

Modification proposal:	Connection and Use of System Code (“CUSC”) Modification Proposal CMP391, “Definition of ‘Charges for Physical Assets Required for Connection’”		
Decision:	The Authority ¹ has decided to approve this modification ²		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	31 May 2022	Implementation date:	1 June 2022

Background

On 20 May 2022, we rejected CUSC Modification Proposals (“CMP”) 368 and 369³ which sought – inter alia – to amend the CUSC to reflect the correct definition of the ‘Connection Exclusion⁴’. The Connection Exclusion is given effect in the CUSC by the defined term, “Charges for Physical Assets Required for Connection” in Section 11 and by the transmission network use of system charging methodology in Section 14.

Following the judgment⁵ of the High Court in the judicial review proceedings⁶, the Competition and Markets Authority (CMA) issued an Order⁷ on 20 May 2022 which had the practical effect of quashing the definition of, “Charges for Physical Assets Required for Connection” from Section 11⁸. Since the CMA’s Order of 20 May 2022, the CUSC has not contained a definition

¹ References to the “Authority”, “Ofgem”, “we” and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ <https://www.ofgem.gov.uk/publications/cmp368-and-cmp369-decisions>

⁴ Commission Regulation (EU) No. 838/2010 (the “Limiting Regulation”) provides that, in calculating annual average transmission charges paid by producers, “transmission charges shall exclude...charges paid by producers for physical assets required for connection to the system or the upgrade of the connection”. We refer to this as the ‘Connection Exclusion’. Note that, following the end of the post-Brexit Transition Period, the relevant parts of the Limiting Regulation continue to apply in Great Britain as retained EU law, pursuant to s.3 of the European Union (Withdrawal) Act 2018 (subject to non-material amendments).

⁵ [SSE Generation Ltd & Ors, R \(On the Application Of\) v Competition And Markets Authority \[2022\] EWHC 865 \(Admin\) \(11 April 2022\)](https://www.bailii.org/uk/ot/cas/cases/2022/UKSC01.html)

⁶ For the background to the judicial review proceedings please see our [CMP368 decision letter](#).

⁷ [Order \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/111111)

⁸ For the background to this Order please see our [CMP368 decision letter](#).

of “Charges for Physical Assets Required for Connection”. We considered that for the purposes of ensuring there is a definition of “Charges for Physical Assets Required for Connection” which reflects the Limiting Regulation, in light of the conclusions reached in the judicial review proceedings about what is required to achieve compliance, it would be prudent to approve implementation of a new definition of, “Charges for Physical Assets Required for Connection”. As none of the options presented to us under CMP368 (and CMP369) were capable of approval, we outlined in our CMP368 decision that we had – alongside that decision – raised a CUSC Modification Proposal under 8.17A.1 of CUSC.

The modification proposal

We raised CMP391 on 20 May 2022 and issued a direction to the CUSC Panel detailing the exact governance process for the proposal. Specifically we said that we considered that neither Workgroup discussion, nor consultation, could provide further views, evidence, or alternatives to influence the proposed solution set out in CMP391.⁹ We are of the view that as the sole scope of CMP391 was to define the term “Charges for Physical Assets Required for Connection” by inserting the provision of the Limiting Regulation, specifically such that “Charges for Physical Assets Required for Connection” shall mean, “*charges paid by producers for physical assets required for connection to the system or the upgrade of the connection*” there was no potential alternative solution which would be in scope of the proposal. CMP391 therefore consists solely of an Original Proposal. We recognised however that the Panel Recommendation Vote carries specific legal consequences and affects parties’ rights of appeal under the Electricity and Gas Appeals (Designation and Exclusion) Order 2014 and as such directed that the CUSC Panel convene and vote on whether CMP391 better facilitates the Applicable CUSC Objectives¹⁰.

CUSC Panel recommendation

⁹ Noting that Parties may wish to bring forward a modification proposal of their own devising to provide non-prescriptive guidance on the interpretation of the definition created by CMP391.

¹⁰ (in accordance with CUSC 8.23.4)

At the CUSC Panel meeting on 27 May 2022, the CUSC Panel unanimously agreed that the Original Proposal would overall better facilitate the Applicable CUSC Objectives (ACOs) than the baseline CUSC arrangements.

Our Decision

We have reviewed and taken into consideration the Final Modification Report (FMR) dated 30 May 2022 and have concluded that:

1. implementation of the modification proposal will overall better facilitate the achievement of the ACOs; and
2. approval of the modification is consistent with our principal objective and statutory duties

Reasons for our Decision

As set out in more detail in our CMP368 decision, we consider that the Connection Exclusion is unlikely to be capable of prescriptive definition within the CUSC, without some provision that enables further case-by-case assessment when required. We therefore believe that this CMP391 represents an appropriate means of ensuring that the CUSC aligns to the legislative framework.

We have assessed CMP391 against the ACOs, and consider it to be neutral against ACOs a) and b).

(c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency

We consider that ACO c) is better facilitated by CMP391 given that it explicitly aligns the CUSC (in respect of the definition of, "Charges for Physical Assets Required for Connection") to the Limiting Regulation by transposing the words of the Limiting Regulation into Section 11 of the CUSC. We note that the CUSC Panel unanimously agreed that CMP391 would better facilitate ACO c).

(d) promoting efficiency in the implementation and administration of the CUSC arrangements

Some CUSC Panel members considered that CMP391 was either neutral to, or did not better facilitate ACO d). We recognise that the solution under CMP391 was designed solely to facilitate compliance. The baseline CUSC contains no definition of “Charges for Physical Assets Required for Connection” and in our view, the introduction of this definition does therefore better facilitate efficiency in the CUSC arrangements.

Decision notice

In accordance with Standard Condition C10 of the Transmission Licence, the Authority, hereby directs that modification proposal CMP391: Definition of ‘Charges for Physical Assets Required for Connection’ be made.

Harriet Harmon

Head of Transmission Charging Policy

Signed on behalf of the Authority and authorised for that purpose