Code Administrator Consultation

CMP288: Explicit charging arrangements for customer delays and backfeeds

CMP288 To introduce explicit charging arrangements to recover additional costs incurred by Transmission Owners and TNUoS liable parties as a result of transmission works undertaken early due to a User initiated delay to the Completion Date of the works, or to facilitate a backfeed.

Modification process & timetable

1. **Proposal Form** — 12 February 2018
2. **Workgroup Consultation 1** — 11 January 2019 - 31 January 2019
3. **Workgroup Consultation 2** — 28 March 2022 - 27 April 2022
4. **Workgroup Report** — 16 June 2022
5. **Code Administrator Consultation** — 27 June 2022 - 18 July 2022
6. **Draft Final Modification Report** — 21 July 2022
7. **Final Modification Report** — 09 August 2022
8. **Implementation** — 10 days following decision

Have 5 minutes? Read our Executive summary

Have 20 minutes? Read the full Code Administrator Consultation

Have 30 minutes? Read the full Code Administrator Consultation and Annexes.

Status summary: The Workgroup have brought forward one solution (the original). We are now consulting on this proposed change.

This modification is expected to have a: High impact Electricity Transmission Owners; Developers requiring new Generation, Interconnector or Demand connections.
Low impact: Parties paying TNUoS

Governance route	Standard Governance modification with assessment by a Workgroup	
Who can I talk to about the change?	**Proposer:** Ken Doyle Kenneth.Doyle@nationalgrideso.com 07814 062030	**Code Administrator Chair**: Jennifer Groome Jennifer.Groome@nationalgrideso.com 07966 130854
How do I respond?	Send your response proforma to cusc.team@nationalgrideso.com by **5pm on 18 July 2022**	

Contents

Executive summary

CMP288 seeks to introduce into section 14 of the CUSC explicit charging arrangements to recover additional costs incurred by Onshore TOs resulting from requests by Users for a delay to, or to speed up, transmission works to facilitate their connection.

What is the issue?

CMP288 There are currently no explicit charging arrangements to recover additional costs incurred by Transmission Owners as a result of a User-initiated change to transmission works either undertaken early or delay as compared to the contracted Completion Date for the works.

What is the solution and when will it come into effect?

Proposer's solution:

CMP288 Change Section 14 to define additional charges which are levied in the event of customers seeking to delay or speed up transmission works, charged as per the methodology in each TO's Charging Statement (i.e. NGESO will not alter or change these values calculated by TOs).

Implementation date: 10 working days after following a decision by the Authority.

Workgroup conclusions: The Workgroup concluded by majority that the Baseline better facilitated the Applicable Objectives than the Original.

What is the impact if this change is made?

CMP288 The inclusion of explicit charging arrangements for one-off incremental costs improves transparency of the CUSC arrangements, but primarily ensures that the Onshore TOs and TNUoS liable parties are not unreasonably compelled to bear additional projects costs via the RIIO TOTEX incentive mechanism as a consequence of a request by individual Users related solely to their project. As a consequence, this modification also helps to keep costs to end consumers proportionate.

Interactions

The Workgroup agreed that there are no necessary modifications required to the STC in relation to CMP288 as the process to apply charges into the connection agreements is standard process.

However, it was discussed that an STCP modification could be raised in future to provide more assurance on the process to update Charging Statements if desired. The Workgroup decided that whilst a change like this was not required currently, a commitment from the Onshore TOs and the ESO to make this process more transparent was sufficient.

What is the issue?

CMP288:
Section 14.4 of the CUSC provides for One-off charges to be recovered by the ESO where the transmission licensee is required to carry out additional activities related to the provision of connection works, particularly as a consequence of a User request.

The Section 14 charging methodology does not explicitly define that the costs incurred as a result of a User-initiated delay to a contracted Completion Date or a backfeed requested are included in these charges. Section 14.15 (e.g. 14.15.130) states the total amount to be recovered through TNUoS. Additional TO costs resulting from delays or backfeed provision are recovered through TNUoS. No mechanism currently exists within the CUSC to ensure these costs are funded by the requesting party instead of being recovered through TNUoS.

Why change?

CMP288
There are three types of cost a TO may incur upon a delay in a customer's Completion Date or provision of a backfeed:

i) Incremental project capital or non-capital costs: additional one-off costs that occur as a direct result of the customer request (e.g. site demobilisation and remobilisation costs);
ii) Financing costs – additional costs required in financing spend for additional years due to works being undertaken earlier than they would, should the request not be made.
iii) Onshore TO price control performance costs (e.g. business plan deviations for any delays to delivering planned outputs).

The CUSC already allows for the ESO to recover non-standard incremental costs incurred by Onshore TOs as a result of a customer's request via a One-Off Charge. However, the CUSC wording does not explicitly state that this includes the recovery of the above TO costs.

What is the solution?

Proposer's solution

CMP288:
The Proposer's solution will explicitly set out the categorisation of costs for delays and backfeed in the context of calculating One-off Works charges in CUSC Section 14. This would add transparency to the existing arrangements, helping Users understand any potential liabilities.

A fully exhaustive breakdown and explanation of these costs will continue to be contained within the Onshore TO's Charging Statements. As delay/backfeed charges can be negotiated between Users, the ESO and Onshore TOs today, any revised provisions brought forward by CMP288 will apply to:

- Any ongoing negotiation of connection agreements containing delay or backfeed charges
- Any new applications (more likely modification applications).

There will be no retrospective insertion of delay charges/backfeed charges into User agreements if these have not been previously agreed. On a case-by-case basis, any Users with finalised agreements containing delay/backfeed charges which are pending settlement can be reviewed in collaboration with the Onshore TOs and ESO to ascertain whether the underlying methodology needs to be adjusted to reflect the outcome of CMP288.

Workgroup considerations

The Workgroup convened 9 times in 2018-2019 and 5 times in 2022 to discuss the perceived issue, detail the scope of the proposed defect, devise potential solutions and assess the proposal in terms of the Applicable Objectives.

CMP288 was originally raised with modification CMP289 which looks to make consequential changes to sections outside of Section 14 of CUSC (CUSC governance requires that separate modifications are raised for changes to the charging methodology (s14), and non-charging sections of the CUSC). The Proposer no longer believes that any changes are required outside of Section 14 for this modification, so a question was added as part of the consultation to gauge whether industry believe any change as part of CMP289 is required.

CMP288 and CMP289 were originally raised by National Grid Electricity Transmission as a combined ESO and Onshore TO legal entity and with dual representation on 23 February 2018 with a joint Workgroup formed to evaluate both modifications. Since the February 2018 Panel, National Grid Electricity System Operator (NGESO) became legally separate from National Grid Electricity Transmission (NGET). NGET was approved by the Authority to become Proposer of CMP288 as they were deemed to be materially affected by the defect of the modification. NGESO maintained to be the Proposer of CMP289. Nine Workgroup meetings were held between May 2018 and December 2019 before the modifications were put on hold due to Panel Prioritisation of other modifications.

In the Workgroup consultation all but one respondent believed that CMP289 was no longer required. The Proposer withdrew their support for CMP289 on 26 May 2022 and there were no requests from industry to adopt support of CMP289 within the withdrawal window.

All of the documentation from the 2018-2019 work can be found in Annex 3.

The Chair asked the Workgroup to consider whether they believe the Alternative Request submitted during the first Workgroup Consultation (which builds off the Original (2018) Proposal however only applies to connection agreements entered into after the modification implementation date) is still valid. The Workgroup agreed that as the Original Proposal has changed, the Alternative Request is no longer applicable.

Consideration of the proposer's solution

In July 2021 NGET withdrew as Proposer of CMP288, due to the modification not being prioritised by the CUSC Panel. As an alternative route, the delay charge/backfeed concept was made explicit in the TO Charging Statement to specify these in formal industry arrangements. The Proposer believes that it is appropriate for the substantive

delay charge/backfeed charge methodology to continue to sit within the TO's Charging Statements, and the update required to CUSC is to define at a high level these costs which derive from the methodology in those statements.

Initially the Proposer recommended a simple 'TO cost pass through' concept as their proposed solution – however Workgroup and Panel feedback led to a reconsideration of that approach. The Workgroup preferred a more detailed set of legal text to add more transparency into the CUSC arrangements. The Proposer and Onshore TO Workgroup member agreed this was a better approach and provided updated legal text to help facilitate this (Annex 4). The Workgroup did largely accept that duplicating the methodology within the Onshore TO's statements in the CUSC was inefficient and could lead to issues with future proofing.

Applying delay charges/backfeed charges where any works are shared

The Workgroup briefly discussed that how delay/backfeed charges would be apportioned where costs relate to shared infrastructure works. One Workgroup member provided an example of a small generator seeking to delay at a site where larger generators with greater capacity requirements were also connecting. The consequence of the presence of larger Users at the site would artificially create a larger charge which could be seen as discriminatory.

Another Workgroup member highlighted that existing connection application and associated charging concepts are applied on a first-come basis, and as a consequence there may be limited options to help to 'shield' the smaller generator in this example, particularly as the other Users at site are commercial entities. Any cost avoidance would also inevitably burden the Onshore TOs and TNUoS payers as a consequence – a primary driver behind the CMP288 defect.

The Workgroup agreed to review previous consideration of Shared Works in the initial Workgroup meetings held in 2018-19:

- Workgroup members had previously agreed that the costs should be distributed in a proportionate and fair way across all parties who have caused the delay. To make sure this does not only penalise the first and last customer and cause perverse outcomes or incentives for third parties being affected, just because they are connected to the transmission system.
- The National Grid ESO representative suggested that an option could be to calculate the delay charge according to megawatts and then proportion this fairly across the delaying parties, according to their contribution towards the delay - a similar principle to the User Commitment methodology.
- The Workgroup sought industry views on two options for this in their 1st Workgroup Consultation.
    - Option 1 – All the costs of financing early works, targeted to the delaying party
    - Option 2 – MW proportion of all shared works targeted to the delaying party

The Workgroup Consultation responses showed no clear agreement on a favoured option. One party favoured Option 1, two showed a slight preference for Option 2 and two showed no support for either option. The Original solution aligns with Option 1.

Charging Statement Process

Some Workgroup members were not comfortable that the updated Proposal has the fully exhaustive methodology for delay and backfeed charges set out in the TO's Charging Statements rather than in the CUSC. In the Original (2018) Proposal, the charges were set out in the CUSC where the methodology would be under open governance. It was explained by the Proposer that Ofgem formally approve the form of the Charging Statements which gives some level of control. However, Workgroup members were concerned as Ofgem predominantly approve the form of the Charging Statement in line with Electricity Transmission Licence special condition 9.12, with only a minor review of any amended text content (if required). However, workgroup members were wary that TO Charging Statements could be amended in isolation, potentially leading to misalignment to CUSC. The Onshore TO workgroup member clarified the process to rectify such a situation, which they believed to be rare, and confirmed it should only ever be temporary. Code changes would be raised as soon as possible (most likely by the ESO) to manage this, and Ofgem would be notified as part of the annual TO Charging Statement refresh. The CUSC code modification outcome would take precedence.

On review of the current charging statements, it was noted that there is already a variation in the approaches taken between TOs. Workgroup members highlighted that this has always been the case, notwithstanding previous charging statements not detailing exhaustive information on delay charging. More discussion on this topic can be found in the section below.

The Onshore TO Workgroup member provided reassurance that substantial revisions to the TO Charging Statement are rare, and typically only as a consequence of evolutions in RIIO Price Control arrangements or following a direction from Ofgem. In their experience, any material changes would be shared with the ESO who would consider any need for CUSC changes.

They believed that adding exhaustive TO costing methodologies into the CUSC – a code to which they are not a party to - might need annual iterative amendments which would lead to inefficiency in CUSC governance arrangements for all parties. They also stated that the CMP288 Original proposal provided a sufficiently robust framework for applying these charges, which would limit the scope for individual TOs to deviate within their own Charging Statements and would need to fall in line with CUSC. Workgroup members welcomed the reassurance provided; however some Workgroup members did not believe it completely negates the potential for the TO's to make a change without open governance.

The Onshore TO Workgroup member then explained how the Charging Statement annual update process currently worked, and also flagged areas for improvement to this activity to help address Workgroup/industry concerns. The existing high-level process is as follows:

- November early engagement between TOs
- TOs update documentation and submit to Ofgem for review and approval to publish in Dec/Jan
- Charging Statements published and become effective 1st April

The Onshore TO Workgroup member suggested that the early engagement in November included the ESO by default in future, and that in collaboration they identify any material deviations from existing methodologies. If any were identified, the Onshore TOs would continue their usual charging statement updates (ensuring their compliance to licence obligations to publish statements by 1 April), but the ESO and Onshore TOs could either immediately raise a code modification to amend the CUSC, or informally consult to ascertain industry views as to whether a change was needed. Ofgem would be advised in the Charging Statement submission process if any consultation or code modifications were likely in their consideration of approving the TO Charging Statement.

Following discussion on this topic, the Original Proposal was enhanced to add some additional definition of the costs/charges to also provide more reassurance to industry. This had evolved from "pass-through" costs to including a clear definition of the charges. Workgroup members noted that whilst the Original proposal was broadened to provide more explanation of these charges in the CUSC, the Proposer, in coordination with the Onshore TO Workgroup member, chose not to fully incorporate the detailed costing methodology followed by each Onshore TO which drives the charges which the Original proposal defines. This level of detail on cost would instead remain in TO Charging Statements, for the reasons explained above and below by the Onshore TO Workgroup member.

Ensuring Charging Statement consistency between the Onshore TOs

The Workgroup sought to understand how each Onshore TO identified and defined the costs associated with delays and backfeed. Concerns were raised that the three TOs could take a different approach to calculating delay charges, and therefore the charges could be discriminatory in accordance with Standard Licence Condition 7.

A few Workgroup members shared their own experience with some projects that have been delayed a number of times, where delay charges have been unpredictable and opaque.
The ESO provided a high-level comparison of the differences on Charging Statement text related to delay/backfeed text, as they perceived them:

High Level Comparison of TO's Charging Statement

NGET:	**SPT:**	**SHET**:
• Location in Statement: 'Delayed Delivery, Early Delivery and Deferred Use Charges in Part 3' • Very detailed with two pages of example capital and non-capital costs and charge calculations using diagrams and formulae • Delayed Delivery: revised forecast spend minus the original forecast spend in current price base. • Early Delivery: forecast spend to deliver	• Location in Statement: 'Delay Charges & Advanced Delivery Charges' • Low on detail - summarised as 'These charges reflects the incremental cost incurred as a result of a User's request irrespective of whether the cost can be capitalised.'	• Location in Statement: 'Other Charges - One-Off Works in Part 3' • Low on detail - summarised as 'The one-off works charge is a charge equal to the cost of the works involved, plus a reasonable return.'

early minus the efficient spend for nominal delivery, in current price base • Deferred Use Charges: straight depreciation-based charge for assets already delivered		

The Onshore TO Workgroup member stated that they believed the core cost elements (e.g. incremental non-capital or capital project costs + associated financing costs) were consistent between the three TOs, but may be described differently in their respective Charging Statements. However they elaborated that some elements of cost could be unique for the individual TOs due to specific provisions in their RIIO Price Controls, as agreed with Ofgem. This would lead to 'acceptable' regional deviations as they are a consequence of Ofgem direction. The Workgroup member highlighted that this was a factor as to why a fully exhaustive methodology in CUSC could be inefficient.

One Workgroup member explained that in their experience the application of the discussed charges appeared not to be consistent across the three TOs. In the past, they had not experienced any such charges in Scotland and it appeared the Scottish TOs communicated expenditure differently. This view was consistent with at least one other consultation response.

The Onshore TO Workgroup Member (who represents NGET) informed the Workgroup that SPT and SHETL have been engaged on this proposal outside the CUSC process, and all three TOs organisations are committed to working together to ensure consistency in their processes to identify cost and explain these in Charging Statements texts as appropriate (noting the point above re. acceptable deviations due to the different Price Control arrangements agreed with Ofgem). They also suggested that how charges are identified or categorised in customer agreements, i.e. further definition beyond calling them 'One-off Works charges' (which is the categorisation of charge which delay and backfeed charges belong to - as per the Proposer's solution) may have led to this possible confusion.

Throughout the Workgroup meetings, members were keen to understand how often these charges have been applied by each of the TO's and had requested these metrics ahead of the consultation, which has not yet been made available The Onshore TO Workgroup member provided anecdotal information on the frequency of delay charges in their TO area during Workgroup discussions. but it was agreed with the Proposer that this data is inherently commercially sensitive as it relates to individual customer projects.

Wider considerations for delay charge/backfeed charge process

The Workgroup discussed other factors which impact a User's ability to predict, consider and agree to delay charges/backfeed charges, and that this also needed scrutiny. Though changes to business processes are outside of the scope of these CUSC

modifications, the Workgroup agreed it was relevant to the solution to discuss in some level of detail how working practice can be improved to communicate to developers the risk of potential delay charges, so they are enabled to put mitigation in place to avoid these.

The route for a User to notify of a delay was discussed, as per the existing Modification Application (Mod App) process:

- Customer notifies TO (via NGESO) of delay to connection date
- TOs apply delay charges as set out in Charging Statement
- TOs pass charge to ESO via TOCA (governed under STC) who perform high level validation
- ESO passes charge to Customer via BCA and CONSAG (governed under CUSC)

It was discussed that delay charges were a last resort to proactive project management conversations, and that all parties (User, ESO and Onshore TO) should be actively working to avoid needing to levy these charges. A Workgroup member noted that in their experience, this has not always been the case historically. Whilst the Mod App process was agreed to not be defective, the Workgroup discussed what else could be done to business processes in order to improve this area.

The Workgroup discussed the process for negotiating and agreeing charges, including the important role the ESO had to advocate on behalf of the customer that delay charges/backfeed charges were well-justified (by supporting TO data) and applied in accordance with approved methodologies. The ESO committed to consider how they could do this to support Users.

The Onshore TO (NGET) Workgroup member highlighted that significant improvements have been made to enable NGET to ring-fence and identify cost internally, and evidence it externally. They assured Workgroup members that this would continue to evolve, and efforts would continue to ensure this data was also understandable to Users and the ESO. They acknowledged that Users should be able to dispute any charges the Onshore TO seeks to levy via the ESO if the User or ESO believes the supporting data is unclear or the charge unjustified in respect of the methodology. They voiced their aspiration that this would be dealt with through collaboration first rather than an immediate formal dispute.

The Onshore TO Workgroup member also highlighted enhancing communications and data exchange with the ESO as part of the Final Sums process, particularly to highlight any significant increases in TO spend which would lead to any delay charge being greater.

A Workgroup member voiced in their opinion that although the TO's aspiration to make significant improvements to the current process was promising, it does not provide assurance that it will happen.

The ESO confirmed that the existing CUSC charging dispute process would apply for the changes introduced by this modification and no consequential changes would be needed.

Clarification on where delays may not be permitted (including interaction with Shared Works)

The Onshore TO Workgroup member provided clarification on the situations where User requests, which could lead to backfeed and delay charges, might not be able to be accommodated, or where other options might influence delay/backfeed charges.

In terms of the scenarios where a request to delay might not be able to be accommodated by an Onshore TO, these include (but are not limited to):

- Where works are Enabling Works for other Users
- Where demob/remob of engineers/third party contractors might not be viable (e.g. resource/time constraints)
- Outage windows (or absence of them) preclude a delay
- The requested delay is too close to delivery or key stages of construction

Where a delay cannot be accommodated, TO works would continue as originally contracted and if the User also decides not to delay, no charges would be levied. However, there are two potential alternative scenarios which might be offered to a User seeking delays. These could lead to variations of delay charges:

1) **TO works continue as per original contracted date, but the delaying User defers asset use until a date which suits them.**
   In that instance the User would pay the cost of depreciation and financing for commissioned Infrastructure assets being sat idle awaiting use. The Onshore TO Workgroup member explained that this cost was to address the fact that end consumers pay for delivery of 40-year-old assets. If a delaying User causes these assets to age ahead of use, it is not reasonable that this cost of depreciation to be incurred by TOs and end consumers via TNUoS. They added that Connection Charges would also be levied (if the User scheme includes Transmission Connection Assets) from the point the TO commissions these assets (as opposed to the User's preferred use date).
2) **The TO might propose an alternative 'delayed' date which could be agreed to instead**.
   In that instance, the User would be liable for any incremental project costs and financing for that revised program of work (i.e. a typical delay charge). If there is any supplemental time lag between TO asset commissioning and User asset use by the delaying User then the approach in point (1) would apply.

The Onshore TO Workgroup member was reminded Workgroup members that projects which remain on track and do not seek delays will not incur delay charges.

Workgroup members discussed these scenarios and sought to understand in particular the extent of cost of depreciation. The Onshore TO Workgroup member explained this is charged in relation to the asset value in a similar manner to connection charges. They flagged that given Infrastructure Asset values are typically significant, that these charges may be high if the delay is for an extended period. However he reminded Workgroup members that Infrastructure Assets are funded by end consumers via TNUoS charges (via Price Control mechanisms). If a delaying User caused the Onshore TO to not be able to recover their allowed revenue in relation to completed deliver of Infrastructure Assets it was important that neither the TO or end consumers face the financial penalties for this.

The Workgroup queried whether the presence of a second comer might provide a route to avoid or minimise this type of charge. The Onshore TO Workgroup member accepted this was another variable in determining the time lag between asset commissioning and that might minimise charges. However in response to a Workgroup query about whether

TO/ESO actively seeks to 'speed up' the connection of other Users to help bridge this gap, he explained this was not typically possible. They explained that each User has different circumstances when managing their projects and this was not in the control of the TO/ESO to unduly influence.

Consideration of other options

The ESO representative listed four theoretical ways CMP288 could be implemented, acknowledging some of these would not be endorsed by industry. They went on to confirm that the implementation approach for the original proposal would be apply CMP288 to all connection contract changes (new contracts or modifications to existing contracts) after the implementation date or where these charges are already applied in the connections contracts. The other three implementation options discussed were;

1. Look back through all current contracts and see if any missing charges should be applied (i.e. retroactive application of charges)
2. Apply to all connection contract changes (new contracts or modifications to existing contracts) after the implementation date (i.e. remove existing charges)
3. Only apply to brand new connection contracts signed after the implementation date.

One Workgroup member believed that with option 2, when expenditure had been applied by the TO prior to the Mod App (in some case many years), that this could be included as a delay charge within 'all connection contract changes'.

Consideration of withdrawal of CMP289

The Proposer believed that CMP289 can be withdrawn as the Construction Agreement that CMP289 is proposing to amend already provides for the possibility that one-off works might take place (Clause 2.11 of that agreement). In addition to clause 2.11, the formulae and charging arrangements set out in CUSC paragraphs 14.4.4-14.4.6, provide sufficient clarity.

In the Workgroup consultation all but one respondent believed that CMP289 was no longer required. The Proposer withdrew their support for CMP289 on 26 May 2022 and there were no requests from industry to adopt support of CMP289 within the withdrawal window.

It was confirmed that the alternative proposal was focused on ringfencing the pre-Trigger costs only, which related to delay not contracting or asset costs.

Workgroup consultation summary

The Workgroup held their Workgroup Consultation between 28 March 2022 – 27 April 2022 and received 12 responses and one alternative request. The full responses, summary of the responses and the alternative form can be found annexes 4, 5 and 6.

12 non-confidential responses received. 1 Alternative Request received.

- 10/12 respondents did not believe that the original proposal better facilitates the applicable objectives
- The 2/12 respondents were supportive of the proposal and believed the proposal better facilitated the objectives (1: A, B and E, 2: A, B and C)

Concerns highlighted

- Lack of evidence that proposal better facilitates objectives
- Lack of transparency – some respondents would prefer the charging methodology to sit within the CUSC under open governance
- Risk asymmetry – risk is transferred to developer by this modification rather than being shared
- Discrimination between users – mention of Standard Licence Condition 7 which contains a prohibition on discriminating between Users. Lack of clarity on how charges will be incurred increases likelihood of inconsistent application
- Disincentivises communication between TO and Developer
- Inadequate provision for charges associated with backfeed
- Concern that the current timeline would not allow for current charging disputes to be concluded - clarification required regarding how these will be treated
- A clear definition is required for Early Access Charge date
- Clarity required on how the proposals interact with the User Commitment methodology – particularly if charges applied to wider/shared works
- Misalignment with market arrangements and net zero ambitions - it distorts the ability of some new build projects to compete in investment mechanisms such as the capacity market

Workgroup discussion:

- *The Workgroup discussed that the mention of conclusion of disputes related to informal disputes between parties which had not yet become a formal dispute raised to Ofgem.*
- *Requiring a clear definition of the 'Early Access Charge date', as suggested in one response, caused debate as some members did not feel that it was a phrase that had been used in the legal text, the Consultation nor Workgroup discussions previously.*
- *There was a discussion around driving consistency between the TO's delay charge calculations and the mechanisms/ relationships between the CUSC and Charging Statements.*
- *The Workgroup could not gain a consensus around capping delay charges when discussing how the proposal would interact with the User Commitment methodology within Section 15 of the CUSC.*
    - *One member believed the introduction of capping would likely result in greater cost to TO's. The TO representative believed that the proposal will allow for transparency and embed explicit rules, allowing for a framework for conversations as TOs have licence obligations to meet connection dates.*
    - *It was suggested that clarity is needed over what the consequence to delaying scenarios, as due to costs associated with demobilising and remobilising there is a potential risk that it would be cheaper for a User to cancel their connection over taking the delay charges to then reapply for connectivity later.*

Benefits highlighted

- Removal of additional financing costs, which removes potential cross-subsidy between CUSC parties
- Ensures cost of delays and provision of backfeeds is reflected in charges made to the party causing the cost – not incurred by Onshore TOs or end consumers via TNUoS

- Helps better facilitate competition by removing any potential risk of inconsistency of cost pass-through which could lead to some Users avoiding these charges
- Ensures that any incremental costs which result from User requests are more explicitly categorised as One-off Works, minimising the risk of these incremental costs instead being incurred by an Onshore TO who is then subject to adverse Price Control performance measures through no fault of their own

Shared works

- Further detailed analysis required in this area
- Shared works: risk of stranded investments
- Sole use: users should not be penalised if the TO has inefficiently mitigated losses
- Incurred losses: all parties need full picture in order to assess this
- Charges should only reflect a user's contribution to the need for works. This proposal means the first party to delay pays the delay costs for all of the works
- One respondent believed that there is no methodology which does not lead to another industry party (e.g. an Onshore TOs or other Users) or end consumers being unreasonably burdened with additional costs if the Workgroup wishes to cap liability for Users seeking to delay when forming part of Shared Works.
- The TO respondent believed the following scenarios must be avoided, as they lead to potentially uneconomic outcomes for end consumers and/or distort competition:
    a) Onshore TOs being forced to bear a share of User-initiated costs – this would cause adverse output performance under the T2 Price Control leading to financial penalties (as already mentioned in Q1 above).
    b) End consumers also being forced to bear a share of costs in the conjunction with (a) – i.e. via TNUoS charges.
    c) User-linked incremental costs being apportioned to adjacent Users also forming Shared Works without their prior consent.

Workgroup discussion:

- *Shared Works were discussed in terms of capping liability, as the additional charges will need to be recovered either by the TO or the end consumer.*
- *The Workgroup did not have a view on whether there needed to be an additional methodology for the Shared Works. A hierarchy of delay charges with generic criteria were requested.*

CMP289

- 11/12 respondents did not believe the CMP289 modification was required
- One thought it would achieve greater transparency to users about delay charges

Alternative Request

An alternative request was raised in the consultation which looks to amend section 14.4.2 to impose charges on Users for incremental costs incurred by the TO where a User requests a delay to the Completion Date for a connection ('delay charges'). This alternative proposal builds on CMP288 by further amending section 14.4.2 to clarify that any work undertaken and costs incurred by the TO prior to the Trigger Date specified in a Bilateral Connection Agreement will not be taken into account when calculating delay charges.

Discussion of alternative request

Discussions from the workgroup on the alternate raised:

- The aim of the alternative proposal is to differentiate between where delay charges would be directed based on the timeline of investment mechanisms. Any costs prior to the Trigger Date would be socialised through TNUoS and later in the process they should be targeted at the party causing the delay, on the basis that this would be more efficient for the end customer.
- It was explained that within the TOs' licence they do not invest based on a pre/post Trigger Date and as Price Control is managed within RIIO, incremental (one off works, such as delay charges) are not included within the Price Control methodology. Therefore, for this alternative proposal to work, Ofgem would need to amend the price control methodology.
- The Workgroup agreed there is a disconnect between the market mechanisms and the Codes, and that conversations between TOs and Users/ Developers need to be improved -with greater visibility and empathy between all parties around the commercial impacts of delaying.
- The alternative proposal focused on the delay charges that Developers incur when they are not successful at the Capacity Markets auctions and are required to delay a project and that therefore incurring delay charges is uncompetitive.
- There was discussion that as not all Developers go through the market mechanisms. The alternative proposal was suggested by one Workgroup member to therefore be non-competitive and is negatively against applicable to CUSC Applicable Charging Objective B.

It was confirmed that the alternative proposal was focused on ringfencing the pre-Trigger costs only, which related to delay not contracting or asset costs.

The alternative request did not form a WACM as it did not receive enough support in the vote on alternatives.

Legal text

The legal text for this change can be found in Annex 7.

What is the impact of this change?

Proposer's assessment against Code Objectives

CMP288

Proposer's assessment against CUSC Charging Objectives	
Relevant Objective	**Identified impact**
(a) That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;	**Positive** The Proposal removes additional financing costs related to individual customer delays and backfeeds, which removes a potential cross-subsidy between CUSC parties.
(b) That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any	**Positive** The Proposal ensures that the cost of delays and provision of backfeeds is

payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);	reflected in charges made to the party causing the cost.
(c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses.	**Neutral**
(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	**Neutral**
(e) Promoting efficiency in the implementation and administration of the system charging methodology.	**Positive** Including explicit charging arrangements for one-off incremental costs improves transparency of the CUSC arrangements.
* The Electricity Regulation referred to in objective (d) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.	

Workgroup vote

The workgroup met on 23 May 2022 to carry out their workgroup vote. The full Workgroup vote can be found in Annex 8 The table below provides a summary of the Workgroup members view on the best option to implement this change.

The Applicable CUSC charging and non-charging Objectives are:

CUSC charging objectives

a) That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;
b) That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);
c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;
d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and

e) To promote efficiency in the implementation and administration of the system charging methodology

*The Electricity Regulation referred to in objective (d) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.

The Workgroup concluded by majority that the Baseline better facilitate the Applicable Objectives than the Original. 2 out of 8 votes voted the Original as better than the Baseline.

Option	Number of voters that voted this option as better than the Baseline
Original	2

When will this change take place?

Implementation date
10 working days after following a decision by the Authority, as the charging arrangements proposed relate to one-off charges, and adjustments to TNUoS Recovery Requirements in subsequent years' charges.

Date decision required by
As soon as possible.

Interactions

☐Grid Code	☐BSC	☐STC	☐SQSS
☐European Network Codes	☐ EBR Article 18 T&Cs[1]	☐Other modifications	☐Other

Whilst the change will adjust the total amount to be recovered via TNUoS, it does not affect how the resulting amount is recovered from CUSC parties.

The Workgroup discussed that modifications to the STC could be raised to provide more assurance in the TO charging statements.

[1] If the modification has an impact on Article 18 T&Cs, it will need to follow the process set out in Article 18 of the Electricity Balancing Regulation (EBR – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.

How to respond

Code Administrator consultation questions

- Do you believe that CMP288 Original proposal better facilitates the Applicable Objectives?
- Do you support the proposed implementation approach?
- Do you have any other comments?

Views are invited on the proposals outlined in this consultation, which should be received by 5pm on **18 July 2022** Please send your response to cusc.team@nationalgrideso.com using the response pro-forma which can be found on the modification page.

If you wish to submit a confidential response, mark the relevant box on your consultation proforma. Confidential responses will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.

Acronyms, key terms and reference material

Acronym / key term	Meaning
Baseline	The current CUSC
BSC	Balancing and Settlement Code
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
EBR	Electricity Balancing Regulation
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions
TNUoS	Transmission Network Use of System
TO	Transmission Owner
TIM	Totex Incentive Mechanism
SO	System Operator

Reference material

- None.

Annexes

Annex	Information
Annex 1	Proposal forms
Annex 2	Terms of reference
Annex 3	Previous work (2018)
Annex 4	Workgroup consultation responses
Annex 5	Workgroup consultation summary
Annex 6	Alternate request form
Annex 7	Legal Text
Annex 8	Workgroup vote