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for energy consumers

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Dear Trisha,

Decision on CUSC Modification Panel's recommendation for CMP396 'Re-introduction Of BSUoS on Interconnector Lead Parties' to not be treated as an Urgent CUSC Modification Proposal

On 12 August 2022, Saltend Cogeneration Company Limited (the 'Proposer') raised Connection and Use of System Code (CUSC) Modification Proposal CMP396.¹ This proposal seeks to charge Interconnector Lead Parties Balancing Services Use of System (BSUoS) charges. The Proposer requested that CMP396 be treated as an Urgent CUSC Modification Proposal.

The CUSC Modifications Panel (the 'Panel') considered the Proposer's urgency request at its meeting on 16 August 2022. On the same day, the Panel wrote to inform us of its majority view that CMP396 should not be treated as urgent because they did not agree with the Proposer's view that this is an imminent or current issue that if not urgently addressed may cause a significant commercial impact on parties and consumers or other stakeholders.

We have considered both the Panel and the Proposer's arguments and have decided that CMP396 should not be progressed on an urgent basis. We have set out our reasoning below.

¹ <https://www.nationalgrideso.com/document/265566/download>

Background

Under the Third Package Electricity Regulation (EC) 714/2009² an interconnector was defined as a transmission line. As a consequence, interconnector flows are neither classed as production (generation) nor consumption (demand) but part of the overall transmission infrastructure facilitating the wider market. On this basis, in 2012, we approved CMP202³, removing any BSUoS charges from interconnector Balancing Mechanism (BM) Units and Trading Units associated with interconnectors, including those associated with the Interconnector Error Administrator.

The proposal

If approved, CMP396 would introduce BSUoS charges to Interconnector Lead Parties, on the basis that (the Proposer argues) in CMP202, Ofgem adopted a legal interpretation of the Electricity Regulation (EC) 714/2009 which seems to no longer be correct in light of (commercial) changes seen in the last ten years.

Urgency

The Proposer has requested this modification be dealt with on an urgent basis under the criterion that this is a current issue that if not urgently addressed, may cause a significant commercial impact. It argues that the proposal would create a more level playing field for industrial customers, who often see BSUoS as a pass through. It also suggests that even a small reduction in costs to other sectors would ease inflationary pressures.

Panel discussion – urgency

The Panel considered the request for urgency by reference to Ofgem's Guidance on Code Modification Urgency Criteria.⁴ The Panel's majority view was that CMP396 does not meet Ofgem's criteria for urgency.

Some Panel members argued that the proposed change did not represent a significant commercial impact on parties. There was also a question as to whether the proposal would

² [Regulation \(EC\) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation \(EC\) No 1228/2003 \(Text with EEA relevance\) \(repealed\) \(legislation.gov.uk\)](#) – this Regulation has since been replaced by 2019/943 as retained.

⁴ <https://www.ofgem.gov.uk/sites/default/files/2022-08/Urgency%20Guidance%20-%20FINAL.pdf>

have been raised if BSUoS costs were not at current levels (and noted that the underlying issue is not a new one).

It was also argued that the issues that CMP396 raises need to be developed more widely for part of wider discussions that are grounded in expertise and analysis. Those that voted in favour of urgency noted that the decision was finely balanced.

Our decision

In reaching our decision on urgency, we have considered the details within the proposal, the justification for requesting urgency, and the views of the Panel. We have assessed the request against each of the urgency criteria set out in our published guidance, and in particular, whether the proposal is linked to an imminent or current issue that, if not urgently addressed, may cause a significant commercial impact on users.

We consider that there is insufficient evidence to support the argument that not addressing the issue urgently may lead to a significant commercial impact on parties, consumers or other stakeholder(s). The Proposer does not provide detailed information as to the perceived impact on network users, other than to say that some industrial consumers, in certain types of supply contract may benefit. It is also unclear to us that the stated issue (of interconnectors being exempt from BSUoS) would have been raised were BSUoS charges not anticipated by some market participants to increase significantly over the coming months, which we consider to be a separate issue, and which the separate CMP395 seeks to address.

When requesting a formal decision on a request for urgency, as in this case, it is important that evidence and a fully articulated rationale for the request is made. A stated impact should be justified with evidence and should clearly articulate how the request satisfies the Authority's Urgency Criteria.

For the avoidance of doubt, in rejecting the request for urgency, we have made no assessment of the merits of the proposal and nothing in this letter in any way fetters our discretion in respect of the proposal.

Harriet Harmon

Head of Transmission Charging

Duly authorised on behalf of the Authority