

Modification proposal:	<b>Connection and Use of System Code (CUSC) CMP395:</b> Cap BSUoS costs and Defer payment to 2023/24 to protect GB customers (CMP395)		
Decision:	The Authority <sup>1</sup> directs that this modification be made <sup>2</sup>		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	05 October 2022	Implementation date:	00:00AM 06 October 2022

## Background

BSUoS (Balancing Services Use of System) charges are the means by which National Grid Electricity System Operator (NGESO) recovers the costs associated with balancing the electricity transmission system. BSUoS charges are currently recovered from Suppliers and Large Generators<sup>3</sup> based on the amount of energy imported or exported onto the network (£/MWh) within each half-hour period.

Earlier this year, we approved CMP308 (Removal of BSUoS Charges from Generation) which means that from April 2023 BSUoS charges will be recovered solely from Final Demand.<sup>4</sup> CMP395 proposes to apply a cap to BSUoS charges in the intervening period, prior to CMP308 coming into effect. We are also currently consulting on our minded-to decision to approve CMP361/362<sup>5</sup>, which would change BSUoS to a fixed ex ante charge from 1 April 2023.

<sup>1</sup> 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.

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

<sup>3</sup> Large Generators are those generators that are directly connected to the transmission network and generators that are connected to the distribution network with capacities greater than 100MW. Interconnectors and distribution connected generation smaller than 100MW do not face BSUoS charges

<sup>4</sup> [Decision on CMP308: Removal of BSUoS charges from Generation](#)

<sup>5</sup> <https://www.ofgem.gov.uk/sites/default/files/2022-09/CMP361%20Minded-to%20final%20PDF%20-%20Publication.pdf>

## The modification proposal

Saltend Cogeneration Company Ltd ('the Proposer') raised CMP395 on 11 August 2022 to cap BSUoS at £15/MWh, with costs above that level to be deferred to the charging year 2023/24, with a maximum deferral amount of £250m. The Proposer argues that as a result of exceptional market conditions, BSUoS costs are significantly higher than expected, due to factors largely outside of NGESO's control. They consider these cost drivers could not be forecast by industry parties. The Proposer also notes that volatility has been high, citing a broad range of BSUoS prices. The Proposer suggests that fluctuations in BSUoS have led parties to add significant risk premia into their commercial activities. To reduce the continued need for such risk premia, the Proposer suggests a BSUoS cap be implemented this winter, with charges above the cap deferred to the 2023/24 charging year. The Proposer requested that CMP395 be treated as an Urgent CUSC Modification Proposal. We granted the request for urgency on 19 August 2022.<sup>6</sup>

Five Workgroup Alternative CUSC Modifications (WACMs) were put forward and debated by the Workgroup. These alternatives are different to the original proposal in two areas: the level of the cap applied to BSUoS in £/MWh and whether to include a reassessment of the BSUoS price cap within the period of potential deferral. All five alternatives were taken forward and are set out in the table below:

Proposed solution	BSUoS Price Cap	Reassessment of BSUoS Price Cap?	Applies to Generators and Suppliers or Suppliers only?
<b>CMP395 Original</b>	£15/MWh	No	Generators and Suppliers
<b>WACM1</b>	£25/MWh	No	Generators and Suppliers
<b>WACM2</b>	£30/MWh	No	Generators and Suppliers
<b>WACM3</b>	£40/MWh	No	Generators and Suppliers
<b>WACM4</b>	£25/MWh	Yes – by ESO	Generators and Suppliers
<b>WACM5</b>	£15/MWh	Yes – by Ofgem	Generators and Suppliers

## CUSC Panel<sup>7</sup> recommendation

<sup>6</sup> [Urgency decision CMP395: Cap BSUoS costs and Defer payment to 2023/24 to protect GB customers](#)

<sup>7</sup> The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

The CUSC Panel considered CMP395 at a meeting on 21 September 2022. The majority of the CUSC Panel considered that all proposed solutions better facilitated the Applicable Code Objectives (ACOs) than the Baseline (i.e. the existing provisions of the CUSC). When considering which solution best met the ACOs, no solution received more than 2 votes, including the Original CMP395 proposal.

## **Our decision**

We have considered the issues raised by the Original Proposal, WACMs 1-5 and the Final Modification Report (FMR) dated 21 September 2022. We have considered and taken into account the responses to the Workgroup Consultation and the Code Administrator Consultation on the Modification Proposal which were attached to the FMR.<sup>8</sup> We have also considered the votes of the Workgroup and the CUSC Panel, and have considered any confidential submissions made directly to us. We have concluded that:

- WACM3 would best facilitate the achievement of the ACOs;<sup>9</sup> and
- directing WACM3 be made is consistent with our principal objective and statutory duties.<sup>10</sup>

## **Reasons for our decision**

We accept that 2022 BSUoS costs are significantly higher at present than in previous years, and that they are expected to increase over the coming winter period. We do not, however, believe that high BSUoS costs alone would warrant intervention measures such as a cap and a deferral. We consider that it is proportionate only to identify and cap *exceptional* BSUoS costs, noting that BSUoS has historically been a volatile charge, increasing at certain points within the year or as a result of specific market conditions. We expect all market participants to continue to forecast network charges as accurately as they are able to, and will only consider interventions such as this CMP395 where we consider it unlikely that any party could reasonably have foreseen. Not all of the options presented to us in this FMR relate to truly exceptional levels of cost: some seek to set a

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<sup>8</sup> CUSC modification proposals, modification reports and representations can be viewed on the ESO's website at <https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc>

<sup>9</sup> As set out in Standard Condition C5(5) of the Electricity Transmission Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

<sup>10</sup> The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

cap at a level that may in relative terms be 'high' but is not reflective of a BSUoS charge that could not have been readily anticipated.

We consider that WACM3, which sets the cap at £40/MWh without reassessment, provides the right balance between consumer cost and charge stabilisation. In addition, we recognise that given the maximum deferred cost of £250m under all of the options, a £40/MWh cap is more likely to provide protection over a longer period when compared with a £15/MWh cap, which may see the cap limit met sooner and therefore afford protection over a shorter period, thus potentially exacerbating market conditions. All options rely on NGESO's ability to fund a shortfall in BSUoS recovery and therefore all carry an associated cost. However, where exceptional circumstances are faced by industry this winter, we consider that these costs are likely proportionate to the issues that would be created by unforeseeably high charges.

The Proposer considers that market participants are adding risk premia to prices and will continue to do so this winter without the protection of a cap. We accept in principle that this may be the case, however no evidence of the level of these premia or the notional reduction resultant of CMP395 has been provided. Given the absence of evidence as to the degree of risk premia being utilised in the market at present provided as part of the CMP395 FMR, we have assessed this CUSC Modification Proposal as beneficial in principle for the reasons set out below. That said, we think it is reasonable to assume risk premiums could fall if a cap is in place, as the potential range of future costs is limited by the cap for as long as the scheme remains open.

### **Our assessment against Applicable Charging Objectives**

For the reasons set out below, we believe that WACM3 better facilitates ACO (a) and is neutral against objectives (b), (c) and (d). We believe WACM3 is negative against ACO (e).

***(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;***

We note in general, most Workgroup participants, consultation respondents and the Panel considered this Proposal to provide competition benefits, potentially avoiding

market distortions and ensuring costs could be recovered over the longer term. The potential for reduced volatility and improved market confidence were cited as specific competition benefits.

BSUoS is a cost-recovery charge and will be levied solely on Final Demand from April 2023. We believe that there are likely benefits to market participants, and ultimately consumers, of limiting the extent to which parties compete on their ability to forecast volatile, and non-cost-reflective BSUoS charges. We consider that all options seeking to place a cap on BSUoS this winter are therefore likely better at facilitating competition than the Baseline CUSC arrangements.

We consider that WACM3 is likely to provide benefits to industry parties, in particular Large Users on pass-through contracts<sup>11</sup>, by protecting them from BSUoS costs that may not have been foreseen. We also understand that the Energy Price Guarantee (EPG) Scheme introduced by Government may affect the benefits of this proposal for consumers. However, on balance we consider WACM3 to be positive against this objective as it prevents Large Users paying higher BSUoS prices in the short term.

We do however consider that, until CMP308 is implemented, generators remain responsible for accurate and reasonable forecasts of BSUoS charges and that the fact a charge is 'high' is not in and of itself sufficient reason for intervention by the Authority. We believe that the £15/MWh and £25/MWh values proposed under the Original Proposal and WACMs 1, 4 and 5 are not exceptional charges, rather they represent values which are broadly consistent with NGENSO's own published average BSUoS forecasts. Further, we note that the £250m deferral limit could be exhausted within significantly less than six months under options setting a cap at these lower values. We do believe that a very short-term cap would be less beneficial to competition as compared a cap at a higher level but providing protection over a longer time period. WACM2 would set the cap at £30/MWh. We accept in principle that a cap at this level might be appropriate however on balance we think that £40/MWh will provide appropriate levels of protection from some of the highest potential BSUoS charges whilst recognising that costs are higher today than they have been in previous charging years or under other BSUoS cap regimes.

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<sup>11</sup> In broad terms, many Large Users have electricity contracts with their supplier where some cost elements such as BSUoS and other network charges, are not built into fixed unit rates, but charged to users on their bills as separate line items. These are known as "pass-through" contracts as these third party costs are passed through by the supplier on to the customer. Users on such contracts may be more exposed to BSUoS costs, with the risk that BSUoS may be higher than anticipated sitting with them, the demand user, rather than with the supplier.

We therefore think that WACM3 is likely to better facilitate ACO (a) as compared to both the Baseline and the other options put forward in this CMP395.

***(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);***

One Workgroup and Panel member considered all solutions to be negative against ACO (b). They argued that implementation of CMP395 would lead to the charges faced by parties this winter no longer being reflective of the costs of balancing the system. Other Panel members, and many market participants including members of the Workgroup considered all options under CMP395 to be neutral, citing Ofgem's view that BSUoS is a cost-recovery charge and therefore is not cost-reflective.

We consider that BSUoS is not a cost-reflective charge from a Supplier or Generator perspective. That is, it does not reflect the costs imposed on the system by a particular user's actions or location.

In our view, all options under CMP395 are neutral with respect to cost-reflectivity. Whilst the overall value of BSUoS charges to be recovered will not reflect the costs incurred by NGESO in the current charging year, the charges paid by liable parties will be as cost-reflective at a user level as they are under the Baseline, given that no party faces BSUoS charges that reflect their use of the system.

***(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;***

We note many of the Workgroup and Panel members considered the Original Proposal and all WACMs to be either positive or neutral against ACO (c). One Workgroup considered all solutions to be negative against ACO (c).

We do not consider that the nature or execution of NGESO's role within the market has changed in the context of the potential for exceptional BSUoS costs that may be incurred this winter. NGESO continues to procure services through the markets, and to balance the system: the value of the payments it makes to market participants in conducting

those activities has increased but we do not consider that there have been, this charging year, any relevant developments in its business. We do, however recognise that all options under CMP395 would rely on NGESO's Working Capital Facility. This funding arrangement was already in place, and each option under CMP395 would utilise it but fundamentally the Proposal does not introduce or amend that funding. In any event, by including a limit on the total amount NGESO can expect to defer to 2023/24, all options reflect the finite nature of NGESO's ability to fund a BSUoS cap. We consider on balance all options under CMP395 to be neutral to ACO (c) on that basis.

***(d) compliance with the Electricity Regulation and any relevant legally binding decisions of the European Commission and/or the Agency;***

We do not consider that ACO (d) is impacted by this CUSC Modification Proposal and is therefore neutral.

***(e) promoting efficiency in the implementation and administration of the connection charging methodology.***

Workgroup and CUSC Panel members broadly agreed that options under CMP395 would be neutral against ACO (e) when compared to the Baseline. We note that there have been a range of views from Workgroup and Panel members on this ACO, including concerns that CMP395 would increase the administrative burden on NGESO.

We consider that in all options presented to us CMP395 performs negatively against ACO (e) on the basis that it necessitates additional process steps on behalf of NGESO. However, we consider that these process steps are not complex and are proportionate when compared to the potential benefit of limiting parties' exposure to charges they could not have reasonably foreseen.

In our view, those options which seek to deal with 'high' rather than 'exceptional' BSUoS costs, and which therefore place the cap level at £15 or £25/MWh, would be worse against this ACO than options which place the cap level at £30 or £40/MWh. As outlined above, the lower the cap level is set, the more quickly NGESO's £250m funding arrangement may be exhausted and therefore the more quickly industry will return to being exposed to exceptional BSUoS costs: the administrative effort required in relatively short order would therefore be greater under the Original Proposal and WACMs 1, 4 and 5.

## **Impact Assessment**

In our letter regarding urgency on 19 August 2022, we decided that CMP395 should be treated as an Urgent CUSC Modification Proposal.<sup>12</sup>

Section 5A of the Utilities Act 2000 imposes a duty on the Authority (its “Section 5A duty”) to undertake an impact assessment in certain circumstances. In particular, that applies where it appears to the Authority that a proposal is important. A proposal is important for these purposes if its implementation would be likely to, among other things, “have a significant impact on persons engaged in commercial activities connected with the ... generation, transmission, distribution or supply of electricity.” Where this applies, the Authority is obliged to carry out an impact assessment.

The Authority has not found it necessary to reach a decision on the implications of the reasons set out in our letter for the application of its Section 5A duty. This is because of the exceptions to this duty. These apply if it appears to the Authority that the urgency of the matter makes it impracticable or inappropriate for the Authority to comply with the Section 5A duty.

The Authority considers it is both impracticable and inappropriate to comply with the Section 5A duty for this decision. The timeline for decision proposed in the FMR does not allow for an impact assessment to be carried out.<sup>13</sup> Within the time available, however, we have considered (to the extent practicable) the potential impacts, in principle, of the proposed options on market participants, NGESO and consumers.

### **Assessment against the Authority’s principal objective and statutory duties**

In making a decision on this modification proposal, we have to act in accordance with our principal objective and statutory duties. In this regard, we consider that WACM3 takes the most proportionate and balanced approach to the recovery of exceptional BSUoS costs in a manner which is in the best interests of future and existing consumers.

We have a duty to have regard to the financeability of the regulated entities, and recognise that there is a limit to the amount of liquidity that can be provided by NGESO under current arrangements. With this in mind, we have duly considered NGESO’s ability

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<sup>12</sup> <https://www.ofgem.gov.uk/sites/default/files/2021-12/CMP381%20-%20Urgency%20letter%20v1.0.pdf>

<sup>13</sup> <https://www.ofgem.gov.uk/publications-and-updates/impact-assessment-guidance>



to finance any deferral of BSUoS costs, and consider that a £250m limit to the BSUoS costs that can be deferred is acceptable.

## **Implementation**

CMP395 WACM3 will be implemented from the first settlement period of 06 October 2022 (00:00-00:30 on 06-10-2022)

Any requisite amendments to NGENSO's Special Conditions or Standard Conditions of its Transmission Licence will be dealt with by the Authority in due course.

## **Other issues**

CMP308 will be implemented in April 2023, placing BSUoS liability on Users with Final Demand volumes only. We recognise that this CMP395 may mean that generators will continue to be liable for any BSUoS costs after 1 April 2023, the liability for which was incurred in the current charging year. All BSUoS-liable parties will benefit from reduced BSUoS exposure over the winter of 2022/23, and it is appropriate that all currently BSUoS-liable parties therefore share in the costs of delivering that benefit. We accept that there will be a 'manual' process for NGENSO to facilitate this but believe it is proportionate to the benefit to be derived from the same. We consider that industry would benefit from some further clarity about the process, and we note that this could be provided through an additional modification raised by NGENSO.

We are engaging with the Low Carbon Contracts Company (LCCC) to ensure that the CMP308-related updates to the contracts between the LCCC and those Generators awarded a Contract for Difference also take into account this Decision so as to avoid the potential for windfall gains to Generators being compensated through their CfD for BSUoS charges. We continue to expect the relevant Generators to engage constructively with LCCC on this matter.

## **Decision notice**

In accordance with Standard Condition C10 of the Transmission Licence, the Authority, hereby directs that WACM3 of modification proposal CMP395: *Cap BSUoS costs and Defer*

*payment to 2023/24 to protect GB customers* be made with effect from the first settlement period of 06 October 2022 (00:00-00:30 on 06-10-2022).

**Charlotte Friel**

**Deputy Director - Market Operations and Signals**

Signed on behalf of the Authority and authorised for that purpose