

Modification proposal:	Connection and Use of System Code (CUSC) CMP390: Updating application forms to enable disclosure of information to government (CMP390)		
Decision:	The Authority ¹ directs that this modification be made ²		
Target audience:	National Grid Electricity System Owner (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	13 December 2022	Implementation date:	10 working days from decision date

Background

The National Security and Investment Act 2021 (NSI Act)³ came into force in January 2022, giving Government powers to scrutinise new build infrastructure for national security risks and investigate the acquisition rights of the developing entities. The NSI Act will apply where developers apply for a network connection, requiring the Electricity System Operator (ESO) to share certain information contained in connection applications with the Department for Business, Energy and Industrial Strategy (BEIS). The ESO's obligations under the NSI Act conflict with the confidentiality agreements in the Connection and Use of System Code (CUSC)⁴.

The modification proposal

The ESO (the Proposer) raised this modification on 12 April 2022 with the aim of updating the CUSC to ensure that information can be provided to the Government in order to support the fulfilment of the requirements of the NSI Act.

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 [National Security and Investment Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2021/26/section/1)

⁴ Section 6.15 [CUSC - SECTION 6 \(nationalgrid.com\)](https://www.nationalgrid.com/uk/cusc-section-6)

CMP390 proposes to update legal text in the following sections of the CUSC:

- Exhibit B – Connection Application,
- Exhibit D – Bilateral Embedded Generator Agreement (BEGA) Application; and
- Exhibit I – Modification Application.

The changes aim to recognise and give consent to the ESO to share information about an applicant with Government as required by the NSI Act, and to enable BEIS to carry out any initial security checks in line with the NSI Act.

The Proposer considers CMP390 better facilitates CUSC objectives (a), (b) and (d), with a neutral impact on objective (c)⁵.

CUSC Panel⁶ recommendation

At the CUSC Panel meeting on 24 June 2022, the CUSC Panel (the Panel) unanimously considered that CMP390 would better facilitate the CUSC objectives, and the Panel therefore recommended its approval. Panel members unanimously agreed that CMP390 better facilitated CUSC objective (a) by facilitating the fulfilment of the requirements placed on the ESO by the NSI Act. A minority of the Panel agreed that CMP390 better facilitated objective (b) with the majority voting that the modification was neutral against this objective. The Panel unanimously agreed that CMP390 is neutral against objective (c) and the majority agreed that CMP390 is positive against objective (d), providing a clear governance route through the CUSC and enabling the ESO to share the required information in an efficient manner.

Our decision

We have considered the issues raised by the modification proposal and the final Modification Report (FMR) dated 6 July 2022. We have concluded that:

⁵ Applicable CUSC Objectives as set out in Standard Condition C10(1) of the [Transmission Licence](#): (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity; (c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and (d) promoting efficiency in the implementation and administration of the CUSC arrangements.

⁶ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the CUSC;⁷ and
- directing that the modification be made is consistent with our principal objective and statutory duties.⁸

Reasons for our decision

We consider this modification proposal will better facilitate CUSC objective (a) and has a neutral impact on the other applicable objectives.

(a) the efficient discharge by the Licensee of the obligations imposed on it by the Electricity Act 1989 and the Transmission Licence; and

The Proposer considers that the modification proposal meets objective (a) because it enables the ESO to support the objectives of the NSI Act by sharing relevant information about connection applicants with BEIS. We agree that the amendments proposed to the legal text in the CUSC will allow the ESO to fulfil these obligations. The Electricity Act and the Transmission Licence do not exist in isolation, and compliance with new legislation is expected. We therefore agree that CMP390 facilitates CUSC Objective (a).

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

The Proposer considers that the modification proposal meets objective (d) because it ensures the CUSC enables information to be shared in a transparent manner. We do not wholly agree that the greater degree of transparency required by the Government will bring about an increase in efficiency in the implementation and administration of the CUSC arrangements. Though we can see the potential for inefficiency to occur without the conflict between the NSI Act and the CUSC being addressed, we do not have sufficient information to confidently say CMP390 is positive against this objective. We therefore deem CMP390 to be neutral against objective (d).

⁷ As set out in Standard Condition C10(1) of NGENSO's [Transmission Licence](#).

⁸ 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.

Legal Text Error

We have identified an error in the CMP390 proposed Legal Text Annexes. Although the proposed legal text amendments are sufficiently clear for us to form a position on the proposal, we view the error in the proposed legal text to hold the potential for misinterpretation.

The error observed is as follows:

- The legal text amendments proposed by the ESO in Exhibits B, D and I of the CUSC include the word “or” at the end of paragraph 8(a) which implies mutual exclusivity between paragraph 8(a) and paragraph 8(b);
- This should be changed from “or” to “and/or” in paragraph 8(a) of Exhibits B, D and I in order to ensure clarity in the instance where information needs to be shared if both the cases outlined in paragraphs 8(a) and 8(b) occur.

We expect the above typographical error to be rectified by the ESO as soon as possible.

Decision notice

In accordance with Standard Condition C10 of the Transmission Licence, the Authority, hereby directs that modification proposal CMP390: ‘Updating application forms to enable disclosure of information to Government for purposes of the National Security and Investment (NSI) Act 2021’ be made.

Tom Kenyon-Brown

Head of Electricity Network Charging

Signed on behalf of the Authority and authorised for that purpose