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TEC Amnesty

Dear Jack,

The ESO in cooperation with the TOs have been in close communication with Ofgem on this Amnesty for a number of months and it was agreed that a letter would be produced for Ofgem that highlights the steps required in order for the TEC Amnesty to progress.

The TEC Amnesty is a critical step within our 5-point plan to improve the connections process, management of the TEC queue and connection timescales. The original TEC Amnesty window for submitting applications closed in November before it was extended out to April 2023.

To progress the TEC Amnesty to its conclusion, it is important that this process can proceed as quickly as possible so we can ensure that the 8GW of potentially non-viable projects are terminated and removed from the queue. This will allow clarity on the connections and works that can be stopped and the identification of any opportunities created by these reductions to provide other customers with more timely connection offers.

There is no express provision in the ESO Licence allowing for non-compliance with the SO-TO Code (STC) or for Ofgem to direct this it is the case. Also, not applying the Cancellation Charge is contrary to the Connection and Use of System Code (CUSC). The application of the TEC Amnesty therefore raises questions of breaches of the CUSC and in turn, the ESO's Licence. Consequentially, this could result in potential investigation/enforcement action by Ofgem. As such, comfort is sought that this would not arise.

This letter sets out the steps that we would like support from Ofgem on, in order to facilitate this.

Recognition that approach does not follow the CUSC

Under TEC Amnesty, we propose that the existing regulatory framework¹ in the ESO and TO Transmission Licences, and the SO-TO code are followed, but the Cancellation Charge under the CUSC is not levied by ESO for customer terminations and capacity reductions resulting from the Amnesty.

This approach will mean that ESO is not following the terms of the CUSC in this respect, and we would therefore require that in doing this, as per discussions and feedback obtained from the Ofgem team at the time of the release of this [initiative](#) (22nd September 2022), and recognising the overall benefit to the connections process, that Ofgem would not view ESO deviating away from the following areas of the Transmission Licence and CUSC as something for which enforcement action under the Transmission Licence is appropriate:

¹ TO can recover Final Sums under the TOCA and ESO collects this amount via TNUoS (Special Conditions 3.1 Part B TS₁) with adjustment to the cancellation charge collected (Special Condition 3.2 Part A Term₁).

- Under the Transmission Licence SC C10 para 3 and 9 below ESO has the obligation that arrangements conform with the CUSC and that ESO complies with the CUSC.
 - 3. The licensee shall only enter into arrangements for connection and use of system which are in conformity with any relevant provisions of the CUSC.*
 - 9. The licensee shall be a party to the CUSC Framework Agreement and shall comply with the CUSC.*
- CUSC Section 15 houses the User Commitment Methodology [CUSC Code Documents | ESO \(nationalgrideso.com\)](https://www.nationalgrideso.com). This is the methodology that applies through the CUSC Framework Agreement and the provisions in the Construction Agreement and sets out the approach to the calculation of the charge (the “Cancellation Charge”) payable by certain types of users (direct and embedded generators) on (a) termination of a construction agreement or reduction in “transmission entry capacity or “developer capacity” prior to connection or (b) reduction in transmission entry capacity post connection.
- The effect of the TEC Amnesty is that the construction agreement will be terminated or “transmission entry capacity” or “developer capacity” will be reduced prior to connection. In those circumstances, absent the Amnesty, those users would become liable to pay the Cancellation Charge (as provided for in the methodology and, in terms of termination, as per clause 11.2 of proforma ConsAg CUSC Exhibit 3 Part 1 and Exhibit 3A) with the bespoke Cancellation Charge payable calculated in accordance with the User Commitment Methodology.

The proposal would only apply to customer projects that opted into TEC Amnesty during the expression of interest window for TEC Amnesty (October 22 – April 23) and would apply for charges that would otherwise apply up to, and including 30th September 2024, to allow ESO to facilitate the processing of TEC Amnesty. Beyond this date, the existing frameworks will continue to apply.

For the avoidance of doubt, as the existing process under the STC will continue to apply, the following requirements will continue to apply throughout the TEC Amnesty process, but the nature of their application in some areas will be impacted as a result of the ESO not applying Cancellation Charges under the CUSC:

- Under the Transmission Licence SC B12 para 9 there is a similar requirement regarding complying with the STC as in red below.
 - 9. The licensee shall be a party to the STC Framework Agreement and shall comply with the STC.*
- Under the STC (standard construction terms in schedule 8) on termination of a TO construction Agreement (ESO has right to terminate at any time) ESO is liable to pay the TO “final sums” (essentially what has been spent/incurred by the TO less any capital items and associated costs for these that TO wants to retain). SC B12 para 15 does allow for the authority to issue directions relieving parties of their STC obligations but under the TEC Amnesty proposal this process of charging for/recovering final sums will remain unchanged. There is a requirement for a TO to provide ESO with information on the certain components (the “attributable works”) of the cancellation charge (schedule 8 clause 12.2) on termination, but this is “where requested” and wouldn’t be requested in this scenario.
- The TO costs charged as final sums are recovered through TNUoS (Transmission Licence SpC 3.1 Part B (formula for calculating maximum revenue (Tot)) through the term TSt (ie what ESO is charged by the TOs as Final Sums less what it receives from users who terminate/reduce). Any Cancellation Charge recovered would, in usual course, offset the amount passed through to TNUoS. TNUoS is paid by connected parties.

We recognise that as part of Ofgem being comfortable with this approach ESO have submitted a list of projects to be offered TEC Amnesty and the likely costs to be recovered through TO Final Sums and passed through TNUoS.

Confirmation of funding

Given that applying the TEC Amnesty will involve many more terminations than would occur in a typical year and that, without the recovery of Cancellation Charges, the costs passed through to consumers will be greater than normally expected, we believe that it’s important to get assurance on this being funded. The normal

approach would be for funding to be reported and assessed as part of the TO's annual RRP cycle, for subsequent Ofgem review.

To show that any material investment undertaken to date has been calculated to provide a reflective view of spend to date for the purposes of TO final sums, we propose to follow a similar administrative process to that undertaken as part of the RIIO-T1 close out process. Under this, TOs will be required to provide justification for each project terminated of any spend greater than one million pounds, outlining works undertaken for that project which the spend relates to and why this was incurred based on the information available at the time. This will mean that Ofgem have sight of the projects and financial consequences to be comfortable in the implementation of the TEC Amnesty, and ESO and TOs can understand the funding implications resulting from the Amnesty. However, it is also worth noting that (as with the existing process for terminations) while a good view of materiality of costs can be provided initially, the precise value can only be confirmed once a termination has been enacted and investments have been financially closed, following implementation of the Amnesty.

As a result, after implementation, ESO will share with Ofgem the final sums/precise values for each individual project subject to a customer expression of interest during in TEC Amnesty received between October 2022 and April 2023. This will also be visible via TOs' annual Regulatory Reporting Pack. Up to 30th September 2024, where any final sums exceed the figure initially submitted to Ofgem, Ofgem may decide to review the additional spend to determine whether it can be covered under the TEC Amnesty or will be excluded from its scope and confirm the funding that results consistent with the provisions of the TO Transmission Licence. Any adjustment in spend after this date, will be subject to the existing Transmission Licence, CUSC, and STC arrangements.

Impact on Other Parties

As part of implementing the TEC Amnesty, both the ESO and Ofgem would like to ensure no third party is adversely affected by the Amnesty (e.g., by materially increasing the liability of one customer as a result of providing the Amnesty to another).

Under the CUSC, the Cancellation Charge methodology uses a Strategic Investment Factor (SIF) to ensure that each customer is only ever liable for their project portion of an investment. Given this, other parties would only experience an increase in liability, as a consequence of a termination/capacity reduction (whether under the TEC Amnesty or not), that results in a redesign of the transmission works for the smaller number of customers/capacities e.g., a reduction in asset size with a lower overall cost but higher pounds (£) per MW cost.

The purpose of TEC Amnesty is to allow developers to remove projects (potentially those that are no longer viable) from the connections pipeline, allowing for optimisation of the remaining connections. As projects subject to the Amnesty are likely to no longer be viable, they would still be subject to a termination in the absence of the Amnesty (albeit later in the connections process). Therefore, with all things being equal, the only difference in impact between the scenarios with and without the Amnesty, is that the impacted customers become aware of their eventual liabilities earlier in the process under the Amnesty.

We will be getting in touch with all those customers who expressed an interest in the TEC Amnesty to ensure they still want to proceed.

Should you wish to discuss any of the above please do not hesitate in contacting Kavita Patel at Kavita.patel@nationalgrideso.com in the first instance

Yours sincerely

David Wildash

Head of Customer Connections