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for energy consumers

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2 November 2023

Dear Rob,

Decision on CUSC Modification Panel's recommendation for CMP425: Billing Demand Transmission Residual by Site to be treated as an Urgent CUSC Modification Proposal

On 24 October 2023, Nissan Motor Manufacturing (UK) Limited (the 'Proposer') raised the Connection and Use of System Code (CUSC) Modification Proposal CMP425¹ and requested that the modification be considered with urgency.

The Proposer seeks modification to better enable customers using the same connection capacity to choose different suppliers, with different Supplier BMUs.² The Proposer has requested urgency for the modification to provide clarity around the Transmission Demand Residual (TDR) charges Nissan and their partner AESC may face ahead of imminent and significant commercial investment decisions.

The CUSC Modifications Panel (the 'Panel') considered the Proposer's urgency request at its meeting on 27 October 2023. On the same day, the Panel wrote to Ofgem to inform us of its majority view that CMP425 should be treated as an Urgent CUSC Modification Proposal.³

¹ [CMP425: Billing Demand Transmission Residual by Site](#)

² [s14.17.13 Supplier BM Unit code - CUSC](#)

³ [CMP425 - Urgency Request Letter](#)

We have considered both the Panel and the Proposer's arguments for urgency and have decided that CMP425 should be progressed on an urgent basis. We have set out our reasoning below.

Background

National Grid Electricity System Operator Limited ('NGESO') is required under its licence to maintain and operate the CUSC. The CUSC constitutes the contractual framework for connection to, and use of, the electricity transmission network in Great Britain. The CUSC also contains the Transmission Network Use of System (TNUoS) tariff model which defines the transmission charges that recover the Transmission Operators' (TO) cost of installing and maintaining the transmission system in Great Britain and Offshore.

TNUoS charges are payable by the Lead Party of a Supplier Balancing Mechanism (BM) Unit, Power Stations with a Bilateral Connection Agreement, and Parties with a Bilateral Embedded Generation Agreement.⁴ For Supplier BM Units, charges are the sum of its energy, demand locational, TDR, and embedded export liabilities.

Most Transmission-connected demand sites are only assigned to one Supplier BM Unit, so are effectively charged one TDR per site, even where there are multiple organisations sharing that point of connection. However, if the customers instead choose to access the same connection and capacity separately through different Suppliers, and therefore with different Supplier BM Units, they are each required to pay a TDR.

The Proposer considers that this arrangement limits customer choice by incentivising the use of the same Supplier and discouraging effective competition in supply.

Until recently, the Proposer believed that their development would be established as an Independent Distribution Network Operator (IDNO) and would not be subject to the TDR. Recently, we published an open letter⁵ detailing our concerns regarding developments in the activities of IDNOs, calling for stakeholder views on these developments and signalling a potential review. Considering a potential review of IDNO settings, the Proposer now intends to proceed on non-standard Balancing and Settlement Code (BSC) metering aggregated up into a number of Supplier BM Units.

We understand that in practice connecting as a single site which is then divided into different Supplier BMUs gives rise to a differential in charging treatment in comparison to a scenario in which the single site had a single Supplier. In our Targeted Charging Review Direction to NGESO⁶, we stated that TDR charges should be levied on a 'per site' basis.

⁴ [s14.17 Demand Charges - CUSC](#)

⁵ [Open letter on regulatory arrangements for independent distribution network operators](#), 19 October 2023

⁶ [CUSC Direction \(ofgem.gov.uk\)](#)

The Proposal

The Proposer suggests amending the 'Parties Liable for Demand Charges' section of the CUSC⁷ so that where a connection point has more than one Supplier BMU the charges will be divided between the relevant Supplier BMUs in proportion to their capacity usage. The Proposer understands that the change will have no impact on the total revenue the ESO collects on behalf of TOs, as each site will remain paying the same total charges.

The Proposer expects that the modification would have a high impact on a limited number of TO connected demand sites, and could be implemented through a manual process by NGENSO's billing team. The modification is not expected to impact the BSC, or any other codes.

Urgency request

In its urgency request, the Proposer explained why it was requesting urgency, highlighting one of the three Modification Urgency Criteria: *a) a significant commercial impact on parties, consumers or other stakeholder(s)*.⁸

The Proposer considers urgency necessary for the modification decision, on the grounds the outcome will significantly impact the commercial viability of both (Nissan and AESC UK) their intended investment for which a decision is imminent.

The Proposer indicates that simply truncating the modification process would not be sufficient, and requests the modification to proceed straight to Code Administrator Consultation to ensure industry views are publicly available to their investors before 15 November 2023.

Panel view

The Panel considered the request for urgency with reference to Ofgem's Guidance on Code Modification Urgency Criteria.⁹ At the Panel meeting on 27 October 2023, the majority of Panel members agreed to recommend to Ofgem that CMP425 should be progressed as an Urgent CUSC Modification Proposal. The Panel's arguments for and against urgent treatment are set out in the letter from the Panel.¹⁰

Panel members agreed with the Proposer's justification for urgency against Ofgem's criteria (a), recognising a significant commercial impact on the parties.

The Panel also recognised that whilst it is not clear whether the defect is a genuine defect in the CUSC away from the intention of the TDR, or evidence that NGENSO is not billing in

⁷ [s14.17.13 Parties Liable for Demand Charges - CUSC](#)

⁸ [Ofgem Guidance on Code Modification Urgency Criteria](#), published 2 August 2022

⁹ [Ofgem Guidance on Code Modification Urgency Criteria](#), published 2 August 2022

¹⁰ [CMP425 - Urgency Request Letter](#)

accordance with the CUSC, the material impact to the Proposer is significant. The Panel noted that if NGESO is billing in breach of the Code, an Authority decision is needed as soon as possible to enable NGESO to correct the billing process.

One Panel member did not agree that CMP425 met the Authority's Urgency Criteria. The Panel member did not believe that the Proposal adequately explained the scale of the impact for users or any wider impact the Proposal may have to justify a 'significant commercial impact' assessment.

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 considered the Proposer's and the Panel's views on urgency. We have assessed the request against the urgency criteria set out in our published guidance.

A request for urgency should be accompanied by evidence and a fully articulated rationale. This should include evidence relating to the satisfaction of the Authority's Urgency Criteria. In this case, the Proposal sets out a basic rationale but does not include significant evidence in the request. In future, we expect industry parties to provide fuller evidence and commentary alongside any request. On balance and having considered the request, the issue at hand and the wider context, we are satisfied that the progression of this modification proposal satisfies Urgency Criteria (a) and therefore is related to a current issue that if not urgently addressed may cause 'a significant commercial impact on parties, consumers, or other stakeholders(s)'. The actual extent of that impact is still uncertain, particularly for complex sites.

Whilst United Kingdom (UK) trade and business interests sit outside the purview of the Authority, our Principal Objective is to protect the interests of existing and future consumers. As consumers, Nissan and AESC UK are materially affected by the current approach to billing, potentially to an extent that their manufacturing development may become unviable. We acknowledge that given the strategic importance of the development this would not be in the interests of the UK.

Critically, as we have said in our Targeted Charging Review publications, we do not consider that the TDR should cause network users to adjust their investments or operational decisions as this can lead to inefficient network use.¹¹

We therefore recognise the importance of investor certainty in this instance and accept the Urgent Timeline provided at Appendix 1 in the Panel Urgency Letter.¹² While we recognise

¹¹ [Targeted charging review: decision and impact assessment](#), published 21 November 2019, s3.55

¹² Appendix 1 – Urgent Timeline, [CMP425 - Urgency Request Letter](#)

the timeline may not provide a confirmed outcome it will allow for a strong idea of industry sentiment and any practical implications before 15 November 2023.

Although there is a risk that reducing the consultation period from 15 to 3 working days will not provide sufficient time for extensive stakeholder engagement, we are satisfied it will be sufficient to provide the certainty of direction which is of the utmost importance for Nissan and AESC UK's imminent and substantial investment decision. We encourage the Panel and Workgroup to proactively engage with interested parties as soon as possible to ensure consultation is effective. Regardless of urgency the proposed implementation date remains 1 April 2025, allowing sufficient time to address any later concerns.

We do not consider that urgency requests related to any individual connection configuration can always be granted, and by granting this request we make no comment or guarantee on whether future proposals which similarly affect a limited number of sites will equally be granted urgent status. Given that a) the CUSC lacks clarity at present; and b) the TDR should not drive siting decisions but may well do so in this instance, we consider that urgency is appropriate in this case.

For the avoidance of doubt, in accepting 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.

If you have any comments or questions about this letter, please contact John McLellan at John.McLellan@ofgem.gov.uk.

Yours sincerely,

Andrew Malley

Head of Distribution and Residual Charging

Duly authorised on behalf of the Authority

Appendix 1 – Approved Urgent Timeline¹³

Modification Stage	Date
Modification presented to Panel	27 October 2023
Workgroup Nominations	27 October 2023 to 06 November 2023
Ofgem decision on Urgency	02 November 2023
Workgroup 1	07 November 2023
Workgroup 2	09 November 2023
Workgroup Consultation (3 working days)	10 November 2023 to 15 November 2023
Workgroup 3	17 November 2023
Workgroup 4	21 November 2023
Workgroup report issued to Panel	22 November 2023
Panel sign off that Workgroup Report has met its Terms of Reference	24 November 2023
Code Administrator Consultation (3 working days)	24 November 2023 to 29 November 2023
Draft Final Modification Report issued to Panel and Industry	04 December 2023
Draft Final Modification Report presented to Panel / Panel Recommendation Vote	06 December 2023 (by 12pm)
Final Modification Report issued to Panel to check votes recorded correctly	06 December 2023 (by 2pm)
Submit Final Modification Report to Authority	06 December 2023 (by 4pm)
Authority Decision	TBC
Date of Implementation	01 April 2025

¹³ Reproduced from Appendix 1 – Urgent Timeline, [CMP425 - Urgency Request Letter](#)