Draft Final Modification Report

CMP396: Re-introduction Of BSUoS on Interconnector Lead Parties

Overview: Re-introduction of BSUoS on Interconnector Lead Parties to reflect BSUoS is an energy management cost and not a transmission access charge.

Modification process & timetable:

1. **Proposal Form**
   12 August 2022
2. **Code Administrator Consultation**
   27 October 2023 to 17 November 2023
3. **Draft Final Modification Report**
   07 December 2023
4. **Final Modification Report**
   05 January 2024
5. **Implementation**
   01 April 2025

Have 5 minutes? Read our Executive summary
Have 30 minutes? Read the full Draft Final Modification Report
Have 180 minutes? Read the full Draft Final Modification Report and Annexes.

Status summary: The Draft Final Modification Report has been prepared for the recommendation vote at Panel.

Panel recommendation: The Panel will meet on 15 December 2023 to carry out their recommendation vote.

This modification is expected to have a:
High Impact: Interconnector Lead Parties and Customers.
Medium Impact: Suppliers, Generators and the ESO.

Governance Route:	Standard Governance modification to proceed to Code Administrator Consultation.

Who can I talk to about the change?	**Proposer:** Scott Keen, Saltend Power scott.keen@tritonpower.co.uk Tel: 07522 214676 or Lisa Waters, Waters Wye Associates lisa@waterswye.co.uk Tel: +44 20 8239 9917	**Code Administrator Contact:** Milly Lewis Milly.Lewis@nationalgrideso.com Tel: 07811036380

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Executive summary

This modification is seeking to re-introduce BSUoS charges on Interconnector Lead Parties by reflecting BSUoS as an energy management cost and not a transmission access charge.

What is the issue?

The nature of cross border trading has changed significantly Since CMP202 was implemented 10 years ago. It is no longer justifiable for GB energy customers to pay 100% of the costs of supplying electricity to interconnected markets, when those flows are adding significantly to the GB balancing costs.

What is the solution and when will it come into effect?

Proposer's solution:

Charge all interconnector lead parties BSUoS when the interconnector flows are exporting power from the GB, thereby treating all Final Demand in the same manner irrelevant of where it is located.

Implementation date: 1st April 2025.

Date decision required by: 30 September 2024

Panel/Workgroup - discussions/conclusions on the legal status of the modification.

Under Section 8.19.2 of the CUSC the modification progressed to Code Administrator Consultation without completing the Workgroup stages.

Panel recommendation: Panel will meet on 15 December 2023 to carry out their recommendation vote.

What is the impact if this change is made?

This change will treat the supply of energy to all customers, defined as Final Demand, the same irrelevant of their location.

Interactions

Interaction with Electricity Regulation 714/2009 – Article 14(3)

Elexon have confirmed that there are no BSC impacts and no changes to data transfers will be required now. Nevertheless, as the modification advances, Elexon has committed to re-evaluate the situation and provide confirmation as necessary.

What is the issue?

Since CMP202 was implemented 10 years ago the nature of cross border trading has changed significantly. The Proposer argues that it is no longer justifiable for GB energy customers to pay 100% of the costs of supplying electricity to interconnected markets, when those flows are adding significantly to the GB balancing costs.

Why change?

The costs going into BSUoS directly include the costs of supplying Final Demand in interconnected markets. Ofgem have now reviewed BSUoS and decided it should be a residual charge on Final Demand. Therefore, in the Proposer's view, interconnector flows are neither demand nor supply for the purposes of charging when they are considered as exactly that in other parts of the market e.g. the calculation of margins, BMU instructions and the payment of Capacity Market agreements.

The Proposer recognises that under the Third Package Electricity Regulation (EC) 714/2009 an interconnector is defined as a transmission line. However, it is not correct that flows are not production or consumption, as market developments over the last decade have shown. It is no longer appropriate that Final Demand in interconnected markets are not charged the same charges as GB demand. For example, customers connected to private networks off the TO's networks pay BSUoS, so the Proposer argues that a customer at the end of another TO asset should also pay BSUoS and adds that the current rules are discriminatory.

Interactions with Electricity Regulation 714/2009 – Article 14 "Charges for access to networks"

Article 14

Charges for access to networks

1. Charges applied by network operators for access to networks shall be transparent, take into account the need for network security and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. Those charges shall not be distance-related.

2. Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at Community level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure.

3. When setting the charges for network access, the following shall be taken into account:

   (a) payments and receipts resulting from the inter-transmission system operator compensation mechanism;

   (b) actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods.

This Article 14 covers all the charges that system users must pay in order to use the transmission system. Article 14(3) requires that charges for network access should be set taking into account payments and receipts resulting from the inter-transmission system operator (TSO) compensation (ITC)[1] mechanism.

The Proposer contests that BSUoS is not about use of the transmission system today, but about balancing of the wider GB market and flows between markets. A lot of the balancing action now occurs within the DNOs and role of DSOs will further change this.

[1] The Inter-Transmission System Operator Compensation (ITC) mechanism is defined by the Commission Regulation (EU) 838/2010. The ITC mechanism provides compensation for: the costs of losses incurred by national transmission systems as a result of hosting cross-border flows of electricity, and the costs of making infrastructure available to host cross-border flows of electricity.

Interconnector actions are no longer a predictable flow, but can flip around adding to costs and creating system issues.

The TSO ITC mechanism probably also needs to be changed in light of Brexit and the decoupling of the GB from other EU markets. The costs of operating cross border flows have increased, the TSO to TSO trade costs are not market related and the interconnector flows can add to constraints. BSUoS is therefore not a network access charge, it is a supply cost irrelevant of where the consumer is located.

Since BSUoS was removed from interconnector flows, BEIS has allowed interconnectors to be in the Capacity Market, with an obligation to import power in a Stress Event. This arrangement demonstrably treats interconnectors as production and it is their production account position under the BSC that would be the check on whether they did deliver in a stress event. The Proposer argues that it is not appropriate that in a Capacity Market Stress Event an interconnector is a producer, but exporting it has no Final Demand. Further, GB customers are paying for interconnectors to be production in a stress event, and have been for years, so why are customers outside GB not paying the full cost of supply when they benefit from exports?

One of the greatest costs of balancing is now around managing constraints (often now c£10m/day). On 20 July 2022, NGESO took actions at c£9,000/MWh to manage constraints around the interconnectors in the South East and even emergency action on NEMO. The interconnector energy flows are very much part of the wider balancing costs, either feeding into BSUoS or into cash-out.

Therefore, the Proposer argues that the legal interpretation of **Electricity Regulation 714/2009 – Article 14(3)** that Ofgem made a decade ago does not seem to be correct in light of the changes seen in the last 10 years[2]. Arguably nothing has changed, but in the view of the Proposer the reality is everything has changed and the electricity market rules need to reflect that. The Proposer noted that they support cross border trading in principle, there has to be a reflection of energy costs in the delivered price wherever that delivery is.

It should also be noted that this modification would not be charging interconnectors, but the parties who flow power over those transmission lines between the relevant markets. The interconnector itself goes on being a “transmission line”, but the energy flows are treated as if going to Final Demand anywhere in the GB market. This about ensuring all customers bear the same costs.

What is the Proposer’s solution?

Charge all interconnector lead parties BSUoS when the interconnector flows are exporting power from the GB, thereby treating all Final Demand in the same manner irrelevant of where it is located.

Panel/Workgroup – discussions/considerations on the legality of the proposal

Proposal and Request for Legal Advice

When this modification was raised on 12 August 2022 the Proposer of CMP396 requested urgency. However, the CUSC Panel on 16 August 2022 by majority recommended that **CMP396** did not meet Ofgem’s Urgency criteria and therefore did not recommend urgent

[2] https://www.nationalgrideso.com/document/129116/download

treatment to Ofgem. Panel's recommendation was sent to Ofgem later on 16 August 2022, on 19 August Ofgem decided that CMP396 should not be progressed on an urgent basis.

This was due to them considering there to be 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).

Within the CUSC Panel meeting on 26 August 2022 the Panel agreed that independent legal advice needed to be commissioned first as it was important to determine whether or not this proposed change is legally permissible.

Panel also set a revised Terms of Reference on this basis and requested that the 1st Workgroup develop and agree the request for legal opinion which would then be issued to an independent Queen's (now King's) Counsel (KC).

"Commission an independent legal view as to whether or not the change proposed with CMP396 could contravene obligations contained in (European Union) Retained Legislation"

With the intent that once the KC opinion has been finalised, this will then be issued to Panel, who would then revise the Terms of Reference.

Establishing the ask for the independent legal advice

After the ESO identified a law firm to provide independent advice, the Workgroup agreed that the law firm should consider the following ask, the proposal seeks to reintroduce BSUoS on "all interconnector lead parties … when the interconnector flows are exporting power from the GB, thereby treating all Final Demand in the same manner irrelevant of where it is located."

Is the proposal compliant with the current legislative framework?

Materials which the Workgroup considered to be relevant to this analysis included those outlined below. Whilst not a non-exhaustive list, it looks to identify whether there are any provisions which are relevant and/or which prohibit interconnector lead parties from being charged in the way proposed:

a) An interconnector owner is a certified TSO and an interconnector is defined as a transmission line as per Article 2 of retained Regulation (EU) 2019/943. For reference, the definition of "interconnector" in retained Regulation 2019/943 is "a transmission line which crosses or spans a border between Great Britain and another country or territory, and which connects the national transmission system of Great Britain with the transmission system of that other country or territory";
b) Previous Ofgem decisions regarding charges on interconnectors and code modification proposals (GB ECM-26 on the UoS charging methodology; BSC P278, P361 and P396; CUSC CMP202);
c) Consideration of scope and application of charges for access to networks as per Article 18 of retained Regulation 2019/943;
d) Provisions not retained under the inter-transmission system operator compensation mechanism provided for under Regulation 838/2010;
e) Provisions under the UK-EU Trade and Cooperation Agreement, such as Article 311 para 1(e) which notes that to ensure the efficient use of electricity interconnectors and reducing barriers to trade between the EU and the UK, "there are no network charges on individual transactions on, and no reserve prices for the use of, electricity interconnectors"; and

f) Ofgem's decision on CMP308, based on the BSUoS Task Forces, which treats BSUoS as a residual charge on Final Demand from 1 April 2023.

Post Receiving Legal Advice

The Workgroup received the legal advice on 28 March 2023, which detailed the KC's view that the amendment to the Connection and Use of System Code (the "CUSC") envisaged by CUSC Modification Proposal 396 ("CMP396") would likely be unlawful. See Annex 3 for full details.

The Proposers attended the CUSC Panel Meeting on 30 June and confirmed that they would like to progress modification on the basis that:

- No further legal opinion will be sort
- No further Workgroups or amendments to the solution are required
- Ofgem may not agree with the legal opinion provided and has the right to seek its own legal view
- In publishing a decision, Ofgem has an opportunity to note whether they agree that the principle that all customers are treated equitably is correct
- Ofgem can also refer the matter to DESNZ to consider when looking at repealing EU legislation

Following discussions around the best use of industry resource and what the most appropriate governance would be. The Panel unanimously agreed that under CUSC Section 8.19.2 CMP396 should proceed directly to Code Administrator Consultation.

Section 8.19.2:
"In relation to each **CUSC Modification Proposal**, the **CUSC Modifications Panel** shall determine at any meeting of the **CUSC Modifications Panel** whether to: […]
(e) proceed directly to wider consultation (in which case the **Proposer**'s right to vary their **CUSC Modification Proposal** shall lapse)."

Final legal text

The Legal Text for this change can be found in Annex 4.

What is the impact of this change?

Proposer's assessment against CUSC Charging Objectives	
Relevant Objective	**Identified impact**
(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;	**Positive** The change would treat the supply of energy to all customers, defined as Final Demand, the same irrelevant of their location.
(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	**Positive** The TO costs can still be covered by the STC, but the CUSC will charge the indirect costs of the energy

licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);	flows to end users in line with Ofgem's decision on CMP308.
(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;	**Positive** This change recognises the significant changes that have occurred in the market, including the impact transmission investment and use is having on BSUoS.
(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	**Positive** BSUoS is not an access charge, but part of the energy balancing costs which are significantly different to 10 years ago.
(e) Promoting efficiency in the implementation and administration of the system charging methodology.	**Positive** Because it treats all customers the same and charges BSUoS to all Final Demand irrelevant of location.
**The Electricity Regulation referred to in objective (d) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.	

Proposer's assessment of the impact of the modification on the stakeholder / consumer benefit categories	
Stakeholder / consumer benefit categories	**Identified impact**
Improved safety and reliability of the system	**Positive** It is not right that the Final Demand in third party countries are not facing the "right costs" for receiving supplies from the GB market. By altering this balance the market should work more efficiently and signals to customers when to reduce use, etc. will be aligned over borders. This should add to DSR competition and add to reliability. In the longer term, where similar charges are applied in other markets those may be applied to GB demand, then that to would also sharpen signals.

Lower bills than would otherwise be the case	**Positive** Spreading the cost of system energy balancing over more customers will lower the average cost to each customer who directly benefits from the market. We noted that other interconnected markets may want to charge similar charges to demand on their networks and therefore exports to GB. However, that would then benefit the customers in a third-party country by also spreading their costs. What is vital here is that all customers are paying some of the costs that are created to meet their demand.
Benefits for society as a whole	**Positive** The GB economy faces both costs and benefits from interconnector flows. What is critical is that those costs are reflective of the costs incurred in delivering energy.
Reduced environmental damage	**Neutral**
Improved quality of service	**Neutral**

Code Administrator Consultation Summary

The Code Administrator Consultation was issued on the 27 October 2023 closed on 17 November 2023 and received 7 responses. A summary of the responses can be found in the table below, and the full responses can be found in Annex 5.

Code Administrator Consultation summary	
Question	
Do you believe that the CMP396 Original Proposal better facilitates the CUSC Applicable Objectives?	• 6 out of 7 respondents stated that they believed the modification to not better facilitate any of the Applicable CUSC Objectives. • The remaining respondent believed the modification better facilitated all the Applicable CUSC Objectives
Do you support the proposed implementation approach?	• 6 out of 7 respondents stated that they believed the modification to be unlawful and there should not be implemented. • The Proposer requested an implementation date of April 2024
Do you have any other comments?	

Panel Recommendation vote

The Panel will meet on the 15 December 2023 to carry out their recommendation vote.

They will assess whether a change should be made to the CUSC by assessing the proposed change and any alternatives against the Applicable Objectives.

Vote 1: Does the Original, facilitate the objectives better than the Baseline?

Panel Member: **Andrew Enzor**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Andy Pace**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Binoy Dharsi**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Claire Huxley**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)

Original						
Voting Statement						

Panel Member: **Garth Graham**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Joe Colebrook**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Joe Dunn**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Kyran Hanks**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Panel Member: **Paul Jones**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original						
Voting Statement						

Vote 2 – Which option is the best?

Panel Member	BEST Option?	Which objectives does this option better facilitate? (If baseline not applicable).
Andrew Enzor		
Andy Pace		
Binoy Dharsi		
Claire Huxley		
Garth Graham		
Joe Colebrook		
Joe Dunn		
Kyran Hanks		
Paul Jones		

Panel conclusion
Panel will meet on 15 December 2023 to carry out their recommendation vote.

When will this change take place?

Implementation date
Implementation Date of 1 April 2025.

Date decision required by
30 September 2024.

Implementation approach
No system/process changes required.

Interactions

☐Grid Code	☐BSC	☐STC	☐SQSS
☐European Network Codes	☐ EBR Article 18 T&Cs[3]	☐Other modifications	☒Other

Interaction with Electricity Regulation 714/2009 – Article 14(3)

Elexon have confirmed that there are no BSC impacts and no changes to data transfers will be required now. Nevertheless, as the modification advances, Elexon has committed to re-evaluate the situation and provide confirmation as necessary.

Acronyms, key terms and reference material

Acronym / key term	Meaning
BSC	Balancing and Settlement Code
BMU	Balancing Mechanism Unit
BSUoS	Balancing System Use of System charges
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
DNO	Distribution Network Operator
DSO	Distribution System Operator
EBR	Electricity Balancing Regulation
ITC	Inter-transmission system operator (TSO) compensation (ITC) mechanism.
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions
Transmission Connected Site Final Demand BM Unit Metered Volume	The BM Unit Metered Volume for Final Demand with a Bilateral Agreement with The Company, or an exporting BMU with an Interconnector Lead Party, which is multiplied by the TLM
TLM	Transmission Loss Multiplier
TO	Transmission Owner
TSO	Transmission System Operator

Reference material

- No additional reference material

Annexes

Annex	Information
Annex 1	Proposal form
Annex 2	Urgency letters
Annex 3	Independent Legal Advice sought by the Code Administrator
Annex 4	Legal Text
Annex 5	Code Administrator Consultation Responses

[3] If your modification amends any of the clauses mapped out in Exhibit Y to the CUSC, it will change the Terms & Conditions relating to Balancing Service Providers. The modification will need to follow the process set out in Article 18 of the Electricity Balancing Guideline (EBR – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.