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Date: 14 September 2023

Dear Trisha,

**Authority decision to send back Connection and Use of System Code (CUSC) Modification Proposal CMP288: 'Explicit charging arrangements for customer delays and backfeeds' (CMP288).**

We are sending back the CMP288 ("the Proposal") Final Modification Report (FMR)<sup>1</sup> and direct the CUSC Panel to revise and resubmit the FMR. We cannot form an opinion on CMP288 based on the submitted FMR and are therefore sending it back for further work.

**Context**

The FMR for CMP288 came to us ("the Authority"<sup>2</sup>) for decision on 10 August 2022<sup>3</sup>. We note that the Proposal is intended to introduce explicit charging arrangements to recover additional costs incurred by Transmission Owners (TOs) and Transmission Network Use of System (TNUoS) liable parties as a result of a User-initiated delay to the Completion Date of the works, or to facilitate a backfeed<sup>4</sup>. A key aspect of the new charging arrangements is

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<sup>1</sup> [CMP288 Final Modification Report | National Grid ESO](#) and [CMP288 Final Modification Report Annexes | National Grid ESO](#)

<sup>2</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>3</sup> We appreciate that the timescales for this decision have been longer than are typical, as a result of other critical priorities across our work on electricity connections and charging.

<sup>4</sup> Availability of infrastructure or connection assets early for commissioning purposes (Proposed legal text CUSC section 14.4.2, paragraph 1, subsection 2).

that the delay charges will be set out as per the methodology in each TO's Charging Statement. The reason we have decided to send back the FMR is due to a lack of clarity of the analysis and the legal text surrounding such contractual arrangements. Our reasons are set out in more detail below.

### **Reasons for send back**

The nature of the "specific charging arrangements" that the Proposal seeks to introduce into section 14 of the CUSC is unclear from the submitted FMR, specifically in terms of processes to be followed and the methodology to be used in order to set the charges resulting from a User-initiated delay or backfeed. The analysis contained in the submitted FMR, as well as the proposed legal text of CMP288, have deficiencies, outlined below, which means we are unable to form an opinion as to the merits of this Proposal.

### **In respect of the Original Proposal:**

#### **1. Proposed categories of charges: definitions and scope**

It is unclear how the "additional costs incurred by Transmission Owners and TNUoS liable parties" are to be defined and what the scope of the costs envisaged is. Whilst we appreciate that it is not possible to provide exact estimates of capital and non-capital, financing and price control performance costs due to a high degree of variability in each instance, the FMR does not provide sufficient clarity or justification around the nature of costs to be levied on the customer. It is unclear how the level of costs will be defined to ensure these additional costs remain within reasonable bounds. In order to add to the level of detail and transparency, we believe that further clarification is required in the FMR with respect to the categories of costs and the predicted range of charges.

In order to support TOs in ensuring fair treatment and consistency, the Proposal should provide sufficient detail on these aspects to enable them to demonstrate that each type of cost which might be incurred as a result of User-initiated changes to the Completion Date of the works, aligns to the scope of charges set out by the proposed legal text of the CUSC.

The extent to which the TOs would consider the circumstances under which costs have been incurred is not clear to us. We believe the proposed categories of costs - 'project capital and non-capital costs', 'financing costs' and 'price control performance costs', as well as the categories of charges forming part of these, ought to be better defined. This is to ensure there is appropriate clarity for customers around both the size and the scope to which any potential costs which may arise under this charge relate.

The FMR should be clearer on how the proposed types of costs relate to the existing categories of costs currently forming part of the connection charge and whether those costs considered under the proposal align with or extend the range of cost types which a user could face.

## **2. Reinforcement works assessment**

We are unsure of the charging arrangements which would be in place in the event that wider reinforcement works (i.e., asset development needed to enable multiple connections) are carried out. Clarity is also needed on whether the proposed charges and costs (e.g., related to de-mobilisation and re-mobilisation of contractors) consider any knock-on impact to other planned outages where other works were scheduled to take advantage of the planned transmission works and also need to be delayed.

## **3. Consistent application across TOs**

It is not clear from the FMR how the proposal aims to ensure the charges are aligned across the three TOs and respective geographical regions. This should be clarified in order to avoid creating undue regional differences which might have a distortionary effect on the market. We encourage the TOs to work together to align industry practices to ensure consistent treatment of customers.

## **4. Clarity with regards to scope of application**

The modification is seeking to change the current wording of the CUSC to make more explicit what one-off charges involve. The current CUSC section deals with how the existing one-off charge is established. The FMR states that exhaustive breakdown and explanation of these cost will continue to be contained in the Charging Statements. It is, however, unclear how the Proposal will set out the CUSC direction to be followed in the case of existing projects (i.e., projects commenced prior to the implementation of the proposed modification). We believe further clarity with associated justification on the scope of application of the proposed modification is needed, specifically in relation to any application of changes to existing contracts.

## **5. Magnitude of costs: examples**

We believe indicative examples which demonstrate the magnitude of costs incurred, eg when a User-initiated delay / backfeed has arisen in the past, could serve as a useful guide for further assessment of the Proposal.

We would encourage further engagement with customers to consider specific circumstances which may arise and ensure that users have certainty on the nature of charges which might be levied upon them when making investment decisions.

**Direction**

In view of these deficiencies in the FMR and associated annexes, we cannot properly form an opinion on this Proposal. We require the revised FMR to clearly set out the arrangements surrounding the issues described in this letter. After addressing these issues, and revising the FMR and the legal text accordingly, the CUSC Panel should re-submit the Proposal to us for decision as soon as practicable.

Yours sincerely,

**Amy Freund**

**Head of Electricity Connections, Energy Systems Management & Security**

Duly authorised on behalf of the Authority