

Modification proposal:	Connection and Use of System Code (CUSC) Modification Proposal (CMP) 392 'Transparency and legal certainty as to the calculation of TNUoS in conformance with the Limiting Regulation' (CMP392)		
Decision:	The Authority ¹ directs that WACM2 of this modification be made ²		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	1 May 2024	Implementation date:	1 April 2025

Background

On 31 May 2022, we approved CUSC Modification Proposal ("CMP") 391³ which amended the definition contained within CUSC Section 11 of, "Charges for Physical Assets Required for Connection"⁴, operated in Section 14. The background to this decision can be found in its approval letter.

CUSC Section 14 requires that National Grid Electricity System Operator ("NGESO") calculate Transmission Network Use of System ("TNUoS") Charges in a manner intended to ensure compliance with the 'Limiting Regulation'⁵. In particular, it requires that annual

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 <https://www.nationalgrideso.com/document/260666/download>

⁴ Unless stated otherwise, capitalised terms in this document have the meaning given to them in the CUSC.

⁵ Commission Regulation (EU) No. 838/2010 (the "Limiting Regulation") provides that, in calculating annual average transmission charges paid by producers, "transmission charges shall exclude...charges paid by producers for physical assets required for connection to the system or the upgrade of the connection". We refer to this as the 'Connection Exclusion'. Also excluded are charges paid by producers related to ancillary services, and specific system loss charges paid by producers. Neither of these two exclusions is relevant to this CMP392.

average TNUoS charges paid by generators should not fall outwith the range of €0-2.50/MWh, barring Charges for Physical Assets Required for Connection (“the Connection Exclusion”). As a result of our approval of CMP391, the current definition of, “Charges for Physical Assets Required for Connection” within section 11 of the CUSC is: “...shall mean charges paid by producers for physical assets required for connection to the system or the upgrade of the connection.”, which mirrors the wording of the Limiting Regulation itself.

CMP391 was raised by the Authority, and in the Proposal we noted that, “We appreciate that CUSC Parties may want the CUSC to indicate principles (beyond the words of the Limiting Regulation itself) which may be relevant to identifying whether particular charges fall within the Connection Exclusion. We consider that any proposed change brought forward to do so would need to take into consideration what is said in the Judgment.⁶ Any such proposed changes should be progressed through a separate CUSC Modification Proposal.”

The modification proposal

On 27 May 2022, SSE (“the Proposer”) raised CMP392 (“the Original Proposal”). The Original Proposal seeks to introduce into the CUSC:

- i) At Section 14.29, a requirement for NGESO to publish the manner in which it has calculated the value of the Charges for Physical Assets required for Connection, and the detailed output of that calculation; and
- ii) At Section 14, Schedule 1, the proforma form which NGESO must use to publish that detailed output.

The Proposer considers that the Original Proposal would, if approved, provide transparency as well as legal certainty to Users as to the calculation of TNUoS in conformance with the Limiting Regulation.

The Workgroup developed two Workgroup Alternative CUSC Modifications (“WACMs”). Raised by NGESO, WACM 1 would instead create an obligation for NGESO to publish ‘guidance’ on how it will undertake the calculation to set TNUoS tariffs in compliance with

Note that, following the end of the post-Brexit Transition Period, the relevant parts of the Limiting Regulation continue to apply in Great Britain as retained EU law, pursuant to s.3 of the European Union (Withdrawal) Act 2018 (subject to non-material amendments).

⁶ [R \(on the application of SSE Generation Ltd\) v Competition and Markets Authority \[2022\] EWHC 865 \(Admin\)](#)

the Limiting Regulation for that following Charging Year and when assessing compliance following the conclusion of that Charging Year, as it had done previously⁷.

Also raised by NGENSO, WACM 2 would combine the Original Proposal and WACM 1, effectively creating both an obligation for NGENSO to publish guidance on how the calculation had been performed, as well as the detailed output of that calculation.

The Workgroup concluded unanimously that the Original and WACM 2 better facilitated the Applicable CUSC Objectives (ACOs) than the current (“Baseline”) arrangements. The Workgroup voted by majority against what became WACM 1 being raised as a formal WACM, however the Chair chose to allow WACM 1 to progress, “[in order] to ensure that a full suite of options is available for consideration⁸.”

CUSC Panel⁹ recommendation

At the CUSC Panel (the ‘Panel’) meeting on 29 September 2023, a majority of the Panel voted that each of the Original Proposal, WACM 1 and WACM 2 would better facilitate the CUSC charging objectives and the Panel therefore recommended its approval. In particular, both the Original Proposal and WACM 2 were unanimously considered to better facilitate the objectives although no option gained majority support as the ‘best’ option.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 13 October 2023. We have considered and taken into account the responses to the industry consultation(s) on the modification proposal which are attached to the FMR¹⁰. We have concluded that:

⁷ <https://www.nationalgrideso.com/document/275816/download>

⁸ <https://www.nationalgrideso.com/document/290086/download> - FMR, Page 17

⁹ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

¹⁰ CUSC modification proposals, modification reports and representations can be viewed on NGENSO’s website at: <https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc/modifications>

- implementation of WACM 2 will better facilitate the achievement of the applicable charging objectives of the CUSC;¹¹ and
- directing that WACM 2 be made is consistent with our principal objective and statutory duties.¹²

Reasons for our decision

We have assessed the Original Proposal and each of the two WACMs against the Applicable Charging Objectives (ACOs) which are:

- 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;
- 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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 (Requirements of a connect and manage connection);
- 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;
- d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency¹³ *; and
- e) Promoting efficiency in the implementation and administration of the use of system charging methodology.

We consider this modification proposal will better facilitate CUSC objectives d) and e) for the reasons set out below. Further, in the interests of transparency we have set out why

¹¹ As set out in Standard Condition C5(5) of NGENSO's Transmission Licence, see: <https://epr.ofgem.gov.uk//Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

¹² 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.

¹³ *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.

we do not necessarily agree with some parties' views as to whether certain ACOs are engaged by CMP392.

ACO a)

We note that the majority of the Panel considered at least one of the Original Proposal or WACMs to be better against ACO a) than the current ("Baseline") arrangements. We do not consider that ACO a) is engaged by this CMP392. We have not seen compelling evidence that supports the assertions that CMP392 would improve competition. We acknowledge the broad principle that improvements in data transparency can give rise to improvements in competition, however we consider this to be a broad concept without a clearly tangible application to CMP392. On balance, we believe that as the process by which NGENSO sets TNUoS tariffs, and the absolute values of the tariffs remains the same irrespective of CMP392, it is unlikely to influence competition in the market either positively or negatively and therefore agree with those Panel members who noted that it would have no bearing on this ACO.

ACO b)

In respect of ACO b), some parties considered that one or more options under this CMP392 would deliver TNUoS charges which better reflect the costs incurred by the transmission companies. We do not agree. As above, no option under CMP392 would change the charges paid by any User and therefore is, in that respect, identical to the Baseline. ACO b) is not engaged by this CMP392.

ACO c)

We consider that there is no clear interaction between CMP392 and ACO c). The results of the varying litigation on this matter have been reflected in the CUSC through our approval of CMP391, which placed the words of the Limiting Regulation into the CUSC. Since then, there have been no relevant developments in respect of the Limiting Regulation within any Transmission Licensee's business. On that basis we consider that ACO c) is not engaged.

ACO d)

Whilst none of the options will directly have an impact on compliance (as they are simply a means to provide transparency as to how NGESO conducts the mathematical exercise), it is expected that there could be an indirect and potentially marginally positive impact on compliance in that the publication of such results may provide an added element of rigour and discipline.

ACO e)

We believe that ACO e) is impacted and it is against this ACO, along with ACO d) which each of the Original Proposal and two WACMs is positive. On balance, we consider that WACM 2 performs best against the other two options against this criterion.

In general terms, we consider that each option is better than the Baseline when considering ACO e), principally because the lack of transparency in present arrangements is, in our view, likely to drive queries and/or disputes as to whether TNUoS charges are being calculated appropriately. To differing degrees, each of the options before us provides a greater level of transparency. A direct comparison under this ACO e) has been provided below.

ACO e) – The Original Proposal

We consider that both the Original Proposal and WACM 2 would likely create additional resource requirements for NGESO in at least the short-term. In the context of the protracted litigation on the Limiting Regulation over the past seven years, we consider that small, or short-term increases in resourcing are likely to be proportionate in any event. In our view, when compared to the level of resource likely deployed by NGESO and industry stakeholders to litigation and/or disputes in respect of the Limiting Regulation, the incremental resource requirements of any option under this CMP392 are relatively small and likely justifiable.

Under the Original Proposal, NGESO would be required to publish the details of how it has calculated the value of Charges for Physical Assets required for Connection, and the detailed output of that calculation. We recognise that NGESO has concerns about the resource implications of such a task, however we also recognise that in order to correctly set tariffs, NGESO must necessarily have all the detailed output to hand. We have not

seen any evidence that there is any additional resource requirement for NGESO in the performance of any calculations, rather there is a requirement for the output to be formatted appropriately.

NGESO has not sought to quantify the impact to their resourcing that the Original Proposal might have. Although we have no evidence as to whether it is disproportionate to the benefits, we would not expect the formatting of a table of data to be a resource-intensive task. Further, given that this Original Proposal would in fact replace the 'guidance' note currently voluntarily published by NGESO, we expect that over the longer-term it would be a case of redeployment of resource rather than incrementality, notwithstanding that the initial set up of the process would likely require additional short-term resource.

In terms of overall efficiency, it is our view that the Original Proposal would see NGESO publishing a significant volume of information, and that some Users may wish to engage with that level of granularity but that it is unlikely to be helpful for those Users who do not have the resources or time to inspect rows of data. On that basis, it is unclear that the publication of this information would in fact serve to help the generality of Users and it could in theory therefore be less efficient than options which might be accessible to a larger audience.

ACO e) – WACM 1

Under WACM 1, NGESO would instead find a CUSC obligation to publish 'guidance' on how it will undertake the calculation to set TNUoS tariffs in compliance with the Limiting Regulation for that following Charging Year and when assessing compliance following the conclusion of that Charging Year. NGESO currently voluntarily publishes this information and in that sense, this is effectively the Baseline arrangement albeit codified. Where the Original Proposal gives rise to a potentially significant volume of information being published by NGESO, this WACM would instead provide high-level guidance and a process map for the calculation. Although it would likely be more accessible to more Users than the output of the Original Proposal it would not, in our view fully address the defect that the Proposer has posited.

ACO e) – WACM 2

We believe that WACM 2 will better facilitate the achievement of the ACOs and likely provides a sensible solution to the potentially differing needs of Users. WACM 2 would see NGENSO publish both the guidance and the detailed output. Users who have the resources and inclination to engage with the granular detail would have the opportunity to, but those who do not can still consult the guidance, checking the detail if needed. We accept that this creates more work for NGENSO with two obligations in effect: one to publish guidance and one to publish the detail. In the round however, we believe that this is likely to be more efficient than an opaque process which is not well-understood by Users and which has been the source of much debate and dispute over time, or a process whereby NGENSO publishes solely granular detail which is used by a handful of parties.

Data Confidentiality

We note that on Page 9 of the FMR, it is stated, in relation to the sharing by NGENSO of the data required under the Original Proposal or WACM 2:

"The ESO noted that there may be issues around confidentiality and commercially sensitive data"

This point is not expanded upon within the FMR, nor does it feature in NGENSO's response to the Code Administrator Consultation. However, in approving WACM 2, we expect NGENSO to satisfy itself that the nature and extent of information published is consistent with all of its legal obligations (included but not limited to obligations in respect of confidentiality and competition law) in relation to the treatment of commercially sensitive data and confidential data. To the extent that NGENSO has any concerns in this regard, we would expect that the information in question is either not published at all or redacted to the extent necessary. For example, consideration should be given as to the need for inclusion of information in respect of (i) the Annual Local Charge for the asset (ii) the Transmission Entry Capacity; and (iii) the Tariff to be published for Physical Assets Required for Connection given such charges will not be included in the calculation of annual average charges. .

In circumstances where NGENSO is planning to redact or not publish information in order to ensure compliance with its (and potentially market participants') other legal obligations, we would expect them to notify the Authority and industry parties of this together with an explanation of its actions its

Implementation is to be made on 1 April 2025, and the first publications made under WACM 2 of CMP392 should be issued prior to the start of that charging year.

Decision notice

In accordance with Standard Condition C5 of the Transmission Licence, the Authority, hereby directs that WACM 2 of modification proposal CMP392, "Transparency and legal certainty as to the calculation of TNUoS in conformance with the Limiting Regulation" be made.

Harriet Harmon

Head of Electricity Transmission Charging

Signed on behalf of the Authority and authorised for that purpose