












Stage 2. Code Administrator Consultation		At what stage is this document in the process?								
<h1 style="color: #00a651;">CMP322</h1> <p><b>Mod Title:</b> Updating the CUSC section 4 “Balancing Services” to ensure Ofgem have the appropriate authority to approve Terms and Conditions (T&amp;Cs), relevant to EBGL Article 18, held within the Standard Contract Terms (SCTs)</p>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="border: 1px solid black; border-radius: 5px; text-align: center;">01</td> <td style="border: 1px solid black; border-radius: 5px; padding: 2px;">Proposal Form</td> </tr> <tr> <td style="background-color: #00a651; color: white; border: 1px solid black; border-radius: 5px; text-align: center;">02</td> <td style="background-color: #00a651; color: white; border: 1px solid black; border-radius: 5px; padding: 2px;">Code Administrator Consultation</td> </tr> <tr> <td style="border: 1px solid black; border-radius: 5px; text-align: center;">03</td> <td style="border: 1px solid black; border-radius: 5px; padding: 2px;">Draft CUSC Modification Report</td> </tr> <tr> <td style="border: 1px solid black; border-radius: 5px; text-align: center;">04</td> <td style="border: 1px solid black; border-radius: 5px; padding: 2px;">Final CUSC Modification Report</td> </tr> </table>		01	Proposal Form	02	Code Administrator Consultation	03	Draft CUSC Modification Report	04	Final CUSC Modification Report
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04	Final CUSC Modification Report									
<p><b>Purpose of Modification:</b> To allow Ofgem to approve future changes to the terms and conditions for Balancing Service Providers (BSPs) and Balancing Responsible Parties (BRPs), as defined in Article 18 (A18) of the European Balancing Guidelines (EBGL), that have been identified as existing in National Grid ESO SCTs for certain Balancing Services, while maintaining the necessary flexibility required to the SCTs.</p>										
	<p>The purpose of this document is to consult on CMP322 with CUSC Parties and other interested Industry members. Parties are requested to respond by <b>5pm on 14 November 2019</b> to <a href="mailto:cusc.team@nationalgrideso.com">cusc.team@nationalgrideso.com</a> using the Code Administrator Consultation response pro-forma which can be found via the following link:</p> <p><a href="https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updating-cusc-section-4-balancing-services">https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updating-cusc-section-4-balancing-services</a></p> <p><b>Published on:</b> 24 October 2019  <b>Length of Consultation:</b> 15 Working Days  <b>Responses by:</b> 14 November 2019</p>									
	<p><b>High Impact:</b> N/A</p>									
	<p><b>Medium Impact:</b> N/A</p>									
	<p><b>Low Impact:</b> Ofgem and National Grid ESO contracts team to ensure SCT process is updated in line with CUSC requirements</p>									

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Timetable		 <a href="mailto:Lurrentia.Walker@nationalgrideso.com">Lurrentia.Walker@nationalgrideso.com</a>
<b>The Code Administrator recommends the following timetable:</b>		
Code Administrator Consultation Report issued to the Industry	24 October 2019	 07976 940 855
Draft Final Modification Report presented to Panel	21 November 2019	<b>Proposer:</b> Simon Sheridan
Modification Panel decision	29 November 2019	 <a href="mailto:simon.sheridan@nationalgrideso.com">simon.sheridan@nationalgrideso.com</a>
Final Modification Report issued to the Authority	13 December 2019	 telephone
Decision implemented in CUSC	4 April 2020	<b>National Grid ESO Representative:</b> Simon Sheridan
		 <a href="mailto:Simon.Sheridan@nationalgrideso.com">Simon.Sheridan@nationalgrideso.com</a>
		 telephone

## Proposer Details

<b>Details of Proposer:</b>	Simon Sheridan
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(Organisation Name)	National Grid ESO
Capacity in which the CUSC Modification Proposal is being proposed: (i.e. CUSC Party, BSC Party or "National Consumer Council")	CUSC party
<b>Details of Proposer's Representative:</b> Name: Organisation: Telephone Number: Email Address:	
<b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:	
<b>Attachments (Yes/No): Yes – legal text</b> <b>If Yes, Title and No. of pages of each Attachment:</b>	

**Impact on Core Industry Documentation.**  
*Please mark the relevant boxes with an "x" and provide any supporting information*

<b>BSC</b>	<input type="checkbox"/>
<b>Grid Code</b>	<input type="checkbox"/>
<b>STC</b>	<input type="checkbox"/>
<b>Other</b>	<input checked="" type="checkbox"/>

Standard Contract Terms owned by National Grid ESO for Balancing Services

## 1 About this document

CMP322 was proposed by National Grid ESO and was submitted to the CUSC Modification Panel for its consideration on 27 September 2019. The CUSC Panel, by majority, approved CMP322 to proceed to Code Administrator Consultation.

CMP322 seeks to allow Ofgem to approve future changes to the terms and conditions for Balancing Service Providers (BSPs) and Balancing Responsible Parties (BRPs), as defined in Article 18 (A18) of the European Balancing Guidelines (EBGL), that have been identified as existing in National Grid ESO SCTs for certain Balancing Services, while maintaining the necessary flexibility required to the SCTs.

## 2 Summary

### Defect

Ofgem don't currently have the authority to approve National Grid ESO SCTs for Balancing Services. To comply with EBGL any future changes to these T and Cs need to follow the processes laid out in EBGL Article 6 (A6) and Article 10 (A10). To enable Ofgem to approve future changes to the parts of EBGL A18, T and C's that are captured in National Grid ESO SCTs, they need to have a mechanism to do this whilst ensuring that the SCTs, remain flexible and support a competitive market place which is inclusive for all parties.

### What

To facilitate this change Section 4 "Balancing Services" will need updating in paragraph 4.2B to state that new or amended terms and conditions in Balancing Servicing Agreements, namely those within the SCTs identified as in scope of the EBGL A18 must be subject to a 1-month consultation and must go to Ofgem for approval as laid out in EBGL A6 and A10.

T&Cs within the scope of EBGL A18 in any new forms of Balancing Servicing Agreements will likewise be subject to consultation and approval as envisaged by EBGL A6 and A10. Where balancing services are being trialled they will only be considered for the purposes of A18 once they have officially been confirmed as an active service by National Grid ESO.

### Why

This change is necessary to ensure compliance with EBGL. If no change is made, then the Authority has no clear way of approving the A18 T and Cs held within the SCTs.

It also ensures that barriers to entry for all parties, specifically non-Balancing Market service providers are not created as it continues to give providers a route to market without the requirement of signing up to the codes. Whilst ensuring that provisions in SCTs remain clear and consistent for all parties and remain flexible for National Grid ESO to respond to new technologies or approaches in the provision of balancing services in a changing energy market.

In addition, this proposed change has been signposted by Ofgem in their EBGL A18 decision letter dated 4 June 2019 where they state on page 3:

*“The proposed updates to the code change process and the proposed solution to capturing any changes to SCT as part of the CUSC, will allow the Authority to have a clear and transparent role in approving and amending any future changes that will have an impact on the Article 18 T and Cs and ensures compliance with Article 6 of EBGL”*

## How

By updating Section 4.2B of the CUSC where general provisions for balancing services are held, Ofgem will, in a clear and transparent way, be able to approve the relevant SCTs that are affected by EBGL A18.

## 3 Governance

At the CUSC Panel on 27 September 2019, the Panel discussed the relevant governance route for the modification. The Panel decided by majority that CMP322 should proceed straight to Code Administrator consultation for 15 Working days.

## 4 Why Change?

This change is necessary to ensure compliance with EBGL. If no change is made, then the Authority has no clear way of approving the A18 T and Cs held within the SCTs.

It also ensures that barriers to entry for all parties, specifically non-Balancing Market service providers are not created as it continues to give providers a route to market without the requirement of signing up to the codes. Whilst ensuring that provisions in SCTs remain clear and consistent for all parties and remain flexible for National Grid ESO to respond to new technologies or approaches in the provision of balancing services in a changing energy market.

In addition, this proposed change has been signposted by Ofgem in their EBGL A18 decision letter dated 4 June 2019 where they state on page 3:

*“The proposed updates to the code change process and the proposed solution to capturing any changes to SCT as part of the CUSC, will allow the Authority to have a clear and transparent role in approving and amending any future changes that will have an impact on the Article 18 T and Cs and ensures compliance with Article 6 of EBGL”*

## 5 Code Specific Matters

### Technical Skillsets

Understanding of EBGL requirements generally and more specifically for A6, A10 and A18

### Reference Documents

[https://www.entsoe.eu/network\\_codes/eb/](https://www.entsoe.eu/network_codes/eb/)

## 6 Solution

By updating Section 4.2B of the CUSC where general provisions for balancing services are held, Ofgem will, in a clear and transparent way, be able to approve the relevant SCTs that are affected by EBGL A18 whilst remaining flexible and support a competitive market place which is inclusive for all parties.

## 7 Impacts & Other Considerations

N/A

**Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?**

No.

### Consumer Impacts

None

## 8 Relevant Objectives

Impact of the modification on the Applicable CUSC Objectives (Standard):

Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Positive
(b) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;	None
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Positive
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	None

\*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

This modification positively impacts a and c. It specifically helps ensure compliance with EU law formed from the 3<sup>rd</sup> Energy package, in this case against the European Balancing Guidelines which came into force in November 2017.

To comply with EBGL the authority must be able to approve all the T and Cs (as set out in A18 of EBGL) that are present in the GB codes and SCTs. It currently cannot do this

for the SCTs and this modification makes sure that the Authority has the necessary approval powers. Whilst the SCTs remain flexible and support a competitive market place which is inclusive for all parties

## 9 Implementation

This change should be implemented as soon as possible, but by 4 April 2020 (current expected implementation date for EBGL A18) at the latest to ensure we are compliant with EBGL.

If the implementation date for EBGL A18 changes then this Modification implementation date should change to reflect that.

## 10 Code Administrator Consultation: How to Respond

If you wish to respond to this Code Administrator Consultation, please use the reponse pro-forma which can be found under the 'Industry Consultation' tab via the following link:

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updated-cusc-section-4-balancing-services>

Responses are invited to the following questions;

1. Do you believe that CMP322 better facilitates the Applicable CUSC Objectives? Please include your reasoning.
2. Do you support the proposed implementation approach?
3. Do you have any other comments?

Views are invited on the proposals outlined in this consultation, which should be received by **5pm on 14 November 2019**. Please email your formal response to [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com). If you wish to submit a confidential response, please note the following; Information provided in response to this consultation will be published on National Grid's ESO website unless the response is clearly marked 'Private & Confidential', we will contact you to establish the extent of this confidentiality. A response marked 'Private & Confidential' will be disclosed to the Authority in full by, unless agreed otherwise, will not be shared with the CUSC Modifications Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.

Please note an automatic confidentiality disclaimer generated by your IT System will not in itself, mean that your response is treated as if it had been marked 'Private & Confidential'.

## 11 Legal Text

### Text Commentary

See Annex 1 for legal text which provides a clear route for the Authority to approve the necessary SCT changes relating to A18 in the future.

## 12 Annex 1 – Legal Text



## PROPOSED CHANGES IN LEGAL TEXT SHOWN IN RED BELOW

### 4.2B OTHER BALANCING SERVICES

#### 4.2B.1 Application

The provisions of this Paragraph 4.2B shall apply to **The Company** and a **User** or other person in respect of the provision by that **User** or other person to **The Company** of **Balancing Services** other than **Mandatory Ancillary Services, Maximum Generation** and **System to Generator Operational Intertripping**.

#### 4.2B.2 Form of Agreement

Any agreement between **The Company** and a **User** or other person in respect of the provision by that **User** or other person to **The Company** of **Balancing Services** other than **Mandatory Ancillary Services, Maximum Generation** and **System to Generator Operational Intertripping** shall be in a form to be agreed between them (but, in respect of **Commercial Services Agreements**, subject always to Paragraph 4.2B.3 where applicable).

#### 4.2B.3 Agreed Ancillary Services

Each **User** and **The Company** shall enter into a **Commercial Services Agreement** providing for the payment for and provision of the **Agreed Ancillary Services** (other than **Maximum Generation**) and **System to Generator Operational Intertripping** (if any) set out in Appendix F1 of the relevant **Bilateral Agreement**. If, after a period which appears to **The Company** to be reasonable for the purpose, **The Company** has failed to enter into a **Commercial Services Agreement** with such **User**, **The Company** shall be entitled to initiate the procedure for resolution of the issue as an **Other Dispute** in accordance with Paragraph 7.4 to settle the terms of the said **Commercial Services Agreement**.

#### 4.2B.4 Disclosure and Use of Information

Each **User** or other person who provides **Balancing Services** to **The Company** hereby consents to the disclosure and use by **The Company** of data and other information from any year relating to the provision by that **User** or other person of the **Balancing Service** to the extent necessary to enable **The Company** to carry out its **EMR Functions**.

#### 4.2B.5 EBGL Article 18

Where and to the extent that:-

- (a) contractual arrangements for the provision of and payment for **Balancing Services** contain **EBGL Article 18 Terms and Conditions**; and
- (b) an **EBGL Amendment** to such contractual arrangements is proposed which under the **[Electricity Balancing Guidelines]** is subject to consultation and prior approval by the **Authority**,

then, to the extent and from such date as is required by the **[Electricity Balancing Guidelines]**, such **EBGL Amendment** shall be effective only after appropriate consultation and prior approval by the **Authority**. Accordingly, **The Company** shall ensure that the amendment processes contained within such contractual arrangements provide for appropriate consultation and prior approval by the **Authority** before any **EBL Amendment** becomes effective.

#### Add new definitions at CUSC Section 11.

**Electricity Balancing Guideline** means Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing;

**EBGL Amendment** means means any amendment to contractual arrangements for the provision of and payment for **Balancing Services** referred to in Section 4.2B5 which amends the **EBGL Article 18 Terms or Conditions** including to introduce a new provision for the purposes of Article 18 into such contractual arrangements;

**EBGL Article 18 Terms and Conditions** means terms and conditions which have been approved by the **Authority** pursuant to and for the purposes of Article 18 of the **[Electricity Balancing Guidelines]**