CMP317 Thoughts

Bill Reed

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1.   Introduction

1.1. This note sets out some thoughts on the potential legal text in the Connection and Use of System Code (CUSC) to deliver the intent of CMP317 in relation to European Commission Regulation 838/2010 Part B paragraph 3.

2.   Current or Baseline CUSC Legal Text and European Commission Regulation 838/2010 Part B

2.1. Chapter 14 of the CUSC sets out the basis for the establishment of Transmission Charges. Part 2 - The Statement of the Use of System Charging Methodology Section, Section 1 – The Statement of the Transmission Use of System Charging Methodology sets out the framework for calculating the charges.

2.2. Under Section 14.14.5 "Principles" the limits on charges in compliance with European Commission Regulation 838/2010 Part B paragraph 3 shall be established as follows:

"*v.)*   *The application of a Transmission Network Use of System Revenue split between generation and demand where the proportion of the total revenue paid by generation, for the purposes of tariff setting for a charging year n, is x times the total revenue, where x is:*

1.   Whilst European Commission Regulation 838/2010 Part B paragraph 3 (or any subsequent regulation specifying such a limit on annual average transmission charge payable by generation) is in effect (a "Limiting Regulation") then:

$$x_n = \frac{(Cap_{EC} * (1 - y)) * GO}{MAR * ER}$$

Where;

Cap_{EC} =   Upper limit of the range specified a Limiting Regulation
y =   Error margin built in to adjust CapEC to account for difference in one year ahead forecast and outturn values for MAR and GO, based on previous years error at the time of calculating the error for charging year n
GO =   Forecast GB Generation Output for generation liable for Transmission charges (i.e. energy injected into the transmission network in MWh) for charging year n
MAR =   Forecast TO Maximum Allowed Revenue (£) for charging year n
ER =   OBR Spring Forecast €/£ Exchange Rate in charging year n-1

2.	*Where there is no Limiting Regulation, then x for charging year n is set as the value of x used in the last charging year for which there was a Limiting Regulation.*"

## 3.	Background

3.1.	This section sets out the background for CMP317. There are essentially three issues:

i)	the calculation of the proportion of total revenue paid by generation as defined under the Regulation;

ii)	the way in which the limiting range under the Regulation is applied in GB; and

iii)	the treatment of under or over recovery relative to the limiting range in compliance with the regulation

Definition of *the "proportion of the total revenue paid by generation"*

3.2.	In November 2017, Ofgem rejected an industry proposal to modify an industry code, the CUSC Modification (CMP261) "Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3). [1]. In making their decision Ofgem stated that "*there is no reasonable justification for treating most, if not all, local charges differently from charges that are labelled as connection charges in the context of the connection exclusion*".

3.3.	In February 2018 the CMA received an appeal by EDF and SSE against the decision by GEMA to reject Proposal CMP261[2]. This primarily related to the issue as to whether charges for Offshore Generator-Only spurs (Offshore GOS) are connection charges or form part of the revenue paid by generation.

3.4.	The CMA accepted "*GEMA's submission that connecting equipment does not cease to be an asset required for connection, following the initial act of connecting. Once this is recognised, the Appellants' distinction between the connection and use cannot be a valid one.*" [3].

3.5.	The CMA concluded in their decision under Ground 1 that "*it is clear that Offshore GOS were constructed for the purpose of connecting the relevant generation assets to the then pre-existing transmission system and so - subject to our consideration of the legislative purpose, below - charges relating to them in 2015/16 are properly treated as falling within the Connection Exclusion.*"[4].

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[1] Ofgem Decision Letter for CMP261, 16th November 2017 at
https://www.ofgem.gov.uk/system/files/docs/2017/11/cmp261_decision.pdf
[2] An appeal under section 173 of the Energy Act 2004, 26th February 2018 Decision and Order at
https://assets.publishing.service.gov.uk/media/5a95295de5274a5b849d3ad0/EDF-SEE-decision-and-order.pdf
(the Decision)
[3] The Decision Para 5.96
[4] The Decision Para 5.101

3.6. The CMA also provided an interpretation of ACER's view on the Connection Exclusions as follows: "*Its view was that under the Regulation, different costs caused by a (new) generator can be treated in different ways: costs stemming from the generator's physical connection to the grid are within the Connection Exclusion, whereas costs relating to the reinforcement of the meshed grid are not.*" [5]

3.7. The CMA also concluded under Ground 2 of the appellant's case that "*we do not agree with the Appellants that what distinguishes connection charges from usage charges under the CUSC is the same as what determines charges that fall within the scope of the Regulation. Whilst there are some differences between the way connection charges and Local Usage charges for Offshore GOS are levied, we are of the view that both sets of charges recover the cost of assets required for connection to the system for the purposes of the Connection Exclusion.*[6]

3.8. It is therefore consistent with this argument the CUSC could be modified to ensure that in determining the proportion of the total revenue paid by generation the proportion of revenue associated with connection charges that falls within the "connection exclusion" as defined by the CMA decision set out above could be excluded from the calculation.

The application of the limiting range

3.9. In March 2019 the ESO published the equivalent euros/MWh generation tariffs for GB calculated according to the charging methodology. These are illustrated in Table 1[7].

Table 1: Equivalent €/MWh generation tariffs in each year

Equivalent €/MWh rate		20/21	21/22	22/23	23/24	24/25
Ex post forecast	€/MWh	0.384	0.080	- 0.169	- 0.515	- 0.837

3.10. In the commentary to this table the ESO highlighted that "*The ex post forecast suggests that in 2020/21 the equivalent rate of revenue recovered from generators will be €0.38 €/MWh, falling below zero in 2022/23. This fall below zero is an issue as it is outside the range specified in regulation 838/2010*".

3.11. The ESO also stated that "*NGESO will soon raise a CUSC modification to address this issue*". CMP317 is this CUSC Modification.

Compliance with European Commission Regulation 838/2010 Part B paragraph 3

3.12. There are currently no provisions in the CUSC that relate to the treatment of any under or over recovery relative to the limiting range in compliance with the regulation

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[5] The Decision Para 5.109
[6] The Decision Para 6.22
[7] Five-year view of TNUoS tariffs for 2020/21 to 2024/25 National Grid Electricity System Operator March 2019 at https://www.nationalgrideso.com/document/140806/download

4. Possible Solution for CMP317

4.1. CMP317 must address both the issue associated with the definition of "generation revenues" in compliance with European Commission Regulation 838/2010 Part B (the definitional problem) and the potential that the resultant tariffs may fall below the permitted limiting range (the floor arrangements). This section explores the potential solutions to these issues.

The Definitional Problem

4.2. The CMA findings require that in applying the limiting range, the revenue paid by generation shall exclude that revenue associated with connections (the connection exclusion). Therefore the CUSC should be amended to reflect this conclusion under CMP317.

4.3. The CMA appeal and decision focussed on the application of the Regulation to local charges and Offshore Generation-Only Spurs . However the application of the connection exclusion exclusively to Offshore Generation-Only spurs may raise issue of discrimination under the CUSC in relation to other onshore local assets. Therefore the CMP317 proposal could apply to all local charges (f they are deemed to be connection charges).

4.4. The simplest way to revise the CUSC in relation to the definitional problem is to revise Clause 14.5.5 as follows:

"v.) The application of a Transmission Network Use of System Revenue split between generation and demand where the proportion of the total revenue paid by generation, for the purposes of tariff setting for a charging year n, is x times the total revenue, where x is:

1. Whilst European Commission Regulation 838/2010 Part B paragraph 3 (or any subsequent regulation specifying such a limit on annual average transmission charge payable by generation is in effect (a "Limiting Regulation") then:

$$x_n = \frac{(Cap_{EC} * (1-y)) * GO}{MAR * ER}$$

Where;

CapEC = Upper limit of the range specified a Limiting Regulation

y = Error margin built in to adjust CapEC to account for difference in one year ahead forecast and outturn values for MAR and GO, based on previous years error at the time of calculating the error for charging year n

GO = Forecast GB Generation Output for generation liable for Transmission charges (i.e. energy injected into the transmission network in MWh) for charging year n

MAR =   Forecast TO Maximum Allowed Revenue (£) for charging year n

ER =   OBR Spring Forecast €/£ Exchange Rate in charging year n-1

2. Where there is no Limiting Regulation, then x for charging year n is set as the value of x used in the last charging year for which there was a Limiting Regulation."

3. Where annual average transmission charges payable by generation excluding local charges payable by generation are greater than the upper limit of the Limiting Regulation the annual average transmission charges payable by generation excluding local charges shall be adjusted to ensure that annual average transmission charges payable by generation excluding local charges payable by generation are as a maximum (subject to an error margin) less than upper limit of the Limiting Regulation.

The Floor Arrangements

4.5. A "floor" will ensure that in calculating the total proportion of the total revenue paid by generation cannot be lower than the lowest limiting value required under European Commission Regulation 838/2010 Part B paragraph 3.

4.6. A "floor" arrangement could be achieved in the CUSC as follows:

"v.) The application of a Transmission Network Use of System Revenue split between generation and demand where the proportion of the total revenue paid by generation, for the purposes of tariff setting for a charging year n, is x times the total revenue, where x is:

1. Whilst European Commission Regulation 838/2010 Part B paragraph 3 (or any subsequent regulation specifying such a limit on annual average transmission charge payable by generation is in effect (a "Limiting Regulation") then:

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2.   Where there is no Limiting Regulation, then x for charging year n is set as the value of x used in the last charging year for which there was a Limiting Regulation."

3.   Where annual average transmission charges payable by generation excluding local charges payable by generation are greater than the upper limit of the Limiting Regulation the annual average transmission charges payable by generation excluding local charges shall be adjusted to ensure that annual average transmission charges payable by generation excluding local charges payable by generation are as a maximum (subject to an error margin) less than upper limit of the Limiting Regulation.

4.   Where annual average transmission charges payable by generation excluding local charges payable by generation are less than the lower limit of the Limiting Regulation for such charges the annual average transmission charges payable by generation including local charges shall be adjusted to ensure that annual average transmission charges payable by generation are at than lower limit of the Limiting Regulation (subject to an error margin).

Compliance with European Commission Regulation 838/2010 Part B

4.7.   Provisions are required to ensure compliance with the Regulation in the event that

i)   the outturn cap arrangements are greater than the limiting range; or
ii)   the outturn "floor" arrangements are less than the liming range.

4.8.   For the purpose of this section, it is assumed that If the annual average transmission charge payable by generation (excluding local charges and connection charges payable by generation) is greater than the limiting range then in effect generators have paid too much and the excess revenues should be returned to "generation".

4.9.   For the purpose of this section, it is assumed that If the annual average transmission charge payable by generation (excluding local charges and connection charges payable by generation) are less than the limiting range is greater than the then in effect generators have paid too little. This should result in an increased annual average transmission charge payable by generation (excluding local charges and connection charges payable by generation) and a reduction in demand charges to offset the excess costs paid to generation.

4.10. For compliance purposes it is assumed that the effect of the outturn annual average transmission charge payable by generation that occurs in one year are corrected in the following charging year.

4.11. The treatment of the compliance issue could be achieved in the CUSC as follows:

"v.) The application of a Transmission Network Use of System Revenue split between generation and demand where the proportion of the total revenue paid by generation, for the purposes of tariff setting for a charging year n, is x times the total revenue, where x is:

1. Whilst European Commission Regulation 838/2010 Part B paragraph 3 (or any subsequent regulation specifying such a limit on annual average transmission charge payable by generation is in effect (a "Limiting Regulation") then:

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4. Where annual average transmission charges payable by generation excluding local charges payable by generation are less than the lower limit of the Limiting Regulation for such charges the annual average transmission charges payable by generation including local charges shall be adjusted to ensure that annual average transmission charges payable by generation are at than lower limit of the Limiting Regulation (subject to an error margin).

5. Where the application of Xn results in forecast (in year (n)) annual average transmission charges payable by generation excluding local charges payable by generation in charging year (n) that are greater than the upper limit of the

Limiting Regulation the annual average transmission charges payable by generation excluding local charges in the following charging year (n+1) shall be adjusted to ensure that any forecast over recovery in year (n) relative to the upper limit of limiting range in year (n) is paid back in average charges payable by generation excluding local charges in year (n+1).

6. Where the application of Xn in year (n) results in outturn (as calculated in Year (n+1)) annual average transmission charges payable by generation excluding local charges payable by generation in charging year (n) that are greater than upper limit of the Limiting Regulation the annual average transmission charges payable by generation excluding local charges in the charging year(n+2) shall be adjusted to ensure that any actual over recovery in year (n) relative to the upper limit of limiting range is paid back to generation in average generation charges excluding local charges in year (n+2).

7. Where the application of Xn results in forecast (in year (n)) annual average transmission charges payable by generation excluding local charges payable by generation in charging year (n) that are less than lower limit of the Limiting Regulation the annual average transmission charges payable by generation excluding local charges in the following charging year (n+1) shall be adjusted to ensure that any forecast under recovery in year (n) relative to the lower limit of limiting range in year (n) is paid in average generation charges excluding local charges in year (n+1).

8. Where the application of Xn in year (n) results in outturn (as calculated in Year (n+1)) annual average transmission charges excluding local charges payable by generation in charging year in year (n) that are less than the lower limit of the Limiting Regulation the annual average transmission charges payable by generation excluding local charges in the charging year (n+2) shall be adjusted to ensure that any actual over recovery in year (n) relative to the lower limit of limiting range is paid back in average generation charges excluding local charges in year (n+2).