# CUSC Code Administrator Consultation Response Proforma

## CMP317 - Identification and exclusion of Assets Required for Connection when setting Generator Transmission Network Use of System (TNUoS) charges; and CMP327 - Removing Generator Residual Charges from TNUoS (TCR)

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to cusc.team@nationalgrideso.com by **5pm** on **20 July 2020**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Panel.

If you have any queries on the content of this consultation, please contact Joe Henry joseph.henry2@nationalgrideso.com or cusc.team@nationalgrideso.com.

| Respondent details | Please enter your details |
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### For reference the applicable CUSC objectives 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 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 Agency. These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1 *; and*

e. *Promoting efficiency in the implementation and administration of the CUSC arrangements.*

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

**Please express your views in the right-hand side of the table below, including your rationale.**

| Standard Code Administrator Consultation questions | | |
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| 1 | Do you believe that the CMP317/327 Original solution, or any WACMs better facilitate the Applicable CUSC Objectives? | The CMP317/327 Original does not attempt to address key issues that clearly do need to be addressed based on the TCR Direction, the CMP261 determination and subsequent CMP261 CMA Appeal decision.<br><br>The NGESO proposes an 'assets required for connection' approach which will incorrectly exclude both shared and pre-existing local assets from the Limiting Regulation compliance calculation. The term "pre-existing system" was first used by Ofgem in its CMP261 Decision document, and was used subsequently by the CMA in its decision, at paragraph 5.94, on the Appeal of CMP261: "*It seems to us that 'the system' here must mean the system as it exists at the point that a new Generator wishes to be connected to it. Any assets that are then required by that new Generator for connection to that pre-existing system (such as Offshore GOS in the case of a new windfarm) are ones that fall within the Connection Exclusion, and such assets continue to be required by that Generator for connection to the pre-existing system even once the Generator is operational..*"<br><br>The CMA went on to state in 5.82 : "*The parties agreed that the interpretation of an EU instrument could not ordinarily depend on the approach taken in domestic law. We were referred to the Monsanto judgment of the CJEU, in which it was said that: The need for the uniform application of Community law and the principle of equality require that the terms of a provision of Community law which…makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, which must take into account the context of that provision and the purpose of the legislation in question*." We believe this reinforces the need for the development of a robust compliant solution rather than one that just appears to be based on a simplistic overlay with the current structure of domestic regulations.<br><br>It is on this basis that we have considered the Original against the facilitation of the Applicable CUSC Objectives.<br><br>*For reference the applicable CUSC objectives are:*<br>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;* |

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| | | **No**, although this change proposal is intended to remove distortions between transmission and distribution connected generations in GB the erroneous definition of what's included and excluded from the controlled amount, will differ from the overseas European interpretations of the same instrument, so that the original would damage competition between generators across the EU through an incorrect interpretation.<br><br>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 licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);*<br>**Marginally, no**. Although the cost reflective locational charges are themselves unchanged, the erroneous definition of what's included and excluded from the controlled amount, risks a misinterpretation of what is transmission so that charges are not correct in terms of the EC limiting regulation<br><br>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;*<br>**No**, because the erroneous definition in the Original of what's included and excluded from the EC controlled amount, would create a misinterpretation of what is transmission<br><br>d) *Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1 *; and*<br><br>**No**, because the erroneous definition of what's included and excluded from the controlled amount, will differ from the overseas European interpretations of the same instrument, so that the original would damage competition across the EU through an incorrect interpretation<br><br>e) *Promoting efficiency in the implementation and administration of the CUSC arrangements.*<br><br>**No**, because the erroneous definition of what's included and excluded from the controlled amount, would represent inefficient maladministration |

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| | | **Objective (d) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).*<br><br>In our view the CMP317/327 Original and alternatives that propose an 'assets required for connection' approach that incorrectly excludes both shared and pre-existing local assets from the Limiting Regulation compliance calculation are not compliant with the Limiting Regulation.<br><br>We consider WACM83 to be the best solution on the following basis.<br><br>**Definition of assets required for connection = All local circuits & local substations except for pre-existing assets and shared assets**<br>• The term "pre-existing system" was first used by Ofgem in its CMP261 Decision document, and was used subsequently by the CMA in its decision, at paragraph 5.94, on the Appeal of CMP261: "*It seems to us that 'the system' here must mean the system as it exists at the point that a new Generator wishes to be connected to it. Any assets that are then required by that new Generator for connection to that pre-existing system (such as Offshore GOS in the case of a new windfarm) are ones that fall within the Connection Exclusion, and such assets continue to be required by that Generator for connection to the pre-existing system even once the Generator is operational..*"<br>• The CMA went on to state in 5.82: "*The parties agreed that the interpretation of an EU instrument could not ordinarily depend on the approach taken in domestic law. We were referred to the Monsanto judgment of the CJEU, in which it was said that: The need for the uniform application of Community law and the principle of equality require that the terms of a provision of Community law which…makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community, which must take into account the context of that provision and the purpose of the legislation in question*." We believe this reinforces the need for the development of a robust compliant solution rather than one that just appears to be based on a simplistic overlay with the current structure of domestic regulations. |

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| | | • The expected Scottish Island links are all, if constructed, to be shared, not sole use. They also are most likely to be connected so as to serve demand, not just generation, and are certainly not for the purpose of a sole connected generator. The Original appears to conflict with the approach agreed at the CMA. It is incontrovertibly the case that the cost of local circuit charges related to these island links must be included in the Limiting Regulation compliance calculation.<br>• This leads to the correct definition of physical assets required for connection is that which includes the charges for both shared and pre-existing local assets in the Limiting Regulation compliance calculation (i.e. shared and pre-existing local assets are not part of the Connection Exclusion). This means that the charges for local circuits and substations in respect of island links, or other physical assets, used by demand, or other Generators, must fall within the scope of the amount controlled by the Limiting Regulation.<br>**Amount targeted = €1.25/MWh**<br>• The Limiting Regulation specifies a range of €0/MWh to €2.50MWh and Ofgem have directed the removal of the Transmission Generation Residual, whilst allowing an adjustment to remain compliant with the Limiting Regulation. This alternative solution proposes that the revenue from generation that falls into the allowed range be set at €1.25/MWh. This reduces the negative adjustment required, and so the distortion identified by Ofgem in the TCR, whilst remaining compliant and reducing material swings to generation charges, especially given that charges are likely to change in 2023 with the Reform of Access and Forward Looking Charges SCR.<br>**Error Margin = no**<br>• The current function of the error margin is to deal with variances from the forecasts, used for setting tariffs, to the outturn of the exchange rate and the total MWh generated, given the target is set at the top of the limiting range in the existing calculation. These risks are not present because the revenue recovery is targeted to the middle of the range, minimising the risk of non-compliance is minimised, so an error margin is not needed.<br>**Phasing = yes, over 2 years**<br>• Ofgem provided industry with a range of possible implementation dates and therefore it |

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| | | was impossible to reflect this uncertainty within commercial arrangements, specifically Capacity Market Auction bids. The proposed implementation date of 1st April 2021 was given in Ofgem's November 2019 TCR Decision. This notice was too late for generators that had already been successful in the Capacity Market auction for the 2021/22 delivery year.<br>• It is appropriate to phase the implementation of this material change over 2 years, which is consistent to other material network charging reforms such as CMP264/5. Ofgem stated in their decision letter for CMP264/5 that "*Allowing a phased introduction of this significant change will provide time for investors and generators to adapt their despatch and business models*."<br>• There is also credible evidence from respectable trade/industry commentators that clearly shows participants failed to correctly understand Ofgem's determination to set TGR=0. This has led to underestimating the potential impact on generators.<br>**BSC Costs = yes**<br>• In accordance with Ofgem's decision on P396, those BSC/Elexon costs which are considered to be network charges that are paid by generators should be included for the purposes of calculating the annual average transmission charges paid by generators in GB in accordance with the limiting regulation.<br>• In their decision letter on P396 Ofgem state '*We consider the Main Funding Share and SVA (Production) Funding Share charges recovered via BSC Charges to be network access charges for the purposes of the Electricity Regulation*.' (Ofgem Decision Letter on P396).<br>**Congestion Costs = yes**<br>• Ancillary services are defined in Regulation 2019/944 - Article 2: Definitions (48). 'Ancillary Service' means a service necessary for the operation of a transmission or distribution system, including balancing and non-frequency ancillary services, but not including congestion management.<br>• This is clear justification for BSUoS costs that are charged to generators, excluding ancillary services, being included for the purposes of calculating the annual average transmission charges paid by generators in GB in accordance with the limiting regulation.<br>**Two Step Ex Ante Adjustment = yes**<br>• This mechanism is necessary for taking the BSC and BSUoS Congestion Costs into account on an ex ante basis. |

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| 2 | Do you support the proposed implementation approach? | No. Ofgem provided industry with a range of possible implementation dates and therefore it was impossible to reflect this uncertainty within commercial arrangements, specifically Capacity Market Auction bids. The proposed implementation date of 1st April 2021 was given in Ofgem's November 2019 TCR Decision. This notice was too late for generators that had already been successful in the Capacity Market auction for the 2021/22 delivery year. We believe that an implementation date of 1st April 2022 is more appropriate, as this would better align with the auctions for the 2022/23 taking place after the TCR decision was published.<br>A delay to April 2022 is also more likely to align with the implementation of further BSUoS reform following conclusion of the second Task Force, which is expected to align charges between Transmission-connected and Distribution-connected generation. |
| 3 | Do you have any other comments? | In our view these modifications will deliver a sub-optimal solution, and may not be necessary for compliance with the EU limiting regulation, if the work planned under the review of access and forward-looking charges (RAFLC) to review the reference node is not taken forward to the same timeframe.<br>The solution envisaged as part of the RAFLC review, would mean changing the 'demand-weighted average reference node' to a 'generation-weighted average reference node', on an annual basis. This is due to be investigated as part of the significant code review core of RAFLC, yet if that is not taken forward on an appropriate timeframe, there is a risk of two changes in a short period of time – CMP327 and then the change of reference node – causing big swing impacts on parties that could have been avoided had the change of reference node work been taken forward on a compatible and suitably-paced timeframe. This would avoid damaging and avoidable effects on investor certainty, as shifting the average reference node further 'north' in the GB charging model by way of a generation-weighted approach, would reduce locational generator tariffs on average, and make locational demand tariffs more positive. If the reference node change was taken forward alongside CMP327, the outcome of the two together would far better address the defect of a negative TGR not accessible to distribution connected, in a way that was much less disruptive. Deferral of the implementation |

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| | | date of CMP327 by one year would help in this highly desirable alignment.<br>This represents the only available means of enabling TGR=0 to be met on a sustainable, enduring, stable basis, that does not require a new, material, increasingly negative adjustment, or other changes in future years, which is otherwise an inevitable consequence of CMP327.<br>It would ensure fair, level and efficient competition between generators transmission and distribution connected generators, those in the EU and GB, with consumers benefiting as whole-system costs will be minimised, and competition maximised.<br>Timely work on the reference node at a timeframe that is compatible with CMP327 would avoid a step change in charges to either side of the market, as opposed to an undesirable outcome where material CMP327 changes are quite quickly “unwound” by subsequent RAFLC SCR changes to the choice of reference node.<br>Additionally, we believe that it would resolve the negative demand locational tariff issue which occurs due to the TCR decision on TDR. |