

## Draft Final CUSC Modification Report

# CMP342:

## Clarification of VAT for Securities in the CUSC

**Overview:** This modification seeks to clarify, and confirm the position that National Grid ESO (NGESO) has always applied, that when calculating the amount Users are required to secure under the CUSC, the amount of applicable Value Added Tax (VAT) is to be included.

### Modification process & timetable

1

- **Proposal form**
- 13 May 2020

2

- **Code Administrator Consultation**
- 19 June 2020 to 10 July 2020

3

- **Draft Final CUSC Modification Report - 20 August 2020**

4

- **Final CUSC Modification Report - 3 September 2020**

5

- **Implementation**
- 10 working days after Ofgem decision

Have 5 minutes? Read our [Executive summary](#)

Have 15 minutes? Read the full [Draft Final Modification Report](#)

Have 20 minutes? Read the full Draft Final Modification Report and annexes

**Status summary:** This Report will be submitted to the CUSC Panel for them to carry out their Recommendation Vote on whether this change should happen.

**This modification is expected to have a:**  
**Low impact**

On all Users.

**Governance route** The May 2020 CUSC Panel unanimously agreed that this modification should follow the self-governance route and proceed to Code Administrator Consultation. The August 2020 CUSC Panel reversed this decision and agreed that this modification should follow the standard governance route and Ofgem will make the decision on whether it should be implemented.

**Who can I talk to about the change?**

**Proposer:** Nick George, National Grid ESO  
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**Code Administrator:** Paul Mullen  
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## Executive Summary

CMP342 intends to clarify the position on VAT and securities, confirming the approach that NGESO has always taken when calculating the amount to be secured.

This will ensure that there is no ambiguity when interpreting the CUSC and that the amount Users are required to secure, will include Value Added Tax (VAT).

## What is the issue?

The CUSC includes requirements for Users to provide security for certain charges. NGESO includes the applicable VAT when calculating the amount to be secured, as the amount payable by a User to NGESO includes payment of VAT. A User has queried NGESO's right to request security for the VAT element of the charges.

## What is the solution and when will it come into effect?

### Proposer's solution:

Amend the relevant sections of the CUSC to clarify that the security calculation is based on the relevant charge including the applicable VAT.

### Implementation date:

10 working days after Ofgem decision.

## What is the impact if this change is made?

### Who will it impact?

This modification may have a low impact on all Users.

## Interactions

None.

## Draft Self – Governance Modification Report

This document is the CMP342 **Draft Self–Governance Modification Report**. This document outlines:

- **What is the issue?**
- **What is the solution?**
  - Proposer's solution
  - Legal text
- **What is the impact of this change?**
- Code Administrator Consultation Summary
- **When will the change taken place?**
- **Acronym table and reference material**

## What is the issue?

### What is the issue?

The CUSC includes requirements for Users to provide security for certain charges. The intention and practise is that NGESO includes the applicable VAT when calculating the amount to be secured, as the amount payable by a User to NGESO includes payment of VAT. A User has queried NGESO's right to request security for the VAT element of the charges. To ensure current and future parties fully understand their obligations, NGESO believe a modification to the code to clarify this provision is appropriate.

The relevant provisions of code that need amending are:

- Section 2, Part III - security for Terminations Amounts, relating to Connection Charges
- Section 3, Part III – security for BSUOS and TNUOS Demand Charges
- Section 15, Part Three – security for Cancellation Charges for generators terminating pre-connection
- Schedule 2, Exhibit 3 – security for Final Sums for demand customers terminating pre-connection

### Why is it an issue?

The security requirements provide financial security from Users for all or a proportion of charges, reducing the financial risk on all other Users from a User defaulting on payment obligations. In the event of a User defaulting, the VAT must still be paid to HMRC, and therefore it is important when calculating the amount that a Customer secures that it includes the applicable VAT. This has always been NGESO's practice (for the avoidance of doubt, including its predecessor, National Grid Electricity Transmission plc).

## What is the solution?

### Proposer's solution:

The changes set out in the Final Legal Text below, are made to clarify that the amounts Users are required to secure shall include the applicable VAT.

## Final Legal text

The final legal text for this change can be found below:

- In CUSC paragraph 2.21.2(a), insert “(inclusive of any applicable **Value Added Tax** that would be due)” immediately after “in respect of **Termination Amounts**”
- In CUSC paragraph 3.23.2, insert a new sub-paragraph (e):  
“(e) any applicable **Value Added Tax** that would be due on the amounts referred to in this Paragraph 3.23.2”
- In CUSC Section 15, Part Three, insert new paragraph 3.4:  
“3.4 The **Cancellation Charge Secured Amount** shall be calculated using the **Cancellation Charge** inclusive of any applicable **Value Added Tax** that would be due.”
- In CUSC Schedule 2 Exhibit 3, Part 2:
  - In Clause 9A.1.4, insert “(inclusive of any applicable **Value Added Tax** that would be due)” immediately after “The security to be provided shall be in an amount not greater than such sums payable on termination”
  - In Clause 9B.2.1, insert “(inclusive of any applicable **Value Added Tax** that would be due)” immediately after “in respect of **Final Sums** and **The Company Engineering Charges** and other expenses in relation to seeking **Consents** referred to in Clause 2.4 of this **Construction Agreement**”

## What is the impact of this change?

### Who will it impact?

This modification may have a low impact on all Users.

### What are the positive impacts?

This modification confirms the current position on securities, which are in place to ultimately protect consumers.

The Proposer's view is that this modification will have a positive impact on the CUSC applicable objectives A, B and D. This is because the modification clarifies the position on securities, allowing NGESO to efficiently administer the securities processes and

ensure all Users secure on a consistent basis, protecting other Users, and ultimately consumers.

Impact of the modification on the Code objectives:	
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;	Positive
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	None
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive
*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).	

## Code Administrator Consultation Summary

The Code Administrator Consultation was issued on the 19 June 2020 and closed on 10 July 2020. One response was received, and a summary can be found in the table below, the full response can be found in Annex 2.

Code Administrator Consultation summary	
Question	
Do you believe that the CMP342 Original Proposal better facilitates the Applicable CUSC Objectives?	<p>No</p> <p>The CUSC and CMP 192 do not provide for the levying of VAT on top of the Cancellation Charge Secured Amounts.</p> <p>Increasing Cancellation Charge Secured Amounts by 20% will have a detrimental effect on consumers costs and have a distortive effect on developer competition.</p>
Do you support the proposed implementation approach?	No

	<p>This modification should have been progressed via a standard governance route rather than Self-Governance route</p> <p>The Criteria for self-governance is not met due to the material effect on existing and future electricity consumers, competition and commercial activities in generation and the impact increased costs has on sustainable development.</p> <p>This change will merely increase the costs to Users of providing financial security on a more cost-reflective basis, undermining the key objectives of CMP192 and, in respect of cash deposits, result in a positive cashflow advantage to NGESO by levying a provisional amount for VAT which may never become due without any resultant benefit such as reduced TNUoS charges.</p>
Do you have any other comments?	No
<b>Legal text issues raised in the Consultation</b>	
No legal text issues raised in the Consultation.	

## When will this change take place?

### Implementation date:

The proposed implementation date is 10 working days after Ofgem's decision.

### Implementation approach:

NGESO seeks implementation of the modification as soon as possible, to ensure that there is no ambiguity possible when interpreting the CUSC and it can take prompt action where a User defaults in providing the required security amount, including for any applicable VAT.

## Acronym table and reference material

Acronym	Meaning
NGESO	National Grid Electricity System Operator
VAT	Value Added Tax

### Reference material:

None

Annexes

Annex	Information
Annex 1	CMP342 Code Administrator Consultation Response