CUSC Code Administrator Consultation Response Proforma

CMP342: Clarification of VAT for Securities in the CUSC

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 **10 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 Shazia Akhtar at Shazia.Akhtar2@nationalgrideso.com or cusc.team@nationalgrideso.com.

Respondent details	Please enter your details
Respondent name:	Matthew Dowds
Company name:	Muirhall Energy Limited
Email address:	md@muirhallenergy.co.uk
Phone number:	01501 785 088

For reference the applicable standard CUSC non-charging objectives are:

Relevant Objective
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;
(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;
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.
*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).

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

Code Administrator Consultation questions		
1	Do you believe that CMP342 Original proposal better facilitates the Applicable CUSC Non-Charging Objectives?	No. The CUSC doesn't currently provide for the levying of VAT on top of the Cancellation Charge Secured Amounts. Nor was it ever contemplated in any of the proposal documents, reports or Ofgem approval of CMP192 introducing Generic User Commitment Methodology. This will increase Cancellation Charge Secured Amounts by 20% to the detriment of electricity consumers through increased costs. It will also have a distortive effect on competition as those developers who do not have parent companies with the requisite credit rating will need to provide higher cash deposits or a letters of credit, imposing a real cash cost on those developers and putting them at a competitive disadvantage to those developers with suitably credit rated parent companies.
2	Do you support the proposed implementation approach?	No. In terms of procedure, we disagree that CMP342 should proceed using the Self Governance Route. CMP342 is likely to: (a) have a material effect on future electricity consumers through increased grid security costs and resultant increased electricity prices; (b) have a material effect on competition in the generation of electricity by disadvantaging those independent developers who can only provide cash deposit or letters of credit for Cancellation Charge Secured Amounts; (c) discriminate between different classes of CUSC Parties. As such, CMP342 does not meet the Self-Governance Criteria and should instead be proposed under the standard modification route. In terms of the detailed proposals, we understand that the Cancellation Charge Secured Amounts do not attract VAT but that the Cancellation Charge itself would attract VAT as and when they fall due following termination of the relevant Bilateral Agreements. The original "Final Sums" methodology and associated financial security were cost reflective.

		They were identified as a barrier to entry, particularly for smaller developers of low carbon generation projects. As a result User Commitment methodology was introduced to lower this barrier to entry whilst retaining appropriate incentives to ensure that new-build generation projects notify cancellation, closure and capacity reduction in a timely manner. One of the key changes under the new User Commitment methodology was that the level of security required to support the Cancellation Charge did not follow the same profile of liability for the Cancellation Charges (e.g. with pre-commissioning Generator's securing 42% of the liability pre-consents, dropping down to 10% post consents). At the time, Ofgem determined these percentages to provide sufficient security cover and incentivisation. Following implementation of CMP223, these percentages were increased for embedded generation only to 45% pre-consents and 26% post consents. Neither CMP192 nor CMP223 make any reference to increasing the Cancellation Charge amounts to include VAT for the purpose of fixing the percentage to be secured. The basis of calculation of the Cancellation Charge as currently provided in the CUSC (and as considered when the percentage figures were being increased for embedded generation under CMP223) does not provide for any increase in this value to account for VAT. It is clear from the terms of the CUSC that the Cancellation Charge (on which the security is sized) and VAT are dealt with separately. The percentages for the Secured Amounts were considered an adequate and appropriate incentivisation mechanism and payment default protection based on Cancellation Charges net of VAT with VAT being paid in the normal way along with the Cancellation Charge, should the Bilateral Agreements be terminated. That remains the case and given that the Secured Amounts only cover a maximum of 45% or 42% of the Cancellation Charge dropping down to 26% or 10% post consents, the artificial increase of the Cancellation Charge to account for future VAT for the purpose of sizing Secured Amounts will not have any material bearing on the adequacy and effectiveness of the existing User Commitment

		Methodology. Rather, such a 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.
3	Do you have any other comments?	Click or tap here to enter text.