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Date: 21 April 2021

Dear Trisha,

**CMP368: 'Updating Charges for the Physical Assets Required for Connection, Generation Output and Generator charges for the purpose of maintaining compliance with the Limiting Regulation' – decision on urgency and
CMP369: 'Consequential changes to Section 14 of the CUSC as a result of the updated definitions introduced by CMP368' – decision on urgency**

On 14 April 2021, National Grid Electricity System Operator ('NGESO' or the 'Proposer') raised Connection and Use of System Code (CUSC) Modification Proposals CMP368¹ and CMP369² ('the Proposals'). The Proposals concern the provisions of the CUSC which aim to ensure compliance with Commission Regulation (EU) No. 838/2010 ('the Limiting Regulation'), in particular Part B of the Annex.³ CMP368 and CMP369 seek to introduce required changes to Section 11 and Section 14 of the CUSC respectively to update the existing methodology and align the CUSC to the correct interpretation of the Limiting Regulation. The Proposer requested that CMP368 and CMP369 be treated as Urgent CUSC Modification Proposals.

The CUSC Modifications Panel (the 'Panel') considered the Proposer's urgency request at its

¹ <https://www.nationalgrideso.com/document/190196/download>

² <https://www.nationalgrideso.com/document/190201/download>

³ This EU regulation came into force in 2011, and has been adopted into UK domestic law following our exit from the EU.

meeting on 16 April 2021. The majority of the Panel agreed that CMP368 and CMP369 do not meet the Ofgem Code Modification Urgency Criteria⁴ and recommended that CMP368 and CMP369 should not be treated as Urgent CUSC Modification Proposals. Following the Panel meeting, we received a letter from the Panel confirming its recommendation that⁵ CMP368 and CMP369 not be treated as Urgent CUSC Modification Proposals.⁶

We have considered both the Panel and the Proposer's arguments. We have decided that CMP368 and CMP369 should not be progressed on an urgent basis. We have set out our reasoning below.

Background

NGESO is required under its licence to maintain and operate the Connection and Use of System Code (the 'CUSC').⁷ The CUSC constitutes the contractual framework for connection to, and use of, the electricity transmission network in GB, the NETS. The CUSC contains provisions as regards transmission charges.

Generators and demand users pay for the ongoing costs of the transmission network via Transmission Network Use of System (TNUoS) charges. For generators, TNUoS Charges are payable by transmission connected generators and Large Distributed Generators.

The Limiting Regulation provides that "*average annual transmission charges paid by producers*" must fall within a range. In Great Britain ('GB'), the permitted range is €0-2.50/MWh. When determining compliance with this range, the Limiting Regulation also stipulates categories of charges that should be excluded from the calculation. These exclusions include (but are not limited to) '*charges paid by producers for physical assets required for connection to the system or the upgrade of the connection*' ('the Connection Exclusion').

Part 2 of Section 14 of the CUSC includes a mechanism which has the aim of ensuring ongoing compliance with Limiting Regulation, in particular that annual average transmission charges do not fall outwith the permitted range ('the CUSC Calculation').

On 17 December 2020, we issued our decision on CMP317/327⁸, which intended, amongst other things, to update the CUSC to identify those charges which fell within the Connection

⁴ Ofgem (2016) Guidance on Code Modification Urgency Criteria: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-code-modification-urgency-criteria-0>

⁵ <https://www.nationalgrideso.com/document/190331/download>

⁶ References to the "Authority", "Ofgem", "we", and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA.

⁷ SLC C10 paragraph 2

⁸ https://www.ofgem.gov.uk/system/files/docs/2020/12/cmp317327_decision_171220.pdf

Exclusion, and ensure that such charges were excluded from the CUSC Calculation. In our decision we concluded that we did not consider any of the proposals brought forward by CMP317/327 incorporated the correct interpretation of the Connection Exclusion. Notwithstanding this, we determined that, as a stop-gap measure for Charging Year 2021/22, the Original Proposal be implemented. We specified that this solution did not accurately reflect the correct legal interpretation of the Connection Exclusion, which we set out in our decision, and asked NGESO to bring forward proposals to fully implement the correct interpretation for implementation from 1 April 2022.

We also noted in our CMP317/327 decision that we did not consider the Limiting Regulation to apply to Large Distributed Generators and as such regarded the CUSC Calculation as incorrect in its treatment of the charges paid and the volumes generated by Large Distributed Generators. We asked NGESO to bring forward proposals to revise the CUSC Calculation so that, when assessing compliance with the Limiting Regulation, the sums payable by Large Distributed Generation and their associated volumes of MWh exports are not taken into consideration. As with the further modification required for the Connection Exclusion, we outlined that we expected the requisite CUSC Modification Proposal to be raised in sufficient time to enable it to take effect as of 1 April 2022.

The CMP317/327 decision was the subject of an appeal to the Competition and Markets Authority (the 'CMA') ('SSE Code Modifications Appeal 2021').⁹ The CMA rejected all grounds of appeal, and confirmed Ofgem's CMP317/327 decision of 17 December 2020, on 30 March 2021.

The Proposals

The Proposer is seeking to correct the CUSC Calculation by amending definitions relevant to the Connection Exclusion and TNUoS-liable Large Distributed Generation. CMP368 has been proposed simultaneously with CMP369 in order to implement required changes to Section 11 and Section 14 of the CUSC:

- **CMP368** amends Section 11 to update the definition of 'Charges for Physical Assets Required for Connection' (the definition giving effect to the Connection Exclusion) and add definitions to exclude charges and volumes attributable to Large Distributed Generation from the CUSC Calculation.
- **CMP369** amends Section 14 to align with the definitional changes introduced by CMP368.

⁹ https://assets.publishing.service.gov.uk/media/60632cd6d3bf7f0c8c97d9f2/SSE_v_GEMA_-_pdf

In its urgency request, the Proposer explained why it was requesting urgency, highlighting one of the three urgency criteria: *(c) a party to be in breach of any relevant legal requirements*. The Proposer considers that this issue, if not urgently addressed, may cause it to breach its legal requirements with regards the provisions of the Limiting Regulation, NGENSO has said, to allow implementation from April 2022, it requires a decision by 31 August 2021 in order to use the correct components within the CUSC Calculation to produce draft tariffs for the 2022/23 charging year, and that this requires an urgent timetable.

Panel view

The Panel considered the request for urgency by reference to Ofgem's Guidance on Code Modification Urgency.¹⁰ At the Panel meeting on 16 April 2021, the majority of the Panel agreed to recommend to Ofgem that CMP368 and CMP369 should not be progressed as Urgent CUSC Modification Proposals. The arguments for and against urgent treatment are set out in the letter from the Panel.

The Panel did not consider NGENSO to be at risk of breach of its legal requirements if the modification proposals are not progressed to an urgent timeline, and therefore did not see the Proposals as meeting Urgency Criterion (c). The Panel were of the view that the Proposer's desire for a decision by August 2021 in order to incorporate changes arising from CMP368 and CMP369 in the published draft TNUoS tariffs is not related to a legal requirement, and that not doing so would not be a breach of a legal requirement. The Panel noted that implementation by 1 April 2022 could be achieved under a standard timetable, on the assumption that the Panel prioritise this as high priority.

The Panel agreed both an appropriate urgent timetable and standard timetable for CMP368 and CMP369, both of which have an implementation date of 1 April 2022 (if approved). The Panel also agreed that it was prudent to progress the proposals as a joint CMP368/CMP369 Workgroup.

Our decision

In reaching our decision on urgency, we have considered the details within the Proposals, the justification for requesting urgency, and the views of the Panel. We have assessed the request against each of the urgency criteria set out in our published guidance, and in

¹⁰ Ofgem (2016) Guidance on Code Modification Urgency Criteria: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-code-modification-urgency-criteria-0>

particular, whether the Proposal is linked to an imminent or current issue that, if not urgently addressed, may cause a party to be in breach of any legal requirements.

We agree that the Proposals require to take effect on 1 April 2022, consistent with the terms of our decision on CMP317/327. However, we are not satisfied that an urgent modification process is required to achieve this. We note that the standard timeline presented by the Panel would ensure that these Proposals can be implemented by 1 April 2022. A decision on the Proposals prior to 31 October 2021, (as provided for in the timeline) would also allow NGENSO sufficient time for implementation before the setting of 2022/23 tariffs. Whilst the Proposer has indicated a preference for an Authority decision to be published by 31 August 2021, it has not presented a legal obligation that would be breached were a decision issued later than this date. As such, we do not consider there to be sufficient evidence that there are issues related to the Proposals which would be mitigated through urgency.

We therefore do not accept the modification proposals being treated as urgent and agree with the Panel that the modifications should follow the standard, rather than urgent, timetable set out in the Panel's letter.

We reiterate our expectation, stated in our CMP317/327 Decision, that these CUSC Modification Proposals be implemented by 1 April 2022. We expect that the Panel will, as indicated, treat the Proposals as high priority to ensure this is possible. If we consider sufficient progress is not being made during the process, we may use measures available to us to ensure the timely implementation of the necessary changes. In order to help facilitate achieving this timetable, we will issue guidance to the Workgroup formally outlining our position on the requirements for CMP368 and CMP369 prior to the first Workgroup.

For the avoidance of doubt, in rejecting the request for urgency, we have made no assessment of the merits of the Proposals and nothing in this letter in any way fetters our discretion in respect of the Proposals.

If you have any comments or questions about this letter, please contact Hilary Algert at Hilary.Algert@ofgem.gov.uk.

Yours sincerely,

Harriet Harmon

Head of Electricity Network Charging, Energy Systems Management & Security

Duly authorised on behalf of the Authority