

**CUSC Alternative Form**

# **CMP368 Alternative 10: Updating Charges for the Physical Assets Required for Connection, Generation Output and Generator charges for the purpose of maintaining compliance with the Limiting Regulation**

**Overview:** This Alternative Request has been raised to better give effect to the Authority determination within the CMP317/327 decision, by

1. by counting Local Circuits with Multiple Connections to the MITS as not within the Connection Exclusion,
2. including demand transmission charges paid by generators (rather than excluding them, as under the Original proposal), and;
3. by excluding only volumes but not the transmission charges paid by Embedded Generators (unlike the Original which excludes both).

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## What is the proposed alternative solution?

This differs from the Original as under the original the revenue from local circuits with two or more connections to the MITS would be classed within the Connection Exclusion,

We also propose that demand transmission charges paid by generators would be included (rather than excluded, as under the Original proposal).

This is because we can see no legal basis for excluding transmission charges - which include demand transmission charges paid by generators - from the calculation.

The Limiting Regulation, as noted on page 9 of the consultation, states that:

*“Annual average transmission charges paid by producers is annual total transmission tariff charges paid by producers”* [emphasis added]

Therefore, the Original proposal, by seeking to exclude the demand transmission charges paid by generators is, in this respect (and others), incompatible with the Limiting Regulation, whereas the Alternative is compliant.

We propose that only volumes are excluded but not the transmission charges paid by Embedded Generators (unlike the Original which excludes both).

This is because we can see no legal basis for excluding transmission charges paid by generators from the calculation. The Limiting Regulation, as noted on page 9 of the consultation, states that:

*“Annual average transmission charges paid by producers is annual total transmission tariff charges paid by producers”* [emphasis added]

Therefore, the Original proposal, by seeking to exclude transmission charges paid by Large Distributed Generators is, in this respect (and others), incompatible with the Limiting Regulation, whereas the Alternative is compliant.

## What is the difference between this and the Original Proposal?

This differs from the Original as under the original the revenue from the local circuit charge for the first connectee would be classed within the Connection Exclusion even if the asset later became interconnected such that it became connected to and therefore used by more than one generator and/or demand, demand transmission charges paid by generators included (rather than excluded, as under the Original proposal), as we have covered in the section above, and; as per the Original but excluding only volumes and not the transmission charges paid by Embedded Generators (unlike the Original which excludes both), as we have covered in the section above.

The purpose of CMP368/369 is to implement **the correct definition** of the connection exclusion. This means that if an alternative introduces a correct element in contrast to an incorrect approach used by Baseline and/or Original, then that alternative must be better than Baseline and/or Original. This is supported by consideration of:

- **Ofgem TCR decision** directing ESO to raise modification that became CMP317327 “This should be achieved by charging generators all applicable charges (having factored in the correct interpretation of the connection exclusion as set out in EU Regulation 838/2010), and adjusted if needed to ensure compliance with the 0 to 2.50 EUR/MWh range.” (emphasis added)
- **The Original CMP368/369 proposal** clearly highlights the need for CMP368/369 to implement a correct definition and the area of the CUSC where there is a defect: “*Additionally, in Ofgem’s decision to approve CMP317/327 they specified that changes to the CUSC should be brought forward and allow implementation in April 2022. To enable this NGENSO require a decision by 31 August 2021 in order to use the correct components within the calculation to allow draft tariffs to be produced for the 2022/23 charging year.*” (emphasis added)
- **Ofgem’s response to the request for urgency** “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.” (emphasis added)
- **The Ofgem open letter** of 19<sup>th</sup> May 21 regarding CMP368/369 workgroup consultation: “*Open letter on updating the Connection and Use of System Code (CUSC) to provide for the correct interpretation of Commission Regulation (EU) No. 838/2010 (as incorporated into retained EU Law): CMP368 and CMP369*” (emphasis added). And “*We therefore asked NGENSO to bring forward proposals to update the CUSC to incorporate the correct interpretation of the Connection Exclusion for implementation in full from 1 April 2022.*” (emphasis added)

Regarding consistency with Ofgem’s CMP317/327 decision letter, Ofgem said “*In addition, we expect National Grid Electricity System Operator (‘NGESO’) to bring forward a further CUSC Modification Proposal (in sufficient time to enable the modifications to be effective as of 1 April 2022)...*” This did not represent a formal regulatory decision from the Authority regarding the issues of the connection exclusion, or the treatment of embedded generators. As indicated, ESO did raise such a modification along the lines that Ofgem requested and it is now the role of the CMP368/369 workgroup of industry experts to give the modification due consideration regarding how best to modify the CUSC to implement “the correct interpretation” of the Limiting Regulation.

This alternative has an alternative that has a better legal interpretation of compliance with the Limiting Regulation compared with Baseline, and Original, so is therefore better with regards to non-charging ACO “c” for CMP368 and charging ACO “d” for CMP369.

This alternative would result in less expensive TNUoS charges for GB generators compared with Baseline and Original. This will better facilitate effective competition with regards to GB generators compared with generators in other markets. It would therefore be better with regards to non-charging ACO “b” with regards to better facilitating effective competition for CMP368. For the same reason, it would also be better than both Baseline and Original with regards to charging ACO “a” regarding effective competition for CMP369.

By implementing a better interpretation of the Limiting Regulation, this alternative will better take account of new developments of the offshore grid and policy position as per Ofgem’s minded to decision regarding the Access and Forward Looking Chagres SCR. It is therefore better than both the Baseline and Original with regards to non-charging ACO “d” regarding efficient implementation and administration for CMP368 by avoiding the

need for returning to make additional changes in the future to accommodate the offshore grid. It is also better with regards to charging ACO “c” regarding developments in the transmission licensees’ transmission businesses and charging ACO “e” regarding efficient implementation and administration for CMP369

### Why this alternative measure of interconnectedness is better than both Baseline and Original

The Baseline and Original use of Local Assets is not legally correct because it fails to use an autonomous definition of the connection exclusion due to relying on domestic GB naming conventions.

MITS definition is arbitrary, so cannot be a correct objective autonomous interpretation of the connection exclusion. This alternative would implement an objective autonomous definition of the connection exclusion, so in this regard it is better than both the Baseline and the Original.

The Proposer has introduced the concept of interconnectedness in the Original and proposed to use the MITS as the definition of sufficient interconnectedness. The use of the concept of the degree of interconnectedness as a feature of the Original proposal, is further confirmation that it is valid for alternative proposals to use a different definition of this feature.

Since the Original use an incorrect definition of the connection exclusion, the assets which it would identify to be included, or excluded as being pre-existing, or not, would be the wrong assets. The Baseline and Original failure to use a correct definition of the connection exclusion would result in ESO using an incorrect interpretation of the ITC regulation, using incorrect components within the tariff calculation and carrying out an incorrect assessment of compliance. This alternative would rectify those failures of the Baseline and Original.

### Consistency with the CMA’s Decision and Order (of 30 March 2021)

According to the Limiting Regulation and the CMA’s 30th March 2021 decision, transmission system assets that are performing the purpose of a network asset should not form part of the connection exclusion. This was described in the CMP368/369 Workgroup Consultation.

*“A Workgroup member noted that the CMA decisions noted, at paragraph 6.99(c)11, the following regarding issues related to ‘interconnectedness’:*

*“The ITC Regulation [this is the Limiting Regulation] does not rule out the possibility that assets required by individual Generators for connection to the system could become assets deployed in the system for different purposes.*

*If the function of assets, initially required by any such Generators for connection to the system, did change in this way, the charges applied for*

*such assets may no longer fall within the Connection Exclusion, depending on the particular facts arising...Relevant factors may include the degree of interconnectedness between assets, and possibly also between Generators, suppliers and other users. However, these matters are complex and call for highly specialist technical expertise and the exercise of judgement by reference to the particular facts of the case.”* (emphasis added)

This alternative is better than both the Baseline and the Original because it better implements the CMA decision.

#### Consistency with the Authority’s decision in respect of CMP317/327

Where this alternative differs from the Ofgem CMP317/327 decision, it is because this alternative better reflects the CMA decision which came after and takes precedence over the Ofgem decision regarding CMP317/327.

The CMA directly contradicted Ofgem’s view of the connection exclusion in at least two important aspects. Firstly by stating that the purpose, therefore treatment for the connection exclusion can change over time which contradicted the Ofgem opinion that it could not change over time. Secondly, the CMA concluded that relevant factors which may cause this different treatment could include the degree of interconnectedness in the way it is used by generators and/or demand and the physical topography of the network, all of which Ofgem had previously claimed were not relevant at all.

#### Arguments in favour of “More than one route” definition

The scenario where there is more than one route for the power to flow is a clear example of the function of a section of network asset, having and performing the purpose of a network, not of connection, as per the CMA decision regarding the CMP317/327 appeal.

## What is the impact of this change?

### Proposer’s Assessment against CUSC Non-Charging Objectives

Relevant Objective	Identified impact
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None.