

Workgroup Consultation Response Proforma**CMP368 & CMP369**

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 2 July 2021**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

If you have any queries on the content of this consultation, please contact Jennifer Groome Jennifer.Groome@nationalgrideso.com or cusc.team@nationalgrideso.com

Respondent details	Please enter your details
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I wish my response to be:

(Please mark the relevant box)

 Non-Confidential Confidential

Note: A confidential response will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel, the Workgroup or the industry and may therefore not influence the debate to the same extent as a non-confidential response.

CMP368**For reference the Applicable CUSC (non-charging) Objectives are:**

- The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;*
- 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;*
- Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and*
- 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).*

CMP369**For reference the Applicable CUSC (charging) 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; and*
- e. *Promoting efficiency in the implementation and administration of the system charging methodology.*

**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 regarding the Workgroup Consultation in the right-hand side of the table below, including your rationale.

CMP368 Standard Workgroup Consultation questions		
1	Do you believe that the CMP368 Original Proposal better facilitates the Applicable Objectives?	We consider CMP368 better facilitates applicable objective (a) and (c) for the reasons set out by the Proposer.
2	Do you support the proposed implementation approach?	Yes.
3	Do you have any other comments?	No.
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	No.

CMP369 Standard Workgroup Consultation questions		
5	Do you believe that the CMP369 Original Proposal better facilitates the Applicable Objectives?	We consider CMP369 better facilitates applicable objectives (c), (d) and (e) for the reasons set out by the Proposer.
6	Do you support the proposed implementation approach?	Yes.
7	Do you have any other comments?	No.
8	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	No.

CMP368 & CMP369 Modification Specific Workgroup Consultation questions		
9	The Proposer is proposing that the both the volumes <u>and</u> charges of Large Distributed Generators are excluded in the compliance calculation, whereas the	Excluding both the volumes and the charges ensures a consistent and common-sense interpretation of the Regulation and is in line with the direction given by Ofgem in its CMP317/327 Decision.

	potential alternative proposes that only the volumes are excluded. Which option do you support and why?	By contrast, we believe the alternative proposal requires an illogical interpretation of the Regulation and is not in line with the direction given by Ofgem.
10	Station demand charges (TNUoS Triad charges on power station demand) would, with the original, be excluded, however the potential alternative would include them. Which option do you support and why?	This would likely require further legal opinion which we do not consider is warranted on this issue due to the immateriality of the values under consideration, which we expect will be negligible once the demand residual charge is removed from station demand. Therefore, for simplicity and efficiency, we prefer the approach in the Original proposal, but it may be worth an alternative being raised on this issue to present both options to Ofgem.
11	The Original proposal would not change the current treatment of transmission charges or the associated volumes relating to storage when assessing compliance with the Limiting Regulation. Do you agree with this approach, and if so why?	<p>The consultation document isn't completely clear on this, but we assume that the proposal to 'not change' the treatment of storage means that storage will be treated in the same way as other Generation. The compliance calculation would include <i>only</i> the relevant charges i.e. it would not include local charges for assets that were not pre-existing.</p> <p>If we have understood the Original proposal correctly, then we agree with this approach.</p>
12	Do you believe that both generation charges and volumes of storage assets should be included in the compliance calculation (page 11)? Does this depend on whether the storage is transmission or distribution connected? Please provide your rationale.	<p>As above, we assume that the proposal is that the compliance calculation would include <i>only</i> the relevant charges i.e. it would not include local charges for assets that were not pre-existing.</p> <p>Assuming we have understood the proposal, we believe it is appropriate for transmission connected Storage assets i.e. treat Storage the same as Generation.</p>
13	What do you think is the appropriate time stamp for defining whether a network asset is "pre-existing" (page 11)? E.g. when a generator wished to connect, was the network asset:	We consider that the timestamp for a 'pre-existing' network asset must be when it is commissioned and fully operational since prior to that point the asset will not be being ' <i>used for the transmission of electricity</i> ' and so will not come under the definition of the NETS i.e. will not form part of ' <i>the system</i> ' for the purposes of the Regulation.

	<ul style="list-style-type: none"> a. Already planned to be built b. Already committed to be built c. Already under construction d. Finished construction e. Commissioned and fully operational 	
14	<p>Do you consider there to be any specific changes to a BCA that may trigger the reclassification of assets? If so, please provide your rationale.</p>	<p>No, we agree with the Proposer's view that a new BCA and/or replanting should not in and of itself drive re-consideration of whether assets are pre-existing or not.</p> <p>We consider the classification of assets should be dependent on developments to <i>the system</i>, not developments to the generator.</p>
15	<p>Do you think an obligation should be placed on the ESO to publish the outturn value and transparently show the working for calculating the average transmission charge paid by generators (page 15)? Please explain your rationale.</p>	<p>Transparency is always welcome. However, we note that the information has been provided by the ESO previously and therefore we don't think an obligation is necessary.</p>
16	<p>How should charges be treated relating to upgrades to local assets? Please explain your rationale.</p> <ul style="list-style-type: none"> a. Only exclude charges for new upgrades that are paid by a new generator. b. Exclude charges paid for the new upgrades that are paid by both existing and new generators. c. Do not exclude any cost related to new upgrades because the upgrade to pre-existing assets was not required to connect the new generator. 	<p>If we have interpreted the options correctly, then option (a) aligns best to our understanding of the connection exclusion.</p> <p>For the avoidance of doubt, we agree with the original treatment presented in all seven illustrative examples in the workgroup consultation document. These set out a clear and logical interpretation of how upgrades should be dealt with under a range of scenarios. We disagree with the alternative interpretations put forward by a workgroup member for illustrative example 2.</p>

	d. Other	
17	<p>Four different options are given on page 22 of the Workgroup Consultation, two of which demonstrate different interpretations of “interconnectedness”. that the CMA identified. Figures 8-11 provide simple examples to help define what network assets should have their charges captured within the Connection Exclusion. Which of the two options (1 or 2) for “sufficient interconnectedness” do you agree with, and why?</p>	<p>We would request the Workgroup ensure that any quotes taken from the CMA decision are complete and presented in the correct context.</p> <p>Paragraph 6.99(c) of CMA decision has been only been partially quoted. The quote in the consultation document skips the important sentence in red below:</p> <p><i>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. Whether any such change would be sufficient to render such charges out with the Connection Exclusion, would need to be assessed by reference to (a) the principles set out at paragraph 6.91 above, and (b) our finding that the fact that an asset is shared is insufficient to render any charges out with the Connection Exclusion (see paragraph 6.92). 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]</i></p> <p>In the preceding paragraph 6.99(b), the CMA also expressly reject the arguments put forward to support a generation only spur interpretation of the connection exclusion.</p> <p>6.99(b): <i>We did not need to reach a concluded view on the meaning of the term ‘GOS’, contrary to the Appellants’ position. That concept, as variously described, was relied upon by the Appellants in support of their general propositions that: (i) save for GOS, no Local Assets should be treated as connection assets as they were used for the purposes of transmitting electricity across the system, not for connection; and (ii) any sharing of an asset was sufficient to render the asset outside the scope of the Connection Exclusion. We have</i></p>

rejected these arguments for the reasons given above.”

Whilst we appreciate that Parties can present their own interpretation of the regulation and can come forward with options as part of the CUSC process, we are concerned that option one appears to have been presented as a possible interpretation of the CMA’s view of ‘interconnectedness’ for the purposes of asset classification, when in fact the CMA has rejected this argument.

We also disagree with some of the options presented within ‘Option 2’. For example, we don’t see how definitions such as two or more network branches, two or more generators, or at least one generator and a source of demand could be considered consistent with the CMA findings. We note that the CMA expressly stated, see 6.98(c), that it disagreed with the submission that any Local Asset or local circuit which is shared by multiple users (including, but not limited to, meeting the needs of Demand) should be treated as a transmission network asset and not as a connection asset.

Unfortunately, as the CMA decision rightly points out, 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. In our view, the options presented in Figures 8-11 do not appear particularly complex and simply represent different scenarios of assets required for connection to the system being shared (some of which may fall to be treated as pre-existing).

Our preference, for now, is to use the MITs on the grounds of administrative ease, but even this approach is not consistent with the CMA’s use of ‘interconnectedness’ and so it will need to be kept under review as the system and charging methodology develops over time.

We note that Ofgem’s evidence to the CMA does not make the claim that the *nature of assets* changes once they become part of the MITs, but rather that the *nature of charges* changes i.e. from

		<p>local charges specific to an asset to wider charges not specific to an asset. Ofgem’s interpretation is that because they do not relate to a specific asset, they fall outside of the connection exclusion. This may be an administratively simple solution for the near/medium term, but it does not address the question of interconnectedness. It means that it may be possible for there to be assets that would rightly be classified as physical assets required by generators for connection to the system, for which there would be no associated charge specific to those assets.</p> <p>If the effect of this approach is that an increasing distortion is created between transmission connected generation (in receipt of the negative tariff adjustment to comply with the regulation) and distribution connected generation (not in receipt of the negative adjustment), then it may become necessary in the future to consider extending the local asset charging regime to include some assets forming part of the MITs.</p>
18	<p>Option 3 (page 22) notes that the CMA says there may be other relevant factors - do you think any other factors should be taken into account, and if so, what?</p>	<p>We struggle to see how the workgroup or industry can be expected to foresee all relevant other factors that would need to be taken into account. As the CMA sets out – 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.</p> <p>We suggest an approach using the MITs on the basis that once an asset becomes part of the MITs, the <i>charges</i> (not assets) cease to come under the exclusion. This will be administratively simple for now but will need to be kept under review to prevent an increasing distortion between transmission and distribution connected generation.</p>
19	<p>The Proposer is considering a potential alternative to utilise data that already exists within the onshore TOs’ Price Control Finance Models (PCFM) (page 25-26), attached in Annex 5. This based on the assumption that</p>	<p>We don’t believe this will adequately address the complexity highlighted by the CMA or give an autonomous definition to the connection exclusion. Therefore, we do not support it.</p>

	a portion of total onshore local charges is associated with non pre-existing assets, and that this portion can be derived by comparing the Generation Connections Volume Driver with the total revenue across all three onshore TOs. Do you support this option? Why?	
20	Do you agree with the proposed definitions of non pre-existing assets 'NPEA' and pre-existing assets 'PEA'?	Yes
21	Do you agree that the legal definitions in the Original Proposal should be limited to TNUoS charges only or include all transmission charges?	<p>The legal text should be limited to TNUoS charges since CMP368/9 has been raised with a specific intent – to apply the interpretation of the Limiting Regulation set out in Ofgem’s CMP317/327 decision. In that decision letter, Ofgem stated that it expected the ESO to bring forward a modification to:</p> <p><i>“Remove from the calculation determining compliance with the range the TNUoS Charges payable by ‘Large Distributed Generators’ and their associated volumes (MWh).”</i></p> <p>We would be concerned about the uncertainty and ambiguity that could be introduced by using a general term like transmission charge.</p>
22	Do you agree that the legal text delivers the intent of the Original Proposal?	Yes.