

CUSC Alternative Form

CMP368 Alternative 5: 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. only allowing local circuits classed as Generator Only Spurs in the Connection Exclusion, and;
2. 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?

Only a 'Generator only spur' (GOS), would be classified as insufficiently interconnected, so only a generator only spur could fall into the connection exclusion of the ITC Regulation. A generator only spur is an asset that is solely required for a single specific generator concerned. This would apply equally to offshore assets and onshore assets.

Similarly, if a Generator only spur became an asset connected to and therefore used by more than one generator, and/or demand, then it would cease to be regarded as a Generator only spur. This would make it sufficiently interconnected that it is not considered as a physical asset required for connection of that generator to the transmission system. It would therefore no longer be classed within the Connection Exclusion for the purposes of the ITC Regulation.

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, 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 19th May21 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 "GOS" definition

The rationale for using this element as a measure of "sufficient interconnectedness" is that once two or more network users are interconnected and networked to each other, even together at the end of a radial spur, then the transmission assets interconnecting those network users are performing the role of a network, not a connection. The relevant transmission assets would enable power to flow between those users such as a second generator may supply power for the first generator's station load, or other on-site purposes at times when the first generator is not generating power. Additionally, power can be supplied from a generator to an interconnected source of demand, or to demand in the form of a storage asset. All of these network actions can be carried out irrespective of whether or not the radial transmission circuit is operational, or capable of flowing power at the time.

We believe it is irrational to view, as the Original would, the same network asset to serve two different purposes (network asset or connection asset) depending on the point of view of different generators. This element is better because it rectifies this irrationality that is present in both the Baseline and Original.

What is the impact of this change?

Proposer's Assessment against CUSC Non-Charging 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;	Neutral

