Code Administrator Consultation Response Proforma

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 & CMP369: Consequential changes to Section 14 of the CUSC as a result of the updated definitions introduced by CMP368

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

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
Respondent name:	John Tindal
Company name:	SSE plc
Email address:	John.tindal@sse.com
Phone number:	01738 457 308

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 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:

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).*

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

CMP368 Standard Code Administrator Consultation questions		
1	Do you believe that the CMP368 Original Proposal or WACM1, WACM 2, WACM3, WACM4, WACM5, WACM6, WACM7, WACM8, WACM9, WACM10, WACM11, WACM12, WACM13, WACM14, WACM15, WACM16, WACM17, WACM18, WACM19 better facilitates the Applicable Objectives?	<u>Summary</u> It is our view that all of the WACMs are better than both the Baseline and better than the Original because of their better treatment of the various features explained further below. The best is WACM6 because it uses the objective and autonomous definition of GOS as a pre-requisite for being defined as an asset required for connection. It correctly includes TNUoS charges paid by embedded generators and demand charges paid by generators because these do represent transmission charges that are paid by producers. It also correctly excludes embedded generator volumes from the volume calculation because this is not measured energy injected to the transmission system. <u>Approach to assessing alternatives</u> It is the purpose of CMP368/369 to implement the correct treatment of the Limiting Regulation. Therefore alternatives that uses a correct legal definition of a feature are better in that regard than one that does not. It is our view that several features are relevant as expressed in the various WACMs regarding: i. Definition to use: “SDG” versus “Embedded” ii. Include/exclude charges for embedded generators iii. Include/exclude volumes for embedded generators iv. Station demand included in the calculation v. Definition of interconnectedness vi. Timestamp for “pre-existing” These are present to different degrees in each of the WACMs. Some WACMs may be better in some aspects, but worse in others, so we have taken a weighted view of the different elements. To correctly interpret the Limiting Regulation, it is important to have in mind the text of the regulation

		838/2010 and then discuss how each feature mentioned above (if we list) works with the text: "*Annual average transmission charges paid by producers is annual total transmission tariff charges paid by producers divided by the total measured energy injected annually by producers to the transmission system of a Member State*." (emphasis added) Our view on each feature is summarised below: Definition to use: "SDG" versus "Embedded" It would better future proof the CUSC to use the term "Embedded" rather than "SDG" with regards to potential changes from Ofgem's Access and Forward Looking Charges SCR, or other potential future changes as the SCR points to charging TNUoS to all Embedded Generation. Using the word Embedded will not cause any issues in the interim as TNUoS is only charged to a subset of embedded generation. In this regard any WACM that uses "Embedded" is better than Baseline with regards to ACO "d" of efficiency in the implementation and administration. By contrast, the Original does not include this feature, so Original is not better than Baseline with regards to objective "d". Include/exclude charges for embedded generators It is clear, and confirmed by the Ofgem representative at a workgroup meeting that it is Ofgem's view , that TNUoS charges paid by embedded generators are transmission charges paid by producers. It is therefore clear that TNUoS charges paid by embedded generators should properly be included for compliance with the Limiting Regulation. The application of locational TNUoS charges to distribution connected generators is based on the same rationale as those paid by transmission connected generators. Distribution connected generators can hold TEC and in particular, large distribution connected generators have to have TEC due to the impact they cause on the transmission system and can cause a requirement for transmission network build. The TNUoS transmission charges these distribution connected

		generators pay are supposed to be reflective of the cost that they cause and are supposed to provide them with economic price signals in an equivalent way to the charges paid by transmission connected generators. For large distribution connected generators, there is no difference in terms of regulatory or economic rationale, or intent as to why they pay TNUoS, while there is also no relevant difference in the way they actually pay the charges. There is therefore no appropriate justification for treating the TNUoS charges paid by distribution connected generators any differently from the TNUoS charges paid by transmission connected generators with regards to compliance with the Limiting Regulation. Any WACM that includes TNUoS charges paid by embedded generators is as good as Baseline with regards to ACO "c" for legal compliance in this regard, because Baseline already includes this feature. Inclusion of this feature would also appropriately tend to result in lower total TNUoS charges paid by GB generators, so would also be as good as Baseline with regards to ACO "b" for effective competition regarding competition between GB generators and generators in other markets. By contrast, the Original does not include TNUoS charges paid by embedded generators, so the Original is worse than Baseline with regards to this feature for both ACO "c" and ACO "b". Several WACMs use the same approach as the Original of excluding TNUoS charges paid by embedded generators, but we consider these WACMs to be still better than Baseline and Better than Original due to their treatment of other features. <u>Include/exclude volumes for embedded generators</u> We agree with Ofgem's decision document for CMP317/327 and the Original proposal that the generation volumes from embedded generators should be excluded from compliance with the Limiting Regulation. The Limiting Regulation defines the appropriate measure of volume to use as: *"…total measured energy injected annually by producers to the transmission system of a Member State."*

		Electricity generated by embedded generators does not qualify as “measured energy injected…to the transmission system.” so any such volumes should not be part of the compliance calculation. Alternatives, including the Original, that exclude volumes from embedded generators are therefore better the Baseline with regards to ACO “c” for legal compliance because they use a correct interpretation of the Limiting Regulation. They are also better with regards to ACO “b” for effective competition, because they would tend to reduce total TNUoS charges paid by GB generators, so better facilitate effective competition compared with generators in other markets. <u>It is appropriate to use different treatment of embedded generator charges compared with embedded generation volumes</u> There is no reason why the TNUoS charges paid by embedded generators and the volumes they generate must be treated the same as each other with regards to being included, or excluded. The question of whether or not a producer exports onto the transmission system is an entirely different from the question of whether or not they are a producer that pays transmission charges. It is our view, and Ofgem Representative in a Workgroup meeting agreed, that charges paid by a transmission connected generator should be included, even if that transmission generator does not generate, or inject any electricity onto the transmission system in the relevant year. It is therefore clear that the question of whether or not a producer injects measured energy onto the transmission system is a different question from whether or not they pay transmission charges. <u>Station demand included in the calculation</u> It is our view that TNUoS demand charges paid by generators does meet the Limiting Regulation definition of being “transmission tariff charges paid by producers”. They should therefore be included with regards to calculating compliance. The aim of the limiting regulation is to maintain a level playing field between EU Generators by capping the cost to generators of transmission charges paid by Generators. Station Demand charges feed into the fixed

		operating cost of power stations, so they impact the relative competitive commercial position of generators in the same way as the generation charges that they pay. It would therefore unjustifiable from either an economic, or legal/regulatory perspective to include these demand charges paid by generators. Alternatives, that include demand TNUoS charges paid by producers are therefore better than Baseline with regards to ACO “c” for legal compliance, because they use a correct interpretation of the Limiting Regulation. They are also better with regards to ACO “b” for effective competition, because they would tend to reduce total TNUoS charges paid by GB generators, so better facilitate effective competition compared with generators in other markets. By contrast, the Original does not include demand TNUoS charges paid by producers, so is not better than the Baseline in this regard with regards to ACO “c”, or “b”. <u>Definition of interconnectedness</u> As described in the alternative proposal forms (quoted below for convenience), a correct interpretation of connection exclusion would include a correct treatment of “interconnectedness”. Without this correct treatment, the interpretation of the connection exclusion would fail to have an objective, or autonomous definition, so could not be the correct legal interpretation of either “pre-existing”, or of the connection exclusion overall. “It is our view that the “not GOS” definition is the correct legal definition, so any alternatives that use this approach are better than both Baseline and Original in this regard with respect to ACO “c” for legal compliance. Such alternatives would also tend to result in lower total TNUoS charges paid by generators, so would also be better with regards to ACO “b” of effective competition compared with generators in other markets. Regarding the alternative “more than one route” feature, we do not believe this is the correct interpretation of the connection exclusion. However, we appreciate that it

		could be viewed as a valid interpretation, on the rationale that it could still provide an objective autonomous interpretation of the connection exclusion. Therefore, any alternatives that use this approach are better than both Baseline and Original in this regard with respect to ACO "c" for legal compliance. They would also tend to result in lower total TNUoS charges paid by generators, so would also be better with regards to ACO "b" for effective competition compared with generators in other markets. By contrast, the Original uses the MITS definition as a measure of sufficient interconnectedness. The MITS definition is subjective and subject to change dependent on variations in GB domestic regulations. This means that reliance on MITS is not objective and it does not provide an autonomous legal definition, so it cannot be the correct interpretation of the Limiting Regulation. This means that the Original is not better than Baseline in respect to ACO "c". <u>Timestamp for "pre-existing"</u> The use of BCA enabling works as a feature to define what is not a pre-existing asset is better than Baseline. Therefore the Original and all WACMs are better than Baseline for this feature with regards to ACO "c" for legal compliance and "b" for effective competition. However, the use of BCA enabling works only provides part of the solution, so it is even better to also take account of whether relevant network assets identified in the BCA had already been planned and approved by Ofgem. This is because if a network asset had already been planned and approved before a generator wishes to connect, then that network asset was planned for a different purpose and is not required for connecting that generator, so not be part of the connection exclusion. Therefore, alternatives that include this "already planned and approved" feature are even better with regards to ACO "c" and "b". The feature of "already planned and approved" is not required for alternatives that use the "not GOS" definition of interconnectedness. This is because only radial circuits used by a single generator would be under consideration for being an asset required for connection,

		so if the assets are listed in the BCA, then it is unlikely such a network asset is being built for any other user.
2	Do you support the proposed implementation approach?	Yes
3	Do you have any other comments?	For convenience, the following quotes have been taken from the alternative proposal forms regarding the rationale for using GOS, or "more than one route" as a measure of interconnectedness. We agree with the rationale provided in these forms: <u>Why this alternative measure of interconnectedness is better than both Baseline and Original</u> 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. <u>Arguments in favour of "GOS" definition</u> The rational 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. <u>Arguments in favour of "More than one route" definition</u> 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.

CMP369 Standard Code Administrator Consultation questions

1	Do you believe that the CMP369 Original Proposal better facilitates the Applicable Objectives?	The CMP369 Original is a consequential modification to support the implementation of CMP368. It appears that the Original proposal is appropriate irrespective of whichever CMP368 option is approved, so therefore is better than Baseline regarding: i. ACO “d” Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency – Because it is required to implement a correct interpretation of the Limiting Regulation in the CUSC ii. ACO “a” Effective competition – By facilitating a reduction in total TNUoS charges paid by GB generators, so better facilitating effective competition compared with generators in other markets
2	Do you support the proposed implementation approach?	Yes
3	Do you have any other comments?	No