

Modification proposal:	Connection and Use of System Code (CUSC) CMP223: Arrangements for Relevant Distributed Generators under the Enduring Generation User Commitment		
Decision:	The Authority ¹ directs that the CMP223 WACM1 modification ² be made ³		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	14 July 2015	Implementation Date:	10 working days after Authority decision

Background to the modification proposal

The user commitment arrangements are the rules set out in the Connection and Use of System Code (CUSC) by which users of the transmission system must underwrite works they trigger on the transmission system. In the event a user terminates its connection agreement, it must pay a cancellation charge to National Grid Electricity Transmission Plc (NGET) (the liability).

The user is required to place security with NGET to cover a proportion of the liability. Security is posted at a reducing rate as the generation project nears commissioning and passes set milestones. Currently, for directly transmission-connected generators, 42% of the liability is secured prior to key consents being granted, reducing to 10% once these are achieved. This reflects the decreasing likelihood of a generator terminating. If NGET is unable to recover 100% of a generator's liability following a termination of its connection agreement, it is able to recover the value of the unsecured liability from Transmission Network Use of System (TNUoS) charges, subject to satisfying certain conditions.

Where a distributed generator is considered to have an impact on the transmission system (a relevant distributed generator), NGET will enter into a Construction Agreement with Distribution Network Operators (DNOs) in respect of any works required as a result of the connection.

In the event that a relevant distributed generator fails to proceed and terminates its contract with the DNO (the contracted 'user' under CUSC Section 15), the DNO will terminate its agreement with NGET, who would in turn seek to recover the full liability amount from the DNO rather than from the relevant distributed generator. The DNOs are not able to recover the shortfall between the security received from the generator and the liability due to NGET. Therefore, some DNOs have been seeking security from the relevant distributed generator for the entire user commitment amount at all times. DNOs have also applied more onerous contractual terms and conditions to relevant distributed generators compared with NGET to cover this risk.

¹ 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.

² 'Change' and 'modification' are used interchangeably in this document.

³ This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

Summary of the modification proposal

Carnedd Wen Onshore Wind Farm Limited raised CMP223 in September 2013. CMP223 seeks to modify the CUSC so that relevant distributed generators do not face a difference to directly connected generators due to the way security requirements are passed on. The proposal is that the DNO should be able to pass any shortfall in the funds recovered relative to total liability to NGET for recovery via TNUoS. This approach reduces the financial exposure of the DNOs and should incentivise them to mirror the security arrangements they have with NGET in their own arrangements with the relevant distributed generator.

The Original proposal was for the introduction of a new contract between NGET and each relevant distributed generator. This contract would be mandatory, would require the relevant distributed generator to accede to the CUSC in a limited way, and would fall away on commissioning of the generator. In the event that a relevant distributed generator terminated its project and did not pay the invoiced liability, NGET would pursue the outstanding debt from the developer.

CMP223 Proposals

Common features

Alongside the Original proposal, four Workgroup Alternative CUSC Modification proposals (WACMs) were developed. All five proposals have the following common features:

- *Security Requirements*

All the proposals apply security percentages of 45% (pre-consent) and 26% (post-consent) to relevant distributed generator liabilities. Further information on how these figures were derived can be found in the Final Modification Report (FMR).⁴

- *Requirement to provide annual termination figures*

All the proposals impose an obligation on DNOs to provide annual figures to NGET on the number of relevant distributed generators who terminated their projects, and the stage at which this happened (before or after key consents are granted). This data will allow NGET and the Authority to monitor whether the security percentages continue to be fit for purpose.

- *Debt Collection Process*

The debt recovery process sets out the process to be followed for collecting any bad debt from a relevant distributed generator that has terminated and not paid any outstanding liabilities. The process ensures that the party collecting the debt has taken sufficient steps to recover the monies prior to recovery through TNUoS charges or applying to the Authority to approve recovery. As part of its work, the Workgroup included example guidance of best debt recovery practice in the CMP223 Final Modification Report (FMR).⁵

- *Setting a debt threshold level*

It was noted by the Workgroup that if going to court to recover the debt costs more than the value of the debt then it would not be efficient to do so. The Workgroup therefore

⁴ Please see Paragraphs 6.40 – 6.49 of the FMR which can be found at:

<http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP223/>

⁵ Please see Paragraph 5.8 of the FMR which can be found at: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP223/>

agreed that a debt threshold level be set. If a debt is below this threshold, the party collecting the debt would not be required to take legal action and a request to NGET to recover the funds through TNUoS charges could be issued following a set period of time.

Differences in the proposals

The Original proposal and the various WACMs assessed by the Workgroup differ in the following ways:

- The party responsible for chasing the debt from the relevant distributed generator if it has an outstanding user commitment liability.
- Which party (the DNO or NGET) would hold the debt during the debt collection process
- The treatment of different types of generators including Statement of Works, BEGAs and BELLAs.⁶

The differences between the proposals are highlighted in the table below and are discussed in Paragraph 4.23, Table 1 of the FMR.⁷ The table is colour-coded to illustrate the differences and similarities between the various options.

	Type of Distributed Generator		
	BEGA	BELLA	Statement of Works
Original	Direct contract w/ NGET for securities and liabilities	Direct contract w/ NGET for securities and liabilities	Direct contract w/ NGET for securities and liabilities
WACM1	NGET reimburses DNOs for unrecoverable liability upon application. NGET recovers through TNUoS	NGET reimburses DNOs for unrecoverable liability upon application. NGET recovers through TNUoS	NGET reimburses DNOs for unrecoverable liability upon application. NGET recovers through TNUoS
WACM2	DNOs do not pay unrecoverable liability. NGET recovers through TNUoS	DNOs do not pay unrecoverable liability. NGET recovers through TNUoS	DNOs do not pay unrecoverable liability. NGET recovers through TNUoS
WACM3	Direct contract w/ NGET for securities and liabilities	Direct contract w/ NGET for securities and liabilities	DNOs do not pay unrecoverable liability. NGET recovers through TNUoS
WACM4	Direct contract w/ NGET for securities and liabilities	Direct contract w/ NGET for securities and liabilities	NGET reimburses DNOs for unrecoverable liability upon application. NGET recovers through TNUoS

⁶ BEGAs refer to Bilateral Embedded Generation Agreements and BELLAs refer to Bilateral Embedded Licence Exemptible Large Power Station Agreements. For further information on the types of generators discussed here, please see: <http://www.ppaenergy.co.uk/web-resources/resources/e28a57c7978.pdf>

⁷ <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP223/>

Process to date

On 27 June 2014, the CUSC Panel⁸ voted on the Original and WACM proposals and recommended, by majority or unanimously, that all of the proposals better facilitate the Applicable CUSC Objectives when compared with the current CUSC baseline. When comparing the options, the CUSC Panel voted by majority (7:2) that WACM3 best facilitates the Applicable CUSC Objectives and therefore should be implemented.

Authority Send Back

The CMP223 FMR was submitted to the Authority on 9 July 2014. We sent back the FMR on 23 October 2014 to be revised and resubmitted noting that:

- (a) The FMR required more detail on the debt collection process for DNOs when recovering debt from developers under CMP223; and
- (b) A high level summary of the proposed options was needed to aid clarity within the FMR.

The CUSC Panel discussed the Authority's send back letter at its meeting on 31 October 2014 and decided unanimously that CMP223 should be sent back to the Workgroup to consider the points made in the Authority's letter and revise the Workgroup Report for resubmission to the CUSC Panel.

Whilst point (b) was addressed by providing a high-level summary of the Original and WACM proposals within the FMR, point (a) was further debated by the Workgroup and further analysis and refinement undertaken by the Workgroup.

CUSC Panel recommendation

A further CUSC Panel vote on the re-submitted draft FMR took place on 29 May 2015. The Panel stated that their previous views on all of the proposals compared with the current CUSC baseline had not changed. The Panel voted by a majority (6:3) that WACM3 is the best option and therefore should be implemented. Panel members' views are shown in full in the FMR which was re-submitted to the Authority on 11 June 2015.

Our decision

We have considered the issues raised by the modification proposal and the FMR. We have considered and taken into account the responses to the Code Administrator consultation on the modification proposal which are attached to the FMR.⁹ We have concluded that:

- CMP223 WACM1 better facilitates the achievement of the applicable objectives of the CUSC¹⁰; and
- Directing that the modification be made is consistent with our principal objective and statutory duties.¹¹

⁸ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

⁹ The CMP223 modification proposals, modification reports and representations can be viewed on NGET's website at: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP223/>

¹⁰ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

¹¹ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

Reasons for our decision

We agree with the views of the majority of Panel members that the Original and all four WACMs better facilitate the Applicable CUSC Objectives compared to the baseline. The Original and the four WACMs facilitate competition by removing a barrier to the DNOs passing down similar security provisions to relevant distributed generators as faced by directly transmission-connected generators. In our view, WACM1 best facilitates the Applicable CUSC objectives (a) and (b) and is neutral with respect to objective (c) relative to the other alternatives and the Original. In our view, under WACM1:

- Appropriate incentives are placed on the party chasing the debt to recover the outstanding sums. This is because the debt remains held by the DNO, which is also the party chasing the debt. This is not the case with WACM2 and WACM3;
- Contractual relationships between NGET, DNOs and different types of generators remain the same as now which, in our view, results in lower costs than changing them. This is not the case for the Original, WACM3 and WACM4; and
- All types of distributed generators are treated equally. This is not the case in WACM3 and WACM4.

Objective (a) 'The efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence'

Our view is that all the options presented will help ensure similar treatment of relevant distributed generators compared to directly connected generators. This is because there is a reduced financial risk to the DNO arising due to a shortfall between the liability it pays to NGET and the amount it can recover from the generator. However, we consider that changing existing contractual relationships adds further layers of complexity and costs and is therefore unlikely to be efficient. We therefore do not consider the Original proposal best facilitates CUSC objective (a) as it would require NGET to enter into new contracts with relevant distributed generators. Further, we do not consider there is sufficient evidence to justify existing BEGA and BELLA contracts to be reopened so that these customers have a direct contractual relationship with NGET for all securities and liabilities. Therefore, in our view WACM3 and WACM4 also do not best facilitate CUSC objective (a). WACM1 and WACM2 ensure equal treatment of relevant distributed generators and do not require any new contracts or existing contracts to be reopened.

We have also considered whether the different processes for collecting the debt put forward under the WACMs provide the appropriate incentives to the DNOs to recover the outstanding sums. Under WACM2 and WACM3, the debt effectively sits with NGET and therefore the DNO may have less financial incentive to recover the debt from the relevant distributed generator. WACM1 and WACM4 do incentivise the DNO to try and recover the outstanding liability as the debt remains with the DNO. The DNO would have to demonstrate that it has exhausted all efforts to recover the debt before either applying to NGET for recovery through TNUoS or submitting an application to the Authority. Our view is that holding the greater liability under WACM1 and WACM4 gives the DNO greater incentive to collect the debt from the relevant distributed generator.

Our decision therefore is that WACM1 will best facilitate CUSC objective (a) because it results in the set of arrangements with the least unnecessary change from the status quo and places appropriate incentives on the party chasing the debt.

Objective (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'

We agree with the majority view of Panel members that the Original and all four WACMs better facilitate Applicable CUSC Objective (b) than the baseline by removing barriers to entry for relevant distributed generators. All proposals reduce the financial exposure for the DNO associated with a generator cancelling a connection by allowing the DNO to pass the shortfall to NGET for recovery through TNUoS. This should incentivise DNOs to pass NGET's security arrangements to relevant distributed generators. This would help to ensure relevant distributed generators are placed on similar terms to directly transmission-connected generators. In our view, this would better facilitate competition in the sale, distribution and purchase of electricity.

We also consider that the revised security percentages proposed (applicable to all the options presented) better reflects the risks that relevant distributed generators impose on the transmission network. Using these percentages will help ensure that generators compete on an equal basis taking into account their impact on the system.

It is important to note that this modification by itself cannot oblige a DNO to mirror the level of security it is charged by NGET. A complete solution may require changes to other codes, subject to how DNOs intend to pass on security and liability requirements.

One of the respondents to the Code Administrator Consultation commented on the security percentages proposed by CMP223. The respondent contended that the underlying dataset used to derive the 45% and 26% security (pre and post consent) levels was drawn from BEGA and BELLA generators only, which is not representative for generators for whom the DNO requests a connection from NGET using the Statement of Works process.¹² The respondent argued that, in the absence of data for these generators, the current levels of security applied to directly transmission-connected generators should endure for relevant distributed generators.

We accept the view that the current dataset does not take into account smaller generators. However, in our view, the analysis conducted by NGET on behalf of the Workgroup includes a subset of relevant distributed generators, and is therefore a more accurate reflection of the risks of these generators cancelling their projects than the population of directly transmission-connected generators. On 29 August 2014, we asked DNOs to submit further information on how often relevant distributed generators connecting using the Statement of Works process had cancelled their projects. As the responses did not contain the necessary level of detail required to provide further evidence on the risk of these generators cancelling their projects, we have decided to proceed with the Panel's recommendation on the level of security required.

We note that the approval of CMP223 would initiate a requirement for DNOs to provide NGET with data on relevant distributed generator cancellations. Both we and NGET will periodically review this data to ensure that the security requirements continue to accurately reflect the actual level of cancellations and that undue financial burden is not placed on consumers as a result.

The Authority's principal objective and statutory duties

We consider that implementing WACM1 will improve competition and is therefore in the long-term interests of consumers. We consider that WACM1 compared with other WACMs and the Original is the most efficient means of achieving this as it requires the least change from existing arrangements as well as being the option that has the best incentives on the DNOs to collect the debt. Our view therefore is that implementing WACM1 better meets our principal objective and wider statutory duties.

¹² This is the process by which the DNO requests NGET to review the impact of the generator on the transmission system and provide details of the costs of connecting that generator.

Cross Code Coordination

We recognise that to deliver a complete solution changes may be required in other codes, subject to how DNOs intend to pass on security and liability requirements. We strongly encourage and are wholly supportive of greater coordination across codes to deliver more holistic solutions, and note that arrangements are well progressed to update the Code Administrator's Code of Practice (CACOP) to reflect this principle: "Code Administrators will ensure cross Code coordination to progress changes efficiently where modifications impact multiple Codes". Our decision addresses the issues in the CUSC and reduces the risk on a DNO associated with a relevant distributed generator cancelling a connection. This should result in the DNO placing less onerous security requirements on the relevant distributed generator to cover its risk. This in turn reduces the burden on new generating projects and should better facilitate competition in generation.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority hereby directs that alternative modification proposal WACM1 for CMP223 '*Arrangements for Relevant Distributed Generators under the Ensuring Generation User Commitment*' be made.

Kersti Berge
Partner, Electricity Transmission

Signed on behalf of the Authority and authorised for that purpose