

## Minutes

<b>Meeting name</b>	CUSC Modifications Panel
<b>Meeting number</b>	186
<b>Date of meeting</b>	9 March 2016
<b>Location</b>	National Grid House, Warwick / Teleconference

## Attendees

Name	Initials	Position
Mike Toms (dial-in)	MT	Panel Chair
Jade Clarke	JC	Panel Secretary (Alternate)
John Martin	JM	Code Administrator
Nikki Jamieson	NJ	National Grid Panel Member
Cem Suleyman (dial-in)	CS	Users' Panel Member
Paul Mott	PM	Users' Panel Member
Garth Graham	GG	Users' Panel Member
James Anderson	JA	Users' Panel Member
Paul Jones (dial-in)	PJ	Users' Panel Member
Bob Brown (dial-in)	BB	Consumers' Panel Member
Abid Sheikh (dial-in)	AS	Authority Representative
Kyle Martin (dial-in)	KM	Users' Panel Member

## Apologies

Name	Initials	Position
Heena Chauhan	HC	Panel Secretary
Claire Kerr	CK	ELEXON
Simon Lord	SL	Users' Panel Member

*All presentations given at this CUSC Modifications Panel meeting can be found in the CUSC Panel area on the National Grid website:*

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

## 1 Introductions/Apologies for Absence

5086. Introductions were made around the group. Apologies from Heena Chauhan, Claire Kerr and Simon Lord.

## 4 New CUSC Modification Proposals

5087. **CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'** GG presented the modification proposal received from SSE and its request for urgency. GG noted that this modification is in relation to a likely breach of European Commission Regulation 838/2010 Part B (3) "Annual average transmission charges paid by producers in Ireland, Great Britain and Northern Ireland shall be within a range of 0 to 2.5 EUR/MWh...". GG presented two graphs detailing the MWh weighted €/£daily exchange rate from the Bank of England and the GB generation MWh per month. GG advised that based on the publically available information (up to the end of February 2016), the average annual TNUoS charges paid by generators in GB, in the current Charging Year 2015/16 is in excess of the requirement of the €2.50/MWh upper limit set out within the EC Regulation.

5088. GG noted that there is a related modification CMP251 'Removing the error margin in the cap on total TNUoS recovered by generation and introducing a new charging element to TNUoS to ensure compliance with European Commission Regulation 838/2010' and that the solution to CMP251, as set out in the current Workgroup consultation, is very similar to what is being proposed with CMP261; however, as the CMP251 Workgroup consultation makes clear<sup>1</sup>, it will not apply to Charging Year 2015/16 (or Charging Year 2016/17).
5089. GG noted that it is essential that this (CMP261) change is implemented within the 2015/16 Charging Year in order to remain compliant with the EC Regulation.
5090. GG explained the rationale for requesting urgent status for CMP261. CMP261 is linked to an imminent date related issue; namely that the average annual transmission charges to be paid by from generators in Great Britain in Charging Year 2015/16 will exceed the €2.50/MWh limit set out in EU law (Commission Regulation (EU) No 838/2010, Part B paragraph 3); and that if not urgently addressed this will cause:
- One or more parties to be in breach of relevant legal requirement(s); and/or
  - A significant commercial impact on generator parties.
5091. GG invited questions from the Panel members on the proposal. BB questioned how much the over recovery would equate to. GG noted that the final figures needed to calculate this wouldn't be available until the end of the Charging Year (2015/16) so it is uncertain at this moment in time what is the actual amount in breach of the Regulation. GG did note that based on the data available to the end of February, the exceedance was in the region of €0.75/MWh. AS asked for clarification that it will not be clear until after 31<sup>st</sup> March 2016 if the charges were in breach of the Regulation. BB clarified that Generators would be reconciled in Spring 2016 and then Suppliers would see this change in their 2017/18 TNUoS.
5092. PM questioned whether a Generator would still receive a payment through reconciliation if they have closed within the 2015/16 Charging Year. GG thought that as the Generator would still have TEC up until 31<sup>st</sup> March 2016, and would have accordingly paid TNUoS during the charging year in question that they would receive a reconciliation payment.
5093. It was questioned why CMP261 would need to be implemented before the end of the 2015/16 Charging year when Generator reconciliation won't take place until the end of April 2016. GG noted that in order for the reconciliation to take place the change is needed to make sure that the clear intent is that charges have been brought back in line with the limit set out in the Regulation. Implementation on or before 31 March 2016 would show change took place in March of this Charging Year, with the normal reconciliation taking place shortly after. NJ stated that you would need to know March's data and the final annual figures wouldn't be available until about the 25 April 2016 and therefore the Generator Reconciliation wouldn't be possible in this time. GG noted the statement<sup>2</sup> from National Grid in the CMP251 Workgroup consultation, that generator reconciliation could take place in April/May. NJ noted that National Grid would need to draft new tariffs and propose these to Ofgem to approve.
5094. KM questioned the legality of reconciling post event. GG thought that this modification aims to remain compliant with the Regulation and because the variables are not known until the end of the year it is not possible to know before 31 March 2016 if the Regulation has in fact been breached.
5095. NJ noted that there is a risk that by implementing this modification there may be a large under-recovery which wouldn't be corrected for two years.

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<sup>1</sup> Paragraph 7.5 of the CMP251 Workgroup consultation, dated 29<sup>th</sup> February 2016.

<sup>2</sup> Paragraph 4.12 of the CMP251 Workgroup consultation, dated 29<sup>th</sup> February 2016.

5096. The Chair sought views from the Panel on whether CMP261 should be considered as an urgent modification.
5097. NJ did not support urgency as in her view this change could be carried out within the normal process of Generator reconciliation. NJ thought there are clearly many issues which need further consideration and it is unlikely to cover this all within two Workgroup meetings planned within the Urgent proposed timetable.
5098. CS agreed with NJ and felt that the modification is too complicated not to allow sufficient time to develop.
5099. BB noted that he was cautious with urgency as there is a risk of unintended consequences and customers may pick up the risks. BB noted what Ofgem had mentioned within their decision letter on CMP224 and recognised that there has been legal advice provided for the CMP251 Workgroup. BB advised that urgency may create a significant disturbance in the market around charges and thought that it was better to take the time to understand the modification and its implications. BB did not support urgency and advised that a Workgroup should obtain legal advice on the issue.
5100. JA was concerned that if this modification wasn't progressed and implemented by 31 March 2016, it would become ineffective; however there are legal issues which need to be addressed. JA was in favour of recommending urgency for CMP261.
5101. KM agreed that it was a complicated issue which would require sufficient time to review, however he felt that it was important not to breach the Regulation so would therefore support the case for urgency.
5102. PM's view was that there should be legal advice and that he did not support urgency.
5103. PJ was concerned about the amount of complexity and was convinced urgency was required. PJ noted that he did not support retrospective application of modification, however if the Regulation was breached, this modification would have a good case for retrospective application. PJ stated that there is a large impact on Suppliers and Customers and therefore rushing the modification through the process would increase the risk of it failing. PJ did not support urgency for CMP261.
5104. MT summarised that the majority of the CUSC Panel felt that CMP261 should not be treated as urgent given the complexity of the issues and further understanding of the legal issues.
5105. PJ noted that although he was not in support of urgency, he did think the modification should be progressed as quickly as possible. The Panel agreed that it should be suggested that the modification should follow an 'accelerated' timetable. MT asked JC to draft an updated timetable and circulate it to the CUSC Panel for comment before sending the Panel recommendation on urgency to Ofgem.
5106. The Panel agreed that CMP261 would require a Workgroup and discussed what should be included on the Workgroup Terms of Reference.
5107. GG noted that the core element of the modification is around a legal issue therefore one item within the Terms of Reference should be to get specific legal advice for CMP261.
5108. GG also suggested that the CMP261 Workgroup should adopt the same Terms of Reference items as CMP251 (which GG read out to the Panel) as many of the issues are the same.
5109. It was also suggested that the two year delay in funds being transferred between Generators and Suppliers should be considered by the Workgroup.

5110. NJ wanted to include an item of the Terms of Reference on the risk associated in implementing the modification within the 2015/16 Charging Year in terms of cost recovery.
5111. The CUSC Panel agreed on the following Terms of Reference for the CMP261 Workgroup;
- a) Implementation
  - b) Review draft legal text
  - c) Consider the legality of breaching the regulation then reconciling the difference the following year
  - d) Consider whether you should fix the charge at €2.5 as proposed under CMP251 rather than remaining within the €0-€2.5 range as per the EC Regulation
  - e) Assess impact on competition
  - f) Assess impact on Suppliers
  - g) Assess impact on Consumers
  - h) Consider any interaction with related CUSC Modification Proposals
  - i) Consider when €2.50 is to be calculated
  - j) Consider two year delay in funds being transferred between Generators and Suppliers
5112. The CUSC Panel also agreed to amend the Terms of Reference for the CMP251 Workgroup to include the two additional items (i) and (j) which the CMP261 Workgroup is considering.

ACTION: JC to update Terms of Reference for CMP251 Workgroup.

## **11 AOB**

5113. No AOB was raised at this meeting.

## **12 Next meeting**

5114. The next meeting of the CUSC Modifications Panel will be held on 18 March 2016.