

Modification proposal:	<b>Connection and Use of System Code (“CUSC”) Modification Proposal 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”</b>		
Decision:	The Authority <sup>1</sup> has decided to reject this modification <sup>2</sup>		
Target audience:	National Grid Electricity System Operator (NGESO), Parties to the CUSC, the CUSC Panel and other interested parties		
Date of publication:	20 May 2022	Implementation date:	N/A

## Background

In December 2020, we approved the original proposal (“Original Proposal”) in both CUSC Modification Proposals (“CMP”) 317/327<sup>3</sup> and 339<sup>4</sup>. These modifications related to the provisions of the CUSC that seek to set charges in such a way as to achieve compliance with Commission Regulation (EU) No. 838/2010 (the “Limiting Regulation”)<sup>5</sup>; specifically, that annual average transmission charges paid by producers in Great Britain (“GB”) must fall within €0-2.50/MWh (“the Permitted Range”). In particular, these modifications<sup>6</sup> sought to update

<sup>1</sup> 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. This decision is made by or on behalf of GEMA.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

<sup>3</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2020/12/cmp317327\\_decision\\_171220.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2020/12/cmp317327_decision_171220.pdf)

<sup>4</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2020/12/cmp339\\_decision\\_171220.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2020/12/cmp339_decision_171220.pdf)

<sup>5</sup> Following the end of the post-Brexit Transition Period, the relevant parts of the Limiting Regulation continue to apply in GB as retained EU law, pursuant to s.3 of the European Union (Withdrawal) Act 2018 (subject to non-material amendments).

<sup>6</sup> Our CMP317/327 decision letter provides a detailed overview of the background to these proposals and the provisions of the Limiting Regulation.

Section 14.14.5 (“the CUSC Calculation”) to reflect the correct interpretation of the so-called Connection Exclusion.<sup>7</sup>

As explained in our CMP317/327 decision, our view was that neither the Original Proposal nor any of the alternative proposals was based on the correct interpretation of the Connection Exclusion, which we set out in a Legal Annex. Nonetheless, we considered that the Original Proposal was formulated on a basis much closer to the correct interpretation of the Connection Exclusion than the baseline. Having concluded that its approval would better facilitate achievement of the Applicable CUSC Objectives (‘ACOs’) and be consistent with our principal objective and other statutory duties, we approved the Original Proposal as a ‘stop-gap’ measure and indicated to NGENSO that it should produce a further proposal to bring forward a longer-term solution in line with the correct interpretation of the Connection Exclusion.

Within our CMP317/327 decision, we also indicated that further changes to the CUSC Calculation were necessary to exclude the sums payable by Large Distributed Generators<sup>8</sup> (‘LDG’) and their associated volumes of MWh exports, and that NGENSO should bring forward a proposal to this effect. NGENSO subsequently raised CMPs 368 and 369 to seek to address these points (collectively referred to as CMP368/369 in this letter).

SSE Generation Ltd (and others related entities, referred to in this letter as “SSE”) appealed to the Competition and Markets Authority against the CMP317/327 and CMP339 decisions. The CMA dismissed that appeal.<sup>9</sup> SSE subsequently applied for judicial review of the CMA decision. As discussed in more detail below, judgment in the judicial review proceedings<sup>10</sup> (the ‘Judgment’) was handed down on 11 April 2022 with the claim allowed on one ground (of three) only.<sup>11</sup>

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<sup>7</sup> The Limiting Regulation provides that, in calculating annual average transmission charges paid by producers, “*transmission charges shall exclude...charges paid by producers for physical assets required for connection to the system or the upgrade of the connection*”. We refer to this as the ‘Connection Exclusion’.

<sup>8</sup> TNUoS-liable Distributed Generators who are party to a Bilateral Embedded Generation Agreement and are licensable.

<sup>9</sup> [https://assets.publishing.service.gov.uk/media/60632cd6d3bf7f0c8c97d9f2/SSE\\_v\\_GEMA\\_-\\_pdf](https://assets.publishing.service.gov.uk/media/60632cd6d3bf7f0c8c97d9f2/SSE_v_GEMA_-_pdf)

<sup>10</sup> <https://www.bailii.org/ew/cases/EWHC/Admin/2022/865.pdf>

<sup>11</sup> See our statement here <https://www.ofgem.gov.uk/sites/default/files/2022-04/Statement%20re%20JR%20conclusion.pdf>

The relief granted by the court was to direct the CMA to partially quash one element of the modification made by CMP339, specifically to remove a definition: “Charges for Physical Assets Required for Connection”, which sought to define the Connection Exclusion.<sup>12</sup> At the hearing to consider relief, the Authority indicated to the Court that, if relief was granted in that form, the Authority would ensure that the CUSC definition of “Charges for Physical Assets Required for Connection” was amended over the coming weeks, either through the implementation of CMP368/369, or by raising another modification if no solution under CMP368/369 was appropriate. This was in line with our letter to the CUSC Panel of 24 November 2021 which stated that we would defer making a decision on CMP368/369 until the Judgment had been issued, in order to allow us to take account of the court’s findings.<sup>13</sup>

On 3 May 2022, we sought permission to appeal against the Judgment. However, unless and until the Court of Appeal overturns the Judgment, we must proceed on the basis that it correctly states the law. Given our commitment to the Court to amend the CUSC’s definition of “Charges for Physical Assets Required for Connection”, we are proceeding to publish our decision on these modification proposals.

For the reasons set out below, we have decided to reject CMP368 (and consequently CMP369). As a result, a further CUSC Modification Proposal will be required to ensure there is a definition of “Charges for Physical Assets Required for Connection” which achieves compliance with the Limiting Regulation, in light of the conclusions in the Judgment about what is required to achieve compliance. This is discussed further in the ‘Next Steps’ section of this Decision.

The letter contains the following sections:

- The modification proposal
- CUSC Panel recommendation
- Our assessment approach
- The Applicable CUSC Objectives
- Our Decision

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<sup>12</sup> The CMA updated and re-issued its Decision and Order to reflect the Judgment on 20 May 2022.

<sup>13</sup> <https://www.nationalgrideso.com/document/222786/download>

- Other matters
- Next steps

## **The modification proposal**

NGESO raised CMP368 on 14 April 2021 following the conclusion of the CMA appeal. CMP368 seeks to amend or introduce definitions to Section 11 of the CUSC, which in turn feed into the CUSC Calculation contained in Section 14. The Original Proposal would update the baseline CUSC Calculation per our CMP317/327 decision by (i) amending the definition of 'Charges for Physical Assets Required for Connection' to remove from the CUSC Calculation Local Charges for those assets which existed at the time a generator wished to connect to the system (referred to as 'pre-existing assets'); and (ii) removing from the CUSC Calculation the charges and volumes associated with LDG.

The Workgroup deliberations also resulted in 19 Workgroup Alternative CUSC Modifications ("WACMs"). In addition to considering the treatment of charges for pre-existing assets and that of LDG charges and volumes (and suggesting alternatives to the approach set out in the Original Proposal), these WACMs considered various other elements of the CUSC Calculation. Each of the WACMs comprise permutations of options within different modules, some of which are not consistent with the views we have previously set out in respect of the correct interpretation of the Limiting Regulation. In our view, the inclusion of additional options (and associated modification proposals) was unnecessary in a number of respects, which we outline further below. A brief description of each of the modules is provided below, with a summary of each of the options within each module in Table 1:

- Firstly, further to our direction in our CMP317/327 decision, the appropriate proxy for when a generator 'wishes to connect to the system'. This has also been referred to as a consideration of what constitutes a 'pre-existing asset' for the purposes of establishing whether a TNUoS Charge should fall within or outwith the CUSC Calculation.
- Whether there is a point at which an asset becomes sufficiently 'interconnected', or shared enough, that charges levied in respect of it no longer fall within the Connection Exclusion.

- Treatment of demand TNUoS charges: the inclusion/exclusion from the CUSC Calculation of demand TNUoS Charges payable by Generators.
- Treatment of LDG charges and volumes: the inclusion/exclusion from the CUSC Calculation of volumes and/or TNUoS charges associated with LDG;

Table 1 below outlines these options and which WACMs have been raised under them. Note that one WACM was silent on the Connection Exclusion and treatment of Demand TNUoS Charges and therefore maintained the baseline in respect of these two modules.

Number	Module Topic	Options	WACMs
1a	Connection Exclusion – “pre-existing”	<ul style="list-style-type: none"> <li>• An asset is not pre-existing if it has been included in a Generator’s Enabling Works</li> </ul>	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18
		<ul style="list-style-type: none"> <li>• An asset is not pre-existing if it has been included in a Generator’s Enabling Works and either the relevant TO or the Authority has approved [construction of] that asset</li> </ul>	11, 12, 13, 14, 15, 16
1b	Connection Exclusion – “interconnectedness”	<ul style="list-style-type: none"> <li>• Charges for assets which become part of the MITS do not fall within the Connection Exclusion</li> </ul>	1, 2, 3, 14, 15, 16, 17, 18
		<ul style="list-style-type: none"> <li>• If an asset provides a route for another Generator to export to MITS Node, it cannot be an asset required for connection</li> </ul>	7, 8, 9, 10, 11, 12, 13
		<ul style="list-style-type: none"> <li>• If an asset provides a route for another Generator to export to the MITS Node or a GSP it cannot be an asset required for connection</li> </ul>	4, 5, 6
2	Demand TNUoS Charges	<ul style="list-style-type: none"> <li>• Include Demand TNUoS Charges paid by Generators in the CUSC Calculation</li> </ul>	1, 3, 6, 8, 10, 13, 16, 18, 19
		<ul style="list-style-type: none"> <li>• Exclude Demand TNUoS Charges paid by Generators from the CUSC Calculation</li> </ul>	2, 4, 5, 7, 9, 11, 12, 14, 15, 17
3	LDG	<ul style="list-style-type: none"> <li>• Include both LDG MWh and TNUoS charges in the CUSC Calculation</li> </ul>	17, 18, 19
		<ul style="list-style-type: none"> <li>• Exclude both LDG MWh and TNUoS charges from the CUSC Calculation</li> </ul>	1, 4, 7, 8, 11, 14
		<ul style="list-style-type: none"> <li>• Include LDG TNUoS charges in, but exclude LDG MWh from, the CUSC Calculation</li> </ul>	2, 3, 5, 6, 9, 1, 12, 13, 15, 16

## **CUSC Panel recommendation**

At the CUSC Panel meeting on 14 September 2021, a majority of the CUSC Panel considered that CMP368 (Original, WACM4, WACM7, WACM8, WACM11, WACM14 and WACM17) would better facilitate the ACOs than the baseline (the existing arrangements under the CUSC).

Of the nine CUSC Panel votes, three voted the Original Proposal as the best option, with two votes for WACM17 and one each for WACM3, WACM6 and WACM 11. One Panel Member indicated they had no preference. The Panel did not reach an overall majority view as to the 'best' option.

## **The Applicable CUSC Objectives**

The ACOs against which the Original Proposal and the WACMs are to be assessed are set out in paragraph 1 of Standard Licence Condition ('SLC') C10 of NGESO's licence:

- (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by its 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*

## **Our Decision**

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 21 September 2021. We have considered and taken into account the

responses to the Code Administrator consultation which are attached to the FMR. We have concluded that:

1. none of the proposals could lawfully be approved, in light of the Judgment;
2. implementation of the modification proposal will not better facilitate the achievement of the relevant objectives of the CUSC; and
3. rejection of the modification is consistent with our principal objective and statutory duties (especially in light of the Judgment's conclusions as to what is required for it to be lawful for the Authority to approve a modification).

CMP369 is consequential to CMP368 as it only has operative effect if one of the options under CMP368 is approved. As noted above, we have separately rejected CMP369.

## **Reasons for our Decision**

### *Introduction*

In reaching our decision, we firstly assessed the options, starting with those related to the Connection Exclusion, against compliance with the Limiting Regulation, in light of the conclusions reached in the Judgment. In light of those conclusions, we firstly conclude that none of the proposals relating to the Connection Exclusion can lawfully be approved. Nonetheless, for completeness, we have assessed these options and each of the remaining modules against the ACOs to ensure industry stakeholders have the benefit of our views on matters raised within CMP368.

### *The Connection Exclusion and the Judgment*

Two modules relate to the Connection Exclusion. Module 1a seeks to define the scope of the Connection Exclusion by determining which assets were 'required for connection' versus those which existed when a generator wished to connect to the system<sup>14</sup> (pre-existing assets). Module 1b seeks to establish whether there is a point at which an asset may become

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<sup>14</sup> We stated as part of our CMP317/327 decision that we consider 'the system' within the meaning of the Limiting Regulation to be the National Electricity Transmission System ('NETS') in GB.

sufficiently 'shared' / 'interconnected' such that charges in respect of it fall outwith the Connection Exclusion.

The Judge held at paragraphs 42-45 of the Judgment that the Limiting Regulation requires more than just that "annual average transmission charges" fall within the Permitted Range, and that the Authority cannot lawfully approve a proposal that does not fully and correctly reflect the Connection Exclusion. Further, the Judgment states at paragraph 57 that which charges fall within the Connection Exclusion "*will self-evidently depend on the facts of any specific case*" and accordingly: "[a]ttempts at generic definition are necessary and useful, but only up to a point. The possibility will always remain that any generic definition might need to yield in the face of the circumstances of the case in hand."

In light of this, we consider that the Connection Exclusion is unlikely to be capable of being prescriptive definition within the CUSC, without some provision that enables further case-by-case assessment when required. All of the options before us seek to ascribe a generic gloss to the Connection Exclusion and do not provide for case-by-case assessment by reference to the words of the Connection Exclusion itself. On that basis, we consider that (in light of the conclusions reached in the Judgment) we cannot lawfully approve any option under CMP368.

Given our commitment to the court, it is our intention to ensure that the CUSC correctly reflects the Limiting Regulation by transposing the words of the Limiting Regulation into the CUSC. This will be achieved via a new modification proposal and is discussed further in the 'Next Steps' section of this Decision.

In view of the above (in light of the Judgment), we consider that all proposals relating to the Connection Exclusion do not facilitate ACO (c) on the basis they do not fully reflect the terms of the Limiting Regulation. Notwithstanding this conclusion, we have carried out a more detailed assessment of the various options within these modules below.

#### *Modular ACO Assessment*



## **Module 1a Charges for Physical Assets Required for Connection: What constitutes 'pre-existing' ?**

This module considers – in the context of our CMP317/327 decision – what constitutes the 'pre-existing' transmission system to which a generator connects (which, under the proposals, subsequently determines in part whether certain charges are treated as falling within the Connection Exclusion). Two different interpretations of the term "pre-existing" are offered through this proposal: one by reference to the date on which the Bilateral Connection Agreement ("BCA") was executed, one by reference to the same with the addition of a check by NGENSO that the asset build has been 'approved' by us or the Transmission Owner ("TO").

Having reviewed the options, we have identified flaws in the interpretation which would refer to TO/Authority approval. The Authority does not routinely "approve" the build of transmission assets<sup>15</sup>. Similarly, the TO does not "approve" assets to be built. The Construction Agreement<sup>16</sup> between NGENSO and the generator outlines the assets the TO will build should the generator connect in the manner and timescale noted in the agreement. In practice therefore, it is hard to see that very much at all would fall within the expression "Charges for Physical Assets Required for Connection" if those charges had to relate to assets for which we or the TO had issued approval.

We consider that such an approach would not correctly reflect the Limiting Regulation. On this basis, we believe options relying on TO or Authority approval to be negative against ACOs a) and c). We also believe that they would add unnecessary complexity to the TNUoS tariff-setting process (and therefore are negative against ACO d)), and that they would distort the annual average charges paid by generators (by having an under-inclusive Connection Exclusion, increasing the negative adjustment tariff applied by NGENSO) which would in turn likely be negative against ACO b) as compared the baseline arrangements.

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<sup>15</sup> We have a role in the approval of strategic transmission investment, such as the High Voltage Direct Current links between Scotland and some Scottish Islands, but we do not approve the individual assets built by TOs to facilitate the generality of connections.

<sup>16</sup> Specifically, the Enabling Works Schedule

With reference to those options which refer to the BCA, we refer to our conclusions above that this would be negative for ACO c) on the basis that it does not allow for consideration on a case-by-case basis. Nonetheless, we continue to consider that reference to a generator's bilateral agreement with NGESO will in many cases be a useful tool in identifying those assets which were required for connection of that generator.

### **Module 1b: Charges for Physical Assets Required for Connection: How interconnected should assets be before they are no longer "Physical Assets Required for Connection"?**

The Workgroup further considered if there is a point at which an asset becomes sufficiently 'interconnected' so as to render the charges it attracts outwith the Connection Exclusion.

There are three options, which we summarise<sup>17</sup> as follows:

- Option 1: Charges do not fall into the Connection Exclusion where they relate to assets which are part of the Main Integrated Transmission System ("MITS");
- Option 2: Charges do not fall into the Connection Exclusion if they relate to assets that could provide another generator (to whom Local Charges in respect of that asset are not levied) a route to export their power on to the MITS; and
- Option 3: Charges do not fall into the Connection Exclusion if they relate to assets that could provide another generator (to whom Local Charges in respect of that asset are not levied) a route to export their power to a MITS Node or to a Grid Supply Point.

We consider that much of the argument in relation to Options 2 and 3 contradicts our conclusion in our CMP317/327 decision that *'charges paid by a generator fall within the Connection Exclusion if they are in respect of assets (whether shared/shareable or otherwise) that were required to connect the generator to the NETS, as the NETS existed at the time when the generator wished to connect (and in that respect, were not pre-existing), or for the upgrade of such assets.'* [emphasis added]

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<sup>17</sup> The specific WACMs under each option are listed in Table 1

We do not consider that the fact that an asset is shared and/or shareable precludes charges in respect of it from falling within the Connection Exclusion. There is nothing in the wording of the Limiting Regulation to suggest that the fact that an asset is shared or shareable is determinative of whether charges in respect of the asset fall within the Connection Exclusion. We also note that challenges (through appeals processes) to the Authority's view on this issue have been unsuccessful.

For the reasons outlined above, we consider that Options 2 and 3 above are inconsistent with the correct construction of the Connection Exclusion and could not be approved. For completeness, we consider that both Options 2 and 3 would be negative against ACOs a) and c) on the basis that they do not correctly reflect the Limiting Regulation; against b) because they would distort the annual average charge paid by generators (by having an under-inclusive Connection Exclusion and an unnecessarily high negative adjustment); and against d) because they would add unnecessary complexity to the CUSC Calculation and assessment of compliance with the Limiting Regulation.

Option 1 maintains the status quo by providing that charges in respect of MITS assets are treated as falling outside the Connection Exclusion. We consider that this is the correct approach and that charges for the MITS must fall outwith the Connection Exclusion as they do not relate to specific individual assets (unlike Local Charges) and are therefore not referable to any specific asset which was required for the connection to the system of the generator paying the charge. We consider the proposals under this Option in maintaining the status quo would therefore be neutral against all ACOs if viewed in isolation.

## **Module 2 – the inclusion/exclusion from the CUSC Calculation of demand TNUoS Charges payable by Generators**

In discussing proposals for CMP368/369, the Workgroup considered<sup>18</sup> whether demand TNUoS charges paid by generators<sup>19</sup> should be included within the CUSC Calculation. This resulted in alternative proposals being brought forward to either include or exclude these charges.

9 WACMs sought to include these charges in the CUSC Calculation. This is inconsistent with the approach that has been taken to date. In practice, this change would mean that Generator TNUoS charges *and* any demand TNUoS charges paid by Generators would be treated as relevant to the CUSC Calculation.

We note that some Workgroup and Panel members felt that these Demand TNUoS Charges should be classed as 'transmission charges paid by producers' under the Limiting Regulation and that as a result, they too should be included in the CUSC Calculation. We do not agree with this view.

We are of the view that the charges to which the Limiting Regulation applies are those which are paid by a generator to access or use the transmission system in its capacity as a producer of electricity, i.e., those charges which it pays in relation to the act of injecting energy onto the transmission system, and not those which it may pay in its capacity as a consumer of electricity. We do not consider that any of the travaux préparatoires suggest that the intention of the Limiting Regulation was to include charges payable by producers who may from time-to-time act as consumers.

Given our view that proposals which would include Demand TNUoS Charges paid by Generators in the CUSC Calculation do not correctly reflect the Limiting Regulation, we consider such options to be negative against ACO(c). Further, we consider that the unnecessary inclusion of such charges within the CUSC Calculation would (i) be detrimental to NGENSO's ability to comply with its obligation to set charges which meet the terms of the Limiting Regulation (and therefore negative against ACO(a)); and (ii) distort competition by adopting an over-inclusive approach to "transmission charges paid by producers" and

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<sup>18</sup>Where Generators import electricity over the three half hours of highest system demand (separated by 10 clear days), they face import, or demand, TNUoS charges.

<sup>19</sup> See page 28 of the FMR for a summary.

unnecessarily inflating the negative adjustment that is applied (such a distortion being negative against ACO b)); and (iii) needlessly increase the complexity of the CUSC Calculation (and therefore negative against ACO(d)).

### **Module 3 - Whether the volumes of and TNUoS revenue from LDG should be excluded from the CUSC Calculation**

Within our CMP317/327 decision, we concluded that it was necessary to revise the CUSC Calculation so that when assessing compliance with the Limiting Regulation, the sums payable by LDG and their associated volumes of MWh exports are not taken into account.<sup>20</sup> We asked NGESO to bring forward a further modification proposal to give effect to this conclusion. The CMP368 Original Proposal sought to achieve this.

Some Workgroup members brought forward proposals which reflected alternative interpretations of this element of the Limiting Regulation. Specifically, some Workgroup members suggested WACMs that sought to *include* the revenues paid by LDG in the numerator of the €/MWh calculation, but to *exclude* their volumes from the denominator, whilst others sought to include both the revenues and the volumes of LDG in the numerator and denominator respectively (thus maintaining the status quo). We understand that some of these options were developed on the basis that LDG are “producers” under the terms of the Limiting Regulation.

We do not agree that charges and/or volumes associated with LDG should be included in the CUSC Calculation. We set out our fuller reasoning as part of our CMP317/327 decision and have seen nothing that convinces us that our interpretation of the Limiting Regulation is flawed in respect of the treatment of LDG, or that there is merit in an alternative interpretation.

We consider options that include volumes and/or TNUoS revenues of LDG to be negative against ACOs a), c) and d), as they proceed on a flawed interpretation of the Limiting Regulation, and create an unnecessary and inefficient calculation within the CUSC. Such

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<sup>20</sup> Page 25 of 317/327 decision

options would also have the potential to distort the CUSC Calculation and negatively affect competition by distorting the annual average transmission charge paid by generators (and are therefore likely negative against ACO b)).

We consider that options which seek to exclude the charges and volumes of LDG from the CUSC Calculation to be positive against ACOs a) and c) as they proceed on the correct interpretation of the Limiting Regulation. We would consider those options to be neutral to competition and the efficiency of the CUSC, and therefore to ACO b) ACO d).

There is no option which would implement these changes without also making other changes to the CUSC Calculation, for example with regards the Connection Exclusion. In light of our conclusions regarding the Connection Exclusion above, we are unable to approve any proposal under this module. However, we continue to consider that changes to the CUSC Calculation require to be made to remove the charges paid, and volumes generated, by LDG. As such, we are taking steps to ensure that such a CUSC Modification Proposal is raised. This is explained further in the 'Next Steps' section below.

### **Other comments**

We have rejected CMP368 for the reasons set out above. We would, however, draw attention to other issues we have identified in the course of our assessment:

We noted a number of inconsistencies and ambiguities within the legal text. For example, the use of the term "Embedded Generator" in the proposed definition of "GB Generation Output" would raise questions of interpretation, given that term itself is not defined within Section 11 of CUSC or elsewhere in this proposal. By relying on an undefined term, such proposals may not have given effect to our view that LDG volumes and TNUoS revenues should be excluded from the CUSC Calculation and assessment of compliance with the Limiting Regulation.

We also note that in using the term "Embedded Generator" the Workgroup sought to pre-empt a separate and unrelated Authority Significant Code Review decision. We do not consider this to be appropriate, particularly given the ambiguity which was likely to arise from the use of this term.

Finally, WACM19 largely maintains the status quo on the basis it is silent on the question of 'pre-existing' and 'interconnectedness' and includes LDG volumes and revenues within the CUSC Calculation. The only difference, therefore, between WACM19 and the baseline is the (erroneous) inclusion of Demand TNUoS Charges paid by generators in the CUSC Calculation. It is therefore unclear to us how WACM19 meets the scope of CMP368, a proposal which was intended to update the CUSC Calculation in respect of 'pre-existing' assets, and to remove the volumes and TNUoS revenues of LDG from the CUSC Calculation and assessment of compliance with the Limiting Regulation. We are unsure on what basis the Code Administrator or Workgroup believed this option to meet the terms of reference of the Workgroup or to fulfil the scope of the CUSC Modification Proposal.

### **Next steps**

As we have been unable to approve any proposal under CMP368 (and CMP369), we have today used the powers afforded to us under CUSC 8.17A.1 to bring forward a CUSC Modification Proposal, and directed the Panel as to the appropriate timeline for that Proposal.

We appreciate that CUSC Parties may want the CUSC to indicate principles (beyond the words of the Limiting Regulation itself) which may be relevant to identifying whether particular charges fall within the Connection Exclusion. We consider that any proposed change brought forward to do so would need to take into consideration what is said in the Judgment. Any such proposed changes should be progressed through a separate CUSC Modification Proposal.

In addition, we will take steps to ensure the CUSC Calculation is revised so that when assessing compliance with the Limiting Regulation, the sums payable by LDG and their associated volumes of MWh exports are not taken into consideration.

**Harriet Harmon**

**Head of Transmission Charging Policy**

Signed on behalf of the Authority and authorised for that purpose