

Special CUSC Panel Minutes: 9 February 2022

CUSC Panel Minutes: Meeting Number 292

Date: 09/02/2022 **Location:** Microsoft Teams Meeting

Start: 09:00am **End:** 10:00am

Participants

Attendee	Initials	Company
Rob Marshall	RM	Acting Panel Chair (National Grid ESO)
Paul Mullen	PM	Code Administrator, National Grid Electricity System Operator
Ren Walker	RW	Technical Secretary, Code Administrator, National Grid Electricity System Operator
Jenny Doherty	JD	National Grid Electricity System Operator & Proposer of CMP383
Grace March	GM	Users' Panel Member
Joseph Dunn	JDu	Users' Panel Member
Paul Jones	PJ	Users' Panel Member
Binoy Dharsi	BD	Users' Panel Member
Nadir Hafeez	NH	Authority Representative
Andy Pace	AP	Users' Panel Member
Andrew Enzor	AE	Users' Panel Member
Garth Graham	GG	Users' Panel Member
Mark Duffield	MD	Users' Panel Member (Alternate)

Jeremy Caplin	JC	BSC Representative
Ryan Ward	RWa	Agenda item 2 – Proposer of CMP384
Apologies	Initials	Company
Trish McAuley	TM	Independent Panel Chair
Cem Suleyman	CS	Users' Panel Member

1. Introductions and Apologies for Absence

11307. Apologies were received from Trish McAuley and Cem Suleyman.

2. New Modifications (Proposed as Urgent)

CMP383 'Updating recovery of CMP381 deferred costs from 1 April 2022'

11308. JD delivered a presentation on CMP383. JD stated that CMP383 seeks to enable the ESO to recover the costs deferred under CMP381, a licence change is required. This will not be in place for 1st April 2022. Therefore, this modification seeks to change the recovery of CMP381 costs, to when the new licence comes into effect until 31st March 2023.

11309. JD, (as Proposer), set out their rationale for Urgency against Ofgem's Urgency criteria (a) and (c), which is as follows:

- (a) significant commercial impact on parties, consumers, or other stakeholder(s) The Proposer believes this has a "significant commercial impact" on all BSUoS liable users, as it changes the timeframes over which the CMP381 costs are recovered, therefore as much visibility of this change as possible is important.
- (c) A party to be in breach of any relevant legal requirements. The Proposer argues that, without this change, the ESO could be in "breach of legal requirements", as currently the CUSC requires the ESO to recover costs from 1st April 2022, which is not currently allowed under the ESO's licence

11310. The Panel considered the request for urgency with reference to [Ofgem Guidance](#) on Code Modification Urgency Criteria. The unanimous view of the Panel is that CMP383 does meet Ofgem's Urgency criteria. Therefore, the recommendation of the Panel is that CMP383 should be treated as an Urgent CUSC Modification Proposal. Panel members set out their rationale behind this decision.

11311. The Panel Members unanimously agreed that this is an imminent or current issue that if not urgently addressed may cause:

- a significant commercial impact on parties and consumers or other stakeholders and therefore met Ofgem's Urgency criteria (a). Panel agreed that this would have a significant effect on BSUoS payers and it was important for Stakeholders to know from when the BSUoS costs deferred under CMP381 would be recovered;
- a party to be in breach of any relevant legal requirements and therefore met Ofgem's Urgency criteria (c) as ESO's licence does not allow recovery from 1 April 2022.

11312. One Panel Member didn't agree CMP383 met Ofgem's Urgency criteria (a) as they believe it is not clear that there is a suitably significant commercial impact/risk compared to existing BSUoS volatility and one Panel Member didn't agree CMP383 met Ofgem's Urgency criteria (c) as they argue that the ESO would be covered under the Licence, which would take precedence. However, both of these Panel Members agreed that CMP383 met one of Ofgem's Urgency criteria and therefore recommended it be treated as an Urgent proposal.
11313. JD advised the Panel that two legal text options have been presented in the Proposal and sought Panel views on which option should be taken forward. The two options were as follows:
- Option 1 – Include a placeholder for the working day after the licence goes live and add the date in when known - *will be known before the modification concludes*.
 - Option 2 - Link back to the licence, without specifying the exact date
11314. Panel agreed that Option 2 would better accommodate this change as it would provide better clarity for Users and would be simpler from a process perspective.
11315. Panel noted the proposed Urgent timeline and noted that it was possible for the requested decision date to be achieved without the need for Urgency; however a Special Panel would be needed for Panel's recommendation vote. Panel agreed that where the only possibility of achieving the requested decision date for a new Modification was via the use of Special Panel(s), then this must follow an Urgent timeline. In addition, Panel agreed it wasn't appropriate to agree a standard timeline using a Special Panel(s) for a Modification that Panel had not yet prioritised.
11316. The CUSC Panel unanimously recommended that CMP383 met Ofgem's Urgency criteria and therefore recommended urgent treatment to Ofgem. Panel's recommendation was sent to Ofgem on 9 February 2022 seeking Ofgem decision by 5pm on 11 February 2022. The CUSC Panel also agreed that CMP383 should proceed straight to Code Administrator Consultation, which will be run from 14 February 2022 to 5pm on 28 February 2022 if urgent treatment is granted.

[CMP384 'Apply adjustments for inflation to manifest error thresholds using Indexation'](#)

11317. RWa from Scottish Power Renewables delivered a presentation on CMP384 to the CUSC Panel. RWa explained that the purpose of CMP384 is to ensure that fixed manifest error thresholds stated within the CUSC account for inflation and are better aligned with current TNUoS tariffs to which they relate. The full presentation slides can be found using the following link:
- <https://www.nationalgrideso.com/calendar/special-cusc-panel-9-february-2022>
11318. The Proposer set out their rationale for Urgency against Ofgem's Urgency criteria (a), which is as follows:
- (a) significant commercial impact on parties, consumers or other stakeholder(s). Towards the end of the current charging year, the ESO identified a manifest error impacting three individual Users. However, the application thresholds associated with manifest errors in the CUSC have been in place at fixed values since 2006. Therefore, they are no longer appropriate since after 16 years they are outdated as a materiality threshold. Updating the threshold by using indexation will be a more appropriate basis by which to judge materiality. This would give a more appropriate threshold of

±£370,384. This will mean that Users will not be directly, unduly and inappropriately affected by a reconciliation process below the more appropriate threshold of ±£370,384. In this charging year, the reconciliation process will take place in April, after the charging year has ended, therefore, these Users will have been unable to reflect these additional costs in their prices. Implementing this modification proposal, by indexing the manifest error thresholds by 31st March 2022 would avoid this for those whose charges are below the more appropriate threshold of ±£370,384.

11319. The Panel considered the request for urgency with reference to [Ofgem Guidance](#) on Code Modification Urgency Criteria. The majority view of the Panel is that CMP384 does meet Ofgem's Urgency criteria. Therefore, the recommendation of the Panel is that CMP384 should be treated as an Urgent CUSC Modification Proposal. Panel members set out their rationale behind this decision:

- The majority of Panel Members agreed that this is an imminent or current issue that if not urgently addressed may cause a significant commercial impact on parties and consumers or other stakeholders and therefore met Ofgem's Urgency criteria (a).
- Those who supported Urgent treatment noted the materiality on stakeholders as the Manifest Error threshold has been exceeded. However, three Panel Members, whilst on balance supporting Urgent treatment, noted this is a finely balanced decision for a request for urgency.
- One of the Panel Members, who didn't support Urgent treatment questioned the need for urgency as the Manifest Error thresholds haven't changed since 2006. However, this Panel Member agreed that the thresholds needed to be looked at as part of a more considered process. Panel also debated whether the issue/defect allowed alternative solutions to simply indexing the current Manifest Error thresholds and the general principle of retrospectivity; however, these are conversations to be explored further in the Workgroup phase.

11320. The CUSC Panel by majority recommended that CMP384 met Ofgem's Urgency criteria and therefore recommended urgent treatment to Ofgem. Panel's recommendation was sent to Ofgem on 9 February 2022 seeking Ofgem decision by 5pm on 11 February 2022. The CUSC Panel also agreed that CMP384 should be assessed by a Workgroup (although one Panel Member supported this being issued straight to Code Administrator Consultation as in their view the proposed solution was simply indexing the previously agreed Manifest Error thresholds) and set the Terms of Reference for the Workgroup. The first Workgroup will be held on 15 February 2022 if urgent treatment is granted.

3. AOB

11320. The Panel had no further business to raise.

The next CUSC Panel meeting will be held on Friday 25 February 2022.