

## Special CUSC Panel Minutes: 30 May 2022

### CUSC Panel Minutes: Meeting Number 298

**Date:** 30/05/2022      **Location:** Microsoft Teams Meeting

**Start:** 11:30am      **End:** 12:30pm

### Participants

Attendee	Initials	Company
Trish McAuley	TM	Independent Panel Chair
Paul Mullen	PM	Code Administrator, National Grid Electricity System Operator
Claire Huxley	CH	National Grid Electricity System Operator (Alternate)
Grace March	GM	Users' Panel Member
Binoy Dharsi	BD	Users' Panel Member
Cem Suleyman	CS	Users' Panel Member
Nadir Hafeez	NH	Authority Representative
Andrew Enzor	AE	Users' Panel Member
Garth Graham	GG	Users' Panel Member (Proposer of CMP392)
Joe Dunn	JD	Users' Panel Member
Paul Jones	PJ	Users' Panel Member
Mark Duffield	MD	Users' Panel Member Alternate (Observer)
Apologies	Initials	Company
Andy Pace	AP	Users' Panel Member

Ren Walker	RW	Technical Secretary, Code Administrator, National Grid Electricity System Operator
Nick Rubin	NR	BSC Representative

## 1. Introductions, Declarations of Interest and Apologies for Absence

11514. Apologies were received from Andy Pace, Ren Walker and Nick Rubin. GG declared an interest in his capacity as Proposer of CMP392.

## 2. New Modifications

### CMP392: Transparency and legal certainty as to the calculation of TNUoS in conformance with the Limiting Regulation

11515. GG (as Proposer of CMP392) delivered a presentation on urgent CUSC modification proposal CMP392. GG believes it is relevant to identify whether (or not) particular charges fall within the Connection Exclusion taking into consideration the Judgment<sup>1</sup> made on 11 April 2022 and has therefore raised CMP392 to provide stakeholders with legal certainty and transparency of the Methodology and process that the ESO would apply.

11516. GG set out the rationale for Urgency against Ofgem’s Urgency criteria (a) and (c), which is as follows:

#### **a) A significant commercial impact on parties, consumers, or other stakeholder(s)**

The Proposer argues that in respect of the Authority’s published urgency criteria this is a current issue which; as witnessed by, for example, the expediency directed, by the Authority, to the progression of CMP391; needs to be addressed with urgency. This is because without this legal certainty and transparency; as to the practical process to be performed by the ESO when undertaking the CUSC Calculation; then the assessment of whether (or not) the transmission charges paid by generators in GB fall within (or out-with) the range prescribed in the Limiting Regulation (and thus are, or are not, those transmission charges paid by generators in GB compliant with that regulation) will be uncertain and this gives rise to “a significant commercial impact on parties, consumers or other stakeholder(s)”.

#### **c) A party to be in breach of any relevant legal requirements.**

The Proposer argues that, without this change, the ESO will be in “breach of legal requirements”, when seeking to perform the said CUSC Calculation; absent of the legal certainty and transparency from this proposal; as to how practically to treat, on a case by case basis, the requisite physical assets (and charges) required for connection of each generator to the system in light of the Judgment.

11517. The CUSC Panel considered the Proposer’s request for urgency for CMP392. The majority view of the Panel is that CMP392 does not meet Ofgem’s Urgency criteria. Therefore, the recommendation of the Panel is that CMP392 shouldn’t be treated as an Urgent CUSC Modification Proposal.

11518. Panel members set out their rationale behind this decision:

<sup>1</sup> <https://www.bailii.org/ew/cases/EWHC/Admin/2022/865.html>

- The Panel supported the need for the principles and methodology to be codified but the majority did not agree that this needs to be done via an urgent timeline.
- On whether or not this is linked to an imminent or current issue, some Panel Members noted that the ESO had previously communicated on this at industry forums such as TCMF and argued that it is a known issue.
- On Urgency Criteria (a), the majority of the Panel Members did not consider there was a significant commercial impact on parties, consumers or other stakeholder(s) with one Panel Member noting that the materiality was ~ £40m (vs a total of £3 billion), which would be smeared across Generators. In addition, a Panel Member noted that this “small” commercial impact can be evidenced as Ofgem didn’t decide to reopen 2022/2023 TNUoS tariffs; and
- On Urgency Criteria (c), the majority view was that there is no party yet in breach of any relevant legal requirements and analysis would be first needed before such an assessment can be made. Although it was noted there is a risk of breach, Urgency Criteria (c) would only be relevant if ESO’s interpretation is in breach of any relevant legal requirements. However, one Panel Member supported the Proposer’s argument that this now met Ofgem’s Urgency Criteria (c) and stressed the need for consistency and transparency in carrying out the calculation to identify whether (or not) particular charges fall within the Connection Exclusion.

11519. The Panel agreed with the timelines proposed by the Code Administrator and PM confirmed that the Panel’s recommendation on urgency will be sent to Ofgem on 30 May 2022 seeking a decision on urgency by the Authority by 5pm on 7 June 2022. The CUSC Panel also agreed that CMP392 should be assessed by a Workgroup, with the first Workgroup being on 13 June 2022 if urgent treatment is granted. The Panel agreed the Terms of Reference for this Workgroup. ***(Post Meeting Note: The Authority’s decision on Urgency was sent on 7 June 2022 and the Authority did not grant urgency for CMP392. The CUSC Panel will discuss the prioritisation of CMP392 at their Panel meeting on 24 June 2022).***

### 3. AOB

11520. No AOB was raised by Panel members.

**The next CUSC Panel meeting will be held on Friday 24 June 2022.**