

**Workgroup Consultation Response Proforma****CMP288/289: Explicit charging arrangements for customer delays and backfeeds (CMP288) and consequential change (CMP289)**

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com) by **5pm on 27 April 2022**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration.

If you have any queries on the content of this consultation, please contact Jennie Groome [Jennifer.Groome@nationalgrideso.com](mailto:Jennifer.Groome@nationalgrideso.com) or [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com)

Respondent details	Please enter your details
<b>Respondent name:</b>	Alastair Tolley
<b>Company name:</b>	EP UK Investments
<b>Email address:</b>	alastair.tolley@epuki.co.uk
<b>Phone number:</b>	020 3826 4901

**I wish my response to be:**

(Please mark the relevant box)

☒ Non-Confidential☐ Confidential

*Note: A confidential response will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.*

**For reference the Applicable CUSC (non-charging) Objectives are:**

- The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;*
- 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.*

*\*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).*

**For reference the Applicable CUSC (charging) Objectives are:**

- a. *That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;*
- b. *That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);*
- c. *That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;*
- d. *Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency \*; and*
- e. *Promoting efficiency in the implementation and administration of the system charging methodology.*

*\*Objective (d) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).*

**Please express your views in the right-hand side of the table below, including your rationale.**

**Standard Workgroup Consultation questions - CMP288**

1	Do you believe that the Original Proposal better facilitates the Applicable Objectives?	<p>Mark the Objectives which you believe the Original solution better facilitates:</p> <table border="1"> <tr> <td data-bbox="548 272 788 331">Original</td> <td data-bbox="788 272 896 331"><input type="checkbox"/> A</td> <td data-bbox="896 272 1003 331"><input type="checkbox"/> B</td> <td data-bbox="1003 272 1111 331"><input type="checkbox"/> C</td> <td data-bbox="1111 272 1218 331"><input type="checkbox"/> D</td> <td data-bbox="1218 272 1326 331"><input type="checkbox"/> E</td> </tr> </table> <p>Our particular concern relates to the application of delay charges. As delay charges are not currently mentioned in the CUSC, the methodology for calculating and applying delay charges has never been assessed by Ofgem for compliance against the charging objectives and NGESO's licence conditions. The implementation of delay charges should therefore be considered as the introduction of a new charge under the CUSC and assessed on that basis. We do not believe that delay charges, as proposed, would further the Applicable Objectives and have set out our concerns below.</p> <p><b>Delay charges distort competition in investment mechanisms and do not reflect current market arrangements</b></p> <p>We do not consider that targeting delay charges at the developer of a power generation project is appropriate in a market in which many investment decisions for new generation are dependent on securing funding via an investment support mechanism, such as the Capacity Market or Contract for Difference scheme, over the outcome of which a developer has limited influence.</p> <p>In order to participate in these auctions, power stations must hold a Bilateral Connection Agreement which provides them with a connection date prior to the start of the relevant Delivery Year. Given that the period between a capacity auction and the start of the Delivery Year is less than four years, it is likely that, if major consenting work is necessary (eg. a Development Consent Order), the relevant TO would already have obtained any necessary Consents to deliver connection works prior to a power station entering a capacity auction and some level of expenditure would therefore already have been incurred.</p> <p>If a project is successful in such an auction, it is highly likely to proceed on the anticipated timescales as delaying the connection date could be a termination event under the capacity market and incur a large financial penalty. We therefore consider that the risk of delays by projects that have been awarded a Capacity Agreement is minimal.</p> <p>If a project is unsuccessful in a capacity auction, it is left with little choice but to request a delay to its connection date in order to reduce its exposure to rising cancellation charges under the Bilateral Connection Agreement. The timing of the T-4 capacity auctions means that the Trigger Date is likely to be passed shortly after the auction and projects will then be liable for the Wider Cancellation Charge if they subsequently terminated the connection agreement. Furthermore, failure to secure a Capacity Agreement is likely to delay the Construction Programme for the connection such it becomes unworkable and NGESO could in any</p>	Original	<input type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C	<input type="checkbox"/> D	<input type="checkbox"/> E
Original	<input type="checkbox"/> A	<input type="checkbox"/> B	<input type="checkbox"/> C	<input type="checkbox"/> D	<input type="checkbox"/> E			

case require a delay to the connection date. For reasons of efficiency in network planning, we consider it desirable that a project should be incentivised to signal its true expected commissioning date to NGESO by delaying its connection date if it is not awarded a capacity agreement and should not be penalised for doing so through the imposition of a delay charge.

Applying delay charges to projects that have been unsuccessful in a capacity auction would increase their costs, inflating their bids in future auctions. This makes it less likely that they will secure a capacity agreement in future or, if they are successful, increases the overall costs to consumers due to the higher clearing prices paid to all successful capacity. Delay charges therefore effectively act as a fee for unsuccessful participation in a capacity auction and will hamper effective competition in these auctions. New build projects bring benefits by providing options for new build capacity to ensure future security of supply and decarbonisation and by maintaining liquidity in auctions. We therefore do not consider it appropriate to target delay charges at the owners of such projects and consider that it would be more appropriate for such charges to be borne by consumers in general.

For these reasons, we consider that the proposal does not better facilitate charging objective (a) as it distorts the ability of some new build projects to compete in investment mechanisms such as the capacity market.

#### **Certainty and transparency of delay charge arrangements**

We consider that the proposed modification provides insufficient certainty to Users as to the methodology for calculating and applying delay charges. We do not consider it appropriate that a User should be directed to the TO Charging Statements to understand the application of delay charges. Users have no direct contractual relationship with the TO in relation to their connections and we consider that NGESO should take responsibility for the methodology for and application of the charges that it seeks to levy on Users.

Furthermore, the detailed methodology set out in the TO Charging Statements has not been assessed against the CUSC objectives and there is therefore no guarantee that it meets them. The methodology in the TO Charging Statements can be unilaterally changed without notice. For example, NGET has recently entirely rewritten its delay charges methodology, including moving to levying these charges upfront on contract signature rather than as a Transmission Charge over the period of the delay as was previously the case. Without codifying the detailed delay charge methodology in the CUSC, we consider that it is impossible to guarantee that delay charges better facilitate the CUSC charging objectives and we are concerned that delay charges could be a 'blank cheque' for TOs to impose charges as they wish.

We are also concerned that the proposals would not allow a User to predict what charges it might be liable for if it initiated a project delay. Users would be entirely dependent on whatever the TO calculates to be the correct figure for a delay charge as (a) Users typically have limited information about what expenditure the TO has undertaken to date in relation to a connection project and (b) only the relevant TO can determine the appropriate alternative programme following a request for delay and the impact this is likely to have on costs. The only way for a User to reveal this information is to submit a Modification Application, which has cost implications for the User and resource implications for NGESO and the TO.

We have experience of a project in which the TO is seeking to impose delay charges amounting to millions of pounds in relation to expenditure dating back nearly a decade without providing any detailed justification for the level of expenditure against which the delay charges have been calculated. We therefore consider it crucial that any delay charges are accompanied by a detailed itemised breakdown of expenditure undertaken on the project to date and how and why this expenditure feeds through to the calculation of the charges. Users should have access to better information about the work that the relevant TO is undertaking in relation to a connection through regular written updates and project meetings.

We consider that there are several outstanding questions about the application of delay charges which are not addressed by this proposal and which must be answered so that Users can understand the operation of the charge and their potential liabilities:

- If delay charges are applied, which elements of costs incurred by the relevant TO should be included in the delay charge calculation, eg. should this exclude costs of obtaining Consents as these are not directly linked to the connection date selected by the User and are likely to have been incurred prior to a project entering a capacity auction?
- If delay charges are applied, what level of detail and evidence of costs incurred that should be provided by NGESO to explain the charge?
- How do delay charges interact with other charges levied by NGESO, eg. cancellation charges? Would a generator receive a refund of any delay charges paid if it subsequently terminated its connection agreement?
- How can a developer obtain sufficient visibility and certainty of what expenditure the relevant TO is undertaking in relation to a connection project and therefore what delay charges might be applied without having to submit a Modification Application and incur application fees to reveal this information?

		<ul style="list-style-type: none"> <li>Whether it is appropriate to charge delay charges upfront (ie. on signature of a Modification Offer) given that many of the additional costs that delay charges seek to recover will not have been incurred by the relevant TO at this point in time?</li> <li>If delay charges are payable on signature of a Modification Offer, how would such charges would be refunded if the connection date for a project was subsequently brought forward?</li> <li>Should delay charges be applied in case of a delay which is longer than that requested by the User, eg. where a User has requested a short delay but NGESO is unable to meet this request and therefore offers a connection date which is later than that which the User desired?</li> </ul> <p>Without addressing these points regarding certainty and transparency, we consider that the proposal does not ensure cost-reflectivity under charging objective (b) and does not better facilitate objective (e).</p>
2	Do you support the proposed implementation approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>We consider that, if introduced, delay charges should only be applied in respect of new connection agreements, not where existing connection agreements are modified. As we consider delay charges to be a new charge under the CUSC, applying it to existing agreements would be retrospective application of charges. Existing projects, some of which entered into Bilateral Connection Agreements a very long time ago, would not have factored in potential delay charges when selecting their original connection date and may be seeking delay for reasons outside their control. These projects will not have a genuine choice whether to accept a Modification Offer if it contains delay charges as they are clearly unable to proceed on the original timescale.</p>
3	Do you have any other comments?	No.
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>We propose that the calculation of delay charges should exclude any costs incurred by the relevant TO prior to the Trigger Date for that connection. This would ensure that costs are excluded where incurred prior to a new build generator participating in a T-4 capacity auction as, for a well-managed project, these auctions would take place shortly before the Trigger Date and only the minimum expenditure necessary to secure a connection date for participation in that auction would have been incurred up to that</p>

		point. This will prevent a situation in which delay charges act as a penalty on a generator for participating in a capacity auction but not receiving a capacity agreement.
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Specific Workgroup Consultation questions – CMP288/289		
1	Are there other supporting commercial processes (either codified or not) which could impact successfully applying delay charges/backfeed charges which the Workgroup have not considered? Please explain how CMP288 may impact them.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>Please see our comments above in relation to investment mechanisms such as the capacity market. We do not consider that delay charges are suitable for a market in which investment decisions are dependent on participation in competitive allocation processes as whether or not a project proceeds on the planned timescale is outside of the project owner's control. We consider that it is reasonable for any costs incurred by the TO in relation to delays in these circumstances to be socialised. The concept of delay charges appears to be better suited to scenarios in which projects have taken a Final Investment Decision but then request a delay.</p>
2	Do you have any comments in respect of the options set out for Shared Works?	No.
3	Do you think the CMP289 modification	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

	<p>is required? If so, please provide your justification.</p> <p><i>If you think CMP289 is required, please continue to answer the CMP289 Workgroup consultation questions.</i></p>	<p>The original CMP289 modification would have provided greater transparency to Users about delay charges by introducing an appendix to specify the value of the charges and by providing periodic reports of incurred and forecast expenditure. As explained above, we consider that, if delay charges are introduced, they must be transparent and predictable. We therefore consider that CMP289 would achieve this.</p>
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Standard Workgroup Consultation questions – CMP289		
1	Do you believe that the Original Proposal and WACM1/WAGCM1 better facilitates the Applicable Objectives?	<p>Mark the Objectives which you believe the Original solution better facilitates:</p> <p>Original    <input type="checkbox"/>A    <input type="checkbox"/>B    <input type="checkbox"/>C    <input type="checkbox"/>D    <input checked="" type="checkbox"/>E</p> <p>While we have concerns about CMP288, we consider that, if it is implemented, also implementing CMP289 would increase the transparency associated with delay and backfeed charges, in particular by providing regular updates on project expenditure.</p>
2	Do you support the proposed implementation approach?	<p><input checked="" type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>Click or tap here to enter text.</p>
3	Do you have any other comments?	No.
4	Do you wish to raise a Workgroup Consultation Alternative Request for	<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>Click or tap here to enter text.</p>



	the Workgroup to consider?	
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