CUSC Modification Proposal Form

CMP398: GC0156 Cost Recovery mechanism for CUSC Parties

Overview: The GC0156 proposal will place new obligations, within the Grid Code, upon CUSC Parties who are not contracted with the ESO as Restoration Service Providers. Therefore a codified cost recovery mechanism is required to prevent the affected parties being commercially disadvantaged by the implementation of the new obligations.

Modification process & timetable

1. **Proposal Form**
   15 September 2022
2. **Workgroup Consultation**
   19 January 2023 - 09 February 2023
3. **Workgroup Report**
   31 March 2023
4. **Code Administrator Consultation**
   04 April 2023 - 04 May 2023
5. **Draft Final Modification Report**
   18 May 2023
6. **Final Modification Report**
   07 June 2023
7. **Implementation**
   TBC

Status summary: The Proposer has raised a modification and is seeking a decision from the Panel on the governance route to be taken.

This modification is expected to have a: High impact

Suppliers and Generators

Proposer's recommendation of governance route	Standard Governance modification with assessment by a Workgroup	
Who can I talk to about the change?	**Proposer:** Garth Graham garth.graham@sse.com 01738 456000	**Code Administrator Contact:** Milly Lewis Milly.Lewis@nationalgrideso.com 07811 036380

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What is the issue?

As part of its GC0156 proposal the ESO is proposing that for existing and future sites[1] which do not have a contract, between the CUSC Party and the ESO, for the provision of Restoration Services[2] from the site (which the ESO has indicated is the vast majority of sites) then they will have an obligation (applied prospectively[3] and retrospectively[4]) to have 72 hours resilience onsite for their plant & apparatus (plus associated Communications infrastructure).

There are several subgroups which are feeding into the GC0156 Workgroup, finalised sub-group reports are expected in October 2022, ahead of GC0156's Workgroup Consultation in November 2022.

This Modification focussed on an approach to cost recovery that arises, rather than appraising, any obligation from the GC0156 proposal.

- The high level current thinking, at the late August **GC0156 Assurance sub-group**, was the obligation would be:
  - "*ESRS will need the users/generators to be able to operate once auxiliary supplies are returned from the system. CUSC Parties will be required to assure their plant and apparatus for a resilience period of up to 72 hours such that when supplies are restored their plant and apparatus can be returned to service in an equivalent time scale that would be expected from a cold plant (had there not been a supply interruption).*
  - *Their plant and apparatus should be such that their plant can be shutdown in a safe manner in a Partial or Total Shutdown such that it does not pose a risk to plant or personnel without supplies for up to 72 hours so there is some assurance that the plant will not have to be subject to major component replacement thereafter*."
- The current thinking from the **GC0156 Markets & Funding sub-group** is that all parties that will have new (or further) obligations arising from the ESRS and / or GC0156 will, with the exception of non-contracted CUSC Parties, have a cost recovery mechanism in place.
  - In the case of the ESO, TOs and DNOs it will be via their existing price control (and associated re-openers) as prescribed by law[5]. This allows those parties to recover their associated capital expenditure (CAPEX[6]) costs incurred / to be incurred and an allowance for their operational expenditure (OPEX[7]) costs incurred / to be incurred.
  - In the case of contracted Restoration Services Providers[8] (be they CUSC Parties or non-CUSC Parties) this will be via the tender(s) / contract(s) that the ESO will

[1] At Transmission and, in terms of a BEGA or BELLA, at Distribution.
[2] The ESO's indication to the GC0156 Workgroup is that the number of CUSC Party sites it anticipates contract with for RSP is a small (below 15%) subset of the total.
[3] To new sites going forward.
[4] To existing sites, if GC0156 is approved.
[5] Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration (Text with EEA relevance) (legislation.gov.uk)
[6] Also known as capital expenses, capital expenditures can include the purchase of items such as new equipment, machinery, plant, land, buildings, business vehicles, software and intangible assets such as a patent or license.
[7] Examples of operating expenses include rent, depreciation, supplies, materials, insurance, repairs and maintenance expenses, utility expenses, rates, staff costs, travel costs, commodities, fuel and overheads.
[8] This is based on the ESO's view that a RSP is limited to those who have a contract with them to provide, going forward, an Anchor or Top-Up Service (as per GC0156).

undertake / enter into which allows those parties to recover their associated CAPEX costs incurred / to be incurred and an allowance for their OPEX costs to be incurred.

- UK Government policy, when introducing the new 'Electricity System Restoration Standard'[9] (ESRS) in April 2021, stated that:
  - *"All parties have been supportive of the establishment of a new Electricity System Restoration Standard, so long as it is implemented in a way which does not commercially disadvantage individual parties."*
  - *"In the interim, Ofgem would put in place processes to monitor the implementation of the new Standard to ensure that the ESO remains on track with meeting this provision as part of its licence obligations and that any new services will not commercially disadvantage individual parties."*
- Absent an express cost recovery mechanism for CUSC Parties (which are not contracted Restoration Service Providers) any new or further obligations, arising from ESRS / GC0156, will place those parties at a commercial disadvantage.
  - As they alone; amongst all the obligated parties; will have costs arising, from ESRS / GC0156, but no route to recover their associated CAPEX costs or an allowance for their OPEX costs.

This Modification aims to address this defect by allowing for a case-by-case assessment of bona fide CAPEX costs incurred and adopting the ESO's ALoMCP[10] allowance approach for ongoing generic OPEX costs such that the relevant parties are not placed at any commercial disadvantage.

Why change?

In order to comply with UK Government policy and ensure that non-contracted CUSC Parties; who have new or further obligations, prospectively or retrospectively, to support the Electricity System Restoration Standard (currently, as per GC0156); are not commercially disadvantaged, it is necessary to enable them to recover their bona fide (case-by-case) CAPEX costs and an allowance for ongoing OPEX costs. Therefore, a mechanism is required to be introduced into the CUSC for that purpose.

Furthermore, as the ESO set out in its GC0156 proposal[11], when considering Applicable (Grid Code) Objective (a) as being positive, it stated that this was because it "*Provides a level playing field for Restoration Service Providers and CUSC Parties*…".

Without this CMP398 modification contracted RSPs would be able to recover their costs whilst non-contracted CUSC Parties would not.

What is the proposer's solution?

Claims Principles

- Based on the principle set out in Article 8[12] (Cost Recovery)[13] of ERNC

[9] Introducing a new 'Electricity System Restoration Standard': policy statement - GOV.UK (www.gov.uk)

[10] The Accelerated Loss of Mains Change Programme (ALoMCP) | National Grid ESO
[11] download (nationalgrideso.com)
[12] See Footnote (5) above for link.
[13] (1) "*The costs borne by system operators subject to network tariff regulation and stemming from the obligations laid down in this Regulation shall be assessed by the relevant regulatory authorities in*

- *The costs borne by CUSC Parties stemming from the obligations laid down in GC0156 shall be assessed and those costs assessed as reasonable, efficient and proportionate shall be recovered via BSUoS*.

Items to be claimed for

- As per previous list of CAPEX cost items shared with BEIS, Ofgem, ESRS groups and GC0156 workgroup (and sub-groups) namely:

  (i) design an on-site solution to that Grid Code approved obligation;

  (ii) identify costed solutions;

  (iii) seek and obtain the necessary planning permission(s) and associated other permits etc.;

  (iv) procure;

  (v) construct;

  (vi) commission[14]; and

  (vii) train the necessary staff (as well as possibly recruit more staff); plus

  (viii) Ongoing annual OPEX costs.

Process to be followed

- Follow the process principles already established in the BSC[15] (Ofgem and BEIS approved[16]) for Generators to make *ex post* claims for costs[17] that arise under the Fuel Security Code[18] which, at a high level, would include:
  - CUSC Panel appoints committee of independent experts[19] (no CUSC Parties, or ESO, on the committee, Ofgem can observe) to assess claims.
  - Claims submitted directly to the committee.
  - Claims include all requisite information / justification needed by the committee (who can ask for further information if needed).
- *Ex ante* pre-expenditure approval requests (as can occur with Networks) can be submitted to the committee for CAPEX items in excess of £[100]k as well as *ex post*[20] claims.
- *Ex ante*[21] allowance for OPEX costs set by committee.

accordance with Article 37 of Directive 2009/72/EC. Costs assessed as reasonable, efficient and proportionate shall be recovered through network tariffs or other appropriate mechanisms."

[14] Including any assurance testing etc., arising from GC0156

[15] Section G of the BSC provides further details – see footnotes below for links to a summary of Section G as well as to the section itself.

[16] And therefore considered as simple and efficient (as they would not support a complex and inefficient approach).

[17] Known, in respect of the Fuel Security Code, as 'Exceptional Costs'.

[18] Fuel Security Code (publishing.service.gov.uk)

[19] It may be appropriate / efficient to have a subset of experts to consider one or more of the items (i)-(viii) who report back to the committee.

[20] But there can be no 'double dipping' / 'double payment' / 'double recovery' in terms of *ex ante* and *ex post* - although an *ex ante* claim, say, of £100k could be extended, via an *ex post* claim, by, say, £20k if the total cost comes in at £120k (but could not be £100k *ex ante* and £100k *ex post*). This additional, *ex post,* cost might, for example, arise where a contractor incurs subsequent additional (bona fide) costs.

[21] The suggestion would be to cover the period from 1st April to 31st March.

Payment

- Claims for CAPEX costs incurred or to be incurred (including requests for pre-approval of expenditure) assessed by the committee to be *reasonable, efficient and proportionate*[22] shall be paid by the ESO within one month of the committee validated claim or pre-approved expenditure request.
- In the case of a pre-approved expenditure request this can include an option for the payment (or stage payment), by the ESO, of the contractor / sub-contractor directly.
- For OPEX, the claims committee to set out, after consultation with stakeholders, an annual[23] allowance (inflated[24]); which maybe based on technology types / types of claimants and asset size; for such items as, for example, staff costs[25], ongoing training[26], assurance activities[27], fuel[28], maintenance, rates[29], permit renewals, statutory equipment testing etc., etc.

Avoidable Costs (AvCo)

As has been noted in the early September GC0156 Markets & Funding sub-group meeting, Section G[30] of the BSC[31] covers just those costs that arise during[32] (but not before[33]) any actual Total or Partial System Shutdown (a 'Black Start' event). These costs are limited to 'Avoidable Costs'[34] and do not cover either initial (or replacement) CAPEX or OPEX that arise out with a 'Black Start' event.

Within the solution for this CMP398 Modification, wording should be included to make clear that any party who is claiming, under this solution, funds for CAPEX (and the OPEX allowance) cannot subsequently seek to claim for those same costs under any (BSC) Section G claims (if it arises) – there can be no 'double dipping' / 'double payment' / 'double recovery'.

Therefore, within the (CUSC) solution, the documentation / information / submission(s) made by any party to the (CUSC) claims committee set up for this Modifications' purpose to be subsequently shared with any BSC appointed (Section G) Claims Committee that is considering 'Avoidable Cost' claims.

Draft legal text

The Legal text will be prepared during the Workgroup deliberations based on the solution set out above.

[22] Based on the legal standard set out in Article 8 ERNC as retained UK law.
[23] It may be appropriate for these payments to be made monthly.
[24] Such as by using CPI-H or the one set, for the TOs, by GEMA in the relevant price control.
[25] Such as overtime (if testing etc., needs to occur out with normal hours) or for additional staff.
[26] Both as determined by the equipment provider but also the training needs arising from GC0156 (as currently being discussed in the GC0156 Assurance sub-group).
[27] Including any assurance testing etc., arising from GC0156.
[28] Such as for testing purposes and for 'cycling' (as the fuel in the tank degrades over time and is replaced).
[29] Installing the additional equipment to meet the GC0156 obligation may give rise to a higher business rates charge.
[30] Simple Guide to BSC Section G: Contingencies (elexon.co.uk)
[31] BSC Section G: Contingencies (elexon.co.uk)
[32] Therefore, if no 'Black Start' event occurs, no 'Avoidable Cost' claims are able to be made under the BSC.
[33] Or indeed after.
[34] As defined in Section G of the BSC.

What is the impact of this change?

Proposer's assessment against CUSC Non-Charging Objectives	
Relevant Objective	**Identified impact**
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	**Positive** Provide assurance that the new licence obligation issued in Oct 2021 can be satisfied and discharged in a non-discriminatory way.
(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;	**Positive** By ensuring that CUSC Parties who are obligated by the Grid Code (but do not have a relevant contract with the ESO) to undertake activities required for ESRS are able to recover their bona fide costs this will facilitate effective competition in the generation and supply of electricity.
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	**Neutral**
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	**Positive** By having a simple and efficient procedure for any bona fide costs to be recoverable this will promote efficiency in the administration of the CUSC arrangements.
*The Electricity Regulation referred to in objective (c) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.	

When will this change take place?

Implementation date
10 Business Days after an Authority decision.

Date decision required by
Meeting 6 of the GC0156 Workgroup shows (at slide 6) that the FMR for that Modification will go to GEMA on 5th June 2023. In order to ensure that GEMA has access to the complete package of code changes arising from ESRS it is necessary that this CUSC Modification FMR is also provided to GEMA at the start of June 2023.

Implementation approach
It will be necessary, once approved, for the CUSC Panel to appoint a claims committee to assess (CAPEX) claims and consider the (OPEX) allowance.

Proposer's justification for governance route
Governance route: Standard Governance modification with assessment by a Workgroup

This change would benefit from following the Standard Governance approach with assessment by a Workgroup.

Guidance on governance routes

Timescales	Route	Who makes the decision (Governance type)
Normal	Proceed to Code Administrator Consultation*	Authority (Standard Governance) or Panel (Self-Governance)
	Assessment by a Workgroup**	
Urgent	Proceed to Code Administrator Consultation	Authority (Standard Governance)
	Assessment by a Workgroup	
Fast-track	Straight to appeals window, then implementation	Panel (Self-Governance)

***** This route is for modifications which have a fully developed solution and therefore don't need to be considered by a Workgroup.
****** For modifications which need further input from industry to develop the solution.

Self-Governance Criteria

It depends on the material effect of the modification as to whether it should be subject to Standard or Self-Governance. If you are proposing that your modification should be subject to Self-Governance, you must explain how it meets the below criteria.
The modification is unlikely to discriminate between different CUSC Parties and is unlikely to have a material effect on:

- Existing or future electricity customers;
- Competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution or supply of electricity,
- The operation of the National Electricity Transmission System
- Matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies
- The CUSC Panel's governance procedures or the CUSC Panel's modification procedures

Urgency Criteria

If you are proposing that your modification is Urgent, you must explain how it meets Ofgem's Urgent criteria (below). When modifications are granted Urgency, this enables the us to shorten the standard timescales for industry consultations. Note that the we (Code Admin) must seek Authority approval for this option.
Ofgem's current guidance states that an urgent modification should be linked to an imminent issue or a current issue that if not urgently addressed may cause:

- A significant commercial impact on parties, consumers or other stakeholder(s); or
- A significant impact on the safety and security of the electricity and/or gas systems; or
- A party to be in breach of any relevant legal requirements.

Fast-Track Self-Governance Criteria

This route is for modifications which are minimal changes to the code. E.g. Typos within the codes. If you are proposing that your modification should be subject to Fast-Track Self-Governance, you must explain how it meets the below criteria.
The modification is a housekeeping modification required as a result of an error or factual change, such as:

- Updating names or addresses listed in the CUSC;
- Correcting minor typographical errors;
- Correcting formatting and consistency errors, such as paragraph numbering, or;
- Updating out of date references to other documents or paragraphs.

Interactions

☒Grid Code	☐BSC	☐STC	☐SQSS
☒European Network Codes	☐ EBR Article 18 T&Cs[35]	☐Other modifications	☐Other

There is an interaction with GC0156 (as set out above) as well as in relation to compliance with ERNC.

Acronyms, key terms and reference material

Acronym / key term	Meaning
ALoMCP	Accelerated Loss of Mains Change Programme (see footnote 10)
BEGA	Bilateral Embedded Generation Agreement
BEIS	(UK Govt Dept of) Business, Energy & Industrial Strategy
BELLA	Bilateral Embedded Licence exemptable Large power station Agreement
BSC	Balancing and Settlement Code
CAPEX	Capital Expenditure (see footnote 6)
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
EBR	Electricity Balancing Regulation
ERNC	Emergency & Restoration Network Code[36]
ESO	Electricity System Operator (aka "The Company")
ESRS	Electricity System Restoration Standard (see footnote 9)
GEMA	Gas and Electricity Markets Authority (aka "The Authority")
OPEX	Operational Expenditure (see footnote 7)
RSPs	Restoration Service Providers
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions

Reference material

- See footnotes

[35] If your modification amends any of the clauses mapped out in Exhibit Y to the CUSC, it will change the Terms & Conditions relating to Balancing Service Providers. The modification will need to follow the process set out in Article 18 of the Electricity Balancing Guideline (EBR – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.

[36] Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration (Text with EEA relevance) (legislation.gov.uk)