

## **CMP398 WACM2 legal text**

New **definitions** to go in CUSC section 11 (definitions):

**Opex Allowance Band:** as defined by the claims validation committee in accordance with 6.37.9

New section 6.37 to go in CUSC section 6 “general provisions”

### **6.37 GC0156 Cost Recovery Claims**

6.37.1 All **CUSC Users** that are **Generators**, except any **User** who owns or operates a **Distribution System** or **The Company** or any **Relevant Transmission Licensee**, which are not **Restoration Contractors** (as defined in the **Grid Code**) may submit claims for the recovery of their reasonable, efficient and proportionate cost of compliance with the new requirements imposed on them via the **Grid Code** modification GC0156. Claims will be assessed by an independent claims committee as described in paragraph 6.37.9. All costs that are validated by the committee shall be recovered via **Balancing Services Use of System Charges**.

6.37.2 The claims process will involve a case-by-case (i.e. asset by asset) assessment of claims for capital expenditure incurred in complying with the new GC0156 obligations, with accompanying evidence of sufficient detail to demonstrate, to the reasonable satisfaction of the committee, that the costs incurred were reasonable, efficient and proportionate. Failure to provide the requisite information of the expenditure and the evidence to the committee may result in the claim for costs being rejected in whole or in part. It shall be the duty of the claimant to provide all relevant information requested by the committee in a timely manner and to make relevant staff available, if required, to answer any relevant questions the committee may have, as well as being available to meet with the committee to answer such questions in person.

6.37.3 Claimants will also be able to request payment of operational costs based on the appropriate **Opex Allowance Band** by reference to the type, size and technology for the claimant’s deemed ongoing generic operational costs for that asset. If successful claimants for capital costs do not make a claim for operational costs, they will be able to make use of this allowance by type, size and technology of claimant for ongoing generic operational costs according to the appropriate **Opex Allowance Band**. **Generators**, provided that they are not restoration contractors, may opt in to the generic operational costs allowance **Opex Allowance Band** applicable to their asset’s size technology and type by providing to The Company evidence that the asset in question meets the said allowance band. **Generators** not opting in, will not receive the operational costs allowance. Payments of the annual opex allowance shall be made in 12 equal monthly instalments made on or before the 15<sup>th</sup> calendar day of the month in question

6.37.4 The capital cost items which may be claimed for, if reasonably, efficiently and proportionately incurred, include:

- (i) the cost of the design of an on-site solution to comply with the requirements of GC0156;
- (ii) the cost of identifying costed solutions for (i);
- (iii) the cost of seeking and obtaining the necessary planning permission(s) and any other necessary permits or approvals, including the cost of any environmental impact assessment or other necessary consultancy support for the solution for (i);
- (iv) the cost of procurement of the solution for (i) to make the **Generator**’s asset compliant with the GC0156 **Grid Code** obligations;

- (v) the cost of construction of the solution for (i);
- (vi) the cost of commissioning of the solution for (i);
- (vii) the cost of any necessary staff training of existing staff in respect of the new requirements;
- (viii) the cost of recruiting more staff (if this should prove necessary)

6.37.5 An ex ante request for a capital cost item arising under 6.37.4 (iv) or (v) only may be made to the independent claims committee for pre-approval of compliance expenditure (subject to a minimum claim of this nature of £100,000 in relation to an asset, with the £100,000 able to be comprised of several relevant investments arising under 6.37.4 (iv) or (v) at that asset ) If such an advance claim is found by the committee to be reasonable, efficient, and proportionate, it shall be paid by **The Company** within one month of the costs represented by such payment actually having been expended by the claimant, subject to provision to the committee of evidence of the expenditure and instruction from the committee to **The Company** to make the payment.

6.37.6 **Generator Users** that sign a new **Bilateral Agreement** with **The Company** after the date of implementation of **Grid Code** GC0156, are not permitted to submit a claim, except if they can demonstrate with evidence that they have already undertaken design work on a generation project that has not yet signed a **Bilateral Agreement** and 6.37.7 applies.

6.37.7 If this design was to the **Grid Code** as it stood before the implementation of GC0156, and the new **Generator** has evidence of an increase in the cost of its project that exceeds £100k following re-design to be compliant with GC0156, a claim can be submitted for this additional cost, provided that it is submitted in accordance with **Good Industry Practice**, and without undue delay taking into account the complexity needed for the development and implementation of a technical solution to meet the GC0156 requirements on a case by case basis.

6.37.8 The annual operational expenditure generic allowance and associated **Opex Allowance Bands** will be set and published by the independent claims committee (established as per 6.37.9), comprising an annual allowance (£) figure, (inflated by CPI annually each using the CPI figure each year for the month of December, as normally published by the Office of National Statistics in January) banded at the committee's discretion by the technology type and size of claimants. In establishing the (£) figure for each allowance, the independent claims committee will take into consideration their estimates of relevant costs that the committee considers are reasonable, efficient and proportionate to annually maintain the GC0156 requirements for the maintenance of relevant assets, relevant costs of staff, cost of any testing or assurance activities, cost of ongoing training, cost of maintaining fuel stocks, cost of maintaining permitting, costs of additional business rates, and any other factors they identify as relevant. The committee may from time to time (if so charged by the Panel) update the set of operational cost allowances as new data and their developing understanding allows them to do so, and any new value so assigned to the allowance for any band of asset will over-ride the annual CPI inflation that otherwise applies to the allowances. Any new value(s) will however then be subject to the annual CPI inflation thereafter. For the avoidance of doubt, **Generators** that first sign a new **Bilateral Agreement** with **The Company** after the date of implementation of GC0156, will be entitled to the annual operational expenditure generic allowance

6.37.9 The process for assessing claims will involve the establishment and maintenance of an independent claims committee, made up of independent experts not currently working for any **User** or **The Company** and who have not worked for any **User** or **The Company** for the previous 12 months. The independent experts will have to each sign a declaration to this effect. The **CUSC Panel** will be required to specify and from time to time review the number of members needed on

this committee, bearing in mind that its members may work on assessment of claims on a part-time basis with seasonal variations in the committee's workload.

6.37.10 Neither the **CUSC Panel** nor **The Company** will play any part in the selection of members of the independent claims committee, but will be advised and updated as necessary of its membership. Members will be selected for the independent claims committee by the President of the Chartered Institute of Arbitrators. The daily pay rate of committee members will be decided by the President of the Chartered Institute of Arbitrators. **The Company** will play no role in managing its work or setting its pay rate. **The Company** will pay members of the independent claims committee the rate that has been set for their work upon receipt of their invoice. **The Company** will recover the costs of the remuneration of the independent claims committee via **Balancing Services Use of System Charges**, along with the costs of claims validated by the committee and any operational cost allowances claimed by Users in accordance with 6.37.3.

6.37.11 Whilst there is no time limit on how long the independent claims committee may take to assess a claim, or to initially set the operational cost allowance bands, the intention is that the claims should be validated expeditiously by the committee and that the allowance bands should be established as soon as relevant information is available to the committee to reasonably determine them.

6.37.12 Where the **CUSC Panel** becomes aware of a conflict of interest or any other impropriety or cause for concern affecting a member of the independent claims committee, the **CUSC Panel** shall raise this with the person concerned and then the **CUSC Panel** may after discussion at its next meeting, by majority vote, at its absolute discretion, recommend to **The Authority** to strike them off the committee. If **The Authority** agrees with the recommendation from the **CUSC Panel** then **The Company** shall notify the person concerned accordingly and shall, forthwith, cease to pay them for future work.

6.37.13 One or more members of **The Authority** will have the right to attend meetings of the independent claims committee if they wish to and they shall receive copies of all internal papers etc., pertaining to the work of the committee including, but not limited to, details of all claim submissions from claimants.

6.37.14 Each claimant shall use reasonable endeavours, exercising **Good Industry Practice**, to identify if compliance with the GC0156 **Grid Code** requirements could be achieved at a materially lower cost by meeting a lesser technical requirement (such as by providing resilience at their asset for fewer than 72 hours) and if so, then they shall advise **The Company** accordingly and liaise with **The Company** about possible solutions associated with a request to **The Authority** for a derogation against the **Grid Code** to the lesser level of resilience. If appropriate, they shall seek a derogation against the **Grid Code** from **The Authority** on that basis. If the derogation request is denied, then a claim can be submitted, by the claimant, for assessment by the independent claims committee as per this section 6.37. If the derogation request is still being assessed by **The Authority** on the 31<sup>st</sup> December 2026, then the capital cost claim will be stayed until the time of determination of the derogation request by **The Authority**, after which the claimant may, if the derogation request is unsuccessful, submit within 5 working days, its claim to the committee for consideration.

6.37.15 Note that Section G of the **Balancing and Settlement Code** describes some circumstances in which a **Generator**, entirely separately from these **CUSC** provisions, is permitted to submit for certain costs. The costs involved are of a very different nature to these **CUSC** cost claims relating to GC0156, and should not be claimed for under these provisions. Successful claims under **CUSC**

6.37 are to be notified to Elexon so it can make sure that the same costs are not being claimed under the **Balancing and Settlement Code** as have been claimed under these CUSC GC0156 provisions.