Workgroup Consultation Response Proforma

CMP398: GC0156 Cost Recovery mechanism for CUSC Parties

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 by **5pm** on **24 January 2023**. 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 banke.john-okwesa@nationalgrideso.com or cusc.team@nationalgrideso.com

Respondent details	Please enter your details
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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:

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

*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.

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

Standard Workgroup Consultation questions		
1	Do you believe that the Original Proposal better facilitates the Applicable Objectives?	Mark the Objectives which you believe the original solution better facilitates: Original ☐A ☐B ☐C ☐D ☒ We consider this change to be neutral regarding Applicable Objective (a), given that the obligations to be introduced within the Grid Code through the implementation of GC0156 will come into force regardless of the changes within the CMP398 Original Proposal being implemented or not. Regarding Applicable Objective (b), we consider that in some respects the proposal may be marginally beneficial in terms of facilitating effective competition in generation. This is because those generators which tender successfully to be providers of system restoration services or the related category of anchor service providers, will have priced into their tendered price, the costs of the equipment they added at their site to enable provision of system restoration services or anchor provider services. There is a potential issue of discrimination between the two baskets of generators. On the other hand, another effect in competition for balancing services contracts is that the new equipment such as new high specification diesels and/or larger fuel tanks fitted by non-restoration CUSC party generators to comply with GC0156, and funded under CMP398 if approved (together with funding for its annual maintenance under the Opex claim heading), could then be used for other commercial purposes – various forms of balancing services provision, perhaps even securing a restoration contract. These generators with CMP398-funded improvements could then compete with demand side, storage, and other non-CMP398-funded-generator solutions, and could have an unfair advantage via the CMP398 funding in being able to claim for the provision and maintenance of relevant capabilities, whereas other technologies in these markets will not benefit from a comparable source of funding. There may also be a risk of discrimination with an adverse effect on competition if the modification is approved, in that some generators have already invested in resilience and are already compliant with GC0156 due to prudent past expenditure; they would not be reimbursed under CMP398 for this past expenditure whereas their peers, who haven't, would be reimbursed for new investment needed to comply.

		Overall, taking account of the effects described above, we believe that the CMP398 Original Proposal is negative in relation to Applicable Objective (b). Regarding Applicable Objective (c), compliance with the Electricity Regulation, we agree with the Proposer that CMP398 is neutral. We consider the Original Proposal will be negative in relation to Applicable Objective (d), and less effectively facilitates this objective than the current baseline. This is because we believe that the cost of compliance with new regulations should be met by industry, and not consumers and the changes proposed by this modification would impose additional and unnecessary administrative burden on the ESO, in administering the CUSC, which will also result in costs falling on consumers that we consider should be met by generators. Overall, we consider the proposal to be negative against the non-charging Applicable Objectives taken as an entire set.
2	Do you support the proposed implementation approach?	☐Yes ☒No
		No, we consider the proposed approach is not appropriate because should the modification be approved, the implementation approach proposed will have uncontrolled and unpredictable effects on BSUoS that could prejudice market stability and the efficacy of the BSUoS fixed tariff. It may in its original form go against the industry need for fixed BSUoS (and predictability) by undermining that recent change, as it could increase the chance of mid-fixed-tariff changes. For this reason, we are proposing a potential WACM with a different implementation approach that reduces these defects.
3	Do you have any other comments?	We are concerned that implementing CMP398 would set a precedent that in this sector, uniquely compared to the wider business environment, costs of complying with changes in regulations would not have to be met by industry participants, but funded by end consumers. This is not consistent with normal practice; for example, in our sector, when the large combustion plant directive required coal plant to fit flue gas desulphurisation (FGD), at a cost of £200m per site, generators simply had to fund it. There is an argument that recovery of the cost from consumers should only be over the asset life, a little like a TO's investment, being initially generator-funded. CMP398 proposes full claimed costs to be funded quickly, but this creates a misalignment between the benefit a user sees

		over the lifetime of the asset compared to up front, rapid, funding. However, to recover the costs from consumers over the 12 month period proposed in our alternative, instead paying out claims across the asset life, would create further administrative complexity. The supporters of the modification make the comparison with the Accelerated Loss of Mains Protection programme (ALOMCP) and suggest that this has already set a precedent. However, there are significant differences between the very numerous smaller embedded ALOMCP generators, and the generators that this proposed modification would impact that justify different treatment – including sitting at a somewhat different point on the cost-benefit scale. If this modification was approved, this would be at risk of being viewed as setting an undesirable precedent that the costs of complying with changes of Grid Code or other regulations should in the first instance be consumer-funded. There is a counter argument that consumers would pay anyway somehow if the modification were not implemented. Under this viewpoint, generators that faced new costs in complying with GC0156 would likely seek to recover their costs from the market. It is a fairly obvious point that costs / assessment of what's needed to comply might differ depending on who is paying; If the consumer is paying, this may result in inefficient investments by generators as the cost of being compliant would not be subject to usual competitive pressures. A merit of CMP398 could be argued to be the transparency that it would give to the costs of GC0156 compliance, albeit that it does not appear to be the intent that the costs of compliance of each generator (successful claims) are published, and it will not be evident which generators were already compliant with GC0156 ahead of it coming into effect (and therefore did not claim). It is not clear from the Original Proposal solution who would determine the costs and remuneration of the proposed claims assessment panel, how many panellists would be appointed, and who makes sure the assessments are completed efficiently, as the proposal seems to suggest a preference for no CUSC Panel or ESO involvement in their appointment, We consider that, if all of this is left to an independent arbitrator, there seems to be a lack of electricity industry control of these matters. It will be

		necessary for these aspects to be clear, for the legal text to be written for the Original Proposal solution. In addition, as a point of principle we consider that ESO membership of any assessment panel should be mandatory as, notwithstanding our views of the Original Proposal's merits, the ESO holds a key role in considering the economic and efficient expenditure of consumer money for balancing service type activity. CMP398 would appear to fall squarely within this space and as such it would not be prudent if ESO were to be excluded.
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	☒Yes ☐No
		Yes, we would like to raise an alternative modification proposal that would not allow claims ad infinitum. Our alternative would introduce an annual claims window, a final end date on claims so that the modification does not remain in force permanently, with claims being paid out as a flat monthly payment across 12 months from the following April after approval of a successful claim.
		Click or tap here to enter text.

Specific Workgroup Consultation questions		
5	Given that most generators have some inherent resilience that has to be maintained regardless of this modification/regardless of ESRS, do you believe the inherent resilience should be considered when generators are requesting for funding for 72hrs resilience? If so, please explain why?	☒Yes ☐No A generator's insurer will wish to ensure, independent of GC0156 and preceding the introduction of those obligations, that the generator can be maintained in a safe condition during a loss of external power, even when the primary generator at that site is not operating – for example, if it is of a type where the shaft temperature could exceed 200 degrees, the shaft must be "barred" to prevent sagging causing the deformation known as "hogging". This is why a proportion of generators will already have resilience; with some already being compliant with GC0156. This will need to be duly taken account of in the submission and assessment of any CMP398 claims.
6	The terms of reference of the workgroup requests that the workgroup estimates a cost impact for this modification, if	☐Yes ☒No

	approved. Do you have any cost information (anonymised/hypothetical) for CMP398 that you can share with the Workgroup? if so, please do so.	
7	The Proposer is considering adding this wording to CMP398: *"The Claimant party shall use reasonable endeavours, exercising good Industry practice, to identify if compliance with the GC0156 requirement could be achieved at a materially lower cost by meeting a lesser technical requirement (such as by providing resilience for less than 72 hours) and if so, then they shall advise the ESO accordingly and liaise with the ESO about possible solutions associated with a derogation. If appropriate, they shall seek a derogation from Ofgem on that basis. If a derogation is not forthcoming then the cost (subject to being reasonable, efficient and proportionate) shall be claimed for."* Do you consider there would be a lot of such cases?	☐Yes ☐No We do not know if there would be very many such cases, so it is difficult to provide a definitive answer. However, we consider that this wording makes sense for inclusion, as where 72 hour compliance is very expensive yet not critical at a site, the possibility of a derogation could be considered.
8	Do you agree with the proposed level of £100k for ex ante pre approval or should the level be higher or lower than this, and if so, why?	☒Yes ☐No Generators should identify what is necessary to comply with GC0156. We consider that compliance costs of generators that do not already meet the standard should fall on generators, but if this modification is implemented, they could then submit their ex-ante claim. This on the one hand could encourage an attempt at funding a more expensive funded solution-set with more potential for use in future tendering for balancing services at a given site than if generators had simply identified an efficient solution giving compliance at least cost and claimed

		ex-post, but on the other hand would enable the proposed claims panel to potentially advocate a cheaper solution than that put forward.