

Final Modification Report

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.



Have 5 minutes? Read our [Executive summary](#)
Have 45 minutes? Read the full [Final Modification Report](#)
Have 90 minutes? Read the full Final Modification Report and Annexes.

Status summary: This report has been submitted to the Authority for them to decide whether this change should happen

Panel recommendation: The Panel has recommended by majority that the Original solution, WACM1 and WACM2 better facilitate the CUSC Applicable Objectives.

This modification is expected to have a:
High impact: Suppliers and Generators

Governance route Standard Governance modification with assessment by a Workgroup

Who can I talk to about the change?	Proposer: Garth Graham, SSE garth.graham@sse.com Phone: 01738 456000	Code Administrator Contact: Milly Lewis Milly.Lewis@nationalgrideso.com Phone: 07811036380

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Executive summary

What is the issue?

Aspects of the [GC0156](#) proposal requires existing and future sites¹ which do not have a contract, between the CUSC Party and the ESO, for the provision of Restoration Services² from the site (which the ESO has indicated is the vast majority of sites) will have an obligation (applied prospectively³ and retrospectively⁴) to have 72 hours resilience onsite for their plant & apparatus (plus associated Communications infrastructure). Without an express cost recovery mechanism, new or further obligations, arising from ESRS / GC0156, will place those parties at a commercial disadvantage as they will have costs arising from ESRS / GC0156, but no route to recover their associated CAPEX costs incurred / to be incurred or an allowance for their OPEX costs incurred / to be incurred.

What is the solution and when will it come into effect?

Proposer's solution: A cost recovery mechanism in place for CUSC parties will prevent them from being in a commercially disadvantaged position and enable them to recover costs through BSUoS (based on the principle in Article 8 of ERNC that those costs are reasonable, efficient and proportionate).

Implementation date: The date Ofgem nominates as the implementation date of the GC0156 Grid Code change.

Summary of potential alternative solution(s) and implementation date(s):

2 formal alternatives have been raised as part of this modification.

Workgroup Conclusions: The Workgroup by majority concluded that WACM2 better facilitated the Applicable CUSC Objectives than the Baseline.

Panel recommendation: The Panel has recommended by majority that the Original solution, WACM1 and WACM2 better facilitate the CUSC Applicable Objectives.

What is the impact if this change is made?

This modification will affect:

- Generators
- Suppliers

The Proposer believes that this change will have a positive impact on CUSC Parties (that are not contracted Restoration Service Providers) by preventing them from being in a commercially disadvantaged position with the implementation of the new obligations arising from ESRS.

Interactions

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

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.

What is the issue?

As part of its [GC0156](#) proposal, the ESO is proposing that for existing and future sites⁵ which do not have a contract, between the CUSC Party and the ESO for the provision of Restoration Services⁶ from the site (which the ESO has indicated is the vast majority of sites), will carry an obligation (applied prospectively⁷ and retrospectively⁸) to have 72 hours resilience onsite for their plant & apparatus (plus associated Communications infrastructure).

The ESO's high level current thinking, to the late August GC0156 Assurance sub-group, about what the obligation would be is that:

“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 shut down 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 merits or otherwise of such an obligation (in the GC0156 Modification) is not strictly relevant for this (CUSC) Modification: which is just focused on an approach to cost recovery that arises from such an obligation.

The GC0156 Markets and Funding sub-group carried out an extensive review of all stakeholders impacted by the proposals of GC0156, such as the proposal mentioned above, and identified that non-contracted CUSC parties have no existing funding mechanism. As such, the sub-group proposed for a CUSC Modification to be raised to address this issue ensuring no party is commercially disadvantaged.

In the case of the ESO, TOs and DNOs it will be via their existing price control (and associated re-openers) as prescribed by law⁹. This allows those parties to recover their associated capital expenditure (CAPEX¹⁰) costs incurred / to be incurred and an allowance for their operational expenditure (OPEX¹¹) costs incurred / to be incurred.

In the case of contracted Restoration Services Providers¹² (CUSC Parties or non-CUSC Parties) this will be via the tender(s) / contract(s) that the ESO will undertake / enter into

⁵ At Transmission and, in terms of a BEGA or BELLA, at Distribution.

⁶ 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.

⁷ To new sites going forward.

⁸ To existing sites, if GC0156 is approved.

⁹ [Commission Regulation \(EU\) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

¹⁰ 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.

¹¹ 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.

¹² 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).

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

It is relevant to note that the UK Government policy, when introducing the new 'Electricity System Restoration Standard'¹³ (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."

In the Absence of an express cost recovery mechanism for CUSC Parties (which are not contracted Restoration Service Providers) then 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 incurred / to be incurred or an allowance for their OPEX costs incurred / to be incurred.

To address the defect, the Proposer believes that by allowing for a case-by-case assessment of bona fide CAPEX costs incurred and adopting the ESO's ALoMCP¹⁴ allowance approach for ongoing generic OPEX costs this will ensure that the relevant parties are not out of pocket and are not, therefore, 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: hence this Modification.

Furthermore, as the ESO set out in its GC0156 proposal¹⁵, 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 (CUSC) Modification that would not be the case as contracted RSPs would be able to recover their costs whilst non-contracted CUSC Parties would not.

¹³ [Introducing a new 'Electricity System Restoration Standard': policy statement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/introducing-a-new-electricity-system-restoration-standard)

¹⁴ [The Accelerated Loss of Mains Change Programme \(ALoMCP\) | National Grid ESO](https://www.nationalgrideso.com/accelerated-loss-of-mains-change-programme)

¹⁵ [download \(nationalgrideso.com\)](https://www.nationalgrideso.com/download)

What is the solution and when will it come into effect?

Proposer's solution

Claims Principles

- To be based on the principle set out in Article 8¹⁶ (Cost Recovery)¹⁷ of ERNC.
- 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 DESNZ¹⁸, 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) *commission¹⁹; 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 BSC²⁰ (Ofgem and DESNZ approved²¹) for Generators to make *ex post* claims for costs²² that arise under the Fuel Security Code²³ which, at a high level, would include:
 - CUSC Panel appoints committee of independent experts²⁴ (no CUSC Parties, or ESO, on the committee, Ofgem can observe) to assess claims.

¹⁶ See Footnote (9) above for link.

¹⁷ (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 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.”

¹⁸ When CMP398 was raised the relevant UK Government department was known as ‘BEIS’; however, this was later changed to ‘DESNZ’.

¹⁹ Including any assurance testing etc., arising from GC0156

²⁰ 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.

²¹ And therefore considered as simple and efficient (as they would not support a complex and inefficient approach).

²² Known, in respect of the Fuel Security Code, as ‘Exceptional Costs’.

²³ [Fuel Security Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

²⁴ 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.

- 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 £100k as well as *ex post*²⁵ claims.
- *Ex ante*²⁶ allowance for OPEX costs set by committee.

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*²⁷ 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 annual²⁸ allowance (inflated²⁹); which maybe based on technology types / types of claimants and asset size; for such items as, for example, staff costs³⁰, ongoing training³¹, assurance activities³², fuel³³, maintenance, rates³⁴, 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 G³⁵ of the BSC³⁶ covers just those costs that arise during³⁷ (but not before³⁸) any actual Total or Partial System Shutdown (a 'Black Start' event). These costs are limited to 'Avoidable Costs'³⁹ and do not cover either initial (or replacement) CAPEX or OPEX that arise out with a 'Black Start' event.

²⁵ 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.

²⁶ The suggestion would be to cover the period from 1st April to 31st March.

²⁷ Based on the legal standard set out in Article 8 ERNC as retained UK law.

²⁸ It may be appropriate for these payments to be made monthly.

²⁹ Such as by using CPI-H or the one set, for the TOs, by GEMA in the relevant price control.

³⁰ Such as overtime (if testing etc., needs to occur out with normal hours) or for additional staff.

³¹ 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).

³² Including any assurance testing etc., arising from GC0156.

³³ Such as for testing purposes and for 'cycling' (as the fuel in the tank degrades over time and is replaced).

³⁴ Installing the additional equipment to meet the GC0156 obligation may give rise to a higher business rates charge.

³⁵ [Simple Guide to BSC Section G: Contingencies \(elexon.co.uk\)](https://www.elexon.co.uk/BSC/Section%20G%20Contingencies)

³⁶ [BSC Section G: Contingencies \(elexon.co.uk\)](https://www.elexon.co.uk/BSC/Section%20G%20Contingencies)

³⁷ Therefore, if no 'Black Start' event occurs, no 'Avoidable Cost' claims are able to be made under the BSC.

³⁸ Or indeed after.

³⁹ As defined in Section G of the BSC.

The Proposer suggests that within the solution for this (CUSC) Modification, wording is 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, the intent would be to include wording, in the (CUSC) solution, that permits 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.

Workgroup considerations

The Workgroup convened 5 times to discuss the perceived issue, detail the scope of the proposed defect, devise potential solutions and assess the proposal in terms of the Applicable Code Objectives.

At the first workgroup meeting, the Proposer delivered a presentation outlining the proposed solution and its benefits. The discussions on various aspects of the modification proposal are detailed below:

Cost Recovery Mechanism

The issue of recovery of the cost was discussed, and it was agreed that this would be via BSUoS. Some Workgroup members were interested to know how the costs of the claims could fit in with the potential fixed annual BSUoS that [CMP361](#) could introduce. The ESO representative noted that under the current baseline approach, the underlying costs that drive BSUoS are passed on as BSUoS charges as they are incurred. Supposing CMP361 or one of its variants is implemented, some degree of fixing of a flat forecast BSUoS charge would need to be done by the ESO.

Claims committee

In terms of the process of recovering costs, the proposed approach is to follow the process principles already set out in the BSC for generators to make *ex post* claims under the Fuel Security Code (FSC). To this regard, the CUSC Panel will appoint a committee of independent experts to assess claims excluding members from CUSC Parties or ESO (Ofgem may observe). A Workgroup member felt that including the ESO in the claims committee might be more reasonable although the Proposer’s rationale against this is to prevent issues of commercial confidentiality and conflict of interest. Also, the Proposer felt the ESO may face the issue of resource constraint or lack of required expertise such as power station operations experts. The ESO representative suggested that the ESO does have *ex post* power station staff, and that if the settlements department lacked expertise consultancy support could be sought.

Proposed Payment Process

The proposed approach for payments would be that claims for CAPEX costs incurred or requests for pre-approved expenditure assessed by the committee should be reasonable, efficient, and proportionate and shall be paid by the ESO within one month of the claim or pre-approved expenditure request. For OPEX, the claims committee would set out, after consultation with stakeholders, an annual allowance (inflated) which will be based on

technology types/types of claimants and asset for size; costs for staff; ongoing training; fuel etc.

A Workgroup member asked how the ESO will estimate the annual total cost of claims. The ESO representative advised the Workgroup that the ESO view at the October CUSC Panel meeting was that the Workgroup would assess cost estimates as it may be difficult for the ESO to do as the ESO won't have the required information. On this basis, item (f) was included in the Workgroup's Terms of Reference: "*Use reasonable endeavours to consider the cost impacts and benefits on consumers*". In response, there was a comment that the cost would be low, and the benefit would be an avoided power cut.

ESO response to Proposal Requirements

The ESO representative felt that the measures set out in the modification proposal would have been considerably different if the cost would have been borne by the generator and that the ESO believed that many generators were compliant with the new GC0156 obligations. The majority of the Workgroup disagreed and supported that funding is necessary.

The ESO representative expressed the concern that the claims assessment committee could be appointed by Panellists who might nominate consultants known to them and this could have a negative effect on neutrality and outcomes. Also, it was not clear from the proposed solution who would arrange the claims committee's meetings or keep track of productivity.

The Proposer suggested that by including into the solution that, rather than the CUSC Panel making the appointment as initially suggested in the proposed solution, the President of the Chartered Institute of Arbitrators could be asked to appoint the members of the claims assessment committee.

Legal text

Legal text is provided in Annex 3.

Note that the implementation date as specified in the legal text means the nominated implementation date for GC0156 and not the date when the ESRS 72 hour resilience obligations (on Generators) in GC0156 is expected to go live '31 December 2026'.

Workgroup Consultation Summary

The Workgroup held its Workgroup Consultation between 03 January 2023 and 24 January 2023 and received 7 responses, none of which were confidential. A summary of the responses and the full responses can be found in Annexes 5 and 6 respectively.

The Workgroup met to discuss and consider all the responses received and noted the following trends and key points within the industry's responses:

- 3 out of 7 respondents support that the original proposal better facilitate some of the CUSC objectives.
- 4 out of 7 respondents were supportive of the implementation approach.

- Regarding the implementation approach, unsupportive respondents felt that:
 - It will have uncontrolled and unpredictable effects on BSUoS that could prejudice market stability and the efficacy of the BSUoS fixed tariff.
 - Allowing explicit pass-through of costs incurred by generators for compliance with an obligation placed on them through the Grid Code will deter market forces to determine the efficient cost of complying with such an obligation.
 - Clarity needed on whether CAPEX and/or OPEX cost recovery is only allowable for plant connected prior to implementation of GC0156, or if any elements would be allowable for all future plant.
 - The introduction of a committee of independent experts will add further inefficiency and cost to the CUSC.
- Most respondents believe that requests for derogation requests will be high because applying 72 hr resilience retrospectively will have significant cost and time impact on existing sites.
- It was suggested that the £100k ex ante pre approval should be reviewed based on actual assessment of applying 72 hrs at large with all CUSC parties and transmission connected and embedded sites.
- Clarity needed on whether CAPEX and/or OPEX cost recovery is only allowable for plant connected prior to implementation of GC0156, or if any elements would be allowable for all future plant.
- The introduction of a committee of independent experts will add further inefficiency and cost to the CUSC.

The ESO representative noted the following:

- Undue advantage could result as funds claimed under CMP398 to comply with GC0156, together with funding for its annual maintenance under the OPEX claim heading, if approved could be used for other commercial purposes.
- CMP398 would set a precedent whereby 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.
- No clarity as to who would determine the costs and remuneration of the proposed claims assessment panel, how many panellists would be appointed, and who completes assessment? If all of this is left to an independent arbitrator, there seems to be a lack of electricity industry control of these matters.

Post Consultation Workgroup Discussions

The key points and discussions around the themes of consultation questions are noted below:

Implementation approach

- The Proposer confirmed that the claims process would be controlled through the Claims Committee, which would be modelled on similar existing industry claims committees (e.g. BSC, the TO/DNO price control) and that, were the GC0156 WAGCM1 approved (does not require retrospective changes to assets) there would not be any requirement for CAPEX claims.

Inherent resilience when generators are requesting funding

- The Proposer confirmed that the intent was for obligated parties to be able to claim for the costs which have been incurred to meet the proposed 72 hour resilience (e.g. to move from 48 hours to 72 hours).

Cost impacts / analysis

- The Workgroup discussed whether or not there should be an end date for CAPEX as there may be circumstances where projects have incurred additional costs due to no knowledge of the obligations in design phase; or if a party had had their derogation request rejected.
- The Workgroup discussed that as the Electricity System Restoration Standard (ESRS) was a government directive for the benefit of the end consumer, it was reasonable that the beneficiaries covered the costs.
- The Workgroup agreed that there was no requirement to complete a CBA within CMP398 as one was undertaken by Ofgem for ESRS.

Draft Legal Text

Workgroup discussed changes to draft legal text which was updated live within the meeting including:

- Updating terminology to align with GC0156 draft legal text (e.g. 'Restoration Contractors' from 'Restoration Service Providers').
- Clarifying which costs would fall under the ex ante pre-approval.
- Adding a clause around requesting derogations.
- Agreeing that it was clear that Ofgem could chose to attend the Claims Committee meetings where decisions around assessing claims were to be made but should not be able to overturn decisions if they had not attended.

Terms of Reference

At meeting 4, the Workgroup talked through the Workgroup objectives within the Terms of Reference and agreed that all elements had been considered and addressed. The Workgroup agreed that all the Workgroup Terms of References had been met.

Workgroup Alternatives

Two Workgroup alternative solution were raised post Workgroup Consultation. The Workgroup debated it and agreed that they were within the scope of the defect.

Workgroup Alternative Vote

On 10 March 2023, the Workgroup voted as to whether or not the proposed Request for Alternatives 1 and 2 should become a Workgroup Alternative CUSC Modification (WACM).

The Workgroup unanimously voted that Alternatives 1 and 2 better facilitate the CUSC Objectives than the Baseline, and that they should be taken forward as a Workgroup Alternative CUSC Modifications (WACM). The full results from this vote are set out in Annex 7.

A summary of the requirements of WACM 1 and 2 are outlined below and the WACM1 and WACM2 proposal documents are available in Annex 6.

WACM1 (ESO):

The original proposal uses a claims committee to assess claims submitted at any time, that may include OPEX (it proposes, also, an automatic annual OPEX allowance by technology, which all receive unless they opt out), with a pre-approval process for claims above £100k, and does not have any end time, nor does it exclude claims by new generators signing a BCA after it is passed. WACM1 has the following modified requirements:

- Claims would be submitted to and assessed by the ESO.
- The first new generators that sign a Bilateral connection agreement (BCA) after Ofgem's decision to pass GC0156, cannot submit a claim.
- A one month claims windows would open each September after the modification is passed (September 2024 at the earliest), until a final claims window ends 31st December 2026, the date from which full compliance with GC0156 commences.
- Approved claims to be paid out as a flat monthly payment across 12 months, with claims being paid out as a flat monthly payment, 1/12th of claim value paid per month, across the 12 months from the following April after approval of a successful claim.
- Ex-post claims for capital expenditure that has been spent on complying with GC0156, with good evidence of why the investment was necessary. It does not feature any form of OPEX allowance or OPEX claim, such as ongoing maintenance, rates, maintenance, or any other OPEX.

WACM2 (Cornwall Insight):

This alternative modification proposal is similar to the Original except that it is proposing that within WACM2 New Users that first sign a bilateral connection agreement with The Company after the date of implementation of GC0156 will not be permitted to submit a claim. It would allow those users who did not have sufficient time (at the design, construction and commissioning stages) to accommodate the requirements in the most cost-effective manner (had they had sufficient notice) to make a claim for cost recovery.

What is the impact of this change?

CUSC Parties (that are not contracted Restoration Service Providers⁴⁰) from being in a commercially disadvantaged position by the implementation of the new obligations arising from ESRS.

Proposer’s assessment against Code Objectives

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.

⁴⁰ The GC0156 solution has developed as CMP398 has progressed and, as at the time of writing in March 2023, GC0156 now refers to such parties as ‘Restoration Contractor(s)’ rather than ‘Restoration Service Provider(s)’.

*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.

Workgroup Vote

The Workgroup met on 10 March (and 14 March) 2023 to carry out their Workgroup Vote for CMP398. The full Workgroup vote can be found in Annex 7. The tables below provide:

- a summary of how many Workgroup members believed the Original for CMP398 and WACM1 and WACM2 were better than the Baseline (the current CUSC); and
- a summary of the Workgroup Members views on the best option to implement CMP398.

Assessment of the Original vs Baseline

The Workgroup concluded by majority that WACM2 better facilitated the applicable CUSC Objectives than the Baseline.

Option	Number of voters that voted this option as better than the Baseline
Original	5
WACM1	5
WACM2	5
Baseline	0

Best Option

Workgroup Member	Company	BEST Option?	Which objective(s) does the change better facilitate? (if baseline not applicable)
Garth Graham	SSE	Original	a, b, d
Paul Mott	ESO	Baseline	a, b, c, d
Paul Youngman	Drax	WACM2	a, b
Priyanka Mohapatra	Scottish Power Renewables	WACM2	a, b
Robert Longden	Eneco Energy Trade BV	WACM2	a, b
Sean Gauton	Uniper Energy	-	-

Code Administrator Consultation Summary

The Code Administrator Consultation was issued on the 02 May 2023 and closed on 09 June 2023 and received 4 non-confidential responses including 2 late responses. A summary of the responses can be found in Annex 8, and the full responses can be found in Annex 9.

Code Administrator Consultation summary	
Question	
Do you believe that the CMP398 Original Proposal, WACM1 or WACM2 better facilitates the Applicable CUSC Objectives?	<p>3 out of the 4 respondents felt that both the Original and WACM1 <u>did not</u> better facilitate the applicable CUSC Objectives. 2 respondents agreed that WACM2 better facilitated the applicable CUSC Objectives (a) and (b).</p> <p>Half the respondents (2 out of 4) preferred the baseline, 1 respondent supported the Original and WACM2.</p>
Do you support the proposed implementation approach?	Half the respondents (2 out of 4) supported the implementation approach.
Do you have any other comments?	<p>The following key points were raised:</p> <ul style="list-style-type: none"> - One respondent felt that the implementation approach for the Original and WACM2 would have uncontrolled and unpredictable effects on BSUoS that could prejudice market stability and the efficacy of the BSUoS fixed tariff. WACM1 was better as it had an annual claims window, the earliest being September 2024, and a delayed, spread-out approach to the recovery of approved claims. - One respondent was disappointed around the lack of a CBA or impact assessment on the costs to parties through higher BSUoS costs. - One Respondent felt that this could set a precedent, so that the costs of complying with changes to the Grid Code are funded in the first instance by the consumer, rather than the industry. - One respondent felt that under the Original solution there was a lack of industry control over the appointment of the claims assessment panel, management of its ongoing work or setting of its remuneration, - Two respondents supported having a cost recovery mechanism for implementing GC0156 resilience requirements, so that individual parties were not commercially disadvantaged. - One respondent supported WACM2 as it would allow new generators who did not have sufficient time

	between GC0156 implementation and BCA signing to make a design change to submit a claim.
Legal text issues raised in the consultation	
No Legal Text issues were raised.	
EBR issues raised in the consultation	
No EBR issues were raised.	

Panel Recommendation Vote

The Panel met on the 30 June 2023 to carry out their recommendation vote.

They assessed whether a change should be made to the CUSC by assessing the proposed change and any alternatives against the Applicable Objectives.

Vote 1: Does the Original, WACM1 or WACM2 facilitate the objectives better than the Baseline?

Panel Member: **Andrew Enzor**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Yes	Neutral	Neutral	Yes
WACM1	Neutral	Yes	Neutral	Neutral	Yes
WACM2	Neutral	Yes	Neutral	Neutral	Yes

Voting Statement

Without CMP398, GC0156 will create a clear competitive distortion by enabling only a subset of parties (those contracted to provide restoration services) to recover costs of complying with the new ESRS. Hence I consider the Original and both WACMs better facilitate the Applicable Objectives.

CMP398 is needed to avoid a competitive distortion. But customer funding GC0156 compliance costs risks removing competitive dynamics which would lead to parties optimising those costs. There is also risk of unintended consequences, such as parties using CMP398-funded assets for commercial gain. So CMP398 funding should be as limited as possible.

The limit of application to only generators which have signed BCAs prior to GC0156 implementation is an improvement on the Original in both WACMs. Some elements of WACM1 have merit - most notably spreading the cost across a longer period of time for BSUoS payers.

However, it is overly restrictive on when claims must be submitted and reliant on ESO alone to determine the merits of claims, reducing transparency in the process. So I consider WACM2 is the best option.

Panel Member: **Andy Pace**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	No	Neutral	Neutral	No
WACM1	Neutral	No	Neutral	Neutral	No
WACM2	Neutral	No	Neutral	Neutral	No

Voting Statement

We have assessed CMP398 against the applicable objectives and do not believe this mod or the alternatives will be a beneficial change or in the interests of consumers.

We assess this modification as not better meeting applicable objective (b) as it does not facilitate effective competition in the generation and supply of electricity for the following reasons:

1. We are concerned that allowing some generation to claim costs associated with meeting the restoration standards would be detrimental to competition as it would provide an unfair advantage for those generators who receive payment when bidding for balancing services against non-CMP98 funded sites such as demand side management.
2. Removing market forces from the cost of complying with industry standards, risks the costs submitted to the ESO being higher than they would be if this modification was not implemented. As a result, this modification may increase the costs faced by end consumers compared to the baseline. We believe there is also a risk that consumers may already be paying for these items through slightly higher wholesale prices which are primarily driven by the marginal price of production and therefore risk paying twice.
3. We are also concerned that this modification could set a precedent that industry participants who are operating in a competitive market should be directly compensated for costs arising from code changes. Changing regulations is a long-standing aspect of the electricity industry and an area all stakeholders need to be aware of. Industry participants need to monitor the changes and assess the impact within their business plans. These risks should already be reflected in business plans and cost of capital and it is not, overall, in consumers' interests to compensate generators directly in the way proposed under CMP398 in a competitive market environment.

If Ofgem believes this modification has merit, we strongly urge Ofgem in its decision letter to set out expectations for how any Committee (or ESO for WACM1) should fully examine applications using techniques such as benchmarking to ensure that these processes do not permit the recovery of excessive costs.

We also strongly urge Ofgem that if it sees merit in the modification to ensure that it only applies to sites with existing connection offers, and that sites with offers issued after an Ofgem decision are not eligible (WACMs 1 and 2). Also, there should be a time limit for the recovery of these costs (as proposed in WACM1) rather than an open-ended liability for consumers.

Panel Member: **Binoy Dharsi**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
WACM1	Yes	No	Neutral	Neutral	Yes
WACM2	Yes	Yes	Neutral	Yes	Yes
Voting Statement					
This proposal provides an important codified mechanism for cost recovery. On balance WACM2 allows for better protection to all Users.					

Panel Member: **Cem Suleyman**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
WACM1	Yes	Yes	Neutral	Yes	Yes
WACM2	Yes	Yes	Neutral	Yes	Yes
Voting Statement					
<p>Having read the various arguments in favour and against CMP398, I am marginally persuaded by the Proposer's arguments that the modification better facilitates the Applicable CUSC Objectives. This applies to all three options (the Original, WACM1 and WACM2).</p> <p>Whilst WACM1 has some attributes which could be beneficial, specifically the claims window and payment schedule, I don't believe the assessment of claims by the ESO provides the same level of independence and expertise relative to that proposed under the Original and WACM2.</p> <p>I'd also note that WACM1 does not include many of the 'safeguards' contained in the Original and WACM2, such as those to help prevent 'double dipping'.</p> <p>As such I believe that the Original and WACM2 are preferable to WACM1. I do not have a preference between the Original and WACM2.</p>					

Panel Member: **Claire Huxley (On behalf of Karen Thompson – Lilley)**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	No	No	Neutral	No	No
WACM1	No	No	Neutral	No	No
WACM2	No	No	Neutral	No	No
Voting Statement					
<p>The options available under CMP398 do not better facilitate any of the CUSC applicable objectives.</p> <p>The baseline is the best approach overall, followed by WACM1, then the Original Proposal and then finally WACM2.</p>					

This is because is the implementation approach proposed for the Original and WACM2 will have uncontrolled and unpredictable effects on BSUoS that could prejudice market stability and the efficacy of the BSUoS fixed tariff. It may 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. WACM1 is better than the Original and WACM2 as having the annual claims windows, the earliest being September 2024, and a delayed, spread-out approach to the recovery of approved claims, to reduce the short notice and sudden potential impact on payments that lay behind fixed BSUoS.

The Proposal will be negative in relation to Applicable Objective (d), “Promoting efficiency in the implementation and administration of the CUSC arrangements”, and less effectively facilitates this objective than the current baseline. This is because 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 should be met by generators.

Panel Member: **Garth Graham**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
WACM1	Yes	Yes	Neutral	Yes	Yes
WACM2	Yes	Yes	Neutral	Yes	Yes

Voting Statement

I am mindful that the conclusions of the impact assessment performed by the relevant Government department (DESNZ now, BEIS at the time) determined that the costs and benefits associated with the introduction of the new Government policy (the Electricity System Restoration Standard) was, for GB consumers, positive and that this policy expressly included that obligated parties (namely restoration service providers such as generators and storage, as well as networks) should not be commercially disadvantaged when delivering their important contributions; which are needed to meet the ESRS restoration service provisions (60% in 24 hours 100% in 5 days) for GB consumers to reap these positive benefits.

Absent a cost recover mechanism (as set out in the CMP398 defect) then parties obligated by GC0156; but who are not in receipt of either an Anchor or Top-Up contract (as per GC0156); will clearly be commercially disadvantaged both in terms of competing in the market with those contracted Anchor and Top-Up providers but also in terms of competing with overseas parties, who are interconnected with GB (and thus trade in competition with GB generators and storage) where the legal application of the Emergency & Restoration Network Code should ensure that terms and conditions for restoration service providers, approved by the regulatory authorities, allows for cost recovery via market based solutions (and not impose, retrospective, obligations as for example with GC0156 Original) rather than being unremunerated (as would happened in GB).

Absent this CMP398 change, then legal certainty (as well as regulatory certainty) within GB, will be seriously compromised as GC0156 imposes retrospective obligations and costs upon existing plant, some of which have been connected to the GB transmission system for over 90 years, without allowing for legitimate costs to be recovered.

When set against the Baseline, which does not include any cost recovery mechanism for the GC0156 costs, then the Original and both WACMs are better in terms of Applicable Objectives (a), (b) and (d) whilst being neutral in terms of (c), as they allow for bona fide costs incurred to be recovered in a way that better facilitates these three Objectives.

Of the three options, the Original is best (with WACM2 the next best and WACM1 the least best, overall, of the three) as it ensures a fair and transparent process (compared to WACM1) involving independent experts (unlike with WACM1) who can assess ex anti and ex post costs (if relevant).

Panel Member: Grace March

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Yes	Neutral	Neutral	Yes
WACM1	Neutral	Yes	Neutral	Neutral	Yes
WACM2	Neutral	Yes	Neutral	Neutral	Yes

Voting Statement

This modification is neutral against ACO a): it will facilitate generators to put in the place the solutions needed for the ESO to meet it's contractual obligations, but does not, in itself, encourage discharge of the licence condition.

The modification is positive against ACO b) as it creates a level playing field for generators to meet requirements for system restoration. If generators were to fund it themselves, it would create a commercial disadvantage for assets that require greater expense to be compliant, such as age or location.

It is not appropriate for Users who had notice of these conditions before signing a BCA to be able to recover the costs, as they should have been costed in when making the investment decision. It is suitable for assets that are having the obligation placed on them retrospectively.

Panel Member: Joseph Dunn

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
WACM1	Yes	Yes	Neutral	Yes	Yes
WACM2	Yes	Yes	Neutral	Yes	Yes

Voting Statement

WACM2 best supports the objectives, as it allows new generators who did not have sufficient time between GC0156 implementation and BCA signing to make a design change to submit a claim as well.

Vote 2 – Which option is the best?

Panel Member	BEST Option?	Which objectives does this option better facilitate?
Andrew Enzor	WACM2	b
Andy Pace	Baseline	NA
Binoy Dharsi	WACM2	a, b, d
Cem Suleyman	None	
Claire Huxley	Baseline	NA
Garth Graham	Original	a, b, d
Grace March	WACM2	b
Joseph Dunn	WACM2	a, b, d

Panel conclusion

The Panel has recommended by majority that the Original solution, WACM1 and WACM2 better facilitate the CUSC Applicable Objectives.

When will this change take place?

Implementation date

This will be the date Ofgem nominates as the implementation date of the GC0156 Grid Code change.

Date decision required by

Q4 - 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.

Interactions

- | | | | |
|--|--|---|--------------------------------|
| <input checked="" type="checkbox"/> Grid Code | <input type="checkbox"/> BSC | <input type="checkbox"/> STC | <input type="checkbox"/> SQSS |
| <input checked="" type="checkbox"/> European Network Codes | <input type="checkbox"/> EBR Article 18 T&Cs ⁴¹ | <input checked="" type="checkbox"/> Other modifications | <input type="checkbox"/> Other |

There is an interaction with GC0156 (as set out above) as well as in relation to compliance with ERNC. However, the proposed solution for this modification will have no impact on the Electricity Balancing Regulation (EBR).

⁴¹ 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.

Acronyms and key terms

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
DESNZ	Department for Energy Security & Net Zero
EBR	Electricity Balancing Regulation
ERNC	Emergency & Restoration Network Code ⁴²
ESO	Electricity System Operator (aka "The Company")
FSC	Fuel Security Code
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
WACM	Workgroup Alternative CUSC Modification

Annexes

Annex	Information
Annex 1	Original Proposal
Annex 2	Terms of reference
Annex 3	Legal Text
Annex 4	Workgroup Consultation responses summary
Annex 5	Workgroup Consultation responses
Annex 6	Alternative Proposals
Annex 7	Workgroup Vote
Annex 8	Code Administrator Consultation Responses Summary
Annex 9	Code Administrator Consultation Responses

⁴² [Commission Regulation \(EU\) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration \(Text with EEA relevance\) \(legislation.gov.uk\)](https://eur-lex.europa.eu/eli/reg/2017/2196/oj)