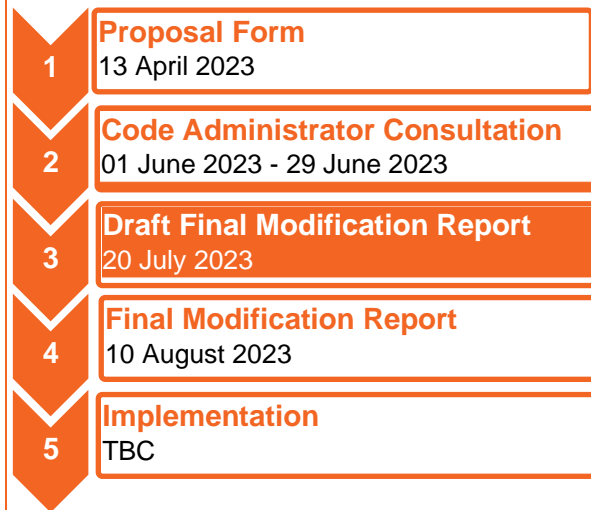


Draft Final Modification Report

CMP414: CMP330/CMP374 Consequential Modification

Overview: This is a consequential modification which by updating Exhibit B, Section 2 and Section 11 of the CUSC enacts the CMP330/CMP374 Workgroup solution.

Modification process & timetable



Have 5 minutes? Read our [Executive summary](#)

Have 25 minutes? Read the full [Draft Final Modification Report](#).

Have 90 minutes? Read the full Draft Final Modification Report and Annexes.

Status summary: The Draft Final Modification Report has been prepared for the recommendation vote at Panel.

Panel recommendation: The Panel will hold their recommendation vote on 28 July 2023.

This modification is expected to have a:

Medium impact: Generators, Transmission Owners, Electricity System Operator (ESO)

Governance route Standard Governance modification to proceed to Code Administrator Consultation.

Who can I talk to about the change?

Proposer:

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Executive summary

As part of the CMP330/CMP374 Workgroup Consultation phase, the Workgroup established that rather than be assessed against the CUSC Charging Applicable Objectives in Section 14 of CUSC, Contestability would be more appropriately contained in a new Part IV within Section 2 of CUSC (Connections).

This modification enacts the CMP330/CMP374 Workgroup solution.

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

Proposer's solution:

CMP414 enacts the CMP330/CMP374 Workgroup solution, by updating Exhibit B, Section 2, and Section 11 of the CUSC. Providing a more detailed treatment of Contestable Assets and Adoption Agreement.

CMP414 can only be approved and implemented in conjunction with CMP330/CMP374.

Implementation date:

If CMP330/CMP374 is approved CMP414 shall be implemented on the same date.

Panel recommendation: To be updated after the 28 July 2023 CUSC Panel.

What is the impact if this change is made?

This modification seeks to enable more flexibility for users looking to connect to the transmission network by extending the scope of transmission assets which can be constructed/delivered by Users contestably to include sole-use infrastructure (as well as Transmission Connection Assets and User equipment as per the baseline).

Where contestability can be reasonably agreed between Users and Relevant Transmission Owners, this modification should provide increased potential for some infrastructure assets to be delivered more economically or efficiently than the baseline.

However, some adjustments to existing licencing and Price Control arrangements may be needed in the instance that contestable works are agreed for sole-use infrastructure assets, but the User fails to deliver the works as agreed, requiring the Relevant Transmission Owners to step in.

Interactions

CMP414 and CMP330/CMP374 if approved by the Authority will have a consequential impact on the STC and STCPs.

A STC modification, [CM079 'Consideration of STC/STCP changes in relation to CMP330/CMP374'](#) has been raised.

What is the issue?

Contestability currently sits within Section 14 Charging Methodologies under paragraph 14.7.

Following a comprehensive review of Contestability as part of the [CMP330/CMP374: Allowing new Transmission Connected parties to build Connection Assets greater than 2km in length & CMP374: Extending contestability for Transmission Connections](#) Workgroup, it was established that the existing wording is limited and insufficient for CUSC Users.

Additionally, the CMP330/CMP374 Workgroup agreed that Contestability is best suited to be assessed under Non-Charging objectives and the legal text better sits within Section 2 of the CUSC which is the proposed solution in this modification.

Why change?

The existing CMP330/CMP374 Modification proposal will be assessed under the CUSC Charging Applicable Objectives (applicable to Section 14 only), therefore the CMP330/CMP374 Workgroup decision to relocate Contestability and the additional wording related to the CMP330/CMP374 solution to Section 2 requires assessment against the CUSC Non-Charging Applicable Objectives.

What is the proposer’s solution?

Implementation Approach

The CMP330/CMP374 modification will be assessed against the CUSC Charging Applicable Objectives and the CMP330/CMP374 legal text proposes the deletion of Contestability from Section 14 on the basis that CMP414 proposes to relocate and expand on the existing clauses on Contestability from Section 14 of CUSC (Charging Methodologies) into Section 2 (Connections) as per discussions of the CMP330/CMP374 Workgroup and supporting legal reviews.

The rationale for the proposed changes to Section 2, the new definitions within Section 11 for Adoption Agreements and Contestable Assets, and references to Contestable Assets being included in CUSC Exhibit B are outlined within the CMP330/CMP374 Code Administrator Consultation document (Annex 2), as the modifications should be considered in conjunction with each other in terms of approval and implementation.

Dispute Process Clarification

As part of CMP414 there are two processes to follow for Users, The Company (ESO) and Relevant Transmission Licensee in the event of a dispute.

<i>Contestability</i>	<i>Adoption Agreement</i>
As part of the Contestability section, Clause 2.23.4 discusses intervention criteria where either The Company or a Relevant Transmission Licensee can prevent the User from construction of Contestable Assets (including where they have commenced under an Adoption Agreement)	A User who wishes to provide /construct Contestable Assets will be required to contract directly with the Relevant Transmission Licensee via an Adoption Agreement. CUSC Clause 2.24.3 specifies several principles that will be contained as part of the Adoption Agreement.

In Clause 2.23.6, should a User believe that the criteria outlined in 2.23.4 has not been appropriately applied or justified, then they have remedy under CUSC Section 7.4 as per Other disputes and/or the dispute provisions of a Construction Agreement	Should there be conflict between the Adoption Agreement and the contents of the above clause, then the Adoption Agreement will prevail.
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As outlined in the Dispute Resolution section of the CMP330/CMP374 Code Administrator Consultation document (Annex 2), the CMP330/CMP374 Workgroup discussed how an Adoption Agreement would be mediated should arbitration if required. The ESO could not be classed as the arbitrator as it is not a part to the Adoption Agreement. The Authority confirmed that it would be the relevant body to address any grievances in any contractual dispute.

Legal text

CMP414 legal text can be found in Annex 3 and the CMP330/CMP374 legal text can be found in in Annex 4.

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;	Neutral
(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 Previous charging and connection methodologies were moved into Section 14 of CUSC. The CMP330/374 Workgroup determined that Contestability and Contestable Assets would be better aligned to Section 2 in CUSC, which would better suit competition
(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 moving Contestable Assets and Adoption Agreements to Section 2 of the CUSC, it ensures that CUSC arrangements for Connections are all in the same area increasing efficiency for CUSC Users and readers.
*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.	

Code Administrator Consultation Summary

The Code Administrator Consultation was issued on the 01 June 2023 and closed on 29 June 2023 and received 4 non-confidential responses, no late responses were received.

A summary of the responses can be found in Annex 5, and the full responses can be found in Annex 6.

Code Administrator Consultation summary	
Question	
Do you believe that the CMP414 Original Proposal better facilitates the Applicable CUSC Objectives?	<p>2 out of the 4 responses felt that the Original better facilitated the applicable CUSC Objectives (b) and (d).</p> <p>The other 2 responses disagreed and felt that it negatively impacted objectives (a) and (d), 1 response also felt that it negatively impacted objective (b).</p>
Do you support the proposed implementation approach?	<p>All 4 responses supported the implementation approach.</p> <p>2 of the responses felt that at the very least the six months implementation period specified by the proposer was required, in order to:</p> <ul style="list-style-type: none"> - Allow TOs/ESO time to establish revised ways of working. - Give TOs/Ofgem time to consider consequential impacts on the Price Control and ensure enduring licence compliance.
Do you have any other comments?	<p>The following key points were raised:</p> <p>2 responses supported the CMP414 because:</p> <ul style="list-style-type: none"> - It will allow CMP330/374 to be enacted, remove barriers for entry for new connections, allow developers to build more of their own assets and promote competition in network development to deliver more cost-effective solutions and facilitate earlier connections to the grid. - This will benefit end consumers and contribute towards meeting net zero targets by enabling more renewable generation to connect to the Transmission System. - Moving Contestability to Section 2 of the CUSC ensures that CUSC arrangements for Connections are all in the same area increasing efficiency for CUSC Users. <p>The remaining 2 responses did not support CMP414, CMP330 or CMP374 because:</p> <ul style="list-style-type: none"> - No cost benefit analysis (CBA) has been carried out to show the benefits of the modifications. - The TOs (and therefore end consumers), could be exposed to rectification costs if TOs are forced to step in and complete works that are abandoned/built incorrectly. This could expose the TOs to adverse performance measures under the current T2 Price Control. - Investments (including connections) need to be progressed strategically and consistently with regional plans in order to decarbonise the electricity network by 2035 and deliver net

zero by 2050. Strategic network design and regional plans could become User focused or piecemeal. With Users expecting their individual projects to be prioritised over the TOs more holistic, long-term network design philosophy. Leading to increased disputes, additional costs being incurred by consumers and/or User-led appeals to Ofgem.

- Allowing third parties to install high voltage transmission equipment, without the same levels of regulatory oversight applied to TOs, increases the risk to public safety as well as other Users of the national electricity system. Users may prioritise commercial factors over agreed design and delivery standards, system stability or safety, where cost or timing becomes a driving factor for their project. Especially as there is no incentive for Users to adhere to the Adoption Agreement (unlike the current arrangements where the User is solely and directly exposed to its actions).
- Greater protections are needed where there could be adverse impacts on interacting connection timescales for subsequent Users, caused by delays or failed infrastructure asset delivery via contestable works. Safeguards need to be codified in the CUSC, rather than left to the discretion of the ESO (in co-ordination with the TOs).
- The solution is still unclear on the full extent of the project management responsibilities Users expect to undertake (or discharge to relevant TOs) when delivering Contestable Assets. The solution is too reliant on Adoption Agreements being able to substantiate this, and as a consequence there is not only a risk of inconsistency but disputes where Users and TOs ultimately cannot agree.
- There is also a risk that TOs could end up in dispute with the ESO if Users and the TO cannot agree on what should be included within the Adoption Agreement. Or if the ESO and a TO cannot agree on when to exercise the right to intervene to prevent or stop contestability (despite the TOs bearing most of the risks). Both issues can be addressed via amendments to the SO-TO Code, but with the modifications predominantly specifying these matters in the CUSC it is likely to lead to more complex dispute management arrangements.
- The solution places new obligations or limitations on existing obligations defined outside CUSC, which will require STC changes, this creates confusion due to the ESO's lack of involvement in these matters.
- It also imposes limiting standards on commercial activities outside the CUSC. This is an unhelpful precedent, as it stifles innovation and leads to inefficiency if code modifications are required every time impacted parties identify and agree to enhancements in working practices.

	<ul style="list-style-type: none"> - It is unclear how the modifications can be considered to facilitate competition if there is no tender process or competitive pressure. - Consequential changes needed to Licences and the RIIO framework would need to be fully considered and implemented, ensuring protections were in place for consumers and TOs. - If approved, the timing of implementation would need to be carefully managed to factor in other competing regulatory priorities, along with interactions with Ofgem's recent ASTI decisions and the next Price Control period. - Interactions with the Queue Management (QM) code modification CMP376 could be complex and further work may be needed should both modifications be approved to reflect better alignment in the CUSC. - Overall, the respondents were supportive of initiatives seeking to expedite connection of generation and demand projects to the transmission system and accepted that these modifications could give Users an opportunity to deliver infrastructure assets quicker and cheaper. But in order to achieve this the solution needed to be developed further to address the issues mentioned above.
<p>Legal text issues raised in the consultation</p>	
<p>1 respondent felt that the phrase 'shared works' in clause 2.23.4b was too vague and could be interpreted in multiple ways. To remove any confusion, they suggested replacing the word 'works' with 'assets'.</p> <p style="text-align: center;">2.23.4b: Where the proposed Contestable Assets will be, or can reasonably be foreseen to be, shared assets works with other Users, or;</p>	
<p>EBR issues raised in the consultation</p>	
<p>No EBR issues were raised.</p>	

Panel Recommendation Vote

The Panel will meet on the 28 July 2023 to carry out their recommendation vote.

They will assess whether a change should be made to the CUSC by assessing the proposed change against the Applicable Objectives.

Panel comments on Legal text

Ahead of the vote taking place, the Panel will consider the legal text amendment proposed as part of the Code Administrator Consultation and agree whether it is typographical.

Vote 1: Does the Original facilitate the objectives better than the Baseline?



Consumer Panel Member: **Andy Pace**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
Voting Statement					

Users' Panel Member: **Binoy Dharsi**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
Voting Statement					

Users' Panel Member: **Garth Graham**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
Voting Statement					

Users' Panel Member: **Grace March**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
Voting Statement					

National Grid ESO Panel Member: **Karen Thompson – Lilley**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
Voting Statement					

Users' Alternate Panel Member: **Mark Duffield**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
Voting Statement					

Users' Panel Member: **Paul Jones**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original					
Voting Statement					

Vote 2 – Which option is the best?

Panel Member	BEST Option?	Which objectives does this option better facilitate? (If baseline not applicable).
Andy Pace		
Binoy Dharsi		
Garth Graham		
Grace March		
Karen Thompson – Lilley		
Mark Duffield		
Paul Jones		

Panel conclusion

To be updated following the Panel recommendation vote on 28 July 2023.

When will this change take place?

Implementation date

Aligned to the implementation date (if approved by the Authority) of CMP330/CMP374.

Date decision required by

A decision is required as soon as practical following the relevant Final Modification Reports being submitted to the Authority.

Implementation approach

This modification can only be approved and implemented in conjunction with CMP330/CMP374.

The Connection Application Process noted in CUSC Exhibit B has been amended to reflect the removal of Transmission Connected Assets and inclusion of Contestable

Assets along with an amendment to the “Application for a New Connection Form” contained within the Exhibit B.

Interactions

- | | | | |
|---|---|--|--------------------------------|
| <input type="checkbox"/> Grid Code | <input type="checkbox"/> BSC | <input checked="" type="checkbox"/> STC | <input type="checkbox"/> SQSS |
| <input type="checkbox"/> European Network Codes | <input type="checkbox"/> EBR Article 18 T&Cs ¹ | <input type="checkbox"/> Other modifications | <input type="checkbox"/> Other |

The STC and STCPs will need to be amended to take account of the processes introduced under this modification to allow contestability. A consequential STC/STCP change ([CM079 ‘Consideration of STC/STCP changes in relation to CMP330/374’](#)) has been raised.

Acronyms, key terms and reference material

Acronym / key term	Meaning
BSC	Balancing and Settlement Code
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
EBR	Electricity Balancing Regulation
ESO	Electricity System Operator
STC	System Operator Transmission Owner Code
STCP	System Operator Transmission Owner Code Procedures
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions

Annexes

Annex	Information
Annex 1	Proposal Form
Annex 2	CMP330/CMP374 Draft Final Modification Report
Annex 3	CMP414 Legal Text
Annex 4	CMP330/374 Legal Text
Annex 5	Code Administrator Consultation Responses Summary
Annex 6	Code Administrator Consultation Responses

¹ 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.