

Code Administrator Consultation															
<h2>CMP392: Transparency and legal certainty as to the calculation of TNUoS in conformance with the Limiting Regulation</h2> <p><b>Overview:</b> As identified in the Authority's direction to the Panel regarding CMP391 it is relevant to identify whether (or not) particular charges fall within the Connection Exclusion taking into consideration the Judgment.</p>	<h3>Modification process &amp; timetable</h3> <table border="1"> <tr> <td>1</td> <td><b>Proposal Form</b> 01 July 2022</td> </tr> <tr> <td>2</td> <td><b>Workgroup Consultation</b> 12 April 2023 - 05 May 2023</td> </tr> <tr> <td>3</td> <td><b>Workgroup Report</b> 21 July 2023</td> </tr> <tr> <td>4</td> <td><b>Code Administrator Consultation</b> 04 August 2023 – 04 September 2023</td> </tr> <tr> <td>5</td> <td><b>Draft Modification Report</b> 29 September 2023</td> </tr> <tr> <td>6</td> <td><b>Final Modification Report</b> 13 October 2023</td> </tr> <tr> <td>7</td> <td><b>Implementation</b> TBC</td> </tr> </table>	1	<b>Proposal Form</b> 01 July 2022	2	<b>Workgroup Consultation</b> 12 April 2023 - 05 May 2023	3	<b>Workgroup Report</b> 21 July 2023	4	<b>Code Administrator Consultation</b> 04 August 2023 – 04 September 2023	5	<b>Draft Modification Report</b> 29 September 2023	6	<b>Final Modification Report</b> 13 October 2023	7	<b>Implementation</b> TBC
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<p><b>Have 5 minutes?</b> Read our <a href="#">Executive summary</a></p> <p><b>Have 40 minutes?</b> Read the full <a href="#">Code Administrator Consultation</a></p> <p><b>Have 150 minutes?</b> Read the full Code Administrator Consultation and Annexes.</p>															
<p><b>Status summary:</b> The Workgroup have finalised the proposer's solution as well as WACM1 and WACM2 solutions. We are now consulting on this proposed change.</p>															
<p><b>This modification is expected to have a: <b>Medium impact</b></b> on the ESO and Generator Users liable for TNUoS, with consequential effect on Supplier Users</p>															
<b>Governance route</b>	Standard Governance modification with assessment by a Workgroup														
<b>Who can I talk to about the change?</b>	<table border="1"> <tr> <td> <b>Proposer:</b> Garth Graham <a href="mailto:Garth.Graham@sse.com">Garth.Graham@sse.com</a> </td> <td> <b>Code Administrator Chair:</b> Teri Puddefoot <a href="mailto:Terri.Puddefoot@nationalgrideso.com">Terri.Puddefoot@nationalgrideso.com</a> </td> </tr> </table>	<b>Proposer:</b> Garth Graham <a href="mailto:Garth.Graham@sse.com">Garth.Graham@sse.com</a>	<b>Code Administrator Chair:</b> Teri Puddefoot <a href="mailto:Terri.Puddefoot@nationalgrideso.com">Terri.Puddefoot@nationalgrideso.com</a>												
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<b>How do I respond?</b>	Send your response proforma to <a href="mailto:cusc.team@nationalgrideso.com">cusc.team@nationalgrideso.com</a> by 5pm on <b>04 September 2023</b> .														

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## Executive summary

Under [CMP391](#) a definition of “Charges for Physical Assets Required for Connection” which reflects the Limiting Regulation has been added to the CUSC. [CMP392](#) seeks to provide stakeholders with legal certainty and transparency of the methodology including the calculation and the output of the calculation. CMP392 will not trigger a tariff change.

### What is the issue?

The Proposer believes that there is lack of transparency and legal certainty around the methodology along with the calculation.

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

#### Proposer’s solution:

CMP392 Original seeks to publish the construction of the “Connection Exclusion” and its application in setting TNUoS (Transmission Network Use of System), along with the methodology and the output of the calculation.

**Implementation date:** Ten Business Days after the Authority approval.

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

WACM1 proposes to codify the obligation for the ESO to publish a guidance note on an annual basis that will explain the methodology used to calculate TNUoS Adjustment Tariff for the purposes of the Limiting Regulation. Implementation would mirror the Original. WACM2 is a combination of the Original Proposal and WACM1. This would see the calculation published on a project by project basis, with an accompanying guidance note, with implementation mirroring the Original.

#### Workgroup conclusions:

The Workgroup concluded unanimously that the Original and WACM2 better facilitated the Applicable Objectives than the Baseline. The Workgroup voted by majority against WACM1, however the Chair chose to put this through to ensure that a full suite of options are available for consideration.

### What is the impact if this change is made?

ESO will be required to publish the calculation methodology along with the output of the methodology.

### Interactions

There are no interactions

## What is the issue?

With the Authority's decision on 20<sup>th</sup> May 2022 to reject CMP368 and CMP369<sup>1</sup> there is a lack of detail; beyond the words of the Limiting Regulation (as transposed into UK law<sup>2</sup>); which is relevant to identifying whether particular charges fall within the Connection Exclusion.

In the Authority's CMP368 decision<sup>3</sup> it was identified that:

*"In light of this, we consider that the Connection Exclusion is unlikely to be capable of being a] prescriptive definition within the CUSC, without some provision that enables further case-by case assessment when required. All of the options before us seek to ascribe a generic gloss to the Connection Exclusion and do not provide for case-by-case assessment by reference to the words of the Connection Exclusion itself. On that basis, we consider that (in light of the conclusions reached in the Judgment) we cannot lawfully approve any option under CMP368."* [emphasis added].

This proposal *enables further case-by-case assessment ...[as] required* in order to undertake the 'CUSC Calculation'<sup>4</sup>.

This proposal also accords with the Judgement<sup>5</sup> (in the recent Judicial Review of the CMA's consideration of the CMP317/327 and CMP339 Appeal) where the Judge noted, at paragraph 57, that:

*"So far as it goes because what is meant by the connection exclusion as stated at paragraph 2(1) of Part B of the Annex to Regulation 838/2010 ("charges paid by producers for physical assets required for connection to the system or the upgrade of the connection") will self-evidently depend on the facts of any specific case. Attempts at generic definition are necessary and useful, but only up to a point. The possibility will always remain that any generic definition might need to yield in the face of the circumstances of the case in hand. There is no generic level of charge payable by all generators; what each should pay will depend on that generator's own circumstances."* [emphasis added]

This follows on from the Judge's consideration (as noted at paragraph 53) of the Authority's reasoning, provided in the CMP317/CMP327 decision<sup>6</sup>, namely that:

*"We set out our analysis of the correct interpretation of the Connection Exclusion in Legal Annex Two. In summary we consider that the Connection Exclusion includes all charges paid by generators in respect of Local Assets whether shared/sharable or otherwise) that were required to connect the generator(s) in question to the NETS as the NETS existed at the time the generator(s) wished to*

<sup>1</sup> [download \(nationalgrideso.com\)](https://nationalgrideso.com)

<sup>2</sup> [Commission Regulation \(EU\) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging \(Text with EEA relevance\) \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>3</sup> [download \(nationalgrideso.com\)](https://nationalgrideso.com)

<sup>4</sup> See, for example, references within the Judgement (such as paragraph 30) and the CMP317/327 GEMA decision (such as page 7 and also paragraph 13 of the Legal Annex One) as regards the 'CUSC Calculation'.

<sup>5</sup> [SSE Generation Ltd & Ors, R \(On the Application Of\) v Competition And Markets Authority \[2022\] EWHC 865 \(Admin\) \(11 April 2022\) \(bailii.org\)](https://www.bailii.org)

<sup>6</sup> Internal pages 18 and 19

connect. We consider that charges paid by generators in relation to Local Assets which existed at the point at which such generator(s) wished to connect to the NETS do not fall within the Connection Exclusion.

By way of an illustrative example, suppose that two generators connect to the transmission system in a similar area at different times. For the first generator (“Generator One”) to connect, a Local Circuit and Local Substation are installed. Generator One pays Local Circuit and Local Substation [Transmission Network Use of System] Charges in respect of these “Local Assets” based on its Transmission Entry Capacity. As the Local Assets were required to connect Generator One to the NETS as the NETS existed at the time the Generator One wished to connect, those charges fall within the Connection Exclusion.

A second generator (“Generator Two”) subsequently wishes to connect at a location close to Generator One. It may utilise Local Assets used by Generator One which now form part of the NETS, instead of requiring a new Local Substation and/or Local Circuit. As such, the Local Assets in this example were required for Generator One to connect to the NETS, but not for Generator Two to connect to the NETS (since the Local Assets already existed at the time Generator Two wished to connect). Local Charges will be payable by both generators based on their respective Transmission Entry Capacities. Local Charges paid by Generator One will fall within the Exclusion (both before and after the connection of Generator Two), but the Local Charges paid by Generator Two will not (since the Local Charges paid by Generator Two do not relate to assets required to connect Generator Two to the NETS as it existed at the time Generator Two wished to connect).

*For the avoidance of doubt, if Generator One and Generator Two had both wanted to connect to the NETS at the same time and Local Assets were installed for them to share a connection from the outset, the Local Charges paid by both Generator One and Generator Two in respect of those Local Assets would fall within Connection Exclusion.”*

This proposal also accords with the express suggestion made by the Authority<sup>7</sup>, in its Direction to the CUSC Panel (published on 26<sup>th</sup> May 2022<sup>8</sup>), namely that:

*“We appreciate that CUSC Parties may want the CUSC to indicate principles (beyond the words of the Limiting Regulation itself) which may be relevant to identifying whether particular charges fall within the Connection Exclusion. We consider that any proposed change brought forward to do so would need to take into consideration what is said in the Judgment. Any such proposed changes should be progressed through a separate CUSC Modification Proposal.”*

It is also important to be mindful of what the Authority noted, on page 5 of its CMP391<sup>9</sup> proposal, namely that:

*“The Judge held at paragraphs 42-45 of the Judgment that the Limiting Regulation requires more than just that “annual average transmission charges” fall within the*

<sup>7</sup> It was also made, by the Authority, in the CMP368 decision under ‘Next Steps’ on page 15.

<sup>8</sup> See CUSC Panel Papers V3 at [CUSC Panel Meeting - 27.05.22 | National Grid ESO](#)

<sup>9</sup> [download \(nationalgrideso.com\)](#)

*Permitted Range, and that the Authority cannot lawfully approve a proposal that does not fully and correctly reflect the Connection Exclusion” [emphasis added]*

The Judgement, in this regard, was also summarised by the CMA, in its 20<sup>th</sup> May 2022 decision<sup>10</sup>, at paragraph 2.4 (c) (ii):

*“Properly construed, Part B of the Annex to Regulation 838/2010 sets requirements both: (a) as to the lower and higher limit of the annual average transmission charge (paragraph 1 read with paragraph 3); and (b) on how the annual average transmission charge is to be calculated (paragraph 2). There is no hierarchy within these obligations. Generators should pay annual average transmission charges that are both calculated in the prescribed way (requiring proper application of both the connection exclusion and ancillary services exclusion) and fall within the specified range. Failing to give effect to the connection exclusion is as much a breach of Regulation 838/2010 as failing to give effect to the requirement that charges fall within the specified range” [emphasis added]*

In this regard this proposal will mean that *generators ...pay annual average transmission charges that are ... calculated in the prescribed way (by the) proper application of ... the connection exclusion and thus give (practical) effect to the connection exclusion.*

This proposal will also ensure that there is transparency and legal certainty for stakeholders (including the Authority) that the CUSC Calculation is undertaken in a way that *fully and correctly reflects the Connection Exclusion* when put into practice. The conclusions we take from these views of the Authority, the CMA and the Court, as set out above, is:

- (i) that a case-by-case assessment is required when determining, for the purposes of undertaking the CUSC Calculation, what is (and what is not) a pre-existing asset when a generator connects to the system (based on the GEMA example<sup>11</sup>);
- (ii) that it is not appropriate to apply a ‘one size fits all’ generic approach; and
- (iii) that the performance of the CUSC Calculation needs to be transparent and ensure legal certainty for stakeholders, by setting this out in the CUSC (as, for example, the ESO proposed with CMP317 and the Authority directed with CMP327).

These are, therefore, the issue within the CUSC that this proposal will address.

## **Why change?**

This change is required to provide legal certainty and transparency of the CUSC Calculation including, in particular, the correct application of the connection exclusion for the following reasons:

1. Accepting that the application of the test will depend on a case-by-case assessment of the charges and assets in issue, it is clear that someone –

<sup>10</sup> [Decision \(publishing.service.gov.uk\)](#)

<sup>11</sup> As noted in paragraph 53 of the Judgement.

presumably either GEMA or NGESO<sup>12</sup> – will need to carry out the relevant calculation.

2. Given that the calculation arises as a result of a legally binding obligation and is an important component in the overall charging structure for network access charging for generators, it is important that the calculation is conducted in a transparent manner, so that those affected by it can understand the process and, where appropriate, challenge it if they disagree.
3. Setting out the parameters which are in fact used for assessing the charges in a given area will also be important for regulatory consistency and to ensure a common approach is adopted nationwide.
4. If the calculation process remains opaque, a generator will not be able to ascertain whether or not the calculation has been conducted correctly. That has an adverse, negative impact on its ability effectively to enforce its legal rights.
5. As a matter of legal certainty, an entity which is or might well be adversely affected by a public law decision ought to be entitled to know the reasons for that decision, so that it can consider its options for seeking a legal review of the decision. Otherwise, the legal rights are not capable of effective or meaningful enforcement. Publication of the method of calculation to be used (and the case-by-case results) in giving effect to the Connection Exclusion (as properly construed) is therefore an important aspect of ensuring that the rule of law is observed.

## What is the solution?

### **Proposer's solution**

In order to ensure legal certainty and transparency to stakeholders (including The Authority) as to the performance by the ESO of the calculation of the Connection Exclusion as part of the overall assessment of whether (or not) transmission charges paid by Generators in GB fall within the range set in the Limiting Regulation (by way of the CUSC Calculation) it is necessary to identify the details (beyond the words of the Limiting Regulation itself) which are relevant to determine whether (or not) particular charges fall within the Connection Exclusion.

The Judgement concluded that the Limiting Regulation places two obligations (that both must be undertaken) namely that the CUSC Calculation must be carried out correctly and that the result (of that calculation) must be within the prescribed range (set out in the regulation).

Legal certainty and transparency therefore require that the calculation must be done correctly, and it must be seen to be done correctly.

Without this transparency, industry would have no assurance regarding whether or not the CUSC Calculation has been done correctly, or whether the overall result is correct. It is therefore essential that, if the obligation to do the calculation is placed on ESO, then the ESO conforms with a public description that details both:

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<sup>12</sup> This proposal is based on the CUSC Calculation being performed by the ESO (not GEMA).

- 1) The methodology in terms of the broad principles the ESO will apply (when performing the CUSC Calculation) as a test to either include or exclude each (local) circuit and (local) asset, as well as how the entirety (end-to-end) of the compliance calculation will be carried out; and
- 2) The results of applying the broad principles on a case-by-case basis, including the rationale within the principles for either including or excluding every element of charge, as well as what and why there were exceptions to the rule. This should provide sufficient detail to stakeholders such that it is possible for them to clearly see, peer review, replicate (if they wish to) and, if necessary, challenge the ESO's result(s) in terms of the CUSC Calculation using the publicly available data (arising from this proposal's solution) regarding the classification of each circuit and asset charge all the way through the calculation to the final end result.

## Workgroup considerations

The Workgroup convened 7 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 Objectives.

The Workgroup held their Workgroup Consultation between 12 April 2023 – 5 May 2023 and received 6 responses, all of which were non-confidential. The full responses and a summary of the responses can be found annex 4.

- Five respondents were supportive of the proposed implementation approach and did not wish to raise a Workgroup Alternative Request for the Workgroup to consider.
- One respondent was not supportive of the CMP392 Original Proposal in its current format. The reason given by the respondent was it was felt that the time and resource commitment required by the ESO to fulfil these obligations would not be cost effective or beneficial to end consumers. The respondent suggested a possibly more cost-effective alternative which had been outlined in the ESO Guidance note provided to the Workgroup.
- Five respondents agreed full publication of the methodology and data would provide legal and regulatory certainty. The view expressed was that transparency would provide Users with evidence that the ESO is acting in compliance with the Limiting Regulation by understanding how the adjustment is calculated and would allow Users to conclude it has been conducted correctly or challenge, where appropriate. One respondent felt this information concerning methodology and the calculation of TNUoS charges was already available in the public domain and extension of a guidance note for future years will allow TNUoS payers to calculate charges on a site-by-site basis.
- Three out of the five respondents mentioned how the Energy Data Task Force had identified benefits to stakeholders and end consumers of publishing the data. One respondent suggested unless ESO could provide examples where commercial sensitivity is significant enough to justify the lack of transparency then the benefits to Users are more important. The same respondent also did not agree that ESO's 'best view' of individual projects is commercially sensitive as significant data for new generation is already published and existing generation is historic and unlikely to be commercially sensitive.



- Three out of the five respondents discussed how ensuring transparency and legal certainty as to how the ESO undertakes the CUSC Calculation will better enable and facilitate competition by lowering costs for generators and end consumers.
- One respondent appreciated ESO's concerns proposed approach would require extra resources and more work but felt the manual changes were minimal. The same respondent expressed the view that the relationship between new and existing assets is likely to change as investment is made towards Net Zero, affecting the level of adjustment. The respondent described how publishing the methodology and data would help industry understand these changes as they occur.

### Consideration of the proposer's solution

The solution aims to provide transparency and legal certainty as to the calculation of TNUoS in conformance with the Limiting Regulation. The Proposer noted that as identified in the Authority's direction to the Panel regarding CMP391, it is relevant to identify whether charges fall within the Connection Exclusion taking into consideration the Judgment.

CMP392 seeks to publish the methodology within CUSC but also publish the calculation and the output of the calculation.

The Workgroup considered the merits of publishing the output of the calculation and some Workgroup members did not consider this to be necessary.

The Proposer noted that CMP392 was not trying to change how the connection exclusion was calculated, but to provide visibility, openness, and transparency. In the Proposer's view this grants parties the ability to check and challenge how the charge had been calculated (along with whether the assets had been correctly labelled as Pre-Existing Assets (PEA) or Non Pre-Existing Assets (NPEA). Therefore, the Proposer, as part of the Ex-Post reconciliation, questioned if the ESO already have final year end PEA's and NPEA's for all projects and customers. Some Workgroup members acknowledged that this would be a very large and difficult task for the first year but going forwards it would only require incremental changes for any new generators that came along. The ESO noted that there may be issues around confidentiality and commercially sensitive data.

However, the Proposer disagreed with this, noting that the opening of a transmission connected power station were not commercially confidential as those connected before privatisation tended to be opened by very senior dignitaries and were well reported in the press; as they were post privatisation where, in addition, they would also have be notified to shareholders, all of which was in the public domain. As such this could not be considered as 'confidential' or 'commercially sensitive' in terms of CMP392, which only needs this information (the year in which one generator connected compared to another generator) for the purposes of practically apply the relevant test that The Authority identified in Legal Annex 2 of the CMP317/CMP327 decision.

Workgroup also agreed that clear definitions were required when discussing "pre-existing" and "non-pre-existing" assets.

Although this is a change to the charging section of the CUSC (and therefore invariably would be a 1 April Implementation Date), the Proposer was clear that CMP392 itself is just adding the calculation that ESO is already legally obliged to carry out into CUSC and

not triggering a tariff change – therefore implementation 10 Business Days after Authority decision seems appropriate.

CUSC 14.14.5(vii) set out the process to be followed if an adjustment to TNUoS Charges is required to remain compliant with the Limiting Regulation.

The ESO published its [‘Calculation of the Generator TNUoS Adjustment Tariff for the purposes of the Limiting Regulation – Guidance for 2023/24’](#) document on 31<sup>st</sup> January 2023. The Workgroup considered the publication in relation to this CMP392 proposal. The ESO indicated that this may form the basis of an alternative proposal although this was not raised prior to Workgroup Consultation. This was included in two alternatives raised post Workgroup Consultation.

### ESO Viewpoint

The ESO is currently compliant with the Limiting Regulation, and whilst recognising the benefits of transparency, does not fully support the Original proposal in its current form, but notes that it is better than the Baseline CUSC. This is because:

- The ESO can publish the calculation of relevant tariffs, in the format “as it is” – i.e. an offline calculation tool. As the offline calculation tool is based on ESO’s intellectual property, anyone wish to obtain a copy, will need to sign a separate software licence agreement (similar to the TnT model licence agreement).
- Inevitably maintaining the licence holder list will require additional resource from ESO which we do not believe benefits end consumers.
- Alternatively, the user may choose to replicate the calculation of pre-existing tariffs by themselves, using the existing TnT model, running this data for each generator project, to be used in conjunction with the guidance note. The ESO will publish the raw data that can be used in the calculation. This will still provide transparency, without involving a separate licence holder list.
- In terms of the expected pre-existing charges, the ESO will not be able to demonstrate how the expected pre-existing charge is derived, as this requires disclosure of the ESO’s “best view” on individual projects. This would be commercially sensitive and therefore the ESO would not disclose.
- During ex-post reconciliation phase, it is not clear whether the ESO should publish the pre-existing revenue from individual projects, as the ESO only publish aggregated charge from all users, without breaking down to individual users.
- Regarding the legal certainty point raised by this modification, ESO do not agree that the original solution provides this. Legal certainty is already in place, as the ESO acts in line with the regulation and law. Therefore, there is no additional consumer benefit that the solution brings.

In response to the first five points from the ESO the Proposer noted the publication, in the summer of 2019, of the joint BEIS<sup>13</sup> and Ofgem commissioned Energy Data Taskforce

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<sup>13</sup> This UK Government Department (BEIS) was changed in early 2023 and the energy related aspects now fall within the new Department for Energy Security and Net Zero (DESNZ).

report<sup>14</sup> which identified five clear benefits<sup>15</sup>, to consumers, of the publication of energy data such as is being sought with CMP392.

In response to the last point (legal certainty) the Proposer noted that without visibility of how the calculation is actually performed (in full) as well as visibility of the actual applicable classification(s) of generator 1 and generator 2 in terms of PEA or NPEA (applying The Authority's CMP317/CMP327 Legal Annex 2 test) that there is, for all non ESO stakeholders, no legal certainty (beyond an assertion from the ESO to the contrary) – indeed it is the very lack of this visibility of the requisite information by the ESO which could be said to reinforce the absence of legal certainty for stakeholders on this matter: after all if the ESO has done the calculation and the associated PEA or NPEA classification for all the applicable locations, on a case by case basis (as required by, for example, the Judgement and the application of The Authority's CMP317/327 Legal Annex 2 test) then this information should be immediately to hand.

### ESO potential resource requirements

- Information on enabling works for generators is already published by the ESO (see the [TWR report](#) for an example). These include generators' contracts, describing the infrastructure works that the TO have to do, to connect the generator. (i.e. assets built for generators to connect).
- As this information is available already and would require the ESO to reformat already available information.
- The re-formatting process is done manually. Considering the multiple rounds of tariff forecast (from 5 year ahead to quarterly forecast and final tariffs), the efforts spent on publishing this element, does not seem to be proportional for this amount of money involved (<£10m out of £4.5bn TNUoS revenue in total) and the anticipated benefit to consumers.

The Proposer noted the demonstrably clear benefits to consumers of greater energy data transparency, as evidenced by the joint BEIS<sup>16</sup> and Ofgem commissioned Energy Data Taskforce report (see above).

### Consideration of other options

ESO presented to the Workgroup the 'Calculation of the Generator TNUoS Adjustment Tariff for the purposes of the Limiting Regulation – Guidance for 2023/24' document (see Annex 3) for consideration and the Workgroup considered if this addressed the key

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<sup>14</sup> [Energy Data Taskforce | A Modern Digitalised Energy System \(catapult.org.uk\)](#)

<sup>15</sup> (i) **Data Visibility:** Understanding the data that exists, the data that is missing, which datasets are important, and making it easier to access and understand data. (ii) **Infrastructure and Asset Visibility:** Revealing system assets and infrastructure, where they are located and their capabilities, to inform system planning and management. (iii) **Operational Optimisation:** Enabling operational data to be layered across the assets to support system optimisation and facilitating multiple actors to participate at all levels across the system. (iv) **Open Markets:** Achieving much better price discovery, through unlocking new markets, informed by time, location and service value data. (v) **Agile Regulation:** Enabling regulators to adopt a much more agile and risk reflective approach to regulation of the sector, by giving them access to more and better data.

<sup>16</sup> This UK Government Department (BEIS) was changed in early 2023 and the energy related aspects now fall within the new Department for Energy Security and Net Zero (DESNZ).

defaults that CMP392 aims to resolve. The Workgroup reviewed a matrix created by ESO to address this as seen below.

Document	Element - Is it currently included?					Disputes Process
	Broad Principles	Case by Case Basis	PEA/NPEA	Relevant Data and Dates	Full calculation disclosure	
Draft Guidance Note	Y	Y	Y	N	N	N
Proposed Original	Y	Y	Y	Y	Y	Y
Overall	Both highlight this, but application is different. Transparency.	Proposer does not agree that there are commercial sensitivities. Energy TF Considered this issues Confidentiality vs Sensitivity. Was not considered an issue. REMIT/Stock Market announcements.	Application differences. Commercial sensitivities. Definitions needed? Can't be done for forecast, but can for reconciliation			Similar to ALF process then escalate to Ofgem

At the time of presenting this to the workgroup, the ESO considered that an alternative may be raised which would be similar to the Guidance Note as part of the above process.

## **Other options/Alternatives**

### **Alternate 1**

Post Workgroup Consultation the ESO presented Alternate 1 (See Annex 6) to the Workgroup which detailed that in January 2023, the ESO published Calculation of the Generator TNUoS Adjustment Tariff for the purposes of the Limiting Regulation – Guidance for 2023/24. Alternative 1 aims to codify the obligation for the ESO to publish a guidance note on an annual basis that will explain the methodology used to calculate TNUoS Adjustment Tariff for the purposes of the Limiting Regulation. The ESO confirmed that they voluntarily published this Guidance for the first time in January 2023 for the 2023/24 period. The ESO proposed that this information, coupled with information which is already in the public domain, is sufficient for parties to understand how their charge is calculated, and how the ESO maintain a position of compliance.

Some Workgroup members expressed that this would not provide sufficient information to industry and would not give the clarity required to understand how their charge is calculated.

The ESO went on to raise Alternate 2 which is a hybrid version of both the Original and Alternate 1.

### **Alternate 2**

The ESO presented to the Workgroup that Alternative 2 (see Annex 7) combines the requirements of Original Solution and Alternative 1 and that it is envisaged that by including the two elements of the solution, the outputs of the Original will be better understood by Industry with an accompanying guidance note. The ESO felt that this would also give the Authority a full suite of options to consider when taking the merits of CMP392 into consideration.

## **Legal text**

The full legal text can be found in Annex 8.

### **Original Legal Text**

14.29

Stability & Predictability of TNUoS tariffs

(Text remains as is)

New text added at end of Paragraphs headed Predictability

The calculation, as undertaken by The Company, of the Charges for Physical Assets required for Connection when setting TNUoS Charges for a Charging Year

To aid in the transparency and understanding of the setting of TNUoS Tariffs, at the same time as The Company publishes the draft and final TNUoS Charges for a Charging Year, The Company shall publish the details and components applied in the above calculation, the figures attributed to these and the output of the calculations as provided for in the proforma calculation schedule attached at Schedule 1 to this CUSC Section 14. The output shall be published in the form as set out in Schedule 1 to this CUSC Section 14.

Add Schedule 1 at end of Section 14

#### Schedule 1

The proforma of the form and content to be published for the purposes of the calculation in accordance with Paragraph 14.29.

#### **WACM1**

14.29

Stability & Predictability of TNUoS tariffs  
(Text remains as is)

New text added at end of Paragraphs headed Predictability

Guidance on the Calculation of the Charges for Physical Assets required for Connection when setting TNUoS Charges for a Charging Year

To aid in the transparency and understanding of the setting of TNUoS Tariffs in each Charging Year, and in any event no later than the date The Company publishes the draft TNUoS Charges for the following Charging Year, The Company shall publish guidance on how it will undertake the calculation to set TNUoS tariffs in compliance with the Limiting Regulation for that following Charging Year and when assessing compliance following the conclusion of that Charging Year.

#### **WACM2**

14.29

Stability & Predictability of TNUoS tariffs  
(Text remains as is)

New text added at end of Paragraphs headed Predictability

The calculation, as undertaken by The Company, of the Charges for Physical Assets required for Connection when setting TNUoS Charges for a Charging Year

To aid in the transparency and understanding of the setting of TNUoS Tariffs, at the same time as The Company publishes the draft and final TNUoS Charges for a Charging Year, The Company shall publish the details and components applied in the above calculation, the figures attributed to these and the output of the calculations as provided for in the proforma calculation schedule attached at Schedule 1 to this CUSC Section 14. The output shall be published in the form as set out in Schedule 1 to this CUSC Section 14.

Guidance on the Calculation of the Charges for Physical Assets required for Connection when setting TNUoS Charges for a Charging Year

To aid in the transparency and understanding of the setting of TNUoS Tariffs in each Charging Year, and in any event no later than the date The Company publishes the draft TNUoS Charges for the following Charging Year, The Company shall publish guidance on how it will undertake the calculation to set TNUoS tariffs in compliance with the Limiting Regulation for that following Charging Year and when assessing compliance following the conclusion of that Charging Year.

Add Schedule 1 at end of Section 14

#### Schedule 1

The proforma of the form and content to be published for the purposes of the calculation in accordance with Paragraph 14.29

## What is the impact of this change?

### Proposer's assessment against Code Objectives

Proposer's assessment against CUSC Charging Objectives	
Relevant Objective	Identified impact
(a) That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;	<p><b>Positive</b></p> <p>By ensuring transparency and legal certainty as to how certain charges are to be treated by the ESO when undertaking the CUSC Calculation this will ensure compliant TNUoS charges which, in turn, will better facilitate effective competition. This is because it will reduce generator cost of capital by providing both legal and regulatory certainty regarding how the Limiting Regulation will be applied. This will feed through to lower cost to customers via lower CfD and Capacity Mechanism bid prices, as well improved international competitiveness of GB generators which will reduce both the system and customer cost of achieving Net Zero and do so in a way that facilitates competition.</p>

<p>(b) That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);</p>	<p><b>Positive</b> By ensuring that the performance of the CUSC Calculation is undertaken in a transparent and legally certain way this will ensure that charges arising from the application of the charging methodology better reflect costs incurred.</p>
<p>(c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;</p>	<p><b>Neutral</b></p>
<p>(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</p>	<p><b>Positive</b> As with CMP391, this proposal is required to correctly reflect the Limiting Regulation practically within the CUSC. The Limiting Regulation is a relevant legally binding decision of the European Commission.</p>
<p>(e) Promoting efficiency in the implementation and administration of the system charging methodology.</p>	<p><b>Positive</b> As identified by the Authority in the CMP391 proposal, it is important that the CUSC (via a proposal) fully and correctly reflect the Connection Exclusion which this proposal does; by identifying whether (or not) particular charges fall within the Connection Exclusion; and this promotes efficiency in the implementation and administration of the system charging methodology as, for example, it avoids disputes being raised by stakeholders to the Authority if uncertainty and a lack of transparency around the detail of the performance of the CUSC Calculation by the ESO as regards which charges, on a case-by-case basis, are included or excluded for the purposes of the Connection Exclusion.</p>
<p>*The Electricity Regulation referred to in objective (d) 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.</p>	

## **Workgroup vote**

The workgroup met on 04 July 2023 to carry out their workgroup vote. The full Workgroup vote can be found in Annex 5. The table below provides a summary of the Workgroup members view on the best option to implement this change.

The Applicable CUSC (charging) objectives are:

### **CUSC charging objectives**

- a) That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;
- b) That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence condition C26 requirements of a connect and manage connection);
- c) That, so far as is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses;
- d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency \*; and
- e) To promote efficiency in the implementation and administration of the system charging methodology

\*The Electricity Regulation referred to in objective (d) 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.

The Workgroup concluded unanimously that the Original and WACM2 better facilitated the Applicable Objectives than the Baseline. The Workgroup voted by majority against WACM1, however the Chair chose to put this through to ensure that a full suite of options are available for consideration.

<b>Option</b>	<b>Number of voters that voted this option as better than the Baseline</b>
Original	7
WACM1	3
WACM2	7

## **When will this change take place?**

### **Implementation date**

Ten Business Days after the Authority approval.

### **Date decision required by**

To be confirmed



## Implementation approach

This CUSC Modification Proposal gives practical effect to the Limiting Regulation within the CUSC (per the view of the High Court) in a transparent and legally certain way.

## Interactions

- |  |   |   |                                |
|--|---|---|--------------------------------|
| <input type="checkbox"/> Grid Code                 | <input type="checkbox"/> BSC                                  | <input type="checkbox"/> STC                    | <input type="checkbox"/> SQSS  |
| <input type="checkbox"/> European<br>Network Codes | <input type="checkbox"/> EBR Article 18<br>T&Cs <sup>17</sup> | <input type="checkbox"/> Other<br>modifications | <input type="checkbox"/> Other |

There are no interactions

## How to respond

### Code Administrator consultation questions

- Please provide your assessment for the proposed solution(s) against the Applicable Objectives?
- Do you have a preferred proposed solution?
- Do you support the proposed implementation approach?
- Do you have any other comments?

Views are invited on the proposals outlined in this consultation, which should be received by 5pm on **04 September 2023**. Please send your response to [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com) using the response pro-forma which can be found on the [modification page](#).

*If you wish to submit a confidential response, mark the relevant box on your consultation proforma. Confidential responses 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.*

## Aconyms, 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
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions
TNUoS	Transmission Network Use of System

### Reference material

- See footnotes

<sup>17</sup> If the modification has an impact on Article 18 T&Cs, it will need to follow the process set out in Article 18 of the Electricity Balancing Regulation (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.

**Annexes**

<b>Annex</b>	<b>Information</b>
Annex 1	Proposal Form
Annex 2	Terms of Reference
Annex 3	ESO Guidance Note
Annex 4	Workgroup Consultation Responses
Annex 5	Workgroup Vote
Annex 6	Workgroup Alternate Request 1
Annex 7	Workgroup Alternate Request 2
Annex 8	Legal Text