ESO

Final Modification Report

CMP392:

Transparency and legal certainty as to the calculation of TNUoS in conformance with the Limiting Regulation

Overview: 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.

Modification process & timetable

1. **Proposal Form**
   01 July 2022
2. **Workgroup Consultation**
   12 April 2023 – 05 May 2023
3. **Workgroup Report**
   20 July 2023
4. **Code Administrator Consultation**
   04 August 2023 – 04 September 2023
5. **Draft Final Modification Report**
   21 September 2023
6. **Final Modification Report**
   13 October 2023
7. **Implementation**
   10 WD After Authority Decision

Have 5 minutes? Read our Executive summary

Have 45 minutes? Read the full Final Modification Report

Have 120 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 unanimously that the Proposer's Original solution and WACM2, and by majority that the WACM1 better facilitate the CUSC Applicable Objectives. The Panel also recommended by majority that WACM2 (4 out of 7 votes) was the best option and should be implemented.

This modification is expected to have a: Medium impact on the ESO and Generator Users liable for TNUoS, with consequential effect on Supplier Users

Governance route	Standard Governance modification which has been assessed by a Workgroup	
Who can I talk to about the change?	**Proposer:** Garth Graham Garth.Graham@sse.com	**Code Administrator Chair**: Teri Puddefoot Terri.Puddefoot@nationalgrideso.com

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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 Working 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 is available for consideration.

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

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 May 2022 to reject CMP368 and CMP369[1] there is a lack of detail; beyond the words of the Limiting Regulation (as transposed into UK law[2]); which is relevant to identifying whether particular charges fall within the Connection Exclusion.

In the Authority's CMP368 decision[3] it was identified that:

> "*In light of this, we consider that the Connection Exclusion is unlikely to be capable of be[ing 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'[4].

This proposal also accords with the Judgement[5] (in the recent Judicial Review of the CMA's consideration of the CMP317/CMP327 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[6], 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*

[1] download (nationalgrideso.com)
[2] 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)
[3] download (nationalgrideso.com)
[4] 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'.
[5] SSE Generation Ltd & Ors, R (On the Application Of) v Competition And Markets Authority [2022] EWHC 865 (Admin) (11 April 2022) (bailii.org)
[6] 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[7], in its Direction to the CUSC Panel (published on 26 May 2022[8]), 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[9] 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*

[7] It was also made, by the Authority, in the CMP368 decision under 'Next Steps' on page 15.
[8] See CUSC Panel Papers V3 at CUSC Panel Meeting - 27.05.22 | National Grid ESO
[9] 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 May 2022 decision[10], 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[11]).
(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 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, someone – presumably either GEMA or ESO[12] – will need to carry out the relevant calculation.

[10] Decision (publishing.service.gov.uk)
[11] As noted in paragraph 53 of the Judgement.
[12] This proposal is based on the CUSC Calculation being performed by the ESO (not GEMA).

2. Given that the calculation arises because 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 each 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 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 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:

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 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 been 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 31st 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 (like 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[13] and Ofgem commissioned Energy Data Taskforce report[14] which identified five clear benefits[15], 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.

[13] 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).
[14] Energy Data Taskforce | A Modern Digitalised Energy System (catapult.org.uk)

[15] (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.

- 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[16] 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 (**Annex 3**) for consideration and the Workgroup considered if this addressed the key defaults that CMP392 aims to resolve. The Workgroup reviewed a matrix created by ESO to address this as seen below.

	Element - is it currently included?					
Document	Broad Principles	Case by Case Basis	PEA/NPEA	Relevant Data and Dates	Full calculation disclosure	Disputes Process
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 sensitivites. Energy TF Considered this issues Confidentialty 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 reconcilliation			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.

Alternate 1

Post Workgroup Consultation the ESO presented Alternate 1 (**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.

[16] 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).

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 (**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 of tariffs'

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.

Adding 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.

Project Name	Transmission Asset name	PARC/Non PARC	Annual Local Charge for company Transmission Asset	TEC	Tariff

WACM1

14.29
Stability & Predictability of TNUoS tariffs
(Text remains as is)

New text added at end of Paragraphs headed 'Predictability of tariffs'

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 of tariffs'

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.

Adding 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.

Project Name	Transmission Asset name	PARC/Non PARC	Annual Local Charge for company Transmission Asset	TEC	Tariff

What is the impact of this change?

Proposer's assessment against the Applicable 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;	**Positive** 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 facilities competition.
(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);	**Positive** 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.
(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	**Neutral**

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	**Positive** 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.
(e) Promoting efficiency in the implementation and administration of the system charging methodology.	**Positive** 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.
*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.	

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 is available for consideration.

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

Workgroup Member	Company	Best Option?	Which objective(s) does the change better facilitate?
Garth Graham	SSE	WACM2	a, b, d, e
Grace March	Sembcorp	WACM1	e
Joe Henry	ESO	WACM1	e
John Harmer	Saltend Cogeneration Company	WACM2	a, b, d, e

Paul Youngman	Drax	WACM2	a, b, e
Ryan Ward	Scottish Power Renewables	WACM2	a, b, e
Simon Vicary	EDF Energy	WACM2	a, b, d, e

Code Administrator Consultation summary

The Code Administrator Consultation was issued on the 04 August 2023 closed on 04 September 2023 and received 6 non-confidential responses and 0 confidential responses. A summary of the responses can be found in the table below, and the full responses can be found in **Annex 9**.

Code Administrator Consultation summary	
Question	
Do you believe that the CMP392 Original Proposal, WACM1 or WACM2 better facilitates the Applicable CUSC Objectives?	All six respondents felt the Original better facilitates the CUSC objectives. • Five respondents stated the Original Proposal better facilitates objectives a, b, and e • Four respondents stated the Original better facilities objective d • One respondent stated the Original better facilitates objective c All six respondents felt WACM2 better facilitates the CUSC objectives. • Five respondents stated WACM2 better facilitates objectives a, b, and e • Four respondents stated WACM2 better facilitates objective d • One respondent stated WACM2 better facilitates objective c Two out of the six respondents stated WACM1 better facilitated the objectives. • Both respondents stated WACM1 better facilitates objective e • One respondent stated WACM1 better facilitates objectives a, b, c, and d • One respondent stated WACM1 was potentially negative against objective a
Do you support the proposed implementation approach?	All six respondents stated they support the proposed implementation approach.
Do you have any other comments?	The respondents who were supportive of both the Original Proposal and WACM2 gave the following reasons:

	• Provide transparency and legal certainty around the methodology and calculations. • Enables better competition between users by establishing confidence in the process. • Provide clarity required on the construction of the 'Connection Exclusion' and its application in setting TNUoS charges referring to the importance of defining assets under 'Connection Exclusion'. • Provide assurance that TNUoS charges are complaint with the limiting regulation and therefore cost reflective. The respondent who expressed support for WACM1 felt this option provided sufficient transparency and represented the most efficient option for industry whilst ensuring compliance (limiting regulation). The same respondent stated the extra resources required for the Original and WACM1 from the ESO would be disproportionate to the benefits transparency on a site-by-site basis may bring. The respondents not supportive of WACM1 felt it could potentially be negative against competition as could lead to instances of information asymmetry between parties and consequential disputes.
Legal text issues raised in the consultation	
No legal text issues were raised by the respondents.	
EBR issues raised in the consultation	
No EBR issues were raised by the respondents.	

Panel recommendation vote

The Panel will meet on the 29 September 2023 to carry out their recommendation vote. They will assess 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)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes	Yes
WACM1	Yes	Neutral	Neutral	Yes	Yes	Yes
WACM2	Yes	Neutral	Neutral	Yes	Yes	Yes

Voting Statement

I consider the Original and both WACMs better facilitate the applicable objectives than the baseline. However, for WACM1 this is only a slight improvement, with a more material improvement under the Original and WACM2.

The introduction of a requirement to produce guidance under WACM1 will make a slight improvement in certainty for users, with the codified requirement to produce such guidance at least ensuring no less transparency than is currently the case (with the ESO having voluntarily produced such guidance for 2023-24 charges).

However, the publication of data behind the calculation will have a more material improvement, enabling users to fully understand the application of the case-by-case assessment undertaken.

I note the ESO's concerns on the resource required to produce such data in a publishable format. While this could be detrimental against objective (e), there is also a risk that additional industry resource is taken up if the ESO does not publish the data. As has been seen with the long-running series of appeals and counter appeals to decisions on this subject, it is highly sensitive to industry. If data is not published, there may yet be further challenges to the calculation approach which ultimately led (via a less efficient process) to the data being required to be released anyway. Hence, I consider on balance that the additional resource required to produce a publishable dataset upfront is likely a better option than allowing any lack of transparency to leave room for further challenges to the calculation approach.

WACM2 is the best option, with the combination of guidance and a published dataset being the most efficient way to provide sufficient transparency to industry to enable focus to move to more pressing matters relating to the future of network charging.

Panel Member: **Andy Pace**

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

Voting Statement

This mod is improving transparency and providing more certainty around how the ESO calculates wider TNUoS generation charges in line with the limiting regulation. We assess this mod as better meeting applicable objective (e) as it promotes efficiency in the implementation and administration of the use of system charging methodology by enabling stakeholders to check that the calculation undertaken and resolve any issues identified and also better meeting applicable objective (a) as it facilitates effective competition in generation. Our preferred option is WACM2 which provides the most information and is therefore the most complete solution. However, we accept that there

may be a trade-off between the amount of information provided and the administrative effort required to produce this information by the ESO. We therefore expect the Authority to assess which option is most proportionate when reviewing the WACMs.

Panel Member: **Binoy Dharsi**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes	Yes
WACM1	No	No	Neutral	No	No	No
WACM2	Yes	Yes	Neutral	Yes	Yes	Yes
Voting Statement						
Transparency and confidence in methodology is crucial for Users. A methodology that allows Users to check and verify calculations is always preferred.						

Panel Member: **Cem Suleyman**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes	Yes
WACM1	No	No	Neutral	No	No	No
WACM2	Yes	Yes	Neutral	Yes	Yes	Yes
Voting Statement						
I agree with the assessment provided by the Proposer.						

Panel Member: **Claire Huxley**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Neutral	Neutral	Yes
WACM1	Yes	Neutral	Neutral	Neutral	Neutral	Yes
WACM2	Yes	Neutral	Neutral	Neutral	Neutral	Yes
Voting Statement						
All three options are an improvement on the CUSC baseline. Some users may see benefit in full publication. However, WACM1 represents the most efficient option for the whole of industry moving forwards. The Original and WACM2, whilst increasing transparency of the calculation, will not enhance the ESO's already compliant position. WACM1 replicates the Guidance note 'Calculation of the Generator TNUoS Adjustment Tariff for the purposes of the Limiting Regulation – Guidance for 2023/24' on an annual basis. The publication of the methodology used in the calculation is sufficient and represents the most efficient use of ESO and Industry resource when considering an appropriate solution to this matter. Industry parties already have sufficient information in the public domain which can be used to calculate their charges.						

The ESO noted throughout workgroups that the Original, and subsequently WACM2, would require extra resource in the initial set up of this process. This may prove to be disproportionate to the potential benefits transparency on a site-by-site basis may bring. It would not help nor hinder the ESOs pre-existing compliant position to the Limiting Regulation and therefore WACM1 better facilitates the CUSC objectives on the basis of efficiency.

Panel Member: **Garth Graham**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Better facilitates AO (e)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes	Yes
WACM1	No	No	Neutral	No	No	No
WACM2	Yes	Yes	Neutral	Yes	Yes	Yes
Voting Statement						
No voting statement provided.						

Panel Member: **Grace March**

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

The publication of guidance and/or complete calculation will not affect tariffs, so the modification is neutral against ACOs a) and b). Where changes to the calculation are made as a result of feedback from industry after the publication(s), those changes will affect the adjustment and not specific generators or classes of generators. The revenue recovered through generation tariffs is currently at the maximum of the Limiting Regulation, so any changes - which would not be triggered by this modification directly - not affect the value collected from generation and absolutely not from Users as a whole. The modification is therefore neutral against ACO c).

The modification provides transparency as to how the ESO is being compliant with relevant regulations but does not, in itself, provide that compliance, so is neutral against ACO d). It is not clear to me how, if a User upon receipt of the publication(s) suspects there is non-compliance, is meant to address that, other than alerting the Authority and the ESO. Given the case-by-case nature of the calculation, it is unlikely an industry participant would have the information to identify an error, even with the full publication as proposed.

Given the complexity of this calculation, and TNUoS in general, transparency and more information is generally useful to industry and the publication(s) will hopefully enable to the ESO have productive and targeted discussions where required, improving the efficiency of the TNUoS process. Given the amount of data proposed to be published under the full calculation, this will require resource from the ESO and industry participants may struggle to apply the data appropriately. This would suggest that solutions that require that are less positive against ACO e) as, for some Users it will aid understanding, for others it will either ignored or a potential source of confusion.

Panel Member: **Joseph Dunn**

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

Voting Statement

Original & WACM2 proposals:
Objective A: Positive – The additional transparency and legal certainty provided to users will be beneficial when it comes to the ESO executing the CUSC calculation and methodology. This establishes confidence in the process and thus better enables effective competition between users, and assurance that TNUoS charges remain compliant.
Objective B: Positive – The Original and WACM2 provides additional clarity that the approach is being carried out in line with the CUSC, thus better ensuring that charges will remain cost reflective.
Objective C: Neutral
Objective D: Positive – The proposed publications including the input parameters, calculation and outputs will allow users to better ensure the charges remain within the legally binding Limiting Regulation (European Commission Regulation 838/2010).
Objective E: Positive – It is crucial that the CUSC correctly reflects the connection exclusion and users can determine if charges fall in or out of scope. The improved clarity provided will prevent any unnecessary confusion and/or disputes that could otherwise be easily avoided.
WACM1 Proposal:
WACM1 alone does not offer the additional transparency or legal certainty required to improve upon the status quo.

Panel Member: **Paul Jones**

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

Voting Statement

Promoting more transparent arrangements in this instance is unlikely to have a significant impact on the relevant objectives, except e) in terms of promoting more efficient implementation of the methodology. Therefore, all solutions appear to be neutral against objectives a) to d). All solutions better promote transparency to a greater or lesser extent so are an improvement on objective e). The requirement to publish the full detail of the application of the methodology does seem to be very onerous and it is questionable whether this delivers significant benefit to the industry and customers.

An aggregate figure for the amount of costs which are deemed to be covered by the connection exclusion should be sufficient for parties to take a view on how that may change going forwards, thereby improving predictability, particularly when coupled with a published guidance note on how the exclusion is applied. On balance, for this reason I believe that WACM1 is the best option, but all are better than the baseline.

Vote 2 – Which option is the best?

Panel Member	BEST Option?	Which objectives does this option better facilitate?
Andrew Enzor	WACM2	a,d,e
Andy Pace	WACM2	a,e
Binoy Dharsi	WACM2	a,b,d,e
Cem Suleyman	Original	a,b,d,e
Claire Huxley	WACM1	a
Garth Graham	Original	a,b,d,e,
Grace March	WACM1	e
Joseph Dunn	WACM2	a,b,d,e
Paul Jones	WACM1	e

Panel conclusion

The Panel recommended unanimously that the Proposer's Original solution and WACM2, and by majority that the WACM1 better facilitate the CUSC Applicable Objectives.

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

☐Grid Code	☐BSC	☐STC	☐SQSS
☐European Network Codes	☐ EBR Article 18 T&Cs[17]	☐Other modifications	☐Other

[17] 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 European Electricity Balancing Guideline (EBGL – 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.

There are no interactions.

Acronyms, key terms and reference material

Acronym / key term	Meaning
BEIS	Department for Business, Energy and Industrial Strategy
BSC	Balancing and Settlement Code
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
CMA	Competition and Markets Authority
DESNZ	Department for Energy Security and Net Zero
EBR	Electricity Balancing Regulation
ESO	Electricity System Operator
GEMA	Gas and Electricity Market Authority
NETS	National Electricity Transmission System Operator
NPEA	Non-Pre-Existing Assets
PEA	Pre-Existing Assets
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions
TnT	Transport and Tariff Model
TNUoS	Transmission Network Use of System
TO	Transmission Owner
TWR	Transmission Works Register
WACM	Workgroup Alternative Code Modification

Reference material

- See footnotes

Annexes

Annex	Information
Annex 1	Proposal Form
Annex 2	Terms of Reference
Annex 3	ESO Guidance Note
Annex 4	Workgroup Consultation Responses
Annex 5	Alternative and Workgroup Vote
Annex 6	Workgroup Alternative Request 1
Annex 7	Workgroup Alternative Request 2
Annex 8	Legal Text
Annex 9	Code Administrator Consultation Responses and Summary