Code Administrator Consultation Response Proforma

CMP396: Re-introduction Of BSUoS on Interconnector Lead Parties

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to cusc.team@nationalgrideso.com by **5pm** on **17 November 2023**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration.

If you have any queries on the content of this consultation, please contact Milly Lewis Milly.Lewis@nationalgrideso.com or cusc.team@nationalgrideso.com

Respondent details	Please enter your details	
Respondent name:	Muhammad Madni.	
Company name:	National Grid Ventures – Representing IFA,IFA2, NSL, Viking Link	
Email address:	Muhammad.Madni@nationalgrid.com	
Phone number:	07500194367	
Which best describes your organisation?	☐Consumer body ☐Demand ☐Distribution Network Operator ☐Generator ☐Industry body	☒Interconnector ☐Storage ☐Supplier ☐Transmission Owner ☐Virtual Lead Party ☐Other

I wish my response to be:
(Please mark the relevant box) ☒Non-Confidential ☐Confidential

Note: A confidential response will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.

For reference the Applicable CUSC (charging) Objectives are:

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. *Promoting 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.*

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

Standard Code Administrator Consultation questions			
1	Please provide your assessment for the proposed CMP396 solution against the Applicable Objectives?	Mark the Objectives which you believe the proposed CMP396 solution better facilitates:	
		Original	☐A ☐B ☐C ☐D ☐E
		We are of the opinion that the modification would be unlawful under the Recast Regulation and the Trade and Cooperation Agreement and note that the legal opinion provided to the Working Group confirms and supports this interpretation. The issue of meeting the Applicable CUSC objectives is nullified once the said modification is in contravention of legislation applicable to the GB electricity market.	
2	Do you support the proposed implementation approach?	☐Yes ☒No	
		Refer to comments in Section 1	
3	Do you have any other comments?	a. The legal opinion provided to the Working Group highlights that under the Recast Regulation Article 18(1), <u>connection charge</u>, <u>use of network charge</u> and <u>reinforcement charge</u>, each aiming to recover actual corresponding cost make the BSUoS charge a type of "network access charge". This interpretation is in line with the wider aspects of Art 18 of Recast Regulation, ACER's definition of "use of network charges" and Ofgem's definition of the BSUoS as	

		cost recovery charges for "system operation" under its Statutory 2020 Regulatory Authorities report to EU Commission. b. In addition, the term "Access to Network" charge under Article 18.1 of the Recast Regulation further qualifies the BSUoS Charge as a network access charge. Similarly, Article 18(6) of the Recast Regulation prohibits "network charge" on "cross-zonal trading" and in our opinion transactions resulting in Interconnector flows qualify as cross-zonal trading. c. In our view, the above interpretations support the objectives of the TCA to enable efficient use of interconnectors along with reduction of barriers for trade between the EU and GB market under Article 311 (1). d. It is pertinent to mention here that as per OFGEM's decision of August 15, 2012 for revised treatment of BSUoS charges for lead parties of Interconnector BM Units (CMP202), emphasis was added to, "better facilitate the applicable CUSC objectives" rendering it "necessary to remove BSUoS charges from interconnector users". The Proposal appears to disregard this key element which underpinned the CMP202 decision. e. Conclusion: i. In view of the above, we believe that this modification is unlawful, as per the findings of the comprehensive legal analysis produced for the Working Group. ii. Additionally, and separate to the assessment of the lawfulness of the Proposal, should it be implemented it would introduce serious economic inefficiencies to the functioning of cross border electricity markets. These inefficiencies alone would be sufficient to render the Proposal inconsistent with the Applicable CUSC Objectives. iii. NGV therefore opposes the Proposal.