

Guidance for the CMP398 Compliance (GC0156) Cost Claims process



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Version	Author	Date	Changes
0.1	Paul Mott and ESRS colleagues	19 th March 2024	First published as a draft for comments
0.2 (to come)	Paul Mott	From 10 th April 2024	Deadline for feedback to be received. Incorporate any feedback, add the email address for claimants and pre-claim correspondence; once update is done, publish

Introduction

On the 29th February, variant WACM1 of a code change called CMP 398 “GC0156 Cost Recovery mechanism for CUSC Parties” was approved by The Authority. The nominal implementation date was ten working days after this (14th March).

This code change applies across Great Britain, including Offshore (in terms of its connection to the onshore transmission network). This code change introduces an ability for parties that already had a signed Bilateral Connection Agreement as at the implementation date of GC0156 (4th March), that have spent money in relation to making their site compliant with GC0156, to submit a claim for these costs. A claims assessment process will involve a case-by-case assessment of claims for capital expenditure incurred in complying with the new

obligations, with accompanying evidence to demonstrate that the evidenced costs that have been incurred were necessary, reasonable, efficiently-incurred, and proportionate, and related to GC0156 compliance.

CMP398 requires parties to use reasonable endeavours, exercising good industry practice, to identify if their compliance with the GC0156 Grid Code requirements could be achieved at a materially lower cost by meeting a lesser technical requirement (such as by providing resilience at their asset for fewer than 72 hours) and if so, then the mod's text requires them to inform NG-ESO, and liaise with it about possible alternative solutions.

Grid Code Change GC0156 itself states that all relevant parties must have 72 hours resilience unless it is 'cost prohibitive' or 'technically impossible' - if this is the case the party will aim to enter into alternative arrangements with NG-ESO. CMP398's text differs in that it also covers situations where the resilience could be achieved at a materially lower cost by meeting a lesser technical requirement.

If appropriate, in a few cases NG-ESO may seek a derogation from The Authority.

This guidance also encourages parties contemplating spend above the thresholds that are specified below, to inform NG-ESO beforehand, so we can discuss the necessity of this for compliance purposes. This route within CMP398 gives parties a chance to check that spending is efficient before going ahead with their build, via a dialogue which could then lead to alternative arrangements. These thresholds are where total site expenditure would cost in excess of £500 per MW, or where a total claim for one site exceeds £50k¹; we encourage parties in these cases to approach us to discuss their planned approach ahead of committing the spend.

Claims will be submitted in one month claims windows in September 2024, September 2025 and December 2026.

Purpose of this guidance

This guide enables relevant CUSC parties to understand how and when to submit a claim, and their obligation to use reasonable endeavours, exercising good industry practice, to identify if compliance with the GC0156 Grid Code requirements could be achieved at a materially lower cost by meeting a lesser technical requirement, liaising with us for anticipated spend above the specified thresholds.

This guide enables other CUSC parties to understand when the cost of claims will be paid out to successful claimants. The BSUoS "fix" will incorporate an internal NG-ESO estimate of the cost of claims across the fixed period, which will be subject to the usual level of transparency regarding estimated BSUoS costs within the BSUoS fix.

This guide includes:

- What the new claims process is
- When to communicate advance information on planned expenditure above the above-described thresholds for discussion of whether another way forward is appropriate
- When to submit claims
- What are the features of a successful claim
- Clarification on when payments of successful claims are paid out

¹ These numbers are subject to confirmation with Ofgem

What the new claims process is

- Grid Code Modification GC0156² takes effect from 4th March 2024; CC/ECC.7.11 within the Grid Code³ relates to a requirement for relevant parties to make changes to their site by 31st December 2026 to improve resilience against a 72 hour loss of external power. This in turn helps NG-ESO to be sure of meeting the licence conditions placed upon it in a new ESRS (electricity system restoration standard) licence condition (special Condition 2.2.1 of the Electricity System Operator's licence) that takes full effect from that time.
- WACM1 of related CUSC Mod CMP398 has been approved and implemented into the CUSC on 14 March 2024. This allows CUSC parties without Restoration Contracts meeting the claims criteria to claim costs that have been incurred at the time of the claims window, funded out of BSUoS via NG-ESO, relating to compliance with these new resilience obligations under this grid code change. CUSC parties with a Restoration Contract with NG-ESO, cannot submit a claim.
- Sites cannot submit a claim in cases where the Bilateral Connection Agreement (BCA) with NG-ESO for that site was first signed after implementation of GC0156 (4th March 2024).

When to submit claims, and what to do as from now

- The change that was approved, CMP398 WACM1, requires claims to be submitted to NG_ESO during an annual claims submission month, which this year is the month of September 2024 (and then September 2025 next year, and finally December 2026, after which no more claims arise). So, from 31st December 2026, no more claims will be accepted.
- Whilst formal claims will be submitted ex-post (after expenditure has been incurred), NG-ESO encourages potential claimants for claims costing in excess of the £/MW and total site claim thresholds outlined above, to engage with NG-ESO when the potential need for it is first identified in the party's GC0156 compliance exercise. This is so that NG-ESO has an opportunity to advise on whether a less costly option might be sufficient; in a few cases NG-ESO may recommend and support a formal application to the Authority for a derogation against the Grid Code. This helps to reduce the risk of a claim for expenditure being refused. It may help identify excessive expenditure that has a risk of refusal, though it is important to say that NG-ESO will rigorously scrutinise all claims when received to ensure that costs incurred were necessary, reasonable, efficiently-incurred and proportionate.
- Both claims and pre-claims communications as mentioned above, should be sent to [*email address to be confirmed in finalised guidance note*]

What are the features of a successful claim; Claims Assessment

- Claims are to be assessed by NG-ESO, using appropriate expertise. The claims assessment process will involve a case-by-case assessment of claims for capital expenditure incurred in complying with the new obligations, with accompanying evidence to demonstrate that the costs actually incurred were, as per the legal text in the CUSC, necessary, reasonable, efficiently-incurred and proportionate.
- The evidential basis for submitted claims should include engineering assessments of the existing compliance level, identifying deficiencies and current resilience of that site. The depth and detail of this assessment will be proportionate to the size of the cost of compliance; in general it should show what investments are needed to bring the site into compliance, identifying options where more than one approach is possible, and setting out any probabilistic basis to any engineering elements

² <https://www.nationalgrideso.com/industry-information/codes/gc/modifications/gc0156-facilitating-implementation-electricity-system-restoration-standard>

³ The assurance and derogation routes are covered in Grid Code sections CC/ECC.7.11, whilst the requirements for 72 hour resilience are covered in CC/ECC.7.10.

- As a result of the engineering analysis, the evidential basis for submitted claims will identify the required measures needed for compliance with GC0156
- In order to demonstrate that costs were efficiently-incurred, good practice will as usual in this industry include getting more than one quote for any significant investment; the assessors will expect to see the competing quotes that were not accepted, and some analysis/documentation of why the accepted quote was chosen (it can occasionally be the case that a cheaper quotation is not thought credible to deliver and meet the need given its content and the tenderer's past experience and activities).
- Receipts from the provider will accompany the claim for each item of incurred, invoiced and paid expenditure within the claim.
- NG-ESO may revert to the claimant with queries if not all the data it needs to assess the claim was included.
- All claims will be rigorously scrutinised to ensure that they represent incurred expenditure that was strictly necessary to meet the new Grid Code GC0156 requirements.

Clarification of when payments of successful claims are paid out

- There is no specified timeframe in the CMP398 mod proposal or legal text as to how long a claim takes to assess. The claims process timing depends on the total number of claims received and the complexity of each; whilst an explicit allowance is made in CMP398 cost recovery provisions for the case where a claim might be paid out after 1st April, NG-ESO aims to assess claims within 6 months unless of unusual complexity.
- NG-ESO will recover the costs of successful claims via Balancing Services Use of System Charges (via related mod CMP412), which benefit from a stabilising "fix". Repayments of successful claims to claimants by NG-ESO are spread out over the next following charging year : when a claim is approved, NG-ESO will pay the claim over the following 12 month period that begins in April the year after the submission of the claim, in 12 equal monthly amounts. If a claim is approved after April in the calendar year after the submission of the claim, payment of the claim will be made in equal monthly amounts over the months remaining to the following March, inclusive.
- NG-ESO may as an outcome of the assessment process, in some cases disallow parts of a claim that relate to expenditure that goes beyond that which was strictly necessary, reasonable, efficiently-incurred and proportionate to meet GC0156 requirements at minimum cost. Should a partial claim acceptance be an outcome, arbitration could still potentially apply, as below.
- There is existing CUSC text that allows for reference, following a process set out therein, of disputed matters to an arbitration process; this provision has never been used throughout the history of the CUSC, or MCUSA that preceded CUSC. The existence of this provision could be relevant in the case of rejection of a claim, or partial acceptance of a claim. The existing text refers to defunct arrangements relating to an "electricity arbitration association", which no longer exists. This process was used in a number of the energy codes. The BSC (Balancing and Settlements Code) Mod P457 was approved by The Authority in November 2023 to update the references in BSC that were formerly to the "electricity arbitration association", to refer to a new body, the London Court of International Arbitration (LCIA)⁴. NG-ESO will raise to the April 2024 CUSC Panel, a new CUSC modification proposal to update relevant references in CUSC to a new arbitration body. We may petition the CUSC Panel for a self-governance process to be agreed for this change proposal when its governance process is being agreed at Panel, or in any event a process that goes to consultation without needing a workgroup. BSC P457 proceeded straight to a BSC Report Stage consultation – that is the BSC equivalent of CUSC's code administrator consultation – without first needing discussion at a national industry workgroup, meaning that there was a single consultation on BSC P457. This CUSC change should be in force in the CUSC fairly quickly, and in any event ahead of October 2024

⁴ <https://www.lcia.org/>