

Stage 03: Final Modification Report

Connection and Use of System Code
(CUSC)

CMP240

‘Amending the Cancellation Charge liability within a CMP213 Judicial Review Period’

What stage is this document at?

01

Code Administrator Consultation

02

Draft CUSC Modification Report

03

Final CUSC Modification Report

CMP240 seeks to amend the Cancellation Charge liability where notice is given within one Financial Year to disconnect/reduce Transmission Entry Capacity (TEC) effective at the start of the following Financial Year where that notice is given within a ‘CMP213 Judicial Review Period’ and the following Financial Year is the Financial Year in which CMP213 is directed by the Authority to take effect.

Published on:

10th February 2015



The CUSC Panel recommends that:

CMP240 should be implemented as it better facilitates Applicable Objective (b).



Low Impact

Transmission connected Generators

Contents

1	Summary	3
2	Background	5
3	Modification Proposal.....	6
4	Proposed Implementation and Transition.....	7
5	Impacts.....	8
6	Views	9
7	Code Administrator Consultation Responses	14
	Annex 1 – CMP240 CUSC Modification Proposal Form.....	19
	Annex 2 – Draft Legal Text.....	27
	Annex 3 – Code Administrator Consultation responses.....	29

About this document

This is the Final CUSC Modification Report which contains details of the CUSC Panel vote in respect of CMP240, as well as any responses to the Code Administrator Consultation. This Report has been prepared and issued by National Grid as Code Administrator under the rules and procedures specified in the CUSC.

Document Control

Version	Date	Author	Change Reference
0.1	2 February 2015	Code Administrator	Version to CUSC Panel
0.2	10 February 2015	Code Administrator	Version to Authority



Any Questions?

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1 Summary

- 1.1 This document describes the CMP240 CUSC Modification Proposal (the Proposal) and seeks views from Industry members relating to the Proposal.
- 1.2 The Proposal seeks to amend the Cancellation Charge liability where notice is given within one Financial Year to disconnect/reduce Transmission Entry Capacity (TEC) effective at the start of the following Financial Year where that notice is given within a 'CMP213 Judicial Review period' and the following Financial Year is the Financial Year in which CMP213 is directed by the Authority to take effect.
- 1.3 The Code Administrator Consultation closed on 9th January 2015 and received seven responses (including two late responses); these can be found in Annex 3, a summary of these responses can also be found in Section 7 of this report.
- 1.4 This CUSC Modification Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP240/>, along with the CUSC Modification Proposal form.

CUSC Panel's discussion

- 1.5 CMP240 was proposed by National Grid Electricity Transmission plc and submitted to the CUSC Modifications Panel (the Panel) for their consideration on 28th November 2014. A copy of this Proposal is provided in Annex 1. The Panel decided that this Modification should not be classed as Self-Governance. The Panel debated whether CMP240 should be sent to a Workgroup or progressed straight to Code Administrator consultation. Some Panel Members felt that a Workgroup should be established to allow Alternatives to be developed to the original proposal, but that the Workgroup should be subject to urgent timescales. However, the Panel agreed by majority (5 out of 9 Panel members) that subject to amendments to the proposed legal text, CMP240 should proceed directly to Code Administrator Consultation for an extended period of 22 Working Days.
- 1.6 One CUSC Panel member sought assurance that the CMP213 review period within which notice may be given would only start at the end of any JR process, after appeals had been exhausted, and last for 20 business days thereafter. The Proposer confirmed this was the case. The Panel agreed that the term 'CMP213 Judicial Review Period' within the Modification title should be capitalised and should be defined as described within the CMP240 Modification Proposal form.
- 1.7 The same Panel member then raised the question of whether the Modification might apply in relation to Transmission Entry Capacity for 2015/16 if the judicial review is resolved early in 2015. It was accepted that this was not the intention of the Modification. The Panel agreed that the proposed legal text should be subject to minor drafting amendments to make these points clear. This amended legal text is included in Annex 2 of this Consultation.
- 1.8 The Panel also noted the importance of when the 'CMP213 Judicial Review Period' starts if this Modification is implemented. National Grid took an action to notify CUSC Parties of when this would be closer to the time.

National Grid's Initial view

- 1.9 National Grid believes that CMP240 better facilitates Applicable CUSC Objective (a) as it facilitates the implementation of CMP213 on 1 April 2016. National Grid also believes that CMP240 better facilitates Applicable CUSC Objective (b) by assisting generators in making

informed decisions in appropriate timescales and reduces market uncertainty leading to reduced risk premiums.

CUSC Modifications Panel's recommendation

- 1.10 At the meeting of the CUSC Modifications Panel on 30th January 2015, the Panel voted by majority that CMP240 better facilitates Applicable CUSC Objective (b).

2 Background

- 2.1 Paragraph 3.11 of Section 15 of the CUSC describes the structure of Cancellation Charges that a generator wishing to reduce a Transmission Entry Capacity (TEC) or submit a Notice of Disconnection at a power station on or after that station's Charging Date is liable for. This structure incentivises generation users to provide a minimum of a year and five days' notice to avoid paying a Cancellation Charge.
- 2.2 It is understood that generators will factor in a forecast of their future costs when making the commercial decision to reduce TEC or disconnect, this will include a forecast of future transmission charges. Changes to a charging methodology will result in changes to a generator's transmission charges and Ofgem will therefore account for this impact when considering any changes to a charging methodology. In the case of CMP213 'Project TransmiT TNUoS Developments', approved by Ofgem on 25 July 2014, the implementation date for the changes to TNUoS charges is 1 April 2016, however the Ofgem determination is subject to judicial review. If the judicial review is allowed and found against Ofgem, the status of the decision (and so the changes to the charging methodology) could be put on hold or undone. This creates uncertainty as to whether and/or when TNUoS Charges will change, which makes it difficult for users to accurately factor future costs into any decision whether to disconnect or reduce TEC in time to give the minimum year's notice to avoid a Cancellation Charge.
- 2.3 Section 15 of the CUSC assumes that generators have a reasonable idea of charges when deciding whether to notify National Grid of TEC reduction or Notice of Disconnection. Under the scenario of a judicial review of CMP213, this assumption is no longer true. Section 15 of the CUSC does not take account of potential implications of a judicial review of CMP213.

3 Modification Proposal

- 3.1 CMP240 proposes to amend the Cancellation Charge liability within Section 15 of the CUSC where notice is given within the preceding Financial Year to disconnect or reduce TEC effective at the start of the CMP213 Financial Year, where that notice is given within a 'CMP213 Judicial Review Period'. The CMP213 Financial Year means the Financial Year in which CMP213 is directed by the Authority to take effect. A CMP213 Judicial Review Period means the period of 20 business days (inclusive) from the day on which (having exhausted all appeals) the judicial review proceedings against the Authority's decision to approve CMP213 are concluded.
- 3.2 During these 20 business days, generators are permitted to reduce their TEC or submit a Notice of Disconnection for a power station on or after their station's Charging Date with no Cancellation Charge in respect of Section 15 of the CUSC providing the year is that year preceding the CMP213 Financial Year.
- 3.3 The Proposer noted that the changes proposed within CMP240 need to be in place by the end of March 2015 to allow it to be of benefit to customers.

4 Proposed Implementation and Transition

- 4.1 If approved, the Code Administrator proposes that CMP240 should be implemented 10 Working days after an Authority decision.

5 Impacts

Impact on the CUSC

5.1 Changes to paragraph 3.11 of Section 15 only.

Impact on Greenhouse Gas Emissions

5.2 None identified.

Impact on Core Industry Documents

5.3 None identified.

Impact on other Industry Documents

5.4 None identified.

Costs

Industry costs	
Resource costs	£ 6,353 <ul style="list-style-type: none">• 1.5 man days effort per response• 7 consultation responses received
Total Industry costs	£ 6,353

6 Views

Applicable CUSC Objectives

- 6.1 For reference, the Applicable CUSC Objectives, as defined in the Transmission Licence are;
- (a) The efficient discharge by the Company of the obligations imposed upon it by the Acts and the Transmission Licence
 - (b) Facilitating effective competition in the generation and supply of electricity, and (so far as is consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.
 - (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

National Grid's view

- 6.2 National Grid believes that CMP240 better facilitates Applicable CUSC Objective (a) as it facilitates the implementation of CMP213 on 1 April 2016. National Grid also believes that CMP240 better facilitates Applicable CUSC Objective (b) by assisting generators in making informed decisions in appropriate timescales and reduces market uncertainty leading to reduced risk premiums.

CUSC Modifications Panel's view

- 6.3 At the CUSC Modifications Panel on 30th January 2015, the Panel agreed by majority that CMP240 better facilitates Applicable CUSC Objective (b).
- 6.4 Kyle Martin was not in attendance for the vote on CMP240 and passed on his vote to Garth Graham.

Panel Member	(a)	(b)	(c)	Overall
Bob Brown	Neutral	Neutral	Neutral	No – I'm comfortable that there is an issue. I do not think the Modification Report demonstrates that CMP240 is better than the baseline. There is not enough fundamental analysis and information within the report. I also think there are other ways to address the issue. I'm not

				convinced the risks and benefits are adequately demonstrated within the report.
Michael Dodd	Neutral	Yes – I think the period of uncertainty is not easy for parties. There is more uncertainty for smaller parties as they have access to less information. Providing the window will better facilitates (b).	Neutral	Yes – Would have preferred for CMP240 to go to a Workgroup to be developed.
Paul Jones	Neutral	No	Neutral	No –Changing the arrangements in this manner would increase perception of regulatory risk in the market and frustrate competition. CMP240 should have gone to a Workgroup to be developed and assessed. We haven't seen whether there is a net benefit of CMP240 or not. There are other options for dealing with the issue, but there seems to be an assumption that implementing CMP213 as soon as possible is the best option. It's not clear that there will be a dis-benefit from delaying implementation as the cost benefit for CMP213 was not positive. CMP240 is not needed to prevent JRs being used to delay implementation of modifications, as they are a high cost option with a high hurdle rate to get to court. The 20 day window is not long enough: some parties have better access to information than others.
Patrick Hynes	Yes – The Authority has directed implementation of CMP213. CMP240 better facilitates its implementation. Further	Yes - The raising of the CMP213 Judicial Review has raised uncertainty. The JR leaves Generators with greater uncertainty around the charges they face. CMP240 gives them an	Neutral	Yes

	to the JR, without CMP240 parties may seek to unwind previous decisions which would be inefficient for the Customer and NGET	opportunity to manage CMP192 liabilities more efficiently. Overall better in terms of efficiency and competition.		
Paul Mott	Neutral	Yes – a drawback is that CMP240 reduces certainty for Grid and for other CUSC parties of the status of generators after April 2016, but in its absence, the uncertainty created by CMP213 could precipitate inefficient early closure decisions – so in this very unusual circumstance, the waiver from CUSC section 15 is does slightly better facilitate (b).	Neutral	Yes
Simon Lord	No – I believe the Judicial Review is part of the Modification process and therefore the correct course of action is to delay implementation on CMP213.	No	Neutral	No – CMP240 should have gone to a Workgroup for further development.
James Anderson	Yes – The Authority has directed implementation of CMP213. By ensuring Parties can await the outcome of the judicial review process before making an economic decision on TEC	Yes – The raising of the CMP213 Judicial Review has raised uncertainty. Some Generators will be unaware of charges they face when deciding whether to give notification of TEC reduction. CMP240 gives them a chance to defer their decision until JR proceedings are concluded thus better	Neutral	Yes

	reduction.CMP240 better facilitates implementation in line with the Authority's direction	facilitating competition. The impact of not applying CMP192 in the period until the end of the JR process is unlikely to be significant .Overall better in terms of efficiency and competition.		
Garth Graham	Yes – Agree with the views already expressed by both James and Patrick as well as those provided by Kyle.	Yes – Agree with the views already expressed by James, Michael and Patrick as well as those provided by Kyle. CMP240 provides certainty for Users and ensures no windfall gains and losses. This Modification ensures equal treatment for all generators irrespective of the outcome of the Judicial Review case currently before the courts which helps facilitate competition.	Neutral	Yes
Kyle Martin	Yes – Considering the additional uncertainty this JR has on future TEC charges CMP240 provides some policy certainty to generators which could otherwise create perverse actions to avoid cancelation charges. Although there could be some impact on other CUSC party's, on balance CMP240 better facilitates	Yes – reduces risk and therefore improves competition.	Neutral	Yes

	objective CUSC objectives A by providing a certainty around CUSC provisions (enabling CMP192 to be implemented as planned).			
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7 Code Administrator Consultation Responses

7.1 Seven responses (including two late responses) were received to the Code Administrator Consultation. The following table provides an overview of the responses received. The full responses can be found in Annex 3.

Company	1. Do you believe that CMP240 better facilitates the Applicable CUSC Objectives?	2. Do you support the proposed implementation approach?	3. Do you have any other comments?
Drax Power Limited	<ul style="list-style-type: none"> • No. In regards to ACO (a) no justification of this point has been made and we cannot see the rationale behind the Proposers claim. • Increases the risk of inefficient network investment and higher bills for end consumers. • In regards to (b) there may be perverse incentives associated with the modification that result in adverse consequences which would be detrimental to the facilitation of competition. 	<ul style="list-style-type: none"> • If CMP240 were to be approved, then the implementation approach seems sensible. 	<ul style="list-style-type: none"> • A Workgroup consultation would have allowed additional scrutiny of the Proposers arguments. However, we appreciate the tight timescales of CMP240.
E.ON	<ul style="list-style-type: none"> • No. The benefits of CMP240 have not been demonstrated as the process chosen for its assessment is insufficient to do so properly. A Workgroup should have been formed to compare the benefits of continuing to implement CMP213 in 2016, with the cost associated with turning off the User Commitment arrangements. • There is no clear benefit of implementing CMP213 as soon as possible rather than just changing the implementation date. • There is a concern of those parties who 	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • No

	<p>stand to gain immediately from the significant re-distributional effects that CMP213 introduces, which increase the perception of the regulatory risk in the market to the investor community.</p> <ul style="list-style-type: none"> • There is a potential alternative of altering the CMP213 implementation date if the decision is made to uphold Ofgem's decision on CMP213. • The Judicial Review should not be seen as an easy option to introduce delay into the modification process, it is used to fundamentally challenge the decision itself. • The proposed 20 working days given to generators to make a TEC reduction does not seem sufficient to make a decision as important as closing a power station and would recommend these timescales be increased to 60 working days. 		
<p>EDF Energy</p>	<ul style="list-style-type: none"> • Yes. In its absence, the risk is that generators feel forced by CUSC section 15 to commit to closure early based on 'worst case scenario' to avoid cancellation charges. • However, the CMP240 does create a risk that plant can close within the CUSC charging year at little notice, creating uncertainty for both Grid and other CUSC parties, however we think the benefits of the Modification balance this out. • Removing the uncertainty for existing generators in this unusual circumstance seems warranted and leave CMP192 intact for the future. We therefore believe 	<ul style="list-style-type: none"> • Yes, although would give its best effective if passed as far ahead as possible of 24th March 20115. 	<ul style="list-style-type: none"> • No

	CMP240 better facilitates ACOs (a) and (b).		
ESB	<ul style="list-style-type: none"> • Yes. Generators will be able to make TEC reduction decisions only when there is certainty around the charging regime and without the Cancellation Charge factoring into their decision making. Increased certainty around TEC reduction and plant closure will help facilitation of ACO (a). • CMP240 leads to increased clarity within the market, reducing risk and improving competition, thus better facilitating ACO (b). 	<ul style="list-style-type: none"> • In general, 10 days after decision for implementation is sufficient time for a generator to make a decision on the future of their assets. • We note there has been little communication with the industry regarding the CMP213 Judicial review. We would urge more communication from Ofgem on the progression of the JR as this will help industry understand when the JR window may open. 	<ul style="list-style-type: none"> • We are conscious that it may not be possible to implement CMP213 in April 2016 due to the potential length of the JR process. • If this is the case we would urge clarity from the regulator as to their proposed implementation approach for CMP213.
RWE Group	<ul style="list-style-type: none"> • No. CMP240 fails to justify why industry benefits of CMP192 should be suspended due to the prospect of a CMP213 Judicial Review as opposed to any other uncertainties. • We do not believe there is a case for reducing the required notice period, if there is uncertainty about the JR, the Authority should delay implementation of CMP213. • CMP240 does not cover uncertainty for Users if CMP213 is not implemented, this flaw is discriminatory. • Enables all Users to reduce TEC irrespective of whether CMP213 Judicial Review is the driver, The proposal fails to identify potential costs to the industry 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • The duration of the CMP213 JR period would appear inadequate to allow the Authority and Users to consider their positions. • The legal text does not achieve what we believe to be the intention of the Proposal. • We suggest that the reference to the Financial Year prior to the CMP213 Financial Year also includes the five business days before the start of the Financial Year. • We suggest there to be notification of the start of the CMP213 JR Period to Users. • This proposal should be considered by a CUSC Workgroup.

	<p>arising from this.</p> <ul style="list-style-type: none"> We are concerned CMP240 would create a precedent where a legal challenge to an Ofgem decision could give rise to a further amendment of the CUSC. It also may create a precedent whereby future regulatory changes that impact on User's TEC charges could give rise to similar proposals to reduce require notice periods. 		<ul style="list-style-type: none"> We are concerned about the role of the Authority in relation to this modification in light of its role in the JR.
Scottish Power	<ul style="list-style-type: none"> Yes. CMP240 better facilitates CUSC Objective (a) by helping to facilitate the implementation of CMP213 by removing the potential penalty of a Cancellation charge thus ensuring that generator parties can await the outcome of the JR review process before making a decision on whether to reduce TEC or disconnect. Also better facilitates (b) by reducing market uncertainty which should lead to more efficient generator decisions, reduced risk premiums being applied and lower resulting costs to consumers. CMP240 is neutral against objective (c). 	<ul style="list-style-type: none"> Yes 	<ul style="list-style-type: none"> No
SSE	<ul style="list-style-type: none"> Yes. CMP240 better facilitates objective (a). Absent of CMP240 generators would be forced to confirm their TEC holding position(s) for 1st April 2016 (by 26th March 2015) in light of the huge uncertainty which has resulted from the Judicial Review. This will lead to inefficient decisions as parties try to 'second guess' the outcome of the JR proceedings in terms of the broad potential Court outcomes. However, if the claimant withdraws their Judicial Review action, they will be 	<ul style="list-style-type: none"> Yes. On a relevant point, CUSC parties, exercising good industry practice can be expected to prepare. 	<ul style="list-style-type: none"> We Agree CMP240 is not Self-Governance We Support the Panel's decision to proceed directly to CA Consultation. We support the capitalisation of the term 'CMP213 Judicial Review Period' as it helps with clarification within the CUSC. We agree with the proposed legal text. We agree the minor drafting amendments to the legal text make clear the points noted in the November

	<p>placed in an (unduly?) advantageous position compared to all other CUSC Parties as they along can bring about this outcome so they could, example, make their TEC holding decisions for 23rd March 2015 in the knowledge that they can utilise this outcome.</p> <ul style="list-style-type: none">• 20 business days is sufficient time for parties to make their determination. All CUSC Users, exercising good industry practice, can be expected to prepare in the period prior to the Court determination the necessary internal papers / approvals.• CMP240 also better facilitates objective (b) as it would enable all generators to make those TEC holding decisions in a timely and fair manner whilst also avoiding inefficient TEC holding decisions (and risk premia) rising from the uncertainty surrounding the possible outcome of the JR proceedings.		<p>Panel meeting.</p> <ul style="list-style-type: none">• We welcome the action taken by National grid to notify CUSC parties of when the 20 business days period commences should CMP240 be implemented.• In our view CMP240 is, given the unique JR circumstances, complimentary to the CMP192 arrangements.• There is a danger, absent of CMP240, that a perverse effect from the Judicial Review; if it is unsuccessful; is that the date of CMP213 implementation I delayed beyond 1st April 2016. If this was to occur it would give rise to ‘windfall gains and losses’ and may incentivise similar Judicial Reviews in the future of charging methodology changes.
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Connection and Use of System Code (CUSC)

Title of the CUSC Modification Proposal
Amending the Cancellation Charge liability within a CMP213 judicial review period
Submission Date
20 th November 2014
Description of the Issue or Defect that the CUSC Modification Proposal seeks to address
<p>Paragraph 3.11 of Section 15 of the CUSC describes the structure of Cancellation Charges that a generator wishing to reduce a Transmission Entry Capacity (TEC) or submit a Notice of Disconnection at a power station on or after that station's Charging Date is liable for. This structure incentivises generation users to provide a minimum of a year's notice to avoid paying a Cancellation Charge.</p> <p>It is understood that generators in making this commercial decision to reduce TEC/disconnect will factor in a forecast of their future costs. This will include a forecast of future transmission charges. Changes to a charging methodology will result in changes to a generator's transmission charges and Ofgem will therefore account for this impact when considering implementation dates for changes to a charging methodology. In the case of CMP213 'Project TransmiT TNUoS Developments', approved by Ofgem on 25th July 2014, the implementation date for the changes to TNUoS charges is 1st April 2016 but the Ofgem determination is subject to judicial review. If the judicial review is allowed and found against Ofgem, the status of the decision (and so the changes) could be put on hold/undone and this uncertainty as to whether/when TNUoS Charges will change makes it difficult for users to accurately factor future costs into any decision to disconnect/reduce TEC in time to give the minimum year's notice to avoid a Cancellation Charge.</p> <p>In summary, Section 15 of the CUSC assumes that generators have a reasonable idea of charges when required to notify of TEC reduction or Notice of Disconnection. Under the scenario of a judicial review of CMP213 this assumption is no longer true. Hence the defect is that Section 15 of the CUSC does not take account of the potential implications of a judicial review of CMP213.</p>
Description of the CUSC Modification Proposal
This proposal is to amend the Cancellation Charge liability where notice is given within one Financial Year to disconnect/reduce TEC effective at the start of the following Financial Year where that notice is given within a "CMP 213 judicial review period". That period being the

period of 20 business days (inclusive) from the day on which (having exhausted all appeals) the judicial review proceedings against the Authority's decision to approve CMP213 are concluded. During these 20 business days generators are permitted to reduce their TEC or submit a Notice of Disconnection for a power station on or after that station's Charging Date with no Cancellation Charge in respect of Section 15 of the CUSC.

This requires a change to Section 15 of the CUSC. Draft legal text for paragraph 3.11 has been attached.

The Proposer suggests that the proposal needs to be in place by the end of March 2015 to allow it to be of benefit to customers and therefore seeks the CUSC Panel's agreement that the proposal can progress direct to Code Administrator Consultation.

Impact on the CUSC

Paragraph 3.11 of Section 15 only. Draft legal text attached.

Do you believe the CUSC Modification Proposal will have a material impact on Greenhouse Gas Emissions? Yes / No

No

Impact on Core Industry Documentation. Please tick the relevant boxes and provide any supporting information

BSC

Grid Code

STC

Other
(please specify)

This is an optional section. You should select any Codes or state Industry Documents which may be affected by this Proposal and, where possible, how they will be affected.

Urgency Recommended: Yes / No

The proposal is required to be in place before the end of March 2015. The proposer believes that if the proposal proceeds direct to Code Administrator Consultation it can meet this timescale and therefore is not required to be treated as urgent. However, should it be decided that a workgroup is required to discuss the proposal, the proposer suggests that the proposal should then be treated as urgent.

Justification for Urgency Recommendation

Noting the reasoning laid out above, if the proposal is required to be treated as urgent the proposer gives the following reasons for urgent status as;

- A requirement for this proposal to be in place prior to the end of March 2015.
- The likelihood of a commercial impact on generators through potential exposure to Cancellation Charges.

Self-Governance Recommended: Yes / No

No

Justification for Self-Governance Recommendation

N/A

Should this CUSC Modification Proposal be considered exempt from any ongoing Significant Code Reviews?

N/A

Impact on Computer Systems and Processes used by CUSC Parties:

No impact

Details of any Related Modification to Other Industry Codes

N/A

Justification for CUSC Modification Proposal with Reference to Applicable CUSC Objectives:

This section is mandatory. You should detail why this Proposal better facilitates the Applicable CUSC Objectives compared to the current baseline. Please note that one or more Objective must be justified.

Please tick the relevant boxes and provide justification:

(a) the efficient discharge by The Company of the obligations imposed upon it by the Act and the Transmission Licence

(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of

electricity.

(c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1.

Objective (c) was added in November 2011. This refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

Full justification:

The proposer believes that the proposal better meets applicable CUSC objective a. The Authority approval of CMP213 requires National Grid to implement the proposal from 1st April 2016. The proposer believes that, due to the current judicial review, generators could face uncertainty in their future transmission charges making it difficult for them to make efficient closure and/or TEC reduction decisions. Whilst this proposal temporarily removes this incentive, holistically forcing parties ahead of a confirmed position on CMP213 may lead to inefficient decisions and / or lead to customers later seeking to unwind decisions made. This is consistent with our view previously articulated in response to Ofgem’s impact assessment on CMP213.

The proposer believes that the proposal better meets applicable CUSC objective b. It recognises that due to uncertainty created by a CMP213 judicial review generators may not be able to make efficient closure or TEC reduction decisions in the timely manner underpinned by the arrangements laid out in Section 15 of the CUSC. This proposal seeks to help facilitate generators making informed decisions in an appropriate timescale recognising this uncertainty. As a result, uncertainty in the market will reduce, leading to reduced risk premiums and hence improved competition.

Additional details

Details of Proposer: (Organisation Name)	National Grid Electricity Transmission plc
Capacity in which the CUSC Modification Proposal is being proposed: (i.e. CUSC Party, BSC Party or “National Consumer Council”)	CUSC Party
Details of Proposer’s Representative: Name: Organisation: Telephone Number: Email Address:	Andrew Wainwright National Grid Electricity Transmission plc 01926 655944 Andy.wainwright@nationalgrid.com

Details of Representative's Alternate:	
Name:	Wayne Mullins
Organisation:	National Grid Electricity Transmission plc
Telephone Number:	01926 653999
Email Address:	Wayne.mullins@nationalgrid.com
Attachments (Yes/No):	
Yes. Draft legal text (one page)	

Contact Us

If you have any questions or need any advice on how to fill in this form please contact the Panel Secretary:

E-mail cusc.team@nationalgrid.com

Phone: 01926 653606

For examples of recent CUSC Modifications Proposals that have been raised please visit the National Grid Website at <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/Current/>

Submitting the Proposal

Once you have completed this form, please return to the Panel Secretary, either by email to jade.clarke@nationalgrid.com and copied to cusc.team@nationalgrid.com, or by post to:

Jade Clarke
CUSC Modifications Panel Secretary, TNS
National Grid Electricity Transmission plc
National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

If no more information is required, we will contact you with a Modification Proposal number and the date the Proposal will be considered by the Panel. If, in the opinion of the Panel Secretary, the form fails to provide the information required in the CUSC, the Proposal can be rejected. You will be informed of the rejection and the Panel will discuss the issue at the next meeting. The Panel can reverse the Panel Secretary's decision and if this happens the Panel Secretary will inform you.

3.11 Where the Transmission Entry Capacity is reduced or Notice of Disconnection is given on or after the Charging Date

The **Cancellation Charge** payable on notice of **Disconnection** and/or a reduction in **Transmission Entry Capacity** on or after the **Charging Date** is calculated on a £/MW basis as follows by reference to the **Zonal Unit Amount** for the **Financial Year** in which the notice is given:

$$\text{Cancellation Charge} = \text{Wider Cancellation Charge}$$

Where:

- *Disconnection equates to reduction in Transmission Entry Capacity to zero*
- *Wider Cancellation Charge = Zonal Unit Amount for year in which notice of disconnection or reduction is given x reduction in Transmission Entry Capacity x Cancellation Charge Profile_t.*
- *Cancellation Charge Profile_t, which varies according to the number of Financial Years notice given from the date of notification to Disconnection or reduction in Transmission Entry Capacity:*
 - *where notice is given in the Financial Year in which such notice is to take effect (t=0) Cancellation Charge Profile = 1,*
 - *except as provided below where notice is given in the Financial Year prior to the Financial Year in which such notice is to take effect (t=1), Cancellation Charge Profile = 0.75,*
 - *where notice of reduction of Transmission Entry Capacity is given in the CMP 213 Judicial Review Period which is within a Financial Year prior to the Financial Year in which such notice is to take effect (t=1), for the purposes of the Cancellation Charge such notice shall be deemed to have been given in timescales such that the Cancellation Charge Profile = zero (where the “CMP213 Judicial Review Period” means the period of 20 Business Days (inclusive) from the day on which (having exhausted all appeals) the Judicial Review proceedings against the Authority’s decision to approve Approved CUSC Modification 213 are concluded).*
 - *where notice is given in the Financial Year which is two Financial Years prior to the Financial Year in which such notice is to take effect (t=2), Wider Cancellation Charge = zero.*

3.11 Where the Transmission Entry Capacity is reduced or Notice of Disconnection is given on or after the Charging Date

The **Cancellation Charge** payable on notice of **Disconnection** and/or a reduction in **Transmission Entry Capacity** on or after the **Charging Date** is calculated on a £/MW basis as follows by reference to the **Zonal Unit Amount** for the **Financial Year** in which the notice is given:

$$\text{Cancellation Charge} = \text{Wider Cancellation Charge}$$

Where:

- *Disconnection equates to reduction in Transmission Entry Capacity to zero*
- *Wider Cancellation Charge = Zonal Unit Amount for year in which notice of disconnection or reduction is given x reduction in Transmission Entry Capacity x Cancellation Charge Profile_t.*
- *Cancellation Charge Profile_t which varies according to the number of Financial Years notice given from the date of notification to Disconnection or reduction in Transmission Entry Capacity:*
 - *where notice is given in the Financial Year in which such notice is to take effect (t=0) Cancellation Charge Profile = 1,*
 - *except as provided below where notice is given in the Financial Year prior to the Financial Year in which such notice is to take effect (t=1), Cancellation Charge Profile = 0.75,*
 - *where notice of reduction of Transmission Entry Capacity is given in the CMP 213 Judicial Review Period which is within a Financial Year prior to the CMP213 Financial Year in which such notice is to take effect (t=1), for the purposes of the Cancellation Charge such notice shall be deemed to have been given in timescales such that the Cancellation Charge Profile = zero where:*
 - *the “CMP213 Judicial Review Period” means the period of 20 Business Days (inclusive) from the day on which (having exhausted all appeals) the Judicial Review proceedings against the Authority’s decision to approve Approved CUSC Modification 213 are concluded*
 - *The « CMP213 Financial Year » means the Financial Year in which Approved CUSC Modification 213 is directed by the Authority to take effect.*
 - *where notice is given in the Financial Year which is two Financial Years prior to the Financial Year in which such notice is to take effect (t=2), Wider Cancellation Charge = zero.*

Annex 3 – Code Administrator Consultation responses

CMP240 – Amending the Cancellation Charge liability within a CMP213 Judicial Review Period

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 by **5pm on 9th January 2015** to cusc.team@nationalgrid.com.

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Respondent:	<i>Joe Underwood – joseph.underwood@drax.com</i>
Company Name:	<i>Drax Power Limited</i>
1. Do you believe that CMP240 better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p>No. Generally, Drax is in favour of providing market participants with adequate notice of regulatory changes, allowing said parties to react and make informed decisions in a timely manner. However, in this case we do not consider that the proposal better meets the Applicable CUSC Objectives.</p> <p>With regards to Applicable CUSC Objective (a), the Proposer has asserted that the change will facilitate the implementation of CMP213 on 1 April 2016. No justification of this point has been made, however, and we cannot see the rationale behind this claim. Furthermore, the reason generators must provide a minimum of one year and five working days’ notice if they wish to reduce their Transmission Entry Capacity (TEC) or submit a Notice of Disconnection, is to assist National Grid in its role in investing and maintaining the network as efficiently as possible. We are concerned that this proposal directly conflicts with the principles introduced by CMP192 WACM5, in that it does not promote the timely delivery of information on TEC reduction and/or disconnection, thereby increasing the risk of inefficient network investment and, consequently, higher bills for end consumers.</p> <p>With regards to the Proposer’s remarks on Applicable CUSC Objective (b), we would like to highlight that there are many uncertainties in the market concerning TNUoS charges. We believe that to regard the upcoming Judicial Review as a special case is not justified. Furthermore, there may be perverse incentives associated with the modification that result in adverse consequences. For example, a generator considering a reduction/release of its TEC may be incentivised to wait until the</p>

	CMP213 Judicial Review Period, resulting in the creation of erroneous market signals. This would be detrimental to the facilitation of Applicable CUSC Objective (b).
<p>2. Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>If CMP240 were to be approved, then the implementation approach appears sensible.</p>
<p>3. Do you have any other comments?</p>	<p>A workgroup consultation would have allowed additional scrutiny of the Proposer's arguments. However, we appreciate that the tight implementation timescales demanded by the proposal meant there was limited time available to send CMP240 to a workgroup for assessment.</p>

CMP240 – Amending the Cancellation Charge liability within a CMP213 Judicial Review Period

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Respondent:	Paul Jones paul.jones@eon-uk.com
Company Name:	E.ON
1. Do you believe that CMP240 better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p><i>No. The benefits of the proposal have not been demonstrated as the process chosen for its assessment is insufficient to do so properly. Additionally, implementing the modification would increase the perception of regulatory risk in the market and therefore frustrate competition in generation.</i></p> <p><i>It is not possible to tell whether this modification has a net benefit, as an appropriate assessment has not been undertaken. This proposal seeks to temporarily turn off user commitment arrangements which were brought in under CMP192, so that an April 2016 implementation date for CMP213 can still be achieved without disadvantaging generators who may close stations or reduce TEC as a result of the new charges brought in under CMP213. In order to assess this, a workgroup should have been formed to compare the benefits of continuing to implement CMP213 in April 2016, with the cost associated with turning off the user commitment arrangements. However, the modification has been put out straight to consultation, so it is not possible for this assessment to be made.</i></p> <p><i>There appears to be an assumption that it would be beneficial to implement CMP213 as soon as possible, rather than the obvious alternative solution which would be to change the implementation date, should it be necessary as a result of the timing of the Judicial Review decision. However, it is not clear there would be a benefit. The impact assessment for CMP213 illustrated that there would be a net cost to customers arising from its implementation and the reason that this didn't lead to rejection of the modification was because Ofgem believed that there were other longer term benefits which it would introduce, although these were never really properly demonstrated and quantified. Nevertheless, if we assume that these longer term benefits are to be realised, it is not clear why a delay of 1 year to the implementation of CMP213 would be a big concern over</i></p>

	<p><i>these longer timescales. The real concern of course is to those parties who stand to gain immediately from the significant redistributive effects that CMP213 introduces.</i></p> <p><i>These redistributive effects, when introduced on the back of a questionable assessed benefit, actually increase the perception of the regulatory risk in this market to the investor community. Therefore, the CMP213 decision has been damaging enough already. This further intervention to rush through the arrangements by turning off other provisions of the CUSC without it being assessed by an industry workgroup, sends another unfortunate message, particularly as the route chosen also prevents parties from raising alternative solutions.</i></p> <p><i>Without this modification the risk to the generation community associated with the Judicial Review decision can still be managed. If the decision is made to uphold Ofgem's decision, but that this leaves parties without the ability to avoid the penalty for reducing TEC, the implementation date can be altered accordingly. What this modification does is to treat the implementation date as sacrosanct without attempting to assess the disbenefits or otherwise of it changing, and instead aims to turn off other parts of the CUSC assuming that this has no detrimental effect. It is not a robust way to assess a modification which could have such significant impacts on generators.</i></p> <p><i>We also expect an argument to be made by some that a Judicial Review should not be seen as a vehicle to delay the implementation of a code modification and this modification would prevent that from happening. However, the Judicial Review is being used to challenge fundamentally the decision itself. Raising the challenge is aimed precisely at trying to overturn, alter or delay the implementation of the modification. This is not an inappropriate aim. There is nothing wrong with raising a Judicial Review; it is part of the regulatory framework open to all parties. The hurdle for getting a Judicial Review accepted into the courts is relatively high. It is also costly to pursue. It therefore can't be seen as an easy option to introduce delay into the process.</i></p> <p><i>Finally, notwithstanding the comments made above, the proposed 20 working days given to generators to make a TEC reduction notification does not seem sufficient to make a decision as important as closing a power station. Given that a number of parties will not know the progress of the Judicial Review and will not be able to anticipate when the decision is likely to come, it is not clear that they could react quickly enough to go through the correct internal procedures and signoffs in time. Of course some parties will be more directly involved in proceedings and may be able to respond better. However, it is not clear why those who are not directly involved should be disadvantaged in comparison. We would recommend, therefore that the timescales should be increased to 60 working days.</i></p>
<p>2. Do you support the proposed implementation approach? If not, please state why and provide an</p>	<p><i>No. We do not support implementation of the modification at all.</i></p>

alternative suggestion where possible.	
3. Do you have any other comments?	<i>No thank you.</i>

CMP240 – Amending the Cancellation Charge liability within a CMP213 Judicial Review Period

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 by **5pm on 9th January 2015** to cusc.team@nationalgrid.com.

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Respondent:	Paul Mott
Company Name:	EDF Energy
1. Do you believe that CMP240 better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p>Yes, the modification seems warranted. In its absence, the risk is that generators, taking a view on which way the court might ultimately go on RWE’s JR (if the JR ultimately proceeds, which is not yet clear), feel forced by the CUSC section 15 regime, to commit to closure early based on whatever for that generator, is the “worst case scenario” – to avoid cancellation charges for short-notice closure. This seems undesirable from society’s point of view in terms of possible security of supply and BSUoS/constraint costs.</p> <p>A countervailing consideration is that this mod does create, if passed, a risk that plant can close within the CUSC charging year at very little or no notice, creating uncertainty both for Grid and for other CUSC parties. However, this needs to be balanced with consideration of the benefits of the mod, and overall we consider that the mod has benefit as per the preceding paragraph.</p> <p>Removing the uncertainty that, absent CMP240, obtains for existing generators, in this unusual circumstance, seems warranted, and leaves CMP192 intact for the future once the JR process has come to its end. We therefore agree that this modification, if passed, would better facilitate applicable CUSC objectives (a) (efficient discharge by Grid of all its obligations) and (b) (facilitating effective competition in generation).</p> <p>(Reminder : the Applicable CUSC objectives are:</p> <p style="padding-left: 40px;">(a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence;</p>

	<p>(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</p> <p>(c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission, and/or ACER)</p>
<p>2. Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>Yes, if the mod is passed, it would give its effect best if passed as far as possible ahead of 24th March 2015; there are no system costs or changes required for CUSC parties; therefore implementation 10 working days after Ofgem's decision, sounds reasonable (maybe even, longer than is needed).</p>
<p>3. Do you have any other comments?</p>	<p>No</p>

CMP240 – Amending the Cancellation Charge liability within a CMP213 Judicial Review Period

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Respondent:	<i>William Chilvers (William.Chilvers@esb.ie)</i>
Company Name:	<i>ESB</i>
1. Do you believe that CMP240 better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p>We are broadly supportive of the CMP240 proposal. We are of the view that the proposal better meets the Applicable CUSC Objectives by allowing generators to make decisions regarding the future of their assets only when there is certainty in the charging regime and thereby stopping the application of Cancellation Charges leading to inefficient decision making.</p> <p>In normal circumstances the purpose of Cancellation Charges are to prevent generators making decisions on the future of plant within timescales that would have an adverse effect on the operation and management of the GB transmission system. This assumes that the generator has reasonable foresight of the prevailing market and its cost base, allowing them to make effective and informed decisions on closure or TEC reduction. The Judicial Review raised in relation to CMP213 introduces significant uncertainty into the future of transmission charging, making efficient decisions on TEC reductions difficult.</p> <p>As well as this it is highly likely that a final decision on the implementation of CMP213 will slip into Charging Year -1, thus any decision made by generators to close plant or reduce TEC following the conclusion of the Judicial Review would become subject to Cancellation Charges.</p> <p>Cancellation Charges can represent a significant cost to generators and will be a major determining factor in any decisions they make as to the timing of TEC reductions.</p> <p>As outlined above, generators wishing to avoid Cancellation Charges will be forced to make decisions on TEC reduction before there is certainty on the future of the charging regime. This is particularly relevant at this time with many gas-fired generators actively considering the closure of loss-making plant.</p>

	<p>If these generators make a decision on plant closure and the outcome of the judicial review is not as they had forecast the generator may wish to reverse their decision. This will lead to a high level of uncertainty for National Grid in system planning and operation as generators may wish to reverse TEC reduction decisions following the outcome of the Judicial Review.</p> <p>If, however, CMP240 is implemented generators will be able to make TEC reduction decisions only when there is certainty around the charging regime and without the Cancellation Charge factoring into their decision making. This will allow for a much more effective decision making process, avoiding the inefficiency of TEC reduction and re-application. This increased certainty around TEC reductions and plant closure will help National Grid to better fulfil its role in system operation and planning and thus better fulfil Applicable CUSC Objective (a).</p> <p>In addition, lack of clarity around the future of a major cost such as TNUoS increases risk premia associated with the charge. This is particularly relevant as the introduction of CMP213 will not have a uniform effect on all generation, leading to inefficiencies in competition, as generators plan for a worst-case scenario (i.e. generators with reduced TNUoS charges under CMP213 plan for a successful JR and those with lower charges under the status quo plan for an unsuccessful judicial review). CMP240 allows generators to make decisions about the future of plant only when there is clarity over charging and when these charges will be implemented. This leads to increased clarity within the market, reducing risk premia and improving competition, thus better facilitating Applicable CUSC Objective (b).</p>
<p>2. Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>We support certain elements of the implementation approach but feel there could be some refinement to the implementation process.</p> <p>In general we feel that 10 days following a final decision on the judicial review is sufficient time for a generator to make a decision on the future of their assets. We also welcome the definition of JR Window as following all appeals as this is the only point at which there can be true certainty with regard to the future of TNUoS charging methodology.</p> <p>We note that to date there has been very little communication to industry regarding the CMP213 judicial review. Although we appreciate that some of this may be down to the legal sensitivity of the issue, as the status of the judicial review is vital to the effective implementation and operation of CMP240 we would urge more communication from Ofgem on the progression of the judicial review as this will help inform industry as to when the</p>

	<p>judicial review Window may open, allowing parties to make suitable preparations. We would welcome a clear process and commitments from Ofgem on this point, were it to approve CMP240.</p>
<p>3. Do you have any other comments?</p>	<p>We are conscious that given the potential length of the judicial review process it may not be possible to implement CMP213 in April 2016 as currently proposed. If this is the case we would urge clarity from the regulator as to their proposed implementation approach for CMP213. In the event that implementation is delayed until April 2017 (which would seem the most appropriate approach given the significance of the change) generators may wish to reduce TEC prior to Charging Year -1 regardless of the outcome of the judicial review.</p>

CMP240 – Amending the Cancellation Charge liability within a CMP213 Judicial Review Period

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<p>Respondent:</p>	<p>John Norbury Network Connections Manager RWE Supply & Trading GmbH Windmill Hill Business Park Whitehill Way Swindon SN5 6PB T +44 (0)1793 89 2667 M +44 (0)7795 354 382 john.norbury@rwe.com</p>
<p>Company Name:</p>	<p>RWE Group of GB companies, including RWE Generation UK plc, RWE Innogy UK Limited and RWE Supply & Trading GmbH</p>
<p>1. Do you believe that CMP240 better facilitates the Applicable CUSC Objectives? Please include your reasoning.</p>	<p><i>For reference, the Applicable CUSC objectives are:</i></p> <ul style="list-style-type: none"> (a) <i>the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence;</i> (b) <i>facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</i> (c) <i>compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.</i> <p>CMP240 does not better facilitate the Applicable CUSC Objectives for the following reasons:</p>

1. CMP240 fails to justify adequately why the industry benefits of User Commitment (CMP192) should be suspended due to the prospect of a CMP213 Judicial Review as opposed to being suspended due to any other uncertainties. The CMP213 Judicial Review should be considered alongside other future uncertainties impacting on the level of TNUoS charges including, for example, the vagaries of regulatory and/or political intervention, economic changes, the actions of other Users, and the effects of the G/D split.
2. We do not believe that there is a case for reducing the required one year and five days notice period for amendments to TEC as proposed under CMP240. We believe that if there is uncertainty about the effects of the Judicial Review, then the Authority should delay implementation of CMP213 until the completion of the Judicial Review rather than approve this modification proposal.
3. Furthermore, the provisions of CMP240 would only apply in the event that CMP213 is directed by the Authority to take effect (as the definition of CMP213 Financial Year is dependent on the direction of the Authority to implement CMP213). As such, CMP240 would favour Users wishing to reduce TEC in the event that CMP213 becomes effective. However, CMP240 provides no more certainty for Users wishing to reduce TEC in the event that CMP213 does not become effective. This flaw in CMP240 would therefore disadvantage this category of User and, as such, would be discriminatory.
4. CMP214 would enable all Users, including those intending to reduce TEC irrespective of the outcome of the CMP213 Judicial Review, to delay a TEC reduction notification until the financial year before the CMP213 Financial Year without being subject to a cancellation charge. In the case of a power station closure, this avoided charge could be significant. The proposal fails to identify the potential costs to the industry arising from this inefficiency
5. We are concerned that CMP240 would create an unfortunate precedent where a legal challenge to an Ofgem decision could give rise to a further amendment of the CUSC or suspension of the application of key rights and obligations.
6. We are similarly concerned that CMP240 would create an unfortunate precedent whereby future regulatory changes that could impact on User's TEC related charges could give rise to similar CMP240 proposals to reduce the required notice for TEC reductions or change other CUSC provisions.

<p>2. Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>No, for the reasons given above.</p>
<p>3. Do you have any other comments?</p>	<p>The following comments are provided without prejudice to our view given above that CMP240 does not better facilitate the Applicable CUSC Objectives:</p> <ol style="list-style-type: none"> 1. The duration of the CMP213 Judicial Review Period would appear inadequate to allow the Authority to consider its position following the outcome of the Judicial Review and for Users subsequently to consider their positions. 2. As drafted, the legal text does not achieve what we believe to be the intention of the Proposal. We suspect that the intention of the Proposal is to enable Users, who have assumed that CMP213 would be implemented, to reduce their TEC in the event that CMP213 is not directed to be implemented by the Authority following the Judicial Review. However, in such event, the definition of CMP213 Financial Year would fall away (since there would be no "CMP213 Financial Year") and this modification CMP240 would have no effect. 3. We suggest that, for consistency with CUSC 6.30.1.1, the reference to the Financial Year prior to the CMP213 Financial Year also includes the five business days before the start of the Financial Year. 4. For the avoidance of doubt, we suggest that the Authority or The Company be required to notify Users of the start of the CMP213 Judicial Review Period. 5. Due to the potential issues associated with this CMP240, the proposal should be considered by a CUSC workgroup before proceeding to a code administrator consultation. 6. As a final comment, we are concerned about the role of the Authority in relation to this modification proposal in the light of its role in the Judicial Review.

CMP240 – Amending the Cancellation Charge liability within a CMP213 Judicial Review Period

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Respondent:	<i>James Anderson</i> <i>James.anderson@scottishpower.com</i>
Company Name:	<i>ScottishPower Energy Management Ltd</i>
1. Do you believe that CMP240 better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p>For reference, the Applicable CUSC objectives are:</p> <ul style="list-style-type: none"> (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity. (c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. <p>ScottishPower believes that the Proposal better achieves Applicable CUSC objective (a). On 11 July 2014 the Authority decided that WACM2 of CMP213 should be implemented on 1 April 2016. CMP240 helps facilitate the implementation of CMP213 by removing the potential penalty of a Cancellation Charge thus ensuring that generator parties can await the outcome of the judicial review process before making an economic decision on whether to reduce Transmission Entry Capacity (TEC) or disconnect.</p> <p>ScottishPower believes that the Proposal better achieves Applicable CUSC objective (b). TNUoS charges can form a significant part of the economic viability of a generation plant and the decision whether to continue to operate that. Due to the uncertainty introduced by the commencement of legal proceedings in connection with the Authority’s decision on</p>

	<p>CMP213, generators may be uncertain whether and when the changes to TNUoS charges will apply and generators will be unable to make a rational economic decision whether to give notice of reduction of TEC (or Disconnection). Generators are required provide a minimum of a year's notice of reduction of TEC (or Disconnection) in order to avoid a Cancellation Charge. This proposal will remove the requirement on generators to make a decision on TEC reduction when faced with uncertainty over TNUoS charges by allowing notice to be given during a CMP213 Judicial Review Period. Reducing market uncertainty should lead to more efficient generator decisions, reduced risk premiums being applied and lower resulting costs to consumers.</p> <p>We believe that the Proposal is neutral against Applicable Objective (c).</p>
<p>2. Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>ScottishPower supports implementation of CMP240 10 working days after an Authority decision. This ensures that Parties are provided with certainty over their ability to respond, if necessary, to any change in TNUoS charges as a result of a decision in the CMP213 judicial review process by reducing their TEC.</p>
<p>3. Do you have any other comments?</p>	<p>No.</p>

CMP240 – Amending the Cancellation Charge liability within a CMP213 Judicial Review Period

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Respondent:	<i>Garth Graham (garth.graham@sse.com)</i>
Company Name:	SSE
1. Do you believe that CMP240 better facilitates the Applicable CUSC Objectives? Please include your reasoning.	<p>For reference, the Applicable CUSC objectives are:</p> <ul style="list-style-type: none"> (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity. (c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. <p>We believe that CMP240 does better facilitate Applicable CUSC Objective (a).</p> <p>The Authority approved CMP213 in July 2014 as it better meets the Applicable CUSC Objectives and their wider statutory duties for the reasons set out in their July decision letter. The Licensee is now required to implement the said Modification (CMP213 – WACM2) for the 1st April 2016 TNUoS charging year.</p> <p>However, the recent Judicial Review proceedings entered into by the RWE (the Claimant) against the Authority (the Defendant) places CUSC generator parties (inadvertently) into a period of significant uncertainty as to the outcome of that Judicial Review.</p> <p>In principle, at a high level, there appears to be four broad possible outcomes of the Judicial Review proceedings, namely:-</p>

- 1) the Court agrees with the Claimant and CMP213 is not implemented; or
- 2) as per (1) but the Court asks the Defendant to review their original decision of July 2014 and the outcome could be either (i) that CMP213 should still be implemented or (ii) that CMP213 should not, on reflection, be implemented; or
- 3) the Court agrees with the Defendant and CMP213 is implemented from 1st April 2016 TNUoS charging year; or
- 4) the Claimant withdraws their Judicial Review action.

Whilst it is early days in terms of the Court process for the Judicial Review it seems certain (at the time of writing this submission in late 2014) that a decision from the Court in terms of outcomes (1)-(3) above is unlikely to be received prior to Monday 23rd March 2015 which is the date by which we (and other GB generators) will have to decide to give notice of any TEC changes we wish to make prior to the 1st April 2016 implementation date for CMP213 TNUoS charges.

The SSE Group has been involved in the reduction of the TEC holdings of its power stations on or around this late March annual deadline for the past three years. These SSE Group TEC holding reductions exceed 1,500MW. In addition the SSE Group has also reduced the TEC held by one of its power stations, by over 700MW, outwith the annual March notification period and, as a result, incurred the 'Cancellation Charge' which CMP240 (via the proposed Legal Text changes to Section 15 of the CUSC) seeks to amend.

As a result of these recent power station TEC holding reductions we are perhaps more cognisant than most CUSC Parties of what's involved in the TEC holding notification process. CMP240 supports and enhances these existing processes by taking into account the uncertainty that arises from the Judicial Review of the Authority decision of July 2014 in respect of CMP213.

Because of the uncertainty as to the outcome of the Judicial Review we, as a major GB generator, are uncertain as to the basis upon which our TNUoS charges will be calculated from 1st April 2016 in terms of will those charges be based either on (i) the CMP213 (WACM2) charging methodology or (ii) the existing 'status quo' charging methodology (unamended by the CMP213 changes).

This makes it very difficult for us to determine, for the 23rd March 2015 deadline, whether we should reduce our TEC holding; which is a distinctly possible outcome if the Court determination accords with either the (1) or (2)(ii) broad outcomes noted above; in order to avoid us paying the 'status quo' based TNUoS charges from 1st April 2016.

We assume there is, conversely, an identical difficulty (arising solely from the fact that the Judicial Review has been entered into by the Claimant) for those generators who wish to reduce their TEC holding if the Court determination accords with either the (2)(i) or (3) broad outcomes noted above (or indeed if outcome (4) arises) in order to avoid them paying the 'CMP213 (WACM2)' based TNUoS charges from 1st April 2016.

Absent CMP240 generators would, as the Proposer of CMP240 notes, be forced to confirm their TEC holding position(s) for 1st April 2016 (by 23rd March 2015) in light of the huge uncertainty we note above.

This will, inevitably, lead to inefficient decisions as parties try to 'second guess' the outcome of the Judicial Review proceedings in terms of the broad possible Court outcomes (1)–(4) noted above.

However, in respect of Court outcome (4) it should be noted that one of the CUSC Parties (namely the Claimant) will be placed in an (unduly?) advantageous position compared to all other CUSC Parties as they alone can bring about this outcome so they could, for example, make their TEC holding decisions for 23rd March 2015 (for the TNUoS charging year starting 1st April 2016) in the knowledge that they can (will?) utilise the outcome (4) route.

After a Court determination on the Judicial Review all CUSC Parties (except the Claimant in respect of outcome (4)) could then find themselves seeking to reverse or unwind the TEC holding decisions they made, in good faith, on or prior to 23rd March 2015.

CMP240 will permit parties to hold off on submitting to National Grid their TEC holding level(s), for application from 1st April 2016, from the 23rd March 2015 deadline to a date twenty Business Days after the conclusion of the legal process.

In our view the twenty Business Days is sufficient time for parties to make that determination. As we have noted above, depending upon which of the broad outcomes (1)–(4) occurs there can only be two effects that arise; namely that TNUoS charges will be calculated for 1st April 2016 either in terms of (i) the CMP213 (WACM2) charging methodology or (ii) the existing 'status quo' charging methodology (unamended by the CMP213 changes).

All CUSC Users, exercising good industry practice, can be expected to prepare in the period prior to the Court determination

	<p>the necessary internal papers / approvals based either on (i) the CMP213 (WACM2) charging methodology or (ii) the existing 'status quo' charging methodology. Qualified internal approval(s) based on either (i) or (ii) can be given with the final internal approval(s) delegated (if necessary) to the appropriate Company Officer(s) to determine in the 'CMP213 Judicial Review Period' of twenty Business Days following the Court determination.</p> <p>We believe that CMP240 does better facilitate Applicable CUSC Objective (b).</p> <p>As we have detailed above (in respect of Applicable CUSC Objective (a)) there is significant uncertainty for generators arising from the Judicial Review proceedings entered into by the Claimant. This will, as noted above, mean that we (and other generators) are unable to make efficient TEC holding decisions, and notify National Grid accordingly, in a timely manner.</p> <p>Furthermore, as a result of this uncertainty surrounding the Judicial Review proceedings generators will be forced to consider applying a risk premium.</p> <p>However, CMP240 would enable <u>all</u> generators to make those TEC holding decisions in a timely and fair manner whilst also avoiding inefficient TEC holding decisions (and risk premia) rising from the uncertainty surrounding the possible outcome of the Judicial Review proceedings.</p> <p>This will, in our view, facilitate effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.</p>
<p>2. Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>In our view the proposed implementation approach, set out in section 4 of the consultation document, of ten Working Days is appropriate and we support it.</p> <p>On a related point, as we have detailed in response to Q1 above, CUSC parties, exercising good industry practice, can be expected to prepare in the period prior to the Court determination the necessary internal papers / approvals such that they can provide to National Grid (if appropriate) the necessary TEC holding notice within the 'CMP213 Judicial Review Period' <i>window</i> of twenty Business Day following the Court determination.</p>
<p>3. Do you have any other</p>	<p>We agree with the Panel that CMP240 does not meet the Self-</p>

comments?

Governance Criteria threshold.

We support the Panel's decision that CMP240 should proceed straight to the Code Administrator consultation.

We support the capitalisation of the term 'CMP213 Judicial Review Period' as this helps clarify the meaning of the term in the context of the CUSC.

We have reviewed the draft Legal text set out in Annex 2 of the consultation document and believe it implements the intent of CMP240.

For the avoidance of doubt, we agree that the minor drafting amendments to the Legal Text noted in paragraph 1.6 of the consultation document make clear the points noted in the November Panel meeting (as set out in paragraphs 1.4-1.6 of the consultation document).

We welcome the action taken by National Grid (as noted in paragraph 1.7 of the consultation document) to notify CUSC parties when the twenty Business Days period commences (and thus when it ends) should this CMP240 Modification be implemented.

We are mindful of the desire to ensure that the CMP192 arrangements are not undermined by CMP240. In our view CMP240 is, given the unique Judicial Review circumstances, complimentary (rather than detrimental) to the CMP192 arrangements.

In this respect we note the Authority's decision letter on CMP192 of 30th March 2012 and, in particular, the opening part of their reasoning, namely that:-

*"We consider that the underlying methodology that forms the basis of the original and all alternatives would allocate the liabilities to generators in a manner reflective of the risk that **any changes in their plans** would pose to efficient transmission investment."* [emphasis added]

The key aspect here is that for all generators have been planning, since July 2014, on the basis of the implementation of the CMP213 (WACM2) charging methodology based TNUoS charges from 1st April 2016. Absent the Judicial Review those plans by generators will be finalised (as they are each year at that time) in time for the March 2015 TEC notification deadline.

The Authority goes on to note, in their reasoning for CMP192, that:-

*"We consider that an enduring regime, codified under industry governance, whereby **generators are incentivised to provide information on their future connection and use of system requirements**, would better facilitate the development of an efficient*

co-ordinated and economical transmission system.” [emphasis added].

The inclusion of a short (twenty Business Day) period in CMP240 for generators to provide notification(s) to National Grid does, in our view, fully conform with the intention of CMP192 as it (CMP240) incentivises generators to provide information on their future connection and use of system requirements as the failure, on the part of the generator, to provide the said notice within the ‘CMP213 Judicial Review Period’ leaves them liable to pay the (CUSC) Cancellation Charge.

Finally, we note that the Authority decided, in July 2014, that CMP213 (WACM2) should be implemented having taken account of the betterment that arises from this change to the CUSC (and TNUoS charges) in terms of the Applicable CUSC Objectives and its wider statutory duties. The Authority decided that implementing this CMP213 (WACM2) change on 1st April 2016 was appropriate as it ensures that these betterments are achieved at the appropriate time.

There is a danger, absent of CMP240, that a perverse effect from the Judicial Review; if it is unsuccessful (from the Claimant’s perspective); is that the date of implementation of CMP213 is delayed beyond 1st April 2016 (the date the Authority has determined the change should be put into effect).

If this were to occur it would, demonstrably, give rise to ‘windfall gains’ (to those generators who should, from 1st April 2016, be paying TNUoS charges based on the CMP213 (WACM2) charging methodology but are, instead, charged on the basis of the ‘status quo’ approach) and a ‘windfall loss’ (to those generators who, from 1st April 2016, would be paying TNUoS charges based on the ‘status quo’ charging methodology rather than the CMP213 (WACM2) approach).

If this were to occur it would appear to incentivise similar Judicial Reviews in the future of charging methodology changes for the purposes purely of delaying the implementation of a proper change.

This would undermine the accepted approach to charging changes (which, in the case of CMP213 / Project Transmit, started in September 2010) and, inherently, give rise to an increase in Regulatory Risk which parties would have to factor into their costs leading, inevitably, to higher charges to existing and future GB consumers.