Stage 04: Code Administrator Consultation

Connection and Use of System Code

CMP261

'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

What stage is this document at?

01	Initial Written Assessment
02	Workgroup Consultation
03	Workgroup Report
04	**Code Administrator Consultation**
05	Draft CUSC Modification Report
06	Final CUSC Modification Report

CMP261 seeks to ensure that there is an ex post reconciliation of the TNUoS paid by GB Generators during charging year 2015/16 which will take place in Spring 2016 with any amount in excess of the €2.5/MWh upper limit being paid back, via a negative Generator residual levied on all GB Generators who have paid TNUoS during the period 1st April 2015 to 31st March 2016 inclusive.

Published on: **26th October 2016**
Length of Consultation: **15 Working Days**
Responses by: **16th November 2016**

The Workgroup concludes:
CMP261 with majority voted that WACM1 better facilitates the Applicable CUSC Objectives with note of support for the baseline.

High Impact:
Users who pay either Generation or Demand TNUoS tariffs.

Contents

About this document

This is the Code Administrator Consultation which includes the deliberations of the Workgroup, responses from the Workgroup Consultation and the final conclusions of the Workgroup.

Document Control

Version	Date	Author	Change Reference
0.1	10/08/2016	Code Administrator	Draft Workgroup Report
0.2	05/09/2016	Code Administrator	Draft Workgroup Report
0.3	12/09/2016	Code Administrator	Draft Workgroup Report
0.4	15/09/2016	Code Administrator	Draft Workgroup Report
0.5	22/09/2016	Code Administrator	Draft Workgroup Report
0.6	05/10/2016	Code Administrator	Final Workgroup Report
0.7	19/10/2016	Code Administrator	Final Workgroup Report
0.8	26/10/2016	Code Administrator	Code Admin Consultation

Any Questions?

Contact:
Ryan Place
Code Administrator

ryan.place@nationalgrid.com

07976794334

Proposer: Garth Graham, SSE.
Garth.Graham@sse.com

1 Summary

1.1 This document describes the Original CMP261 CUSC Modification Proposal (the Proposal), summarises the deliberations of the Workgroup and sets out the options for potential Workgroup Alternative CUSC Modifications (WACMs). Prior to confirming any alternative proposals the Workgroup are seeking views on the options they have identified, what is the best solution to the defect and also any other further options that respondents may propose.

1.2 CMP261 was proposed by SSE and was submitted to the CUSC Modifications Panel for their consideration on 9th March 2016 at an urgently convened CUSC Panel. A copy of this Proposal is provided within Annex 1. The proposed request for urgency was not supported by a majority of the CUSC Panel or by Ofgem (in their letter of 17th March 2016). The Panel and Ofgem did agree to progress CMP261 on an accelerated timetable. The Panel decided to send the Proposal to a Workgroup to be developed and assessed against the CUSC Applicable Objectives. The Workgroup is required to consult on the Proposal during this period to gain views from the wider industry (this Workgroup Consultation). Following this Consultation, the Workgroup will consider any responses, vote on the best solution to the defect and report back to the Panel at the July 2016 Panel meeting.

1.3 CMP261 aims to ensure that there is an ex post reconciliation of the TNUoS paid by GB Generators during charging year 2015/16 which will take place in Spring 2016 with any amount in excess of the €2.5/MWh upper limit being paid back, via a negative Generator residual levied on all GB Generators who have paid TNUoS during the period 1st April 2015 to 31st March 2016 inclusive[1].

1.4 Following the Workgroup discussions, as summarised in this Report, this Workgroup 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/CMP261/ along with the Modification Proposal Form.

Workgroup Conclusions

1.5 At the final Workgroup meeting, Workgroup members voted on the Original proposal and the three WACMs: Three of the Workgroup members voted that the Baseline better facilitated the Applicable CUSC Objectives, one Workgroup member abstained, one Workgroup member voted for the Original Proposal and 6 Workgroup members voted that WACM1 better facilitated the Applicable CUSC Objectives.

[1] The CMP261 original solution proposes the same mechanism as that of CMP251 original to remedy any exceedance of the €2.5/MWh value for average Generator transmission charges. However, it is a one-off change proposal applying to the charging year 2015/16, whereas CMP251 would, if approved, apply on an enduring basis commencing 2017/18. The other important distinction is that CMP261 considers the €2.5/MWh value as a cap whereas CMP251 is a target with reconciliation possible in both directions.

2 Workgroup Discussions

Background and the Defect

2.1 Commission Regulation (EU) No 838/2010 Part B (the 'Regulation') restricts annual average transmission charges paid by electricity Generators in Great Britain to the range of €0/MWh to €2.50/MWh. The Regulation is legally binding for all Transmission licensees across Europe. If in any given year the average annual generation transmission charges in GB do not fall within this range (€0-2.5/MWh), National Grid runs the risk of being non-compliant with the Regulation. Therefore it is important that the average annual generation transmission charges remain within the current prescribed range. The methodology for generation transmission charges in Great Britain is defined in Section 14 of the CUSC. Therefore, to seek to ensure compliance of Great Britain with the above Regulation, CUSC modification CMP224[2] "Cap on the total TNUoS target revenue to be recovered from generation users" was raised by National Grid with a Workgroup formed consisting of Generation and Demand participants with a Panel recommendation that was, subsequently, approved by Ofgem on 8th October 2014[3].

2.2 Under CMP224, and as now codified in the CUSC[4], the proportion of the total annual average TNUoS revenue paid by GB generation in any given Charging Year is the lower of 27% or a calculated percentage to ensure that the upper €2.50/MWh limit in the Regulation is not exceeded. To calculate this percentage in order to set TNUoS tariffs in January (preceding the start of the Charging Year in April) the €2.50/MWh figure is converted to pound sterling using the OBR Spring Forecast €/£ Exchange Rate in Charging Year n-1. This OBR forecast (as set out, for example, in Table 4.1 of their 2014 Budget report[5] on page 92) was €/£ 1.22 for the 2015/16 Charging Year. The MWh is considered by using Forecast GB Generation Output for generation liable for Transmission charges (i.e. total measured energy injected annually by producers into the transmission system) for Charging Year n. In addition an error margin is applied to the €2.50/MWh figure to account for the difference in the one year ahead forecast and outturn values for Forecast TO Maximum Allowed Revenue (£) and Generation Output (MWh), based on previous years error at the time of calculating the error for Charging Year n.

2.3 The calculation of the percentage for the Charging Year 2015/16 was undertaken prior to the TNUoS tariffs being set at the end of January 2015 and is shown in Figure 1. The calculation was to seek to limit the amount of the total TNUoS revenue that could be recovered from GB Generators so as not to breach the €2.50/MWh cap. For Charging Year 2015/16 the calculation yielded a generation percentage of 23.2% which was equivalent to expected revenue of £613m to be paid by generation out of the total expected TNUoS revenue of £2,637m.

		2015/16
CAP_{EC}	Limit on generation tariff (€/MWh)	2.50
y	Error Margin	6.4%
ER	Exchange Rate (€/£)	1.22
MAR	Total Revenue (£m)	2637
GO	Generation Output (TWh)	319.6
G	% of revenue from generation	23.2%
D	% of revenue from demand	76.8%
G.R	Revenue recovered from generation (£m)	613
D.R	Revenue recovered from demand (£m)	2024

[2] http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP224/
[3] Implementation took place on 22nd October 2014
[4] The CUSC, Section 14 – Charging Methodologies, 14.14.5 (v)
[5] http://cdn.budgetresponsibility.org.uk/37839-OBR-Cm-8820-accessible-web-v2.pdf

Figure 1: *The application of the €2.50/MWh cap applied to final tariffs (set in January 2015) for 2015/16 under the current CUSC methodology.*

2.4 As implemented by CMP224, to calculate the percentage of the total TNUoS to be recovered from GB Generators, the upper limit to generation charges has been implemented through a variable described as "CAPec". This is defined in the CUSC as the "*Upper limit of the range specified by Commission Regulation (EU) No 838/2010 Part B paragraph 3 (or any subsequent regulation specifying such a limit) on annual average transmission charge payable by generation*" [6].

Workgroup Discussions

2.5 The Proposer raised the proposal (CMP261) which identified the defect that; using an indicative estimate, based on publically available information (up to the end of February 2016); the average annual TNUoS charges paid by Generators in GB, in Charging Year 2015/16, was likely to amount, at that time, to circa €3.22 /MWh, which is approximately €0.73/MWh, or 29%, in excess of the €2.50/MWh upper limit set in the Regulation. The Proposer updated these figures (from end February to end March 2016) in the Workgroup meetings (see Figure 2 below).

2.6 The Proposer noted if a GB Generator paid a TNUoS tariff exceeding the €2.50/MWh cap then National Grid will have charged an excessive amount of TNUoS in the 2015/16 Charging Year. The Proposer noted that, had their arguments been accepted, the CMP261 solution (had urgency been granted and approval given to the Original, to change tariffs by the end of March 2016) would have seen the Generator TNUoS tariffs for Charging Year 2015/16 changed 'mid-year' (in reality, it would have been at the end of March 2016) and this would have resulted in the Generator Reconciliation carried out in accordance with CUSC 3.13.2-3 in April 2016 ensuring that, via a circa £1.92/kW residual paid to Generators, there was compliance with the €2.50/MWh limit set in the Regulation with the balancing amount (of approximately £130M) being recovered from Suppliers in the following year 2017/18 (Charging Year Y+2).

2.7 One Workgroup member noted that no draft CUSC legal text had been included with the CMP261 proposal, so the Proposer was asked to clarify what the modification was seeking to change in the CUSC. The Proposer noted that it was not altogether unusual for draft legal text not to be provided at this stage in the process, and clarified that any change to the CUSC resulting from CMP261 would be a one-off occurrence in order to mitigate what the Proposer considered to be a breach of the Regulation in Charging Year 2015-2016. The Proposer clarified that if the €2.50/MWh limit was to be exceeded in any future Charging Year then another (separate to CMP261) modification would need to be raised. One Workgroup member noted that if an ex post reconciliation of the TNUoS tariffs was carried out for 2015/16, and then this would effectively set a precedent which would need to be continued year on year if there were further breaches of the €2.50/MWh limit in a future year.

2.8 One Workgroup member suggested that the CUSC modification should seek an enduring solution to amend the formula (e.g. bigger risk margin) if the principles of an ex ante approach was valued by the industry. The Proposer noted that the reason an enduring solution was not sought as part of the CMP261 solution to the defect is because a variety of economic events, such as 'Brexit'[7], could have a significant impact either positively or negatively on the €/£ exchange rate in Charging Year 2016/17. The Proposer, mindful of CMP251, noted that they were conscious of CMP261 not affecting the progression of CMP251 and also that CMP251 would not be implemented in enough time to ensure that the €2.50/MWh cap is not exceeded, in Charging Year 2015/16, and to minimise any associated costs that might be attributed to parties and the SO.

2.9 Some Workgroup members raised the dangers of retrospective changes and the impact on Supplier and Demand customers. Those members did not foresee any retrospective ex post reconciliation of tariffs to be applied to the

[6] The CUSC, Section 14 – Charging Methodologies, 14.14.5 (v)

[7] This discussion having taken place prior to the 23rd June 2016 Referendum result being known.

Charging Year 2015/16. Notwithstanding that, the Proposer suggested that any impacts arising from exceeding the €2.50/MWh upper limit cannot be billed as being totally unexpected by stakeholders for a number of reasons, including:

(i) It was, set out in 2010 when the Regulation was introduced that the limit cannot be exceeded;

(ii) it was identified in the September 2011 Ofgem Project Transmit Technical Working Group Initial Report, which noted that "*Analysis was presented to the Working Group to ascertain when the EU €2.5/MWh guideline would be likely to be breached. It was estimated that, in the context of GB, the EU Tarification Guidelines could be breached as early as 2015/16 using 'worse case' assumptions and by 2018/19 using assumptions considered to be a 'central case'*[8] ".

(iii) it was implicitly recognised that a possibility of a change to TNUoS tariffs would occur, if required, within a particular Charging Year by virtue of the statement (within the CMP224 proposal itself of September 2013) that "*In any given charging year, if the generation revenue falls within the range then the G/D split ratio will not be modified*." or, to put the counter factual, 'if the generation revenue falls out with the range then the G/D split ratio will be modified';

(iv) it was highlighted in the May 2014 CMP224 Final Modification Report (see, for example, Figures 1 and 2) that an exceedance of the €2.50/MWh limit was forecast to occur during Charging Year 2015/16[9];

(v) it was recognised in Ofgem's October 2014 CMP224 Decision Letter[10] that "*Based on current forecasts and the current G:D split of 27:73, average transmission charges for Generators in Great Britain are expected to exceed the €2.5/MWh upper limit at some point over the five years from 2015/16 to 2020/21*"; and

(vi) it was highlighted to stakeholders on numerous occasions[11] during 2015 and 2016 (culminating in the raising of CMP261 in March 2016) that there was a possibility of an exceedance of the €2.50/MWh limit occurring in Charging Year 2015/16.

2.10 In respect of item (ii) above a Workgroup member did not feel that it was reasonable to expect users to read all documentation publicly available in order to make a judgement on the expectancy of an exceedance of the €2.50 CAP.

2.11 In respect of item (iv) above a Workgroup member commented that this was already a risk prior to the implementation of CMP224 and was why CMP224 was raised.

2.12 In respect of all items above some Workgroups members felt that an ex post reconciliation was totally unexpected and that an ex post adjustment could be considered in future methodology discussions. It is unexpected due to the ex ante methodology being approved in the CMP224 modification. Some Workgroup members felt that it was foreseen as an obligation exists in the Transmission licence[12] that users should have clear sight of the Charging Methodology and risks associated with it. Some Workgroup members felt that CMP224 considered the potential of the above risks and put in place a methodology to address them.

2.13 The Proposer also noted that, with the proposed CMP261 (Original) solution, Suppliers would not have an immediate cash flow impact as their transmission charges would not be changed until the following 2017/18 Charging Year by amending the K factor. However, some Workgroup members believed that there would be an immediate Profit and Loss impact resulting from the impact

[8] Paragraph 9.15 https://www.ofgem.gov.uk/ofgem-publications/54282/transmit-wg-initial-report.pdf

[9] CMP224 Final Modification report, paragraph 4.6, page 10.

[10] https://www.ofgem.gov.uk/sites/default/files/docs/2014/10/cmp224_d.pdf

[11] Examples of these are listed below in paragraph 2.33.

[12] '*The licensee shall, for the purpose of ensuring that the use of system charging methodology achieves the relevant objectives, keep the use of system charging methodology at all times under review'* – Electricity Transmission standard licence condition C5(1).

of long term fixed contracts. Resulting action from some Suppliers could be to increase forward looking tariffs. A Workgroup member then asked if costs could be passed onto Suppliers in the 2015/16 Charging Year. The Proposer noted that the Regulation only stipulates Generators should not pay more than €2.50/ MWh and, in terms of the CMP261 (Original) solution, any corresponding change, in terms of Supplier TNUoS tariffs, would occur in 2017/18.

2.14 With the approval by Ofgem[13] of CMP224[14] the approved methods to seek to ensure compliance with the Regulation was to use an ex ante methodology. The driver for the CMP224 proposal was to counter the risk of non-compliance with the Regulation if indeed a breach of the €0/MWh to €2.50/MWh range applied on generation transmission charges becomes a possibility in the future. The logic behind CMP224 was to set an error margin (deliberately not taking account of movements in the €/£ exchange rates as this was considered to be outside industry control) based on historical evidence of demand and revenue forecast error which would be a reasonable approach to ensure the €2.50/MWh limit was not exceeded. However, the Regulation is silent on what should be done where the limit is expected to be exceeded, and indeed when it is actually exceeded.

2.15 One Workgroup member challenged that as a result of the ex post nature of CMP261 we are questioning the principles of the wider methodology as a whole. The Proposer noted that given the strong argument that a breach of the €2.50/MWh limit had occurred in the 2015/16 Charging Year that a remedy was required to address the harm that (a) had been experienced during 2015/16 and (b) was continuing to be experienced during 2016/17 by GB Generators. A Workgroup member felt it important to flag that if there was no breach then no remedial action would be required.

2.16 Some Workgroup members felt that the concept of 'harm' referenced above is not in scope of the modification as it stands. The modification proposal (Original) specifically seeks a reconciliation to ensure that Generation charges are no higher than €2.50 MWh for the Charging Year 2015/16. Subsequently in light of the legal advice received it states that it would be prudent to adjust the Generation charges paid in the relevant year by adjusting on a backward looking basis in order to bring them materiality in line with €2.50 MWh limit in order to demonstrate compliance with the Regulation.

2.17 A further Workgroup member argued that if local charges were excluded from the calculation then the €2.50/MWh limit would not be exceeded. The Proposer countered that the arguments for including and excluding generation only spurs were set out in the CMP224 Final Modification Report. The Proposer highlighted that stakeholders were afforded three separate occasions (the Workgroup consultation, the Code Administrator consultation and the Ofgem Regulatory Impact consultation) to set out those arguments. The Proposer noted that, mindful of these arguments, in the CMP224 decision, the Authority decided to include generation only spur charges in the pot of money recovered, and that no other proposals had come forward to change this definition since CMP224 was implemented. The Ofgem representative at the CMP261 Workgroup noted that in its CMP224 decision letter, the Authority approved an option that would result in charges that comply the "stricter" interpretation of the Regulation (and a broad interpretation) on grounds of legal risk, not that they had accepted the principle that local circuit charges should be included in the calculation of GB's average charge. The Proposer considered that this was the practical effect. The Ofgem representative disagreed with the Proposer on this point.

2.18 Subsequently, at the second Workgroup meeting[15], the Proposer noted to the Workgroup that the legal robustness of including generation only spurs was confirmed by the Addleshaw Goddard legal advice provided to the CMP261 Workgroup in, for example, their answer to Question (iv), at paragraph 20, which states that *"… we agree with the conclusions reached in respect of the*

[13] In its decision letter of 8th October 2014.

[14] Which was implemented on 22nd October 2014.

[15] 29th April 2016.

CMP224 that it is reasonable that such spurs should be included within the average G charge calculation". The Proposer highlighted that detailed arguments to include generation only spurs had, for example, been set out over some 20 pages in the SSE response to the CMP224 Workgroup consultation of 23rd January 2014[16]. Furthermore, the Proposer indicated that the Addleshaw Goddard note went on to say, in answer to Question (iv); at the end of paragraph 20; "*In contrast, it is not clear on what basis the exclusion of "charges paid by producers for physical assets required for connection to the system" justifies the exclusion of TNUoS charges (as opposed to connection charges) in respect of generation only spurs, and therefore the justification for such a specific carve-out appears lacking*". The Proposer stated therefore that it would seem wholly appropriate for Workgroup members who supported excluding generation only spurs (despite the evidence and advice to the contrary) should provide that justification.

2.19 Some Workgroup members felt that whether there has been an exceedance of the Regulation depends on the viewpoint of individual parties; Suppliers might view that having an ex ante approach displays sufficient prevention to avoid the limit being exceeded. The Proposer reminded the Workgroup that such a viewpoint, whilst interesting, did not address the legal requirement, namely not breaching the €2.50/MWh limit.

2.20 In order to make an informed decision on the CMP261 impacts, it would be useful to understand how a process might work for the reconciliation. The Chair confirmed at the first Workgroup meeting[17] that it would need a CUSC modification to change the date the Generator Reconciliation would be produced (which was, at the time, the end of April). The Proposer highlighted that had CMP261 been dealt with in the 'urgent' timescales asked for then he had envisaged that the truing up of the TNUoS paid by Generators in Charging Year 2015/16 would have occurred as part of the existing Generation Reconciliation process set out in the CUSC[18]. The Proposer argued that the longer it took for any reconciliation to take place the greater the harm done to GB Generators by having to fund the circa £130M not only during the course of 2015/16 but also (until a remedy occurred) during the course of Charging Year 2016/17 as well. At the second Workgroup meeting the Proposer asked National Grid (i) if the 'Generation Reconciliation Statement(s)' prepared in accordance with 3.13.2 of the CUSC, for Charging Year 2015/16, had already been issued; and (ii) did those statements include any amount(s) associated with the exceedance of the €2.50/MWh in Charging Year 2015/16. National Grid confirmed that the answer to (i) was 'yes' and the answer to (ii) was 'no'. The Proposer noted that this would mean that if CMP261 was approved by the Authority that another form of 'Generation Reconciliation' would seem to be required.

2.21 As Some Workgroup members previously mentioned they felt that the concept of 'harm' as referenced above is not in scope of the modification as it stands.

2.22 National Grid added that if the CMP261 Original was to be approved by the Authority a second Generation Reconciliation would be carried out at a later date. The Proposer noted that given all the data necessary to calculate the exceedance and the amount to be returned to GB Generators (of some £1.92/kW) was already available (as at the 29th April 2016, if not before); coupled with National Grid having the means necessary to perform this task including, practically, contacting / making payment to the affected Generators; that this should be done with the utmost alacrity to minimise the harm and costs arising from the breach of the €2.50/MWh limit in Charging Year 2015/16. National Grid noted that because the reconciliation involves a change in TNUoS tariffs, it will require approval from the Authority to make the changes. The Proposer asked National Grid to confirm if it had asked Ofgem for approval for a mid-year tariff change in Charging Year 2015/16 in accordance with its Licence; and to confirm the outcome of that request; in terms of was it still pending or had it been approved or rejected by the Authority? National Grid confirmed, at the third Workgroup meeting that no approach to Ofgem had

[16] Pages 97-119 of the CMP224 Final Modification Report.
[17] 23rd March 2016.
[18] Section 3.13.2-3

been made as it was following the ex ante CMP224 methodology. A Workgroup member felt it would be helpful to have a process map detailing the reconciliation process options.

2.23 As Some Workgroup members previously mentioned they felt that the concept of 'harm' and 'costs' as referenced above is not in scope of the modification as it stands.

2.24 The Workgroup agreed that a legal opinion would be useful in terms of 1) coming to the conclusion as to whether the TNUoS tariffs for Charging Year 2015/16 paid by GB Generators were in breach of the Regulation and 2) whether reconciliation is an absolute requirement to ensure compliance with the Regulation.

2.25 The Workgroup debated the legal questions with the final version (below) submitted to Addleshaw Goddard by National Grid:

1. If under the current methodology (which uses an ex-ante approach with error margin and no reconciliation) GB's average G charge exceeds €2.5/MWh due to forecast error for the 2015/16 charging year, is it compliant with the regulation (i.e. no action is required) and if not, what action is required:
    a. Reconciliation for the 2015/16 charging year
    b. Changes to the methodology to apply for future charging years
2. If changes are required for future charging years must they ensure we do not exceed €2.5/MWh, e.g. by introducing ex-post reconciliation, or would changes to reduce the risk of exceeding €2.5/MWh, e.g. a larger error margin, be sufficient?
3. If Generator charge reconciliation is required for 2015/16, how quickly should this happen?
4. Should the charges for Generation only Spurs be included in the calculation of the average Generation charge? (See CMP224 Report and Responses).
5. Would the use of the exchange rate at the time the Regulation was set be reasonable?

Views on the legal opinion from Addleshaw Goddard (dated 22nd April 2016).

2.26 The legal opinion can be found in Annex 4.

2.27 Before presenting the legal opinion to the Workgroup, the National Grid legal representative made the following comments:

- The advice has been obtained by National Grid at the request of the Workgroup and solely in the context of the Workgroup deliberations on CMP261 and so was without prejudice to National Grid's own views
- It addresses the specific Workgroup questions
- It is an informed view, but still a view

2.28 In summary, according to the National Grid legal representative, the legal opinion states:

- A pure ex ante approach, by its nature, is never guaranteed to be 100% precise or accurate and is the approved GB approach to compliance with the Regulation
- In establishing the GB approach judgements have been made as to what charges are included in the calculation of transmission charges for the purposes of setting the G:D split
- The fact the €0/MWh to €2.50/MWh range has been exceeded is contrary to the strict requirements of the guidelines within the Regulation but as would generally be the case whether, how and when to "remedy" would generally be considered on the facts and against the effect and consequences and risk of any enforcement routes available.

2.29 The majority of the Workgroup members felt that the Addleshaw Goddard's legal opinion confirmed that an ex-ante approach has still got its merits, but that if National Grid have exceeded the €2.50 CAP then best practice would be to remedy the non-compliance. The Proposer highlighted that the legal opinion identifies that there is a strong legal argument that a material breach of the

€2.50/MWh limit set in respect of the 2015/16 Charging Year had occurred and that this equates to non-compliance with the Regulation. Accordingly the Proposer and some other Workgroup members felt that the legal opinion was unequivocal that a remedy is required following the breach of the €2.50/MWh limit and, that the discussions of the Workgroup needed to focus on the type of remedies that are available. In the view of some Workgroup members they felt the interpretation of the legal opinion by the Proposer and some Workgroup members was incorrect because the legal opinion in 9a and 9b states:

a. there is a *strong argument* that a material breach of the €2.5/MWh G Charges limit in respect of the 2015/16 charging year equates to non-compliance with the Guidelines Regulation;

b. as a result, we are of the view that reconciliation of G Charges for the 2015/16 charging year *would be prudent*;

2.30 The Proposer noted the National Grid view set out in paragraph 9.5[19] of the CMP251 Workgroup report submitted to the April 2016 CUSC Panel that "…,*the purpose of the Regulation is not consistent with an ex post reconciliation*" and wondered therefore, whether reconciliation, per se, would be permitted under the Regulation with this interpretation.

2.31 It was clarified by the National Grid legal representative that the Regulation does not say how you achieve anything; it just says what you need to achieve (namely remaining within the €0/MWh to €2.50/MWh range). The aim and the purpose of the Regulation are to not exceed the €2.50/MWh limit, but, it does not mandate how to achieve it. The question that needs to be asked is how fast any reconciliation should be done. It was flagged that National Grid is required to carry out Generator volume reconciliations by 30th April after each Charging Year (i.e. by 30th April 2016, for Charging Year 2015/16) and in the Workgroup discussions[20] on CMP251 National Grid confirmed that the data is available to carry out a tariff reconciliation if this was required in an enduring industry process. The Proposer noted that, in his view, the data had been available for Charging Year 2015/16 by the 30th April 2016 to permit National Grid to remedy the breach that, based on the legal opinion (dated 22nd April 2016), there were strong arguments to believe had occurred. It was added by some Workgroup members that the governance process needs to be followed in order for full Workgroup discussion before conclusions can be made on a remedy and timescale.

2.32 A Workgroup member pointed out that paragraph 3 of the legal opinion states that exceedances are permissible; it is only where the exceedance is material that reconciliation may be considered best practice. In a Workgroup members view we are not permitted to exceed so we are not permitted to reconcile, it was noted that reconciliation is a standard industry practice where a limit has been exceeded, and where it was appropriate to do so. A further Workgroup member's opinion was provided that through the governance process (CMP224) an ex-ante approach had been agreed as a methodology that was put in place to address revenue and generation output forecast risk.

2.33 The Proposer highlighted that a question arose as to whether National Grid could (or should) have acted sooner, to address the breach in Charging Year 2015/16. The Proposer noted that on numerous occasions during 2015 and 2016 (culminating in the raising of CMP261) that the possibility of an exceedance of the €2.50/MWh limit occurring in Charging Year 2015/16 had been identified.

2.34 Examples of these warnings included:-

[19] "*As the legal opinion from Addleshaw Goddard alludes, EU Regulation 838/2010 is purposive and the intent of the Regulation is to promote cross border trade. Given that ex ante tariffs provide price certainty to market participants, the purpose of the Regulation is not consistent with an ex post reconciliation*"

[20] Paragraph 4.12 "*In the event an ex post process was adopted, National Grid confirmed that a good enough set of data for Generator reconciliation is available at D+23 as per the existing standard metering settlement timescales. Presently a generation reconciliation process is carried out at the end of April (in t+1) to take account of power station demand and generation in negative TNUoS charging zones in the preceding Charging Year t*."

- January 2015
  - 30th at the CUSC Panel (minute 4409-4411) raised on the back of an email sent on
  - 19th[21] to a National Grid CUSC Panel member @ 09:27

- May 2015
  - 13th at the Transmission Charging Methodology Forum (TCMF) (minute 7)
  - 29th at the CUSC Panel (minute 4597-4600 with a follow up email[22] shortly after that meeting @ 13:48 based on the email of 19th January)
- August 2015
  - 28th at the CUSC Panel (minute 4673-4694) plus the CMP251 Modification Proposal[23] and Proposers' presentation to the Panel where, for example, the forecast Generator €/MWh for 2015/16 was identified as €2.65/MWh (slide 3).
- November 2015
  - 11th at the TCMF (minute 2-4 plus slides 13-18)
- February 2016
  - 26th at the CUSC Panel (minute 5079-5082)
- March 2016
  - 9th at the CUSC Panel (minute 5087-5112) plus the CMP261 Modification Proposal and Proposers' presentation to the Panel

2.35 Notwithstanding these warnings as to the possibility of a breach, the Proposer noted that National Grid through its Transmission Licence Condition C5(1) is obliged to "*keep the use of system charging methodology at all times under review*". The Proposer suggested that even a cursory examination during 2015/16; be it on a 'spot check' or regular basis; of the available data would have indicated to National Grid the possibility (and towards the latter half of the period, the probability, if not near certainty?) of a breach of the €2.50/MWh limit set in the Regulation. This is illustrated in Figures 2 and 3 below where neither of the two variable (the €/£ exchange rate or the generation output) actuals came within the levels used when setting the 2015/16 Charging Year generation TNUoS tariffs in January 2015. The cumulative effects of these two variables (the €/£ exchange rate and the generation output) is shown in Figures 4. This, the Proposer suggested, would have indicated that National Grid could have carried out a mid-year tariff change in order to address the risk of a breach. It was noted that a mid-year tariff change had been carried out before by National Grid. In this respect the Proposer highlighted the 'Good Industry Practice' standard that is widely used within the industry; namely that degree of skill, diligence, prudence and foresight expected from the same type of undertaking under the same or similar circumstances; and wondered why that appeared not to have occurred this time. As noted in paragraph 2.22 above, National Grid confirmed that it had not approached Ofgem to undertake a mid-year tariff change in Charging Year 2015/16 as it was following the ex ante CMP224 methodology. Therefore the required changes to the Charging Methodology to comply with the Regulation had been made. Further the validity of the ex ante approach had been reconfirmed by the CMP251 legal opinion in October 2015.

2.36 In a Workgroup member's opinion National Grid would not have even needed to seek Authority approval as European law takes precedence over national law, if National Grid thought that was the appropriate thing to do.

2.37 A Workgroup member added that the most important statement in the legal opinion is in paragraph 4 where it refers to the "*materiality*" of the breach[24] that has occurred in Charging Year 2015/16:

[21] The email is reproduced in Annex 6.

[22] The email is reproduced in Annex 6.

[23] CMP251, description of issue or defect: "*For instance, if the Euro/pound exchange rate remains at the level observed since April 2015 (an average of 1.38 for the period 1 April to 30 June) then the cap would be exceeded in 2015/16 (holding all other assumptions constant)*".

"….*in circumstances where the outturn figures for a charging year demonstrate average €/MWh G Charges which are materially above the G Charge Guidelines limit (as is the case for the 2015/16 charging year), on balance we would suggest that the G Charges paid for the relevant year should be adjusted on a backward looking basis in order to bring them materially in line with the €2.5/MWh limit and in order to demonstrate compliance with the Guidelines Regulation*."

2.38 The Proposer believes that CMP261 needs to be progressed in line with the defect raised; however, it needs to be considered somewhere how an enduring solution can be introduced to avoid the reoccurrence of the issues currently faced. In some Workgroup members' opinion the information written in paragraphs 4, 5 and 10 of the CMP261 legal opinion gives enough information to confirm that it is the requirement of the Workgroup to discuss whether reconciliation is appropriate and the appropriate timescales to accompany the reconciliation.

2.39 **Further Workgroup Discussion**

2.40 The Proposer provided (for the 2nd Workgroup meeting) the following updated figures in reference to the defect (based on the available data up to 31st March 2016):

		NG published Jan final 2015/16	Outturn full charging year 2015/16
		Jan-2015	Mar-2016
Cap Euro/MWh	€/MWh	2.50	
Target Euro/MWh	€/MWh	2.34	
Expected Exchange Rate	€:£	1.22	
Expected Cap Sterling	£/MWh	1.92	
Expected Output	TWh	320	
Expected Revenue	£M	613	613
Expected Outturn Exchange Rate	€:£		1.362
Expected Outturn Generation	TWh		259
Expected Revenue collected from generators	€m		835
Expected Outturn unit revenue	€/MWh		3.22
Excess Unit Revenue	€/MWh		0.72
Excess Revenue	€m		187
Generation Capacity	GW		71.5
Reduction in TNUoS generation charge	€/kW		2.62
Exchange Rate	€:£		1.364
Reduction in TNUoS generation charge	£/kW		1.92

***Figure 2**: Key data items for Charging Year 2015/16 pertaining to CMP261*

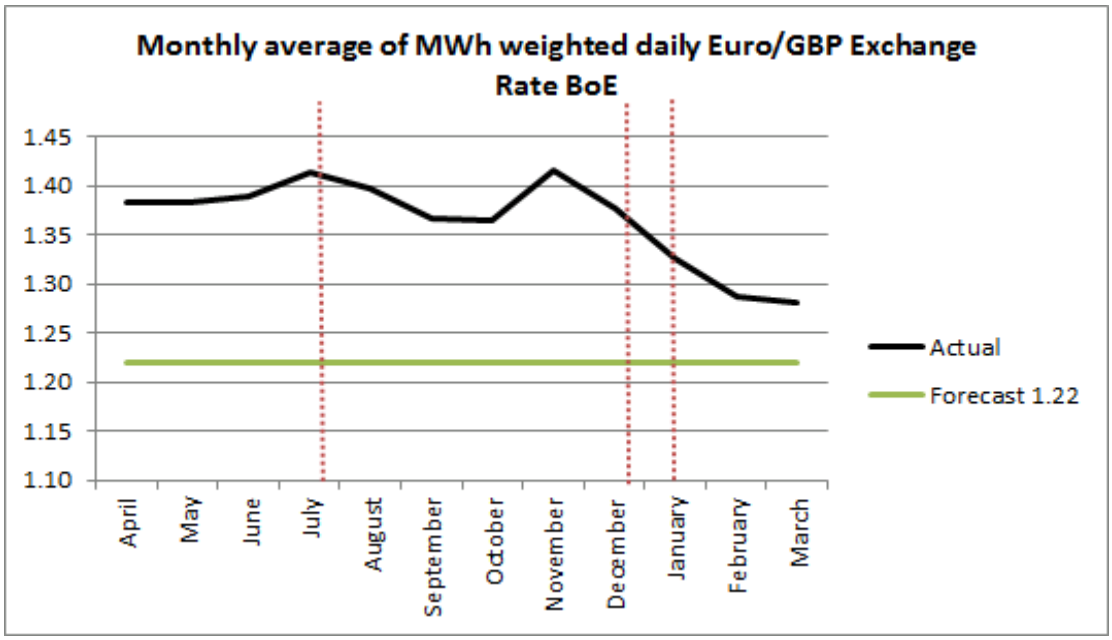


***Figure 3**: Graph showing the Daily Bank of England €/£ Exchange Rate for 2015/16 and the forecast rate used in tariff setting for 2015/16*

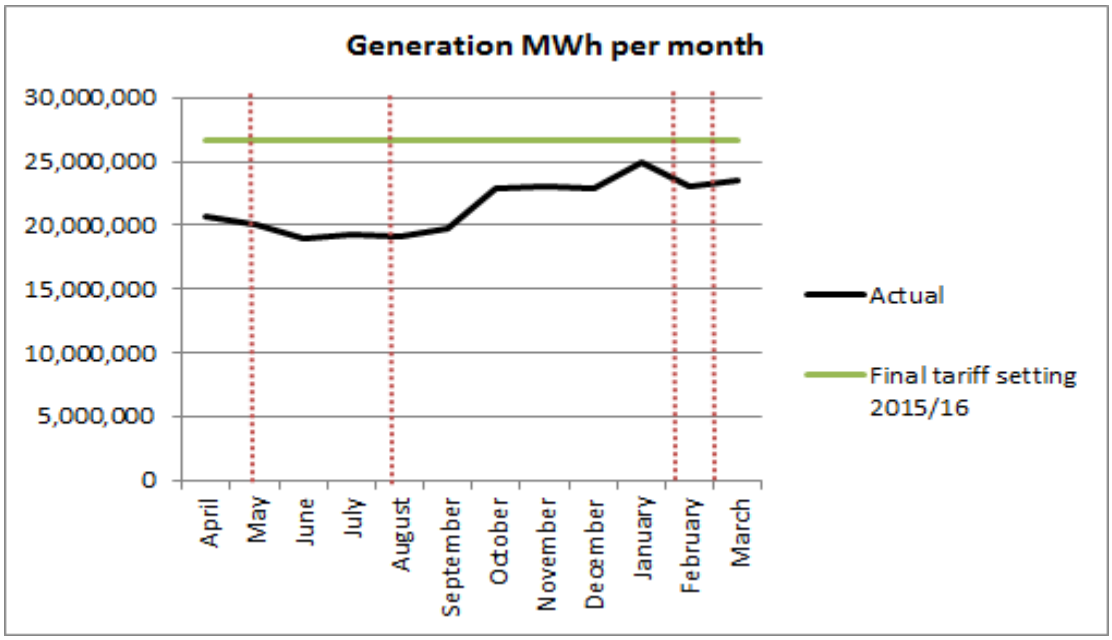


***Figure 4**: Graph showing the actual Generation Output and the forecast figure used in tariff setting for 2015/16*

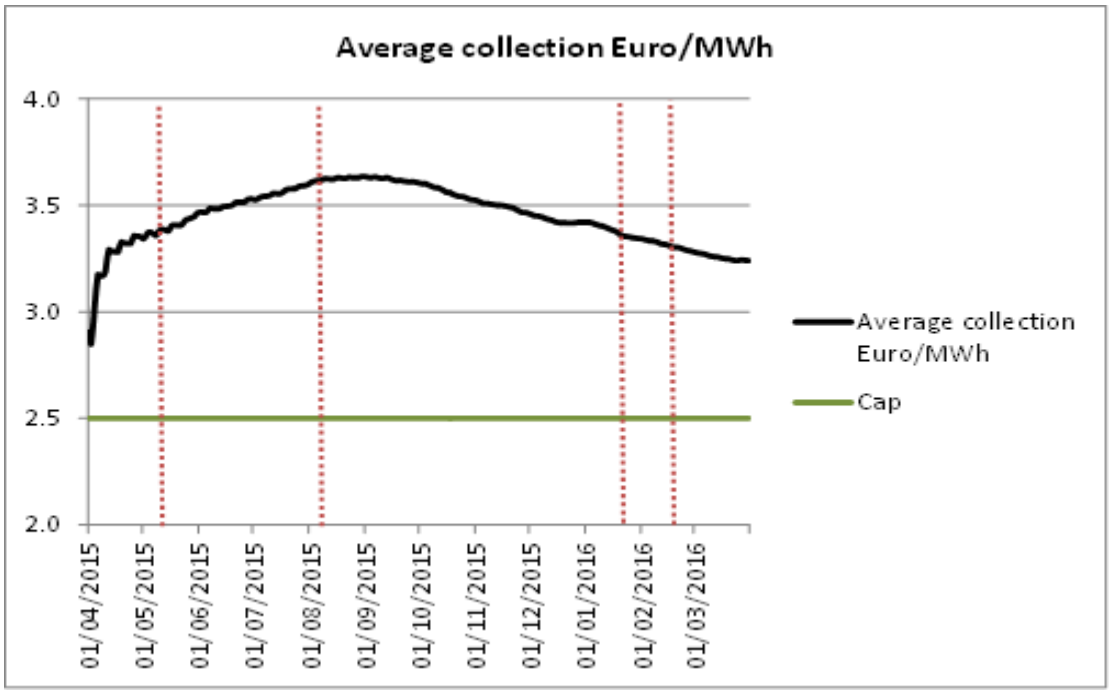


***Figure 5**: Graph showing the combined effect of the two individual items shown in Figures 3 and 4 in 2015/16*

2.41 The Proposer argued that due to higher than necessary generation TNUoS charges electricity wholesale costs could have had a negative impact on consumers, cross border trade, competition and interconnectors could have financially benefited due to increased flows.

Workgroup discussion on National Grid Analysis in Annex 5

2.42 In the second Workgroup meeting of CMP261 an action was placed on National Grid to confirm the outturn figures for 2015/16. At the third Workgroup meeting National Grid noted that in providing outturn data, there were a number of interpretations that could determine the actual outturn. For instance, it was flagged that in the CMP224 methodology specifically excludes exchange rate risk from the calculation and therefore in judging the outturn, it could be argued that the original exchange rate used in the forecast should also be used in the outturn. The Proposer noted that in light of the Addleshaw Goddard legal

advice; and in particular paragraphs 23 and 24[25]; it was neither rational, logical or reasonable to now assess actual (as opposed to forecast) compliance with the Regulation in Charging Year 2015/16 on the basis of a forecast from March 2014 when the actual exchange rate data for the year in question was now freely available. For completeness, National Grid also provided outturn numbers where a "broad" interpretation of local circuit charges was used. The Proposer reiterated the points noted in paragraph [2.18] and also referred to the Ofgem CMP224 decision letter where it is stated *"We must approve either the original proposal or WACM1 [both of which used the 'strict' interpretation] to ensure compliance with the Regulation…*" A Workgroup member highlighted that Ofgem were clear in their CMP224 decision letter that the CMP224 Original and the 3 WACMs, using both the strict and broad interpretation mitigated (to a greater or lesser degree depending on the interpretation of the Regulation used) the risk of non-compliance with the Regulation.

2.43 CMP261 has opened up the debate previously discussed in the CMP224 Workgroup about whether local circuit charges should be included in the calculation for Regulation compliance. The Proposer noted that this 'opening up of the debate' seemed bizarre, given that it had not led to a similar debate under CMP251; where the undertaking of the same calculation of the three variables to determine post reconciliation compliance with the €2.50MWh elicited none of this 'debate' now seen when undertaking that same calculation for CMP261. Rather, the Proposer hypothesized, it appeared that the local circuit charge 'issue' was perhaps now being resurrected for CMP261 as a crude attempt to artificially 'remove' the breach of the €2.50/MWh by massaging the variables to achieve the result desired. The Proposer wondered if a less generous person might conclude that the only reason that this approach (of excluding Generator only spurs plus using forecast rather than actual data) was now being taken forward was in order to both frustrate and obfuscate the remedying of the breach and the ceasing of the harm at the earliest practical opportunity. National Grid made the point that data was provided on the impact of Generator spurs following comments made by Ofgem in a Workgroup meeting. The Ofgem representative noted that if a broad interpretation of the Regulation as regards, "*charges in respect of assets required connecting to the system*", is correct, GB's average charge would be less than €2.5/MWh. Some Workgroup members considered that the debate around the 'strict' and 'broad' interpretation was closed following Ofgem's decision on CMP224 and, therefore, wasn't relevant to CMP261. In their view Ofgem had decided that the strict interpretation was correct and market participants had a reasonable expectation that compliance with the Regulation would be carried out based on a strict interpretation. The Ofgem representative noted that the CMP224 decision was based on the view that the words "*charges in respect of assets required to connect to the system*" were ambiguous. Ofgem, therefore, approved a CMP224 option that would comply with either the 'strict' or the 'broad' interpretation, which ever was correct, on the grounds of legal risk.

2.44 The Proposer noted that the relevant CUSC legal text [26] for the 'strict' (i.e. including Generator spurs) and 'broad' (i.e. excluding Generator spurs) options under CMP224 were fundamentally different. Thus the relevant legal text for CMP224 WACMs 2 [27] and 3 [28] (i.e. the options that were based on the 'broad' / exclude approach to Generator only spurs) specifically had a 'REC spurs'

[25] [para 23] "*In the context of a reconciliation of G Charges (in the context where reconciliation is deemed appropriate) the Guidelines Regulation does not mandate a specific approach on exchange rates. However, we would suggest that a robust and reasonable approach would be to use average actual exchange rates during the period of the 2015/16 charging year*".

[para 24] "*By way of example, the EU Merger Regulation 139/2004/EC sets mandatory thresholds for notification in euro and the Commission's Consolidated Jurisdictional Notice made under that Regulation states that the annual turnover should be converted at the average rate for the 12 months concerned.[25] We believe that the same approach to currency conversion would be expected in this context, as it would be more consistent with the purpose of the Guidelines Regulation to use an exchange rate for the relevant year, which better represents the economic reality in that year*".

[26] The relevant part of the CUSC for the purposes of CMP224 being 14.14.5 (v).
[27] See page 194 of the CMP224 Final Modification Report (13th May 2014)
[28] See page 200 of the CMP224 Final Modification Report (13th May 2014)

element[29]. However, the relevant legal text for CMP224 Original [30] and WACM1 [31] (i.e. the options that were based on the 'strict' / include approach to Generator only spurs) specifically did not have this 'REC spurs' element; and it was the Original option that was approved by the Authority and therefore that is the version of the legal text in the current (baseline) CUSC. The Ofgem representative also considered that regardless of Ofgem's view, the interpretation of the Regulation would be relevant to CMP261, for example, Workgroup members might bring forward arguments or evidence suggesting a broad interpretation is correct.

2.45 Some Workgroup members felt that Ofgem made it clear in their CMP224 decision letter that local circuit charges needed to be included in the calculation in order to ensure compliance with the Regulation. Analysis was provided to highlight the differing levels of exceedance that may or may not have occurred depending on whether an 'include' or 'exclude' approach[32] to the local circuit charges was taken on compliance with the Regulation. One Workgroup member also suggested that an outturn should be provided using only forecast rather than actual generation output, as this was the approach taken in Sweden[33]. As with the exchange rate noted above, the Proposer highlighted that the use of an old, outdated, forecast figure when actual data was now available was neither rational, logical nor reasonable. The National Grid analysis provided to the second Workgroup meeting is represented in the figure below:

Summary of EU Regulation 838/2010 Interpretations

Exceedance

		Exchange Rate Interpretation					
		Risk Excluded Forecast data used		Risk Included Actual data used			
Generation Output Interpretaion	Using Actual Data	Outturn €/MWh	2.81	Outturn €/MWh	3.15	Include (Strict)	Local Circuits Interpretation
		G Charge over-recovery £m	64.12	G Charge over-recovery £m	119.50		
		£/KW over-recovery	0.92	£/KW over-recovery	1.71		
	Using Forecast Data	Outturn €/MWh	2.21	Outturn €/MWh	2.47	Include (Strict)	
		G Charge over-recovery £m	N/A	G Charge over-recovery £m	N/A		
		£/KW over-recovery	N/A	£/KW over-recovery	N/A		
	Using Actual Data	Max Outturn €/MWh	2.02	Max Outturn €/MWh	2.26	Exclude (Broad)	
		G Charge over-recovery £m	N/A	G Charge over-recovery £m	N/A		
		£/KW over-recovery	N/A	£/KW over-recovery	N/A		

***Figure 6**: Summary of EU Regulation 838/2010 Interpretations*

2.46 Figure 6 shows that two scenarios indicate an exceedance of the €2.50/MWh limit has arisen; with the 'strict' interpretation (of the Generator only spurs) and use of actual data (for (i) the €/£ exchange rate and (ii) generation output). Depending on the exchange rate interpretation; in terms of using either the March 2014 forecast or using the actual data for Charging Year 2015/16; that exceedance is either €0.31/MWh or €0.65/MWh respectively.

2.47 A Workgroup member asked the Workgroup how the figures provided by National Grid differed from those provided by the Proposer. It was confirmed that the main difference was that the Proposer had assumed National Grid had recovered the full targeted £612m from Generator TNUoS tariffs, whereas National Grid has stated that there was an under-recovery with actual recovery from Generator TNUoS tariffs amounting to £578m. The Proposer noted that this excluded the small Generator discount figure of £18.3m which, if included, would take the total amount to £596m.

2.48 A Workgroup member felt that in CMP251 the conclusion of the legal opinion was that the interpretation is strict and excluded using actual data. If this

[29] Which was defined as "*Forecast Revenue from generation only spur connections in charging year n*"
[30] See page 182 of the CMP224 Final Modification Report (13th May 2014)
[31] See page 188 of the CMP224 Final Modification Report (13th May 2014)
[32] Further details of which can be found in the CMP224 Final Modification report.
[33] CMP251 Workgroup Report Annex 9.

interpretation is correct then the question that the Workgroup needs to discuss is if €2.74 is a '*material*' exceedance of the Regulation. The Proposer countered this view, noting that currently in the Regulation as it stands it does not use the definition '*material*' and so the Proposer's belief is that a reconciliation is required regardless of the size of the breach.

2.49 The Proposer provided a list of questions on the data provided by National Grid to the Workgroup after the third Workgroup meeting which is represented in Annex 6 of this document. The questions and answers are as follows:

1. In respect of the "Actual Recovery from Generators £560M could you please confirm that this was the total transmission tariffs paid by GB Generators in charging year 2015/16, which included any amount(s) associated with the April 2016 Generation Reconciliation statements (but excluded any amount(s) associated with the equivalent statements from April 2015)?

   Response: Yes, the spreadsheet shows how the £560m is calculated (see column G of tab "Gen Output and Charge Data 1516).

2. In respect of the £560M outturn compared to the expected revenue (as at January 2015) of £612M for Charging Year 2015/16 - could you please provide an explanation of this difference; i.e. what was the cause; as I'm keen to understand what was the reason(s) for this reduction (as it appears to account for the bulk of the difference between our two respective figures)?

   Response: There are two components to the under recovery in the Charging Year 2015/16: (i), difference being between the expected Generator TEC as at the time of charge setting in January 2015, and the actual TEC held by Generators during Charging Year 2015/16. Those differences can be found in the spreadsheet tab "Gen Output and Charge Data 15/16"; and (ii), the Small Generator Discount that is applied after the charge setting process. It was clarified by the National Grid representative that the Small Generation Discount is detailed in the Transmission Licence and not mentioned in the charge setting process so as a result the process is applied after charge setting has been completed. To calculate the value of the Small Generator Discount, the generation and demand residuals must be calculated first as it is the sum of the generation and demand residual tariffs to which the 25% discount applies, as described in section 14.18.19 of the CUSC. The application of the Small Generator Discount is detailed in the spreadsheet tab "Small Gen Discount", and totals for Charging Year 2015/16 approximately £18million.

3. In respect of the outturn energy TWh, could you please provide the associated individual figures that were summated to come to your total (of 250.7)?

   Response: the National Grid representative asked the Proposer if they wanted a breakdown by power station or something more holistic. The Proposer confirmed that he is only looking for the total daily output in order to understand how the figure of 250.7TWh was calculated. The spreadsheet tab "Gen Output and Charge Data 15/16" in Annex 5 shows how the 250.7TWh is calculated in column E.

4. In respect of the average exchange rate for the year, your figure of 1.366 is close to our number of 1.362 – you appear to have based your calculation on a simple (time) weighted basis. Is this correct?

   If this is how you have done it, I would suggest a daily **MWh** weighted average is more in line with the legal requirement.

   Furthermore, how have you treated weekends / Bank Holidays? They appear to be blank.

   By contrast, we have assumed that for days where there was no exchange rate published by the Bank of England, it was the same as the day before; i.e. the Friday rate for Saturday and Sunday. This is because if you are using an MWh weighted approach, then you do need to fill in the blank dates using this (or some other method?).

Response: the mechanism for calculating the exchange rate is not currently defined. The National Grid representative confirmed that in order to arrive at the values on the spreadsheet only a working day time weighted average was used based on the published daily Bank of England exchange rate. It was noted by the Workgroup that various methods could be used to take into account daily averages, monthly averages, weekends and weekdays, weighted by energy flows per MWh, or even weighted by energy deals given that 80% of energy is traded 18 months ahead of time etc. The Proposer confirmed that they solely wanted to understand the method of calculation used by National Grid in the analysis. The Workgroup agreed at the fifth Workgroup meeting that the National Grid approach of using a working day time weighted average based on the Bank of England published daily exchange rate was appropriate.

5. In respect of the 'Capped €2.5/MWh Revenue from Generators (£m)' whilst both of our final figures appear close (£458.84 v £458.66) it seems to me that you have come to your figure via a convoluted route which, in my view, gives an almost correct, but not quite right answer.
It seems, looking at the spreadsheet that your calculation of the final answer ((£458.84) is based on:
Final answer = Cell D17 "Capped €2.5/MWh Revenue from Generators (£m)" = "**ROUND(2.5/D10*D7/D9,3)*D9**"
The component parts of this are:

- Cell D10 "Exchange Rate" = Time weighted exchange rate = "**1.366**"
- Cell D7 "Energy (TWh)" = "**250.7**"
- Cell D9 "Allowed Revenue (£m)" = "**2637**"

Therefore the total calculation is:

- **ROUND (2.5 Euros / 1.366473 Exchange Rate * 250.7 TWh / 2637 allowed revenue,3) * 2637 allowed revenue = £458.838m**

This raises some specific (sub) questions:

a) The "allowed revenue" cancels out in the calculation (apart from the rounding) – there is mathematically no point in including it, so why is it there?

b) Why does the calculation do the rounding in the middle of the calculation? Further detail:
   - It divides the calculation be 2637 to make it a really small number, before rounding it to 3 decimal places, which makes it less accurate
   - It then scales it back up by multiplying by 2637 again (this is why the 2637 cancels out) to get it back up to the number they first thought of, but slightly less accurate because of the supplemental rounding step in the middle.
   - Why not just round at the end of the calculation if they want it rounded?
   - The calculation would be better done using only the part highlighted in blue since this matches my suggested simpler methodology – You do not need the rest of the calculation, so what is it there for?

   Just using the part highlighted in blue matched our suggested methodology and provides:

- 2.5 euros / 1.366473 exchange rate * 250.7 TWh = **£458.66m**

Response: it was confirmed that the G:D split is currently rounded to 1 decimal place which has been replicated in the spreadsheet.

Options for a Reconciliation.

2.50 The options for the process of any potential reconciliation were discussed by the Workgroup. A Workgroup member flagged that if monies were recovered from Suppliers then that should happen in t+2; i.e. Charging Year 2018/19; to avoid losses arising from contracts that had already been agreed. Ultimately it was felt that the impact on the end consumer needs to be taken into account.

2.51 It was felt by the Workgroup that any options to be put forward should not include a mid-year tariff change for demand in Charging Year 2016/17 as it would place too much burden of cost onto Suppliers. Some members felt that in the pursuit of cost reflectivity a mid-year tariff change would not reconcile Generation plant already closed. The Proposer confirmed that the Original proposed a reconciliation of the Charging Year 2015/16 breach for Generators in spring 2016 and not a mid-year tariff change for either Demand or Generation in Charging Year 2016/17.

2.52 A Workgroup member commented that National Grid had recovered less than the targeted £612m from generation and so questioned whether any harm had actually been done.to Generators – National Grid had charged less than market expectations.

2.53 Some Workgroup members felt that a lot of panic has been raised around CMP261 but that no harm has currently been done, what is written in the CUSC has been complied with and that any remedy that was being sought by some Workgroup members would only end up harming consumers as Generators would get a windfall gain and end consumers would end up paying TNUoS twice; once in the Charging Year in question and then once in a future (yet to be defined) Charging Year. One of the Workgroup members then added that in their view most Generators plan in sterling, invoice in sterling and all payments are made in sterling so no harm had been caused. The Proposer re-iterated that compliance was with EU Law, which had demonstrably not been complied with as there had been a breach of the €2.50/MWh limit. As a result harm had been done (and was continuing to be done, until it was remedied).

Commentary on the Analysis in Annex 5.

2.54 Analysis was undertaken by National Grid on the Workgroup's behalf. The spreadsheet containing the analysis will be available on the National Grid website alongside this report. The spreadsheet analysis consist of 13 figures, of which figures 1-7 are the core inputs and figures 8-13 (reproduced in Annex 5 to this report) contain the main outputs.

2.55 The figures have the following inputs:

- Forecast and actual TEC – used to determine the target TNUoS revenue recovery and the actual TNUoS revenue recovery, as TNUoS is primarily a capacity based charge for generation

- Whether a power station is chargeable – not all power stations are chargeable as they may not hold TEC

- Generation output in 2015/16 by power station – this is used to calculate the £/MWh figure which is later converted to €/MWh

- TNUoS charges recovered from each chargeable power station – the actual revenue recovered from each Generator after application of the relevant transmission tariffs

- Cancellation Charges – where a Generator terminates ahead of connection to the transmission network, or fails to give the notice of closure required, other charges apply, as defined in the CUSC.

- Small Generator Discount (figure 14) – Generators less than 100MW connected to the transmission system in Scotland receive a small Generator discount.

2.56 A Workgroup member asked the National Grid representative whether the figures used in the pricing spreadsheet for the £119.5M (as represented in Annex 5) excluded the (CUSC defined) 'Connection Charges' paid in 2015/16.

2.57 The National Grid representative confirmed that the (CUSC defined) 'Connection Charges' paid in 2015/16 are excluded from the spreadsheet.

2.58 Figures 9-12 collate the data to reflect the different interpretations of EU Regulation 838/2010. Figure 9 presents the CMP224 methodology, Figure 10, the SSE methodology, Figure 11 and 12, other approaches depending on the treatment of local circuits. These figures also contain the original inputs at the time Generator TNUoS charges were set, namely, forecast Generation Output, Allowed Revenue and the exchange rate for 2015/16. Figures 11 and 12 include inputs relating to a further breakdown of Generator TNUoS charges so that the impact of local circuit interpretations on the €/MWh outturn can be observed.

2.59 Figure 13 summarises the final €/MWh numbers for each interpretation of the Regulation.

2.60 Following the Workgroup review of the consultation responses and WACM voting at meeting 6[34], a Workgroup member questioned how the reconciliation, if approved, would be applied under Original and WACMs 1, 2 and 3 to generators that paid TNUoS or cancellation charges in 2015/16. The Workgroup recognised that the National Grid calculation of the applicable £/kW reconciliation of the £119.5m overcharge needs to reflect generators that paid cancellation charges in the proportion paid (i.e. 100%, 75%, 50% or 25%) in accordance with the CUSC. It was proposed to calculate the appropriate TEC/Chargeable Capacity for these generators using the percentage of charges that they paid. In other words a 100MW generator that paid a 75% cancellation charge related to charging year 2015/16 would have an adjusted TEC/Chargeable Capacity of 75MW[35] to which the calculated reconciliation rate

[34] Held on 8th August 2016

[35] 75% of the 100MW

would then be applied. The £119.5m will then be divided by the sum of the adjusted TEC/Chargeable Capacity for all generators that paid TNUoS or cancellation charges in 2015/16 to give the overall £/kW rate (with the Original and WACM 1) or taken off the amount to be recovered in generator TNUoS tariffs (with WACM 2 and WACM 3).

Ofgem Guidance on the Content of the Report

2.61 At the end of meeting 6 of the CMP261 Workgroup (and following the Workgroup review of the consultation responses, discussions on alternatives and the formal vote on WACMs) Ofgem informed the Workgroup that they had been advised in a meeting with leading junior barrister from Blackstone chambers a few days before[36] that:

- The Regulation says you must exclude charges associated with physical assets required to connect in calculating the average charge.
- The Regulation requires us to look beyond the names we give charges and look instead at the nature of the underlying asset.
- Before we can work out whether there has been a breach of the regulation we need to make clear that we are applying the calculation correctly and excluding charges in respect of physical assets required to connect to the transmission system.
- CMP 224 was a legitimate and reasonable approach to constructing a compliant charge, but it did not set out the rules for how we calculate whether we are in fact compliant – that is in the Regulation. Therefore the approach to constructing a compliant charge under CMP224 is not binding.

2.62 Based on this advice, the Ofgem representative requested that the Workgroup carry out further analysis around the different transmission assets that generators use to connect to the system, in order for the Authority to make a determination on the modification. Given that Ofgem informed the Workgroup of its deliberations with legal counsel at the end of meeting 6, the Workgroup asked if the points could be set out in an email (for members to consider overnight). This was done later that day (this email can be found in Annex 9 of the Report).

2.63 The following day, at meeting 7[37] of the CMP261 Workgroup, the Workgroup discussed in more detail Ofgem's request (arising from the legal advice[38] they had received) for further supporting analysis. Ofgem laid out that, in order to allow Ofgem to reach a conclusion on the modification, the Workgroup needed to consider the physical transmission assets used by generators including (i) what assets are built when a Generator connects to the Transmission System and (ii) any relevant differences between local onshore and offshore connections. Ofgem stressed that this may not be a complete list. They stressed that it was important for the workgroup to consider this issue fully in order to inform their decision and the views of stakeholders and CUSC Panel members.

2.64 Ofgem suggested a sensible approach to carrying out this analysis would be to consider different connection scenarios. One Workgroup member suggested using historic examples – rather than hypothetical scenarios. Ofgem confirmed their aspiration that the analysis should be able to inform the interpretation of the Regulation and any determination on whether some of all local circuit charges should be excluded from the calculation of GB's average transmission charge for the purposes of determining whether a breach of the Regulation had occurred or not.

[36] Held on Wednesday 3rd August 2016
[37] Held on Tuesday 9th August 2016
[38] Ofgem was unable to confirm to the Workgroup (at meeting 7) that the responses to the Workgroup consultation had or had not been shared with counsel prior to them providing advice to Ofgem. The Workgroup wished to understand if the advice had been made on the basis of the latest available information.

2.65 A Workgroup member noted the recent[39] comments from the Judge in the Nuclear Decommissioning Authority judgement[40] with respect to that Authority 'fudging' in terms[41] of him saying "*By the word "fudging" I mean choosing an outcome, and manipulating the evaluation to reach that outcome*." [42] The Ofgem representative stated that they were in no way attempting to manipulate the modification to reach a certain outcome. They noted that they had received clear legal advice that they need to carefully consider what charges should be excluded in order to determine whether there has been a breach or not within the meaning of the EU Regulation and that they were requesting factual information in order to assist them in making this decision.

2.66 A Workgroup member responded that over the last two years or so through at least six separate consultations[43], only one stakeholder has argued as to why local circuits should be excluded from the calculations despite this being a known 'issue' since at least the Ofgem's Project Transmit Technical Working Group deliberations in the autumn of 2011. This point was also picked up in paragraph 20[44] of the legal advice provided by Addleshaw Goddard. Furthermore, the Workgroup member noted that there had been additional opportunities for Ofgem to highlight any concerns they had with respect to the interpretation of the Regulation in terms of connection assets; these opportunities included (a) post the Regulation being published[45] and pre-CMP224 being raised[46] (such as during Ofgem's Project Transmit Technical Working Group deliberations in the autumn of 2011); or (b) in their CMP224 decision letter[47] (by, for example, approving a WACM that explicitly was the 'exclude' approach); or (c) in their CMP224 decision letter (by, for example, approving the Original (as they did) but specifically highlighting that 'include' / 'exclude' needed to be reviewed by industry at a later date); or (d) post the CMP224 decision, but pre CMP251 being raised[48] (such as during the ACER electricity transmission tariff structures scoping activity, undertaken during 2015); or (e) with its CMP251 urgency decision letter[49]; or (f) post CMP251 being raised and pre CMP261 being raised[50]; or (g) during the CMP251 deliberations or (h) during the CMP261 deliberations (from it's being raised till after the Workgroup vote, at meeting 6, on WACMs). However, none of these opportunities were taken up by Ofgem. As a result, that member believed it brought into question the timing of this work now being requested by Ofgem at meeting 6 (and set out in their email[51] of 8th August 2016). That member understood that the Workgroup had clearly mapped out the reasoning for why local circuits should be included in the calculation but that no clear reasoning

[39] 29th July 2016
[40] http://www.bailii.org/ew/cases/EWHC/TCC/2016/1988.html

[41] At paragraph 945, page 323
[42] "*In my judgment the NDA sought to avoid the consequence of disqualification by "fudging" the evaluation of those Requirements to avoid reaching a situation where CFP would be given a "Fail" or "Below Threshold" score. By the word "fudging", I mean choosing an outcome, and manipulating the evaluation to reach that outcome. This was by choosing a score high enough to avoid that undesirable outcome, rather than arriving at a score by properly considering the content of the tender against the scoring criteria. If that were to be the approach during the evaluation – some sort of institutional reluctance by the NDA to score a Requirement correctly, if that were to result in a score "Below Threshold" or a "Fail" – one wonders why the NDA imposed such terms within the SORR in the first place. The NDA was the architect of its own misfortune in that respect*."
[43] The three separate CMP224 consultations noted in paragraph 2.17 (the Workgroup consultation, the Code Administrator consultation and the Ofgem Regulatory Impact consultation) plus the two CMP251 consultations (Workgroup and Code Administrator) and the CMP261 Workgroup consultation.
[44] "*…it is not clear on what basis the exclusion of "charges paid by producers for physical assets required for connection to the system" justifies the exclusion of TNUoS charges (as opposed to connection charges) in respect of generation only spurs, and therefore the justification for such a specific carve-out appears lacking*"
[45] 23rd September 2010
[46] 19th September 2013
[47] 8th October 2014
[48] 19th August 2015
[49] 8th September 2015
[50] 8th March 2016
[51] Reproduced in Annex 9.

has been presented to the Workgroup (prior to Ofgem's intervention) for why they should be excluded.

2.67 In relation to the comment above that that no justification has been provided by stakeholders over the last two years as to why local circuits should be excluded from the calculations, another Workgroup member noted that some stakeholders did argue that local circuits should be excluded from the calculations in responses to some of the consultations referred to.

2.68 The Ofgem also representative noted at an earlier meeting that he had suggested the Workgroup look into the interpretation of the Regulation earlier in the Workgroup process and the Workgroup had chosen not to (as discussed in paragraph 2.44). He also noted that different potential interpretations had been discussed as part of the CMP224 Workgroup process. He later noted (by email) that arguments for excluding some or all local charges had been considered as part of the CMP224 workgroup process (as well as in response to the consultation) and that the Addleshaw Goddard advice did not appear to address these arguments.

2.69 Another Workgroup member felt that there is ambiguity in the way that the Regulation had been interpreted in relation to the charges that make up the €2.50 cap in GB.

2.70 Some Workgroup members did not disagree on the ambiguity of the Regulation; however, the problem for many Workgroup members was the Ofgem timing of raising the issue. Those Workgroup members believed that the ambiguity could have been resolved on many previous occasions[52;] A Workgroup member also postulated that when the Regulation was being developed and the €2.50/MWh cap was set by the Comitology process that the UK Government would have been fully involved in that process during 2010 and would, in turn, have likely consulted closely with both National Grid and Ofgem (as the relevant parties with knowledge of transmission charges in GB, unlike the UK Government) as part of the decision making process which determined the €2.50/MWh cap for GB[53.] That Workgroup member further hypothesised that when the €2.50/MWh cap was decided in 2010 it must have been concluded that local charges should be included in the calculation.

2.71 Finally another Workgroup member wished to flag that the CUSC modification process is designed to provide evidence to demonstrate whether a proposal better meets the applicable CUSC objectives, and not to gather evidence to reject it. That Workgroup member also argued that the initial Ofgem legal counsel advice which detailed the need to consider certain interpretations of the Regulation in relation to the assets required to connect, had only been provided in summary form to the Workgroup at a late stage in the process, whilst the Workgroup legal opinion had been received in full by the Workgroup, allowing it to be questioned, consulted upon with stakeholders and transparently represented in the Workgroup Report. That Workgroup member wished to state that if the full Ofgem legal advice were shared with the group, then, it would be easier to understand the importance of the extra analysis required, and without this information it could be perceived as an attempt to guide the Workgroup to find a certain outcome. The Ofgem representative again confirmed that they were not attempting to "fudge" the issue. The Ofgem representative later made clear they are asking for the additional analysis in order to assess the modification, rather, they are not attempting to reject it as alluded to above.

2.72 The National Grid representative reminded the Workgroup that Ofgem needed full evidence to make a determination on any CUSC proposal. He argued that, in his experience, not providing all required information would likely result in a proposal being sent back to the Workgroup for further assessment.

2.73 At the 11th Workgroup meeting[54] of CMP261 the Workgroup discussed the analysis carried out following the Ofgem steer; this analysis can be found in

[52] See paragraph 2.62 for further details.
[53] Plus Northern Ireland and Ireland.
[54] Held on 3rd October 2016

Annex 8 of the Workgroup Report. The Workgroup finalised the direction that the analysis needed to follow in order to define which assets are required to connect to the transmission system based on a request provided by Ofgem which can be found in Annex 12 of this Report.

2.74 A Workgroup member expressed their concern that the Workgroup were providing explanations and examples of transmission network assets to Ofgem Legal Counsel without being able to discuss these with them. The Workgroup member was concerned that without direct engagement with the Ofgem Legal Counsel, or provision of their advice to the Workgroup, that the Legal Counsel may misunderstand or misinterpret the analysis work, or it may not accurately answer Legal Counsel's original questions.

Discussion on the legal text

2.75 Some Workgroup members felt that the legal text should only detail the process to calculate any amount over and above the €2.50/MWh figure in the Regulation and not the actual hardcoded figure produced by the National Grid (based on the numbers shown in their spreadsheet – see Annex 5) whilst some other Workgroup members felt that the figures should be hardcoded into the legal text. It was flagged by more than one Workgroup member that the essence of the Proposers' modification was that it was looking to recover a precise overcharge figure for 2015/16 only. The definition of the figure has been concluded with detailed analysis so it should be hardcoded into the legal text. As a result the figure of £119.5million would need to be hardcoded into the CUSC should the modification be approved.

2.76 The chair wished to note that if a number is hardcoded into the CUSC and is later found to be erroneous by even a modest amount then it could lead to a modification being rejected, whereas, if a process was included it allows for some variance on the decision from the Authority. The usual manner to achieve this would be to put the figure as a definition in the CUSC and the value in the Statement of Use of System charges. The Proposer noted that the various component elements[55] needed to calculate the relevant £/kW figure for charging year 2015/16 were already known based on the data produced by National Grid (see Annex 5) . The Proposer was confident that National Grid would have exercised 'good industry practice'[56] when producing this information and, therefore, considered it appropriate to include the relevant figure within the CUSC itself rather than the need to include, in the legal text, a process the outcome of which may not be the essence of what the Proposer is seeking. This was supported by other Workgroup members.

2.77 A Workgroup member felt that when the WACM voting was concluded that it did not solely include the SSE interpretation but rather that WACM were open for the interpretation of the Authority on the strict/broad approach etc. It was confirmed by the other Workgroup members that the WACM voting at meeting 6 was carried out on the sole basis that all alternatives were based on the £119.5M figure in terms of the breach. Following this the Workgroup member was happy to proceed. Therefore, based on the information produced by National Grid (see Annex 5) using the £119.5M figure[57], an average exchange rate of 1.3664 [58] and a total TEC figure of 69,784MW[59] this means (if the proposal is approved by Ofgem) that the rebate figure paid to generators (under either the Original or WACM 1) would be shown, in the legal text, as £ 1.71/

[55] The actual exchange rate (based on the Bank of England publication), the total amount of charges paid by GB generators and the applicable generator volume (MW).

[56] Defined in the Grid Code as "*The exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances*".

[57] This is shown in Column 'N', line 152 on the 'Gen Output and Charge Data 15/16' tab in the spreadsheet at Annex 5.

[58] This is shown in Column 'L', line 261 on the 'SSE' tab in the spreadsheet at Annex 5.

[59] This is shown in Column 'F', line 152 on the 'Gen Output and Charge Data 15/16' tab in the spreadsheet at Annex 5.

kW[60]. This would then be multiplied by the appropriate TEC/Chargeable Capacity[61] figure for each relevant generator[62]. However, the rebate to generators with either WACM 2 or WACM 3 would be shown, in the legal text, as the £119.5M figure (rather than as a £/kW figure) which would be reflected in an alteration to the initial amount(s)[63] to be recovered from Generators and Demand transmission tariffs in the relevant charging year (2017/18 with WACM 2 or 2018/19 with WACM 3).

2.78 Finally, it was concluded that the hardcoded figure would be used in the draft legal text with the majority of the Workgroup happy to trust National Grid to have calculated the value correctly and to take the small risk that the modification could be rejected because the figure is incorrect once the Authority make their determination on the strict/broad local circuit inclusion determination. National Grid agreed to clarify this approach with their legal team as part of the normal legal drafting process.

Discussion with Ofgem's Principal Legal Advisor on CMP261

2.79 At the eighth Workgroup meeting[64] Ofgem's Principal Legal Advisor on CMP 261 provided the Workgroup with further clarification around the information provided to them by Counsel[65] which was first raised initially at the sixth Workgroup and then discussed further at the seventh Workgroup meeting. The Principal Legal Advisor on CMP261 noted that the rationale for CMP261 turns on whether there has been a breach of the Regulation which requires to be rectified.

2.80 The Ofgem Principle Legal Advisor on CMP261 noted that this was a different issue to the one sought to be addressed by CMP224. The purpose of CMP 224 was to devise an *ex ante* charging scheme which had sufficient margin of error to seek to ensure that it was not capable of resulting in charges which breached the €2.50/MWh cap. The Ofgem Principal Legal Advisor on CMP261 went on to note that as set out in its CMP224 decision letter; Ofgem agreed that it was most appropriate to devise the charging scheme on the basis of an extremely conservative reading of the Regulation, and particularly what constitutes a connection asset, and it was also appropriate to include an additional error margin. The Ofgem Principal Legal Advisor on CMP261 noted that it had originally thought that the additional error margin would have been sufficient to avoid any questions of compliance with the €2.50/MWh cap; however, for a variety of economic reasons this has not proved to be the case and so the question we must now consider is whether there has, in fact, been a breach of the Regulation on its own terms, given that it is the terms of the Regulation that bind Ofgem.

2.81 The Ofgem Principal Legal Advisor on CMP261 confirmed that the question that needs to be answered is which charges does the Regulation require to be included in the calculation of the €2.50/MWh cap and which does it require to be excluded from that calculation. Ofgem's legal team reviewed the Addleshaw Goddard advice to the CMP261 Workgroup from April[66], but had some additional questions which that advice had not considered. Ofgem sought its own legal advice on how a UK Court would interpret the requirements of the Regulation, which are directly applicable and effective.

2.82 The Ofgem Principal Legal Advisor on CMP261 noted that it is bound by the Regulation; Ofgem could not take a decision on CMP261 without having addressed the issue of whether the right charges had been taken into account in calculating whether or not there had been a breach of the €2.50/MWh cap. To assist them they went to a senior junior Counsel at Blackstone Chambers who confirmed Ofgem's thinking that the key issue is how to apply

[60] This is shown in Column 'N', line 156 on the 'Gen Output and Charge Data 15/16' tab in the spreadsheet at Annex 5.
[61] See paragraph 2.58
[62] This is shown in Column 'F' on the 'Gen Output and Charge Data 15/16' tab in the spreadsheet at Annex 5
[63] Absent the £119.5M figure.
[64] Held on 30th August 2016
[65] At the meeting held on Wednesday 3rd August 2016
[66] Dated 22nd April 2016

the connection charge exclusion in respect of physical assets required to connect: i.e. what does '*physical assets required to connect to the system*' mean within the context of generator transmission charging in GB. This turned on the wording of the Regulation itself. The Ofgem Principal Legal Advisor on CMP261 noted that the wording requires us to look behind the names given to charging, or whether they are one off or ongoing, but instead to look at whether they relate to "physical assets required connecting to the system".

2.83 This might mean, depending on the facts, that some radial links or other aspects of the local charge could be excluded from the calculation.

2.84 A Workgroup member asked whether the European Commission had been approached in relation to the question of what is meant in the Regulation as they may be able to provide further clarity. The Ofgem Principal Legal Adviser on CMP261 said that they had sought further clarity at the time of comitology[67] (of the Regulation) but that this had not materialised in the final draft. Further clarity today from the Commission was a possibility, although we had to be mindful of that what was achievable in the post 23rd June 2016 Brexit context maybe limited. But in any event, the Ofgem Principal Legal Advisor on CMP261 clarified that the relevant provisions were directly enforceable and effective provision in a Regulation: it was something the UK court could interpret. The Ofgem Principal Legal Advisor on CMP261 agreed that you can ask the Commission for their interpretation of a particular piece of legislation but it is ultimately a matter for the courts.

2.85 In instructing Counsel, Ofgem reviewed the Commission's consultation documents for the Regulation. Ofgem highlighted (i) the Impact Assessment and (ii) the Consultation Document produced by the Commission[68] prior to the Regulation being approved which seemed to suggest that the key issue was the nature of the assets being funded rather than whether a connection charge was one off or ongoing.

2.86 In order to examine the question of '*physical assets required to connect to the system*' the Ofgem representative provided[69] the Workgroup with items and scenarios to be considered further.

2.87 In light of the above, it was agreed that the Workgroup would examine further the items and scenarios that Ofgem had highlighted with a view to providing Counsel with a pictorial and written clarification on these points.

2.88 Ofgem also noted that they need to submit a report to ACER in relation to the Regulation but they will not do so until after this issue on CMP261 is resolved.

Further Workgroup Discussions

2.89 At the ninth Workgroup meeting[70] a Workgroup member expressed concern that Ofgem had taken so long to seek its own legal opinion, especially given that the Workgroup's own legal opinion[71] had been available from the end of April 2016. He felt this delay was hard to understand as surely Ofgem would have made this matter a priority given the magnitude of National Grid's alleged breach of the Regulation and the level of Generator refunds that CMP261 would entail of circa £119M.

2.90 There was also a short but vocal discussion as to whether further Workgroup alternatives should be considered. It was noted that Ofgem had informed the Workgroup at the end of meeting 6 of the Workgroup (and following the Workgroup review of the consultation responses, discussions on alternatives and the formal vote on WACMs at that meeting) that they had received their legal opinion three working days before. The majority of Workgroup members considered that it would be improper to now consider further Workgroup

[67] Circa 2009

[68] http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2010/sec_2010_1075_en.pdf

[69] Via email, which is reproduced in Appendix 10.

[70] Held on 5th September 2016

[71] From Addleshaw Goddard

alternatives, as a vote on the Workgroup alternatives had already taken place at meeting 6. Ofgem could have raised their legal opinion concerns prior to the Workgroup's consideration of and voting on WACMs.

2.91 At the tenth Workgroup meeting of CMP261, the Workgroup reviewed the supporting analysis provided in relation to the potential rebate[72].

2.92 Based on the Workgroup's deliberations to use an "Adjusted TEC" upon which to calculate the potential rebate value for each power station, it was noted how two power stations (Abernedd and Brigg) could receive a higher rebate than the actual wider cancellation charge paid.

2.93 The Proposer suggested that in the case of Abernedd, although the wider cancellation charge was £287,182 the total cancellation charge paid was £10.8m, and that this total amount should be considered as the reference figure and that therefore the calculated possible rebate of £413,990 was less than the original amount paid. Some members of the Workgroup challenged this approach noting that the vast majority of the cancellation charge paid by Abernedd had nothing whatsoever to do with the GB split and would have remained the same regardless of any potential correction to the TNUoS charge. The Proposer noted that this was about the total contribution of generators to the 'generator pot', of which the £10.8m was a part. The Proposer noted that the general principle behind the Modification was that any generator who had contributed (even those in negative charging zones) to the total transmission charges 'generator pot' within 2015/16 was entitled to a rebate, whilst noting that for cancellation plant they had a lower TEC figure calculated in the way the Workgroup had agreed previously. The Workgroup agreed there was no further adjustment necessary to the calculated possible rebate of £413,990 for Abernedd.

2.94 In the case of Brigg, it was noted that the potential rebate would exceed the cancellation charge and it was agreed that the potential rebate should be capped at the original cancellation charge amount paid. The Ofgem representative noted that it was not clear that generators should receive rebates in relation to their cancellation charges, particularly if the money rebated is more than the value paid by those Generators. He also noted that Ofgem would need to consider these issues when reaching a decision on the proposals submitted to them. The Workgroup then discussed whether it was sensible to look at further WACMs to avoid a situation where the modification was rejected and a further modification had to be raised. The Proposer stated that he was aware that this could cause further delay but in his view this was part of the CUSC process and did not consider further WACMs should be raised. The Proposer was more concerned about the risk of delay to the submission of the Report rather than the possibility of send back for further analysis by Ofgem.

2.95 The discussions then progressed onto the formulation of the legal text. The Proposer and some Workgroup members reiterated the preference to hardcode the sum £119.5m into the legal text. A Workgroup member felt that due to the Regulation being unclear in referring to TNUoS, the broad range of charges that could make up Transmission charges adds an element of risk to Ofgem's review of the modification as it does not allow flexibility in the interpretation of Transmission charges. The chair asked the Workgroup whether they felt using a formula rather than a hardcoded figure may be wiser to avoid any potential of send back or rejection. If this was done then it would allow for any permutations resulting from the interpretation of Transmission charges.

2.96 Several Workgroup members felt that the number should be hardcoded into the legal text because (1) a formulaic approach would make it difficult to consult stakeholders and (2) it would mean that Ofgem could choose any number between £0 and £119.5m when making a determination. A Workgroup member pointed out the fundamental difference between the hard coded figure approach (which, to be clear, has been itself derived explicitly from the formulaic approach) compared to just a formulaic approach is that the three elements used in the formulaic approach (in terms of Generator transmission

[72] Represented in Annex 6

charges paid, the applicable exchange rate and the applicable volume for Charging Year 2015/16) are already known. A further Workgroup member felt it was also important to note that due process should be followed in the essence of the original proposal and the Proposers' wishes.

3 Impact and Assessment

Impact on the CUSC

3.1 Changes to Section 14

Impact on Greenhouse Gas Emissions

3.2 None identified.

Impact on Core Industry Documents

3.3 None identified.

Impact on other Industry Documents

3.4 None identified.

4 Proposed Implementation and Transition

4.1 Over the course of its early meetings the Workgroup considered a number of possible implementation approaches for CMP261 and (as at the time of this Workgroup Consultation) the following options were mapped out by the Workgroup:

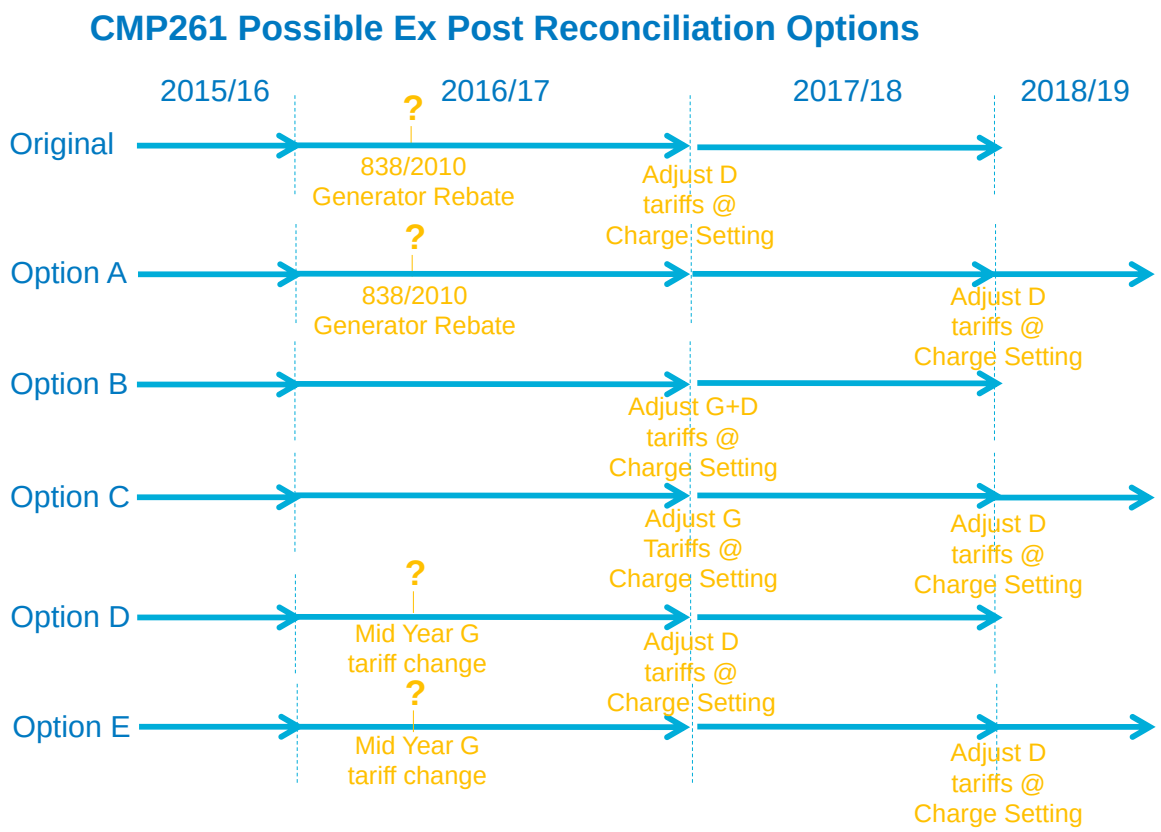


***Figure 7** : Possible Ex Post Reconciliation Options*

4.2 The Workgroup initially identified five possible reconciliation options (A to E) in addition to the Original approach to a possible reconciliation. A further option (F) was identified after the Workgroup Consultation stage.

4.3 The **Original** proposes a rebate (as opposed to a Generator TNUoS tariff change in a future – non 2015/16 – Charging Year) to all those Generators holding Transmission Entry Capacity in Charging Year 2015/16 as soon as possible following a decision by Ofgem to approve the Original, with the value of the reconciliation amount paid to Generators being recovered from Suppliers by an adjustment to Demand TNUoS tariffs in the Charging Year 2017/18.

4.4 Option A was the same as the Original, except that the adjustment to demand TNUoS tariffs would take place in Charging Year 2018/19 (rather than 2017/18 with the Original). Following the vote at meeting 6 of the Workgroup, this option became **WACM 1**.

4.5 Option B would adjust Generators[73] by adjusting Generator and Demand TNUoS tariffs at the same time at Charge Setting (in January 2017) and then applying them to both sets of TNUoS tariffs in Charging Year 2017/18. Following the vote at meeting 6 of the Workgroup, this option became **WACM 2**.

4.6 Option C, based on Option B, with Generator[74] TNUoS tariffs being adjusted at Charge Setting (in January 2017) for Charging Year 2017/18, but demand TNUoS tariffs being adjusted at Charge Setting (in January 2018) for Charging Year 2018/19. Following the vote at meeting 6 of the Workgroup, this option was not taken forward.

[73] This would include those Generators who did not hold TEC in Charging Year 2015/16, but did hold TEC in Charging Year 2017/18. It would exclude those Generators who held less (or no) TEC in Charging Year 2017/18 but who did hold TEC in in Charging Year 2015/16.

[74] This would include those Generators who did not hold TEC in Charging Year 2015/16, but did hold TEC in Charging Year 2017/18. It would exclude those Generators who held less (or no) TEC in Charging Year 2017/18 but who did hold TEC in in Charging Year 2015/16.

4.7 Option D proposes a mid-year tariff change for Generators[75] in the current Charging Year 2016/17 with implementation as soon as possible following a determination from Ofgem. Demand TNUoS tariffs would be adjusted at Charge Setting (in January 2017) for Charging Year 2017/18. Following the vote at meeting 6 of the Workgroup, this option was not taken forward.

4.8 Option E is a variation on this (with Generation being treated as per Option D) with a one year later adjustment to demand TNUoS tariffs - in Charging Year 2018/19 (rather than 2017/18, as per option D). Following the vote at meeting 6 of the Workgroup, this option was not taken forward.

4.9 Option F was developed by the Workgroup at meeting 6 in light of the Workgroup consultation responses. This Option F is similar to Option B (WACM 2) but would adjust Generators[76] by adjusting Generator and Demand TNUoS tariffs at the same time at Charge Setting (in January 2018) and then applying them to both sets of TNUoS tariffs in Charging Year 2018/19. Following the vote at meeting 6 of the Workgroup, this Option F became **WACM 3**.

4.10 The Proposer asked the Workgroup to consider how certain items of cost may be recovered if the modification is approved which is represented in the figure in Annex 6. The Workgroup noted the items listed in the annex. Some Workgroup members felt that it was questionable whether all of the items raised are relevant to the CUSC but the Proposer still felt it important to note in relation to the defect and the solution.

4.11 According to National Grid the Original Proposal, and Options A (WACM1), D and E would require non-standard processes for implementation. The Proposer noted that CMP261 Original is linked to the established Generator Reconciliation Statement which is a standard process set out in the CUSC (which is well understood by National Grid who, for example, undertook that process, for Charging Year 2015/16, in April 2016).

4.12 The Original Proposal and Option A (WACM1) would require the preparation of 70-80 ad hoc credits, advice notes, calculation of the revised methodology and performance of the usual controls and checks. It is anticipated the above can be completed in 14 calendar days.

4.13 In addition to any industry notification periods as confirmed by Ofgem following any decision for implementation, and the 14 calendar days outlined above, Options D and E would require an additional 10 working days to process the main system. It should be noted however that a mid-year tariff change (with Options D and E only) has not previously been carried out in the current charging system and the test environment would require a 6-8 week lead time.

[75] This would include those Generators who did not hold TEC in Charging Year 2015/16, but did hold TEC in Charging Year 2016/17. It would exclude those Generators who held less (or no) TEC in Charging Year 2016/17 but who did hold TEC in in Charging Year 2015/16

[76] This would include those Generators who did not hold TEC in Charging Year 2015/16, but did hold TEC in Charging Year 2018/19. It would exclude those Generators who held less (or no) TEC in Charging Year 2018/19 but who did hold TEC in in Charging Year 2015/16.

5 Workgroup Consultation Responses

5.1 Nine responses were received to the Workgroup Consultation. These responses are contained in full in Annex 4 of the report.

5.2 The following table provides an overview of the responses received for the standard Workgroup questions;

	Do you believe that CMP261 Original proposal, or any potential alternatives for change that you wish to suggest, better facilitates the Applicable CUSC Objectives?	Do you support the proposed implementation approach?	Do you have any other comments?	Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?
British Gas	We do not believe CMP261 Original Proposal or any of the potential options identified better facilitate the CUSC objectives. (Further comments can be found in Annex 4).	We do not support the modification. However, any implementation should seek to limit or avoid windfalls. This will require options which delay the reconciliations to G&D tariffs.	The workgroup should consider more fully the impact on consumers.	No.
InterGen	We believe there has been a breach of the €2.50/MWh CAP set by EU Regulation 838/2010, which requires a reconciliation or rebate equal to £1.71/kW, as per the SSE approach in Figure 10, Annex 5 of the workgroup report. (Further comments can be found in Annex 4).	Yes, the proposed options outlined in section 5 of the workgroup report seem logical.	No.	No.
Drax Power and Haven Power Ltd	Yes. We believe that the CMP261 Original and the potential options for change all better facilitate Applicable CUSC Objectives (ACOs) (a), and (d). In the 15/16 charging year, generators	There are a number of potential options for change currently on the table. Generators should be paid back as soon as possible to limit the damage and ensure that we comply with the 838/2010 regulation as soon as	No.	No.

	were overcharged for transmission charges against the €2.50/MWh cap. This represents a breach of the technical requirements of the guidelines regulation. This position has been supported by legal advice from Addleshaw Goddard, procured by National Grid for the workgroup. Therefore, with respect to ACO (d), CMP261 realigns GB transmission charging for 15/16 with European regulation that takes precedence over the CUSC.	possible. Further, suppliers should be given sufficient time to correct their pricing strategies for future charging years to ensure that these costs can be recovered appropriately from customers via TNUoS tariffs.		
EDF Energy	We believe that CMP261 Original Proposal for change better facilitates the CUSC Objectives, in particular (d) "Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency". (Further comments can be found in Annex 4).	We support the proposed implementation approach preferring Option A, Generator rebates in 2016/17 and the Adjustment of Demand tariffs in 2018/19.	Commission Regulation (EU) No 838/2010 Part B restricts annual average transmission charges paid by electricity Generators in Great Britain to the range of €0/MWh to €2.50/MWh. The Regulation is legally binding for all Transmission licensees across Europe so it is reasonable to expect National Grid to ensure demonstration of compliance.	No.
RWE Npower	We do not believe the original change proposal facilitates the CUSC as it does not better facilitate competition, cost reflective or Transmission investment. (Further comments can be found in Annex 4).	We do not support the ex post reconciliation but should Ofgem choose to award this money. In the event of Ofgem awarding this money we believe that 3 years notice would be required from the date of the decision for these costs to be included in customer contracts / prices.	It is unclear whether any CUSC changes are required as no legal text changes have been provided. This can only mean that the current arrangement (money is not given back to generators) remains in place. Reference made to section 14 of the CUSC however no legal text changes have been included.	3 years notice for implementation of recovery from suppliers / consumers post the decision.

Smartest Energy	No. The whole point about the current arrangements is that there is an error margin to try to avoid breaching the cap. If a breach were illegal there would have been no point to the error margin; the whole calculation would have had to include a reconciliation.	No.	Yes – if the proposal is to go ahead then the reconciliation should be two ways; if generators have been given an additional discount beyond that which is necessary for the €2.50 cap, it should be refunded to suppliers.	No.
SSE	We believe that the Original Proposal better facilitates the Applicable CUSC Objectives. We set out, in the proposal itself, the reasoning for this. (Further comments can be found in Annex 4).	We believe that the implementation of the Original and potential option A_1 can be undertaken within 14 calendar days from an Authority decision. (Further comments can be found in Annex 4).	A number of comments were made on the following: Alternative Recourse and Double Recovery, Treatment of Small Generator Discount and Generation Only Spurs. (Further comments can be found in Annex 4).	No.
VPI Immingham	Yes, we believe that CMP261 better facilitates the applicable CUSC objectives. (Further comments can be found in Annex 4).	We would support option A in terms of implementation. We think it is right that generators who held TEC in 2015/16 are given an immediate rebate whereas the costs are recovered from suppliers further in the future. This is on the basis that a large amount of generation that paid TEC in 2015/16 is no longer operational so any future reconciliation would not recompense the affected parties. (Further comments can be found in Annex 4).	We do not support the argument that CMP261 creates a windfall payment for generators. Looking at thermal generators' profits over the last few years, it becomes obvious that most have been suffering from serious financial issues. One such reason for this has been the inability for generators to recover their fixed costs, including TNUoS, via the wholesale market. (Further comments can be found in Annex 4).	No.
Scottish Power	We believe that the Original Proposal and Option A overall better meet the Applicable CUSC Charging Objectives than the baseline principally by ensuring compliance with Electricity Regulation 838/2010 and ensuring that the average charge paid by GB	We support the implementation approaches outlined in Section 5 for the Original Proposal and Option A. As outlined above we do not support implementation of Options B, C, D & E.	No.	No.

	generators does not exceed €2.50/MWh. Options B, C, D and E do not better meet the Applicable CUSC Charging Objectives as they describe a reconciliation process which makes reconciliation payments to generators which were not impacted by the original "overcharge" (i.e. they have increased TEC between charging years) and fails to make payments to others affected by the "overcharge" (i.e. they have reduced TEC between charging years).			

5.3 The following table provides an overview of the responses received to the CMP261 specific Workgroup questions:

	Do you have any comments on the legal opinion?	Is ex-ante certainty preferred over ex-post accuracy?	Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?	If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?
British Gas	The legal opinion in 9a and 9b states: a. there is a *strong argument* that a material breach of the €2.50/MWh G Charges limit in respect of the 2015/16 charging year equates to non-compliance with the Guidelines Regulation; b. as a result, we are of the view that reconciliation of G Charges for the	Ex-ante certainty was believed to have been provided by CMP224. Having identified defects in the CMP224 methodology, the appropriate response is to improve the methodology going forward, as is proposed by CMP251, not to retrospectively change the	Regardless of whether the €2.50 limit has been breached (which is unclear at this stage) we do not believe a breach of the Regulation has occurred. We agree that the nature of the Regulation is purposive and National Grid acted with the purpose of complying with the Regulation, as is clearly demonstrated by the use of an error margin (Further comments can be	We consider that options which delay the reconciliation are preferable to adjustments with shorter notice periods. In this exceptional circumstance, given the unexpected nature of any additional costs to be passed onto suppliers, we believe any reconciliation affecting suppliers should not occur before 2018/19 at the earliest (Further

	2015/16 charging year *would be prudent*; It is not clear for whom it would be prudent to make reconciliation, and we disagree that it is the prudent course of action. National Grid has not been found to be in breach of the Regulation. It is also highly uncertain whether it could be found to be in breach of the Regulation.	methodology as is now proposed by CMP261.	found in Annex 4).	comments can be found in Annex 4).
InterGen	The legal opinion, in our view, supports that there has been a material breach of the €2.50/MWh CAP and that an ex-post reconciliation is therefore required to ensure compliance with the regulation. (Further comments can be found in Annex 4).	No, ex-post accuracy is a requirement in this situation. TNUoS paid by generators must remain within the 0 - €2.50/MWh range, to ensure compliance with the regulation. In principle, we prefer ex ante certainty, providing that there exists a reconciliation element (as per CMP251) that would, for example, take place the following charging year, should the TNUoS paid by generators not fall within the 0 - €2.50./MWh in a given charging year.	Yes, we believe there has been a material breach of the €2.50/ MWh cap in the 2015/16 charging year, amounting to a generator rebate of £1.71/kW.	An ex-post reconciliation should be adopted as soon as is practically possible.
Drax Power and Haven Power Ltd	The legal opinion is heavily weighted in support of reimbursing generators for the 15/16 overcharge. We believe that the generator rebate should take place as soon as possible. Recouping revenue	The current methodology better facilitates efficient trading in the market and provides certainty to market participants. An ex	The regulation clearly states that average generation transmission charges should not exceed €2.50/MWh. The workgroup has shown that average generation transmission charges for the 15/16	The legal response states that “The G Charges Guidelines do not mandate how such reconciliation should be performed” and we therefore believe that a reconciliation that will cause minimal

	from suppliers, however, should allow sufficient time for them to correct their pricing methodology for future charging years.	post approach will detrimentally impact the predictability of TNUoS charges and will clearly result in a risk premia being factored into wholesale prices. The increased uncertainty will result in higher costs to the consumer. (Further comments can be found in Annex 4).	charging year were €3.22/MWh and therefore we believe that a breach has occurred and should be remedied as soon as possible in order to be compliant with EU Regulation.	distortion should take place. However, the reconciliation should not be delayed too far. We believe that a suppliers should pay the difference between €2.50/MWh and €3.22/MWh in the 18/19 charging year.
EDF Energy	The legal opinion provided to the workgroup is clear that where a forecast proves (despite the Error Margin) to have been inaccurate for a given year, and therefore takes the average Generator Charge above the €2.50/MWh limit, this exceedance of the Guidelines Regulation limit represents a breach of the technical requirements of the Guideline Regulation.	In most cases ex-ante certainty in network charges is preferred over an ex-post change to ensure accuracy. However, in this particular case there appears to be a legal requirement to undertake an ex-post reconciliation as the average Generator Charge is above the €2.50/MWh limit, a clear breach of the EU Regulation. (Further comments can be found in Annex 4).	Using actual data and the strict interpretation of EU Regulation 838/2010, there has clearly been a material breach for Charging Year 2015/16. Moreover this is the view provided by expert legal opinion. Given the legal opinion, we believe that an ex post reconciliation must be carried out and support the proposed implementation approach preferring Option A, with Generator rebates in 2016/17 and the Adjustment of Demand tariffs in 2018/19.	We support an implementation approach preferring Option A, with Generator rebates paid as soon as practicable in 2016/17 and the Adjustment of Demand tariffs in 2018/19. (Further comments can be found in Annex 4).
RWE Npower	Legal opinion may be misled as certain local connection charges for offshore generation are included in the total costs recovered through the tariff & transport model. If these costs were excluded from the calculation as shown in section 2.45 then there is no breach of the EU legislation.	Yes this is preferred as it provides competitive certainty. Provides cost reflectivity for future customer / energy contracts and pricing of generation. Ex post reconciliation of prices leads to the potential need for risk	We do not believe a breach has occurred as certain local connection charges for offshore generation are included in the total costs recovered through the tariff & transport model. If these costs were excluded from the calculation as shown in section 2.45 then there is no breach of the EU legislation. (Further comments can be	3 years notice for implementation of recovery from suppliers / consumers post the decision.

		premia being applied. This in turn increases costs for the end consumer. Windfall gains can also occur leading to additional costs for consumers.	found in Annex 4).	
Smartest Energy	We agree with the NGT interpretation that "a pure ex ante approach, by its nature, is never guaranteed to be 100% precise or accurate and is the approved GB approach to compliance with the Regulation."	In this instance, yes.	No.	Before the end of the calendar year.
SSE	We strongly agree with the legal opinion in respect of the fact that there has been a breach of the Regulation and that a remedy is required. (Further comments can be found in Annex 4).	Whilst we appreciate the desirability of having ex ante certainty when compared with ex post accuracy, the overriding requirement must be to comply with the law. If either an ex ante or an ex post approach would (in both cases) ensure compliance with the law (in this case that GB generators did not pay, in charging year 2015/16, in excess of the €2.50/MWh figure) then, an ex ante approach would seem preferable. (Further comments can be found in Annex 4).	Yes, we do firmly believe that a breach of the Regulation has occurred in charging year 2015/16 as transmission charges paid by GB generators during the period were in excess of the permitted range of €0-2.50/MWh. (Further comments can be found in Annex 4).	As we set out in response to Question 2 above, the reconciliation should be undertaken within 14 calendar days from an Authority decision (noting that the processes, procedures and systems already existing within National Grid to perform this task; it being a repeat of the Generator Reconciliation Statement processes and procedures already undertaken (in April 2016) for charging year 2015/16 in accordance with 3.13.2 and 3.13.3 of the CUSC. (Further comments can be found in Annex 4).
VPI Immingham	We are in full agreement with the Legal opinion. Despite the ex-ante approach being in place, it is clear that Regulation	We support the principle of ex-ante certainty over ex-post accuracy, however not at any	Yes, we believe a significant breach, close to 30%, has occurred which has resulted in a huge over-payment by	Immediately. All of the data is available to assess the size of the breach and to calculate monies owed to generators.

	838/2010 has been breached, and a material breach at that. As a result, National Grid are non-compliant with the law and we believe that immediate recompense should be made to affected parties. (Further comments can be found in Annex 4).	cost. Ex-ante certainty must also be compliant with the relevant Regulations (in this case Regulation 838/2010) and therefore the error margin included in the ex-ante approach must be appropriate to ensure compliance. (Further comments can be found in Annex 4).	generators and National Grid being non-compliant with EU law. (Further comments can be found in Annex 4).	Given that there has been a clear breach of the law and that all necessary information is available, we see no reason to delay such payments.
Scottish Power	We agree with the legal opinion in Annex 4 that; - the average generation charge has materially exceeded the G Charge Guidelines limit (Key Conclusion 4) - that taking the average G Charge above €2.50/MWh and exceeding the Guidelines Regulation limit represents a breach of the technical requirements of the Guidelines Regulation (Key Conclusion 3) - that reconciliation of G Charges for the 2015/16 charging year would be prudent (paragraph 9 (b)) - that the breach in respect of the 2015/16 charging year does not automatically mean the methodology for future charging years requires amending	There will always be a trade-off between the certainty provided by ex-ante charge-setting and ex-post accuracy and the current charging methodology allows for ex-post reconciliation of demand charges and charges payable to generators in negative charging zones. (Further comments can be found in Annex 4).	As outline in our response to question 5 we believe that there has been a material breach of Regulation 838/2010 and that an ex-post reconciliation should be carried out.	For the parties which have been adversely affected by the breach, namely generators paying TNUoS charges during charging year 2015/16, the reconciliation should be completed as soon as reasonably practicable. (Further comments can be found in Annex 4).

	Are there trade-offs between speed of reconciliation and the most appropriate process?	Do you believe any harm has been done in the spirit of the defect identified?	Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.
British Gas	We believe that any reconciliation that may be required should seek to limit or avoid windfalls to generators and losses to suppliers and consumers. This will require options which delay the reconciliations to G&D tariffs.	No – tariffs were set for 2015/16 under a methodology which was accepted as an ex-ante methodology. Therefore there has been no over-charging of TNUoS to generators above that which they expected once tariffs were set. Until such time as National Grid are found to be actually 'in breach' of the regulation, the concept of 'harm' is not relevant.	Under CMP224 compliance with the relevant EU Regulation is managed via an ex-ante approach with no reconciliation. This was the accepted expectations of the market. The examples presented in paragraph 2.34 of the consultation which show that National Grid and market participants were aware that the €2.50/MWh limit might have been exceeded during 2015/16 simply serve as evidence that the accepted expectations of the market was that there would be no mid-year tariff change or reconciliation in respect of the cap since at no point during 2015/16 did National Grid propose any mid-year tariff change to address the potential exceedence – which, as has been demonstrated, would have been visible to it and market participants (Further comments can be found in Annex 4).
InterGen	In our opinion the €2.50/MWh has been exceeded, and a rebate of £1.71/kW is required to be compliant with the regulation. The most appropriate process must therefore carry out this rebate as soon as is practically possible to ensure compliance.	We do not believe that the concept of harm is in the scope of this modification as it currently stands, as the modification seeks to ensure that transmission charges remain within the €0 - €2.50/MWh range, so as to remain compliant with the regulation (Further comments can be found in Annex 4).	Yes, InterGen operates on the assumption that National Grid will not exceed the €2.50/MWh Cap set by the EU regulation. National Grid have the ability to make a mid-year tariff change (Further comments can be found in Annex 4).
Drax Power	If the reconciliation process was done in the 17/18	Impact on market economics. Due to generators	There are many different variables that affect a

and Haven Power Ltd	charging year this would seriously impact suppliers, in particular smaller suppliers who may not be able to properly respond to the impact in time. Suppliers generally fix costs within their contracts and many of these contracts covering future years and in particular 2017/18 will already have been signed meaning that increases in costs cannot be recovered directly from customers. (Further comments can be found in Annex 4).	being overcharged in the 15/16 charging year, generators have higher costs to recover during period of low market spreads. There may have been an impact to the economic basis of energy flows between Europe and GB which would be detrimental to competition. (Further comments can be found in Annex 4).	generator TNUoS bill which generators have minimal/no visibility of. The difficulties are only amplified by the fact parties are only given 2 months' notice of the final charges. There are lots of variable elements and therefore year on year we don't know how it will change. We therefore rely on National Grid forecasts and therefore can only assume the €2.5/MWh cap will not be breached. It states in EU Regulation 838/2010 that UK generators should not be charged over €2.50/MWh so this is a fair assumption.
EDF Energy	We consider the best implementation approach is Option A, with Generator rebates paid as soon as practicable in 2016/17 and the Adjustment of Demand tariffs in 2018/19. Please see our answer to Q8 above.	Generators contracting to sell output and setting market prices for 2015/16 before Draft and Final tariffs were published would have built into their cost base forecasts of TNUoS costs on the expectation that the EU Regulation 838/2010 €2.50MWh cap would be complied with. (Further comments can be found in Annex 4).	Generators were contracting to sell output and setting market prices for 2015/16 before Draft and Final tariffs were published. It was reasonable for Generators to build into their cost base a forecast of TNUoS costs on the expectation that the EU Regulation 838/2010 €2.50MWh cap would be complied with. As Final 2015/16 tariffs were set that actually had an average Generator Charge well in excess of the EU Regulation 838/2010 €2.50MWh cap, they will have under-forecast the TNUoS cost.
RWE Npower	Should Ofgem choose to award this money we believe that 3 years notice would be required from the date of the decision for recovery from the demand side of tariffs. We recognise the same timescales would need to apply to the generator reconciliation, given this would be a windfall gain for them.	We do not believe any harm has been done as generators will have priced in the short term based on published tariffs rather than an accurate forecast of the exchange rate. There is harm to suppliers and customers on pass through TNUoS contracts if this modification is approved. As a result of the windfall gains to generators.	Both the supply and generation businesses use the published tariff where available and do not expect ex post variations. We wouldn't have the information to be able to anticipate, nor would we expect any other outcome.
Smartest Energy	Yes. There must be an element of pricing certainty for suppliers.	No.	We do not believe that commercially astute generators would have been so foolish as to take this risk. The current arrangements are perfectly

			clear: an ex ante approach with an error margin (but no agreed reconciliation) would always imply the possibility of exceeding the €2.50MWh cap.
SSE	For the reasons we outlined in our answers to Questions 2 and 8 above, the most appropriate process is that already approved by the Authority (as set out in 3.13.2[6] and 3.13.3[7] of the CUSC). There is no need for another process – any suggestion otherwise is a '*red herring*'. Given that National Grid has, by virtue of undertaking this process annually for many years we see there being no practical 'trade-off' between 'speed' and 'process' – the existing process can be undertaken quickly (within 14 calendar days of an Authority decision). (Further comments can be found in Annex 4).	As we set out in detail in our answer to Question 7 above there has been a clear breach of the EU Regulation 838/2010 Part B. That being the case it is self-evident that where the law has been broken that harm has arisen. Whilst there maybe discussion to be had as to the quantum of the harm, it cannot be denied that breaking the law (any law) causes harm. (Further comments can be found in Annex 4).	All parties must operate on the basis that they and all other parties will fully comply with the prevailing law at all time. To do otherwise would not only be irrational and call into question a central tenant of how both business and the regulatory arrangements work (and indeed those of the wider society) but would also invite the party (a) who believes that party (b) will not comply with a certain law to then themselves (party (a)) instead 'substitute' what level or standard of 'law' (rather than the prevailing law itself) that party (b) would comply with. (Further comments can be found in Annex 4).
VPI Immingham	There is a trade off between payments to generators and when these costs can be recovered from suppliers and the costs associated with bearing this debt. (Further comments can be found in Annex 4).	Yes, we do believe that there has been harm as a result of this defect. Most obviously is the impact on higher transmission charges on GB thermal generators compared to their competitors on the continent, many of whom do not pay transmission charges and those that do, pay considerably lower charges. The capping of GB Generation transmission charges was introduced to help mitigate this discrepancy and disadvantage. The ongoing discrepancy make it ever hard to harmonise the EU Energy market. (Further comments can be found in Annex 4).	We are not in a position to comment on our own or other generators' approach to contracting in the market or setting prices. However, given that this issue has been flagged to National Grid and a corresponding modification raised, it would not be unreasonable to assume that some parties actively monitor TNUoS against the €2.5/MWh limit.
Scottish Power	We do not foresee the need for any trade-off between the speed of reconciliation and the most appropriate process. National Grid now has access	Yes. The intent of regulation 838/2010 is to promote a common approach to transmission charging with a view to supporting the internal energy market	In examining the costs to be recovered through electricity contracts, GB generators will consider, amongst other factors, the anticipated level of

	to all the data required to perform the calculation of how much on average generators paid in charging year 2015/16 (TNUoS costs, generation output, exchange rate) and so there should be no compromise on accuracy. (Further comments can be found in Annex 4).	through competition. Breach of Regulation 838/2010 has resulted in GB generators suffering an undue burden of transmission charges relative to other European generators and is detrimental to competition.	TNUoS tariffs. Each generator has access to the TNUoS tariff model and is able to use its own assumptions to determine its own view of TNUoS tariffs not only for the current charging year but for future charging years for which tariffs have not yet been set. One of the key assumptions has been that future generation tariffs will be constrained by the cap contained within Regulation 838/2010. (Further comments can be found in Annex 4).

6 Workgroup Alternatives

6.1 Section 4 of this report highlights the main areas of the Workgroup discussion that could lead to possible alternatives.

6.2 CMP261 aims to ensure that there is an ex post reconciliation of the TNUoS paid by GB Generators during Charging Year 2015/16 which will take place as soon as possible after an Ofgem decision[77] with any amount in excess of the €2.5/MWh upper limit being paid back, via a negative Generator residual levied on all GB Generators who have paid TNUoS during the period 1st April 2015 to 31st March 2016 inclusive

6.3 Discussion began among the Workgroup members whether they wished to raise any WACM Proposals. It was decided by the Workgroup members that Options A, B and C which are considered in the Implementation and Transition section (4) of this Workgroup Consultation should be taken forward as suggested WACM proposals. Furthermore, on the back of the RWE Consultation response one Workgroup member raised a further Option (F) which looks to carry out the Generator Rebate and Supplier charge at the same time in Charging Year 2018/2019. The WACM proposals are detailed in the below table.

WACM Proposals	Rebate vs Tariff	Generator Rebate Year	Supplier Charge Year
Proposal 1	Rebate	ASAP	18/19
Proposal 2	Tariff	17/18	17/18
Proposal 3	Tariff	17/18	18/19
Proposal 4	Tariff	18/19	18/19

Table 1 details the WACM Proposal discussed by the Workgroup.

6.4 Following a Workgroup vote WACM Proposal 1 was the only proposal raised as an official WACM (WACM1) by the Workgroup members. The Workgroup chair voted to save WACM Proposals 2 (WACM2) and 4 (WACM3) because WACM Proposal 2 follows a tried and tested methodology as set out in the CUSC which industry clearly understands whilst also providing a forecast of future costs for Generation and Demand whilst, WACM Proposal 4 follows a process that could be more favourable for the consumer/Suppliers following Supplier feedback. The formal WACM numbers and their attributes are represented in the table below:

WACM Numbers	Rebate vs Tariff	Generator Rebate Year	Supplier Charge Year
WACM 1	Rebate	ASAP	18/19
WACM 2	Tariff	17/18	17/18
WACM 3	Tariff	18/19	18/19

Table 2 details the WACMs raised by the Workgroup.

6.5 A detailed description of the WACMs is as follows:

1. **WACM 1: Carries out a Generator Rebate ASAP, charging Suppliers through tariffs in Charging Year 2018/19.**
2. **WACM 2: Carries out both reconciliations through tariff adjustments for both Generators and Suppliers in the Charging Year 2017/18.**
3. **WACM 3: Carries out both reconciliations through tariff adjustments for both Generators and Suppliers in the Charging Year 2018/19.**

6.6 The Workgroup then voted against the Original and the 3 WACMs, these votes can be seen in section 7.

[77] When CMP261 was raised this was anticipated to be in Spring 2016.

7 Workgroup Vote

7.1 The Workgroup believes that the Terms of Reference has been met and that CMP261 has been fully considered.

7.2 For reference the CUSC 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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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. These are defined within the National Grid Electricity Transmission plc License under Standard Condition C10, paragraph 1.).
e) promoting efficiency in the implementation and administration of the CUSC arrangements.

7.3 The Workgroup met on the 11th October 2016 and voted on the Original Proposal and the three Workgroup Alternative CUSC Modifications. Three of the Workgroup members voted that the Baseline better facilitated the Applicable CUSC Objectives, One Workgroup member abstained, One Workgroup member voted that the Original Proposal better facilitated the Applicable CUSC Objectives and six Workgroup members voted for WACM1. The Workgroup members votes and reasoning's are shown in the table below.

National Grid view.

7.1 National Grid considers that it is not clear whether a defect exists. National Grid has followed an industry-agreed process to set the G:D split, established by the CMP224 industry working group, and subsequently ratified by the Regulator, to comply with EU Regulation 838/2010. The CMP224 methodology preserved the ex ante principle that tariffs are set in advance. This is consistent with the intention of EU Regulation 838/2010, which is designed to promote cross border trade. The CMP224 methodology also deliberately excluded exchange rate risk to avoid inclusion of risk premia into contract pricing which would be to the detriment of GB consumers. CMP224 did not include an ex post reconciliation mechanism to adjust tariffs, but does include an error margin calculated on the basis of historic data to adjust tariffs in future years to ensure the G:D split is set in a way that recovers the appropriate revenue from generation, and which is in itself a form of ex post reconciliation. Hence the CMP224 methodology preserves the ex ante principle, avoids exchange rate risk, and includes a mechanism to adjust the calculation of the G:D split with the latest data. CMP224 remains a reasonable methodology for compliance with EU Regulation 838/2010.

7.2 Using ex post data applied to the CMP224 methodology, an exceedance of €2.50/MWh can be shown. However, if the ex ante principle is disregarded, whether a breach of the Regulation has actually arisen depends on the interpretation of the EU Regulation and hinges on what is meant by excluding "*charges paid by producers for physical assets required for connection to the system*". There is an argument, ~~which was also played out in the CMP224 decision taken by Ofgem,~~ that costs associated with local circuits should be excluded, and the Workgroup has provided analysis to compare the charging treatment of assets on the system. If those assets are excluded, there is no exceedance of €2.50/MWh and therefore until a decision is made on this point, it is not clear a defect exists.

7.3 In the event a defect is identified, then measures should be taken to take account of any generator overcharges. National Grid believes the most appropriate method to do this to avoid windfall gains to generators is by preserving the principle of ex ante tariff setting and using existing processes and timescales to adjust future tariffs. This approach would provide most certainty to market participants and avoid the addition of risk premia in future prices which would adversely affect GB consumers.

Nick Pittarello	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	No, unclear whether defect exists. If it does, ex post reconciliation of tariffs does not facilitate cross border trade and leads to higher risk premia for GB consumers	No, potentially leads to windfall gains as market expectations were based on published tariffs. Whether the rebate is cost reflective depends on the definition of "assets physically required for connection" in the interpretation of the Regulation.	No, unless it is clear there is a defect	No, unless it is clear there is a defect. CMP224 put in place a reasonable industry-agreed approach to comply with Regulation 838/2010	No, requires an additional non-standard process	Abstain
WACM1	No, unclear whether defect exists. If it does, ex post reconciliation of tariffs does not facilitate cross border trade and leads to higher risk premia for GB consumers	No, potentially leads to windfall gains as market expectations were based on published tariffs. Whether the rebate is cost reflective depends on the definition of "assets physically required	No, unless it is clear there is a defect	No, unless it is clear there is a defect. CMP224 put in place a reasonable industry-agreed approach to comply with Regulation 838/2010	No, requires an additional non-standard process	Abstain

		for connection" in the interpretation of the Regulation				
WACM2	No, unclear whether defect exists. If it does, this approach is consistent with industry timescales (K adjusted t+2)	Neutral, whether tariff adjustment is cost reflective depends on the definition of "assets physically required for connection" in the interpretation of the Regulation	No, unless it is clear there is a defect	No, unless it is clear there is a defect. CMP224 put in place a reasonable industry-agreed approach to comply with Regulation 838/2010	Neutral	Abstain
WACM3	No, unclear whether defect exists. If it does, this approach is not consistent with industry timescales as K is adjusted t+3	Neutral, whether tariff adjustment is cost reflective depends on the definition of "assets physically required for connection" in the interpretation of the Regulation	No, unless it is clear there is a defect	No, unless it is clear there is a defect. CMP224 put in place a reasonable industry-agreed approach to comply with Regulation 838/2010	Neutral	Abstain
	Vote 2 (Each WACM vs original)					
WACM1	Neutral	Neutral	Neutral	Neutral	Supplier tariff adjustment not consistent with t+2 timescales	No
WACM2	Yes, avoids ex post	Yes, Adjustment of	Neutral	Neutral	Yes, consistent with	Yes

	adjustment of tariffs which promotes cross border trade and leads to lower risk premia for GB consumers	future tariff rather than rebate means less risk of windfall gains			existing industry processes and treatment of K	
WACM3	Yes, avoids ex post adjustment of tariffs which promotes cross border trade and leads to lower risk premia for GB consumers	Yes, Adjustment of future tariff rather than rebate means less risk of windfall gains	Neutral	Neutral	Supplier tariff adjustment not consistent with t+2 timescales	No
	Vote 3 (Which best meets applicable CUSC objectives)					
Abstain						

Garth Graham	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	Yes It (i) removes the uncertainty / risk of infraction proceedings; and (ii) it removes uncertainty / risk of changes to charges at a later date. These uncertainties / risks undermine generators/ suppliers commercial positions and therefore interfere with the correct functioning of the markets in generation and supply of electricity.	Yes By ensuring that the charges are set in accordance with the Regulation this will ensure they are more reflective of costs than if this change were not undertaken.	Neutral	Yes The Regulation (EC) No 714/2009 and Commission Regulation 838/2010 are binding for all Transmission licensees across Europe. We believe that this proposal ensures that GB remains compliant with the European legislation and properly reflects National Grid's duties in the development of its transmission business.	Neutral	Yes As has been set out in detail in the Workgroup report, and in accordance with the legal advice obtained by National Grid, the breach of the Regulation in 2015/16 has occurred and must be addressed and rectified immediately. The harm that has arisen from the breach of Regulation in 2015/16 is ongoing and is being further compounded by the lack of it's rectification at the earliest possible opportunity. The CMP261 Original ensures compliance with the Regulation and, accordingly, both better facilitates competition whilst also ensuring that cost reflective charges are applied.
WACM1	Yes	Yes	Neutral	Yes	Neutral	Yes

	It (i) removes the uncertainty / risk of infraction proceedings; and (ii) it removes uncertainty / risk of changes to charges at a later date. These uncertainties / risks undermine generators/ suppliers commercial positions and therefore interfere with the correct functioning of the markets in generation and supply of electricity.	By ensuring that the charges are set in accordance with the Regulation this will ensure they are more reflective of costs than if this change were not undertaken.		The Regulation (EC) No 714/2009 and Commission Regulation 838/2010 are binding for all Transmission licensees across Europe. We believe that this proposal ensures that GB remains compliant with the European legislation and properly reflects National Grid's duties in the development of its transmission business.		This WACM (1) has all the positive attributes of the CMP261 Original, whilst allowing for a delay of up to an extra year (2018/19 instead of 2017/18) for the amount to be recovered from Suppliers (via an appropriate amendment to their TNUoS charges). For the same reasons as noted above with respect to the Original, and as has been set out in detail in the Workgroup report, and in accordance with the legal advice obtained by National Grid, the breach of the Regulation in 2015/16 has occurred and must be addressed and rectified immediately. Rebating Generators within 14 days, whilst allowing an extra year (to 2018/19) achieves this. The harm that has arisen from the breach of the Regulation in 2015/16 is ongoing and is being

						further compounded by the lack of it's rectification at the earliest possible opportunity. This WACM (1) (along with the CMP261 Original) ensures compliance with the Regulation and, accordingly, better facilitates competition whilst also ensuring that cost reflective charges are applied.
WACM2	No A significant proportion of Generator Users who paid TNUoS in 2015/16 will not receive any rebate from the breach of the Regulation in 2015/16 whilst other Generator Users (in a later charging year) will receive a rebate this WACM (2) does not better facilitate effective competition.	No A significant proportion of Generator Users who paid TNUoS in 2015/16 will not receive any rebate from the breach of the Regulation in 2015/16 whilst other Generator Users (in a later charging year)will receive a rebate this WACM (2) this will not be cost reflective and thus not better facilitate the	Neutral	No A significant proportion of Generator Users who paid TNUoS in 2015/16 will not receive any rebate from the breach of the Regulation in 2015/16 whilst other Generator Users (in a later charging year) will receive a rebate. Furthermore, even those Generator Users who did pay TNUoS in 2015/16 who remain on the system in 2017/18 will not	Neutral	No. This WACM (2) would, if implemented, not correct the defect identified in the proposal; as a significant proportion of the Generator Users who paid, during 2015/16, on average in excess of the €2.50/MWh upper limit would not receive any rebate, whilst others, who were non Generator Users during 2015/16 would (as Generator Users in 2017/18) receive a 'windfall gain'.

		applicable objective.		receive a speedy rectification, in the form of a rebate, for in excess of two years after the breach of the Regulation was identified. Therefore this WACM (2) does not better facilitate compliance with the Regulation.		
WACM3	No A significant proportion of Generator Users who paid TNUoS in 2015/16 will not receive any rebate from the breach of the Regulation in 2015/16 whilst other Generator Users (in a later charging year) will receive a rebate this WACM (3) does not better facilitate effective competition.	No A significant proportion of Generator Users who paid TNUoS in 2015/16 will not receive any rebate from the breach of the Regulation in 2015/16 whilst other Generator Users (in a later charging year)will receive a rebate this WACM (3) this will not be cost reflective and thus not better facilitate the applicable objective.	Neutral	No A significant proportion of Generator users who paid TNUoS in 2015/16 will not receive any rebate from the breach of the Regulation in 2015/16 whilst other Users (in a later charging year) will receive a rebate. Furthermore, even those Generator Users who did pay TNUoS in 2015/16 who remain on the system in 2018/19 will not receive a speedy rectification, in the form of a rebate, for in	Neutral	No. This WACM (3) would, if implemented, not correct the defect identified in the proposal; as a significant proportion of the Generator Users who paid, during 2015/16, on average in excess of the €2.50/MWh upper limit would not receive any rebate, whilst others, who were non Generator Users during 2015/16 would (as Generator Users in 2018/19) receive a 'windfall gain'.

				excess of three years after the breach of the Regulation was identified. Therefore this WACM (3) does not better facilitate compliance with the Regulation.		
	Vote 2 (Each WACM vs original)					
WACM1	Neutral	Neutral	Neutral	Neutral	Neutral	Neutral. This WACM (1) has the positive attributes of the Original.
WACM2	No	No	Neutral	No	Neutral	No, for reasons detailed under Vote 1.
WACM3	No	No	Neutral	No	Neutral	No, for reasons detailed under Vote 1.
	Vote 3 (Which best meets applicable CUSC objectives)					
The CMP261 Original.						

Peter Bolitho	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	Yes - Competition is facilitated through compliance with EU law	Neutral	Neutral	Yes - This proposal ensures compliance with EU law but there is some detrimental impact to suppliers as pass through in customer tariffs in 2017/18 is difficult	Neutral	Yes - This change goes some way towards addressing the harm to generators by NGET's failure to comply with the Regulation. Rebate payments to generators covering the 'overcharge' amount as specified in the CMP261 legal text will address this and provide confidence to the market that the Regulation, which was enacted to promote competition through facilitating cross-border trade and a single electricity market, is complied with. Unfortunately, this proposal does not compensate for the loss of revenue of generators from reduced operating

						hours in 2015/16, because of displacement by cheaper imported power that did not pay GB transmission charges. A failure of Ofgem to approve the original proposal or WACM1, will increase regulatory uncertainty and reduce confidence in the very EU laws enacted for the purpose of supporting an efficient, competitive market. Such an outcome would also undermine the reasonable expectation of market participants that previous regulatory decisions (including the implied settled policy position as to what constitutes a "transmission tariff charge" under CMP244) will remain unchanged.
WACM1	Yes - Competition is facilitated through compliance with EU law	Neutral	Neutral	Yes - This proposal ensures compliance with EU law but, supplier charge impact	Neutral	Yes + As per the text for the Original above.

				can more reasonably be passed through in customer tariffs in 2018/19		WACM1 has the added benefit that the consequential adjustment to supplier charges is made a year later in 2018/19, which allows suppliers in most cases to pass the costs through to customers in tariffs; thus avoiding some distortion to competition in the supply market.
WACM2	No - A different set of generators receives the tariff benefit resulting from the 2015/16 overcharge amount.	No - Poor targeting of costs is not cost reflective	Neutral	No - A different set of generators receives the tariff benefit resulting from the 2015/16 overcharge amount.	Neutral	No - This is not a legitimate alternative as it does not address the defect set out by the proposer of CMP261. The Regulation deals with "annual average transmission charges" paid by producers" in a particular year (in this case 2015/16). Any 'overcharge' must be targeted via a rebate, otherwise generators that have since closed or operate less will lose out financially and those that

						have just started operating, or operate more, in 2016/17 will receive a windfall reduction in charges. Such reallocation of costs between users across different timeframes is not cost reflective and overall is detrimental to competition.
WACM3	No - A different set of generators receives the tariff benefit from the 2015/16 overcharge amount.	No - Poor targeting of costs is not cost reflective	Neutral	No - A different set of generators receives the tariff benefit resulting from the 2015/16 overcharge amount,	Neutral	No - Comments as per WACM2. This proposal is even worse than WACM2 as there is an even longer delay to recover the generator 'overcharge' amount arising in 2015/16. This means that cost targeting will be even less reliable and therefore less cost reflective than WACM2.
	Vote 2 (Each WACM vs original)					
WACM1	No	n/a	n/a	Yes	n/a	For reasons set out above.
WACM2	No	No	n/a	No	n/a	"
WACM3	No	No	n/a	No	n/a	"

	Vote 3 (Which best meets applicable CUSC objectives)
WACM1 – it is better than the Original as the potential adverse impact on supply competition is mitigated to some extent as suppliers are better able to pass through tariff changes to customers in 18/19 rather than in 17/18.	

Comments on the process

7.4 The decision on this modification will have a material impact on market participants. It is therefore particularly concerning that that there have been unnecessary and avoidable delays in assessing this modification. This has not been helped by the late interventions of Ofgem, or in some cases how National Grid has chosen to manage the process.

7.5 Being seen to act impartially as code administrator is bound to be difficult for National Grid when it is alleged to have overcharged generators by over £120m in 2015/16; and Ofgem may also genuinely believe it is appropriate for it to steer the industry assessment process given it is the relevant GB NRA charged with deciding compliance with the Regulation. However, it should be noted that these actions of National Grid and Ofgem has altered the nature of the assessment process and the alternatives that have been put forward. In turn this may well impact the eventual decision made by Ofgem and affect parties' rights of appeal under the statutory, merits based, industry code appeals process.

7.6 In my opinion, Ofgem has not, to date, approached its evaluation of CMP261 with an open mind. Despite strong evidence to support CMP261 (including the unequivocal legal opinion of Addleshaw Goddard produced in April), Ofgem has consistently remained sceptical of the claims of the proposer that a material breach of the Regulation has occurred. In August however, after the workgroup had voted on the alternatives, it decided (in my opinion in an entirely inappropriate fashion) to intervene and steer the process, so as to seek to find evidence that could lead to a more restricted definition of what constitutes a "transmission tariff charge" and thereby potentially conclude that a breach was either smaller than set out in the original proposal, or had not occurred at all. Furthermore, workgroup members were put under pressure to reconsider voting on possible alternatives. To re-open such a voting process would have been improper and depending on a subsequent CUSC Panel recommendations, could well limit statutory rights of appeal of any Ofgem modification decision.

7.7 Unfortunately, the actions of National Grid have not helped expedite the CMP261 process either. Their actions may well be commercially understandable, as they could well be found to be materially in breach of the Regulation, but at the same time as code administrator could be perceived to lack impartiality. The actions that could be misconstrued have included:

- extending the scope of analysis beyond that requested by the workgroup;
- the chair saving an alternative proposal that had been proposed by the National Grid representative but had been rejected by the workgroup; and
- various chairs actively encouraging the workgroup to reconsider its vote on alternatives, after the vote had already been taken,

7.8 In making its recommendation, on the above proposals, I would urge the CUSC Panel to reflect on the above procedural concerns.

Simon Vicary	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	yes	neutral	neutral	yes	neutral	yes
WACM1	yes	neutral	neutral	yes	neutral	yes
WACM2	no	neutral	neutral	no	neutral	no
WACM3	no	neutral	neutral	no	neutral	no
	Vote 2 (Each WACM vs original)					
WACM1	yes	neutral	neutral	yes	neutral	yes
WACM2	no	neutral	neutral	no	neutral	no
WACM3	no	neutral	neutral	no	neutral	no
	Vote 3 (Which best meets applicable CUSC objectives)					
WACM 1 best meets applicable CUSC objectives.						

Supporting Text for Voting

7.9 Given the legal opinion supporting the view that there is a breach of the €2.50/MWh annual average limit for TNUoS paid by Generators in GB in Charging Year 2015/16, as set in EU Regulation 838/2010 Part B (3), we believe that an ex post reconciliation must be carried out.

7.10 CMP261 Original and WACM1 would ensure compliance with the EU Regulation 838/2010 Part B (3).

7.11 The proposed implementation approach in WACM1, with Generator rebates as soon as practicable and the Adjustment of Demand tariffs in 2018/19 is the best solution for both generators and customers.

7.12 The adjustment of generation tariffs in 2017/18 (WACM3) or 2018/19 (WACM4) will not ensure that the generators that overpaid TNUoS in 2015/16 receive adjustments that correctly reverse their overpayments.

George Moran	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	NO	NO	NEUTRAL	NEUTRAL	NEUTRAL	NO
WACM1	NO	NO	NEUTRAL	NEUTRAL	NEUTRAL	NO
WACM2	NO	NO	NEUTRAL	NEUTRAL	NEUTRAL	NO
WACM3	NO	NO	NEUTRAL	NEUTRAL	NEUTRAL	NO
	Vote 2 (Each WACM vs original)					
WACM1	YES	NEUTRAL	NEUTRAL	NEUTRAL	NEUTRAL	YES
WACM2	YES	NEUTRAL	NEUTRAL	NEUTRAL	NEUTRAL	YES
WACM3	YES	NEUTRAL	NEUTRAL	NEUTRAL	NEUTRAL	YES
	Vote 3 (Which best meets applicable CUSC objectives)					
The Baseline best meets the applicable CUSC objectives.						

Supporting Text for Voting

Vote 1 (proposal vs baseline)

7.13 The CMP261 Original Proposal and all of the WACMs do not better facilitate the CUSC objectives.

Applicable Objective (a)

7.14 Under CMP224, compliance with the relevant EU Regulation is managed via an ex-ante approach with no reconciliation. This was the accepted expectation of the market. The examples presented in paragraph 2.34 of the workgroup consultation show that National Grid and market participants were aware that the €2.50/MWh limit might have been exceeded during 2015/16. This demonstrates that the accepted expectation of the market was that there would be no mid-year tariff change or reconciliation in respect of the cap. This expectation was also affirmed at both the May 2015 and August 2015 CUSC Panel meetings – by National Grid in May 2015, who were clear that there was no intention of reviewing the CMP224 solution and by the proposer of CMP 251 in August 2015, who was clear that any solution should not be applied retrospectively to 2015/16.

7.15 National Grid did not, at any point, propose any mid-year tariff change to address the potential exceedance – which would have been fully visible to it. Therefore the Original and all of the WACMs perform worse against applicable objective (a) as the unexpected nature of this modification would

damage competition because the impact on parties, and parties' ability to manage those impacts, will vary. The retrospective nature of the changes could also lead to increased risk premiums applied to future tariffs.

Applicable Objective (b)

7.16 The principles underpinning the charging methodology, including the default proportion of revenue to be recovered from generators in 2015/16, were approved as meeting objective (b).

7.17 Therefore, any unnecessary restrictions or changes to how these principles are translated into charges are detrimental to meeting objective (b). To the extent that the proposed change retrospectively moves Generation tariffs from the default position in the methodology for 2015/16, CMP261 performs worse against applicable objective (b).

Applicable Objective (d)

7.18 CMP261 has no impact on Objective (d) as the current methodology is compliant with the relevant EU Regulation. This is clear as:

- There has been no enforcement action taken or (as far as we are aware) being considered.
- The legal advice does not conclude that National Grid is not compliant.

7.19 Until such time as non-compliance is found, and given the uncertainty surrounding whether such a finding would be achievable, no impact can be assessed against objective (d).

Vote 2 (Each WACM vs Original)

7.20 The WACMs only affect the assessment against applicable objective (a).

WACM 1: Worse than the baseline but better than Original as the D reconciliation includes reasonable notice for suppliers and also customers on pass-through contracts.

WACM 2: Worse than baseline but better than Original as there is a slight delay in G adjustment which provides some (limited) opportunity for the adjustment to pass through to wholesale prices (and to consumers), reducing any windfall to Generators (and detriment to consumers/suppliers).

7.21 In this instance do not believe the notice for Demand charge adjustment is sufficient due to the unexpected nature of the modification. Also insufficient notice for customers on pass-through contracts.

WACM 3: Worse than baseline but better than Original, and the least detrimental of the WACMs, as the delay in the Generation adjustment provides more opportunity for the adjustment to pass through to wholesale prices (and to consumers), limiting any windfall to Generators (and detriment to consumers/suppliers). Also, the Demand reconciliation includes reasonable notice for suppliers and customers on pass-through contracts

Jeremy Guard	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	Negative	Negative	Negative	Negative	Negative	Negative
WACM1	Negative	Negative	Negative	Negative	Negative	Negative
WACM2	Negative	Negative	Negative	Negative	Negative	Negative
WACM3	Negative	Negative	Negative	Negative	Negative	Negative
	Vote 2 (Each WACM vs original)					
WACM1	Negative	Neutral	Neutral	Neutral	Neutral	Negative
WACM2	Positive	Neutral	Neutral	Neutral	Neutral	Positive
WACM3	Positive	Neutral	Neutral	Neutral	Neutral	Positive
	Vote 3 (Which best meets applicable CUSC objectives)					
Baseline						

Supporting Text for Voting

7.22 This modification does not encourage competition, it does the exact opposite; the threat of this modification alone regardless of the outcome could lead to parties leaving the market due to the excessive level of cost uncertainty and risk of retrospective charging being too high. Suppliers that are vertically integrated and have a large proportion of generation vs demand would receive an adverse distributional benefit if this modification were to be approved. It is detrimental to objective a.

7.23 This modification attempts to exploit an exchange rate fluctuation that had little material impact on the cost to generate. If there was any risk of a material impact on generators from such an exchange rate fluctuation then generators themselves should have managed that risk within their own businesses. This modification is detrimental to objective b.

7.24 Charging methodologies in themselves exist to provide certainty to the affected parties, this modification undermines the whole purpose of charging methodologies and the basic principle of cost certainty and is therefore detrimental to objective c.

7.25 Regarding the regulation; (i) The regulation specifies a cap in Euro's; (ii) It is widely accepted that ex-ante charging methodologies are preferable to ex-post; (iii) There is no mention of a retrospective adjustment in the regulation; (iv) The regulator would have been aware of an exchange rate fluctuation risk. The regulation therefore never intended for a retrospective adjustment to be made, therefore this modification does not have a positive impact with compliance of any regulation or objective d.

7.26 This modification would introduce inefficiencies into the implementation of the CUSC and would therefore have a negative impact on objective e.

Matthew Hulks	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	YES	YES		YES		YES
WACM1	YES	YES		YES		YES
WACM2	YES	YES		YES		YES
WACM3	YES	YES		YES		YES
	Vote 2 (Each WACM vs original)					
WACM1	YES	YES		YES		YES
WACM2	NEUTRAL	NEUTRAL		NEUTRAL		NO
WACM3	NEUTRAL	NEUTRAL		NEUTRAL		NO
	Vote 3 (Which best meets applicable CUSC objectives)					
WACM 1						

Supporting Text for Voting

7.27 WACM 1 allows generators to be paid back as soon as possible, whilst limiting any damage caused and ensuring compliance with the 838/2010 regulation quickly and efficiently. Further, suppliers should be given sufficient time to correct their pricing strategies for future charging years to ensure that these costs can be recovered appropriately from customers via TNUoS tariffs.

George Douthwaite	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	No	No	Neutral	Neutral	No	No
WACM1	No	No	Neutral	Neutral	No	No
WACM2	No	No	Neutral	Neutral	No	No
WACM3	No	No	Neutral	Neutral	No	No
	Vote 2 (Each WACM vs original)					
WACM1	Yes	Neutral	Neutral	Neutral	Neutral	Yes
WACM2	Yes	Yes	Neutral	Neutral	Neutral	Yes
WACM3	Yes	Yes	Neutral	Neutral	Neutral	Yes
	Vote 3 (Which best meets applicable CUSC objectives)					
Baseline						

Supporting Text for Voting

7.28 Direction was given by Ofgem early on that the workgroup should discuss the best solution should Ofgem determine a breach in regulation has occurred, and that it is up to Ofgem to make that determination. Since the original proposal and WACMs still perform that function of determining a breach and specifying the size of that breach, in addition to proposing a solution for any such breach, we are unable to support them.

7.29 Since we do not feel that a breach in regulation has been adequately proven, this change does not improve compliance to EU regulations. It not only represents a reduction in competition by adding uncertainty to published tariffs, but it also represents a reduction in the cost-reflectivity of this charge by attempting to redistribute costs from an earlier charging year and additionally decreases efficiencies in the administration of the CUSC. Further distortions to cost-reflectivity occur with any windfall gain, since customers will fail to get a rebate on any deemed over-charging. In this instance, we believe that generators will have priced their energy on published tariffs rather than taking a view on the exchange rate at the time of contracting and therefore their costs will have been passed through. As a result, any rebate on these costs should be applied through tariffs to ensure sufficient lead time for cost reductions to get passed back to customers. Although it is recognised the customer base may have changed from that of 2015/16, without adequate lead time it could be that all customers are disadvantaged.

7.30 Should Ofgem determine that a breach in EU regulation has occurred, we feel that the WACMs offering better cost reflectivity would be those where any reduction in the generators' TNUoS charges were to be applied through the tariffs, to minimise the possibility of there being a windfall gain.

Competition is best served where there being no windfall gains, through sufficient notice in changes to tariffs. Therefore, should some breach in regulation be determined, we feel that WACM3 offers the best methodology for resolving that breach.

Joe Underwood	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	Yes	Yes	Neutral	Yes	No	Yes
WACM1	Yes	Yes	Neutral	Yes	No	Yes
WACM2	No	No	Neutral	No	No	No
WACM3	No	No	Neutral	No	No	No
	Vote 2 (Each WACM vs original)					
WACM1	Yes	Yes	Neutral	Yes	Neutral	Yes
WACM2	No	No	Neutral	No	Neutral	No
WACM3	No	No	Neutral	No	Neutral	No
	Vote 3 (Which best meets applicable CUSC objectives)					
WACM1						

Supporting Text for Voting

7.31 I consider both the CMP261 Original and WACM 1 to better facilitate the Applicable CUSC Objectives with respect to the baseline with WACM 1 being the superior of these two options. WACM 1 recovers cost in the 18/19 charging year therefore consumers can benefit from the extra notice being given to demand charges.

7.32 I do not believe that WACM2 or 3 properly hit the defect. A tariff adjustment will not reimburse generators effected by the overcharge that have closed since the 15/16 charging year. This also means that transmission connected generators that have entered the market since the 15/16 charging year will be getting payed for an overcharge they were not subject to.

7.33 I consider that there has been a material breach of the €2.50/MWh average transmission charges cap and effected generators should be immediately remitted the amount they were overcharged.

7.34 In the 15/16 charging year, generators were overcharged for transmission charges against the €2.50/MWh cap. This represents a breach of the technical requirements of the guidelines regulation. This position has been supported by legal advice from Addleshaw Goddard, procured by National Grid for the workgroup and effected generators should be immediately rebated the amount they were overcharged.

7.35 With respect to ACO (d), CMP261 Original and WACM 1 realigns GB transmission charging for 15/16 with European regulation that takes precedence over the CUSC.

7.36 Approving CMP261 or WACM 1 will reduce the risk of infraction proceedings and remove the uncertainties of future changes to charges that will undermine commercial positions of suppliers and generators thereby better facilitating ACO (a).

7.37 It is our view that the generator rebate should occur as soon as practical. Recouping revenue from suppliers, however, should allow sufficient time for them to correct their pricing methodology for future charging years. We therefore believe that the potential option A would best facilitate the ACOs with respect to the other options.

7.38 For the avoidance of doubt I also feel it necessary to note that I do not support the exclusion of generation only spurs from the TNUoS charging methodology as per the Addleshaw Goddard legal response (para. 19): *As was concluded during the CMP224, we would agree with the view that it is a reasonable interpretation of the Guidelines Regulation for TNUoS in respect of generation only spurs to be included within the TNUoS charges subject to the Guidelines Regulation G Charge limits (as implemented under the CUSC).*

Karl Maryon	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	Yes	Yes	Neutral	Yes	No	Yes
WACM1	Yes	Yes	Neutral	Yes	No	Yes
WACM2	No	No	Neutral	No	No	No
WACM3	No	No	Neutral	No	No	No
	Vote 2 (Each WACM vs original)					
WACM1	Yes	Yes	Neutral	Yes	Neutral	Yes
WACM2	No	No	Neutral	No	Neutral	No
WACM3	No	No	Neutral	No	Neutral	No
	Vote 3 (Which best meets applicable CUSC objectives)					
WACM1						

Paul Jones	Applicable CUSC Objectives					
	(a)	(b)	(c)	(d)	(e)	Overall
	Vote 1 (proposal vs baseline)					
Original	YES	Neutral	Neutral	YES	Neutral	YES
WACM1	YES	Neutral	Neutral	YES	Neutral	YES
WACM2	YES	Neutral	Neutral	YES	Neutral	YES
WACM3	YES	Neutral	Neutral	YES	Neutral	YES
	Vote 2 (Each WACM vs original)					
WACM1	YES	Neutral	Neutral	Neutral	Neutral	YES
WACM2	Neutral	NO	Neutral	Neutral	Neutral	NO
WACM3	Neutral	NO	Neutral	Neutral	Neutral	NO
	Vote 3 (Which best meets applicable CUSC objectives)					
WACM 1						

Supporting Text for Voting

7.39 All options improve on the baseline in respect of objective e) as they ensure compliance with Regulation (EU) No 838/2010 Part B, in line with the legal advice provided to the working group. The current ex ante approach is normally sufficient to ensure compliance with the regulation in general, but when material breaches occur it is correct that adjustments are made to ensure that generators as a class are not exposed to excessive levels of TNUoS charges. This provides regulatory certainty and promotes competition in the wholesale market better meeting objective a). They are neutral against objectives b), c) and e).

7.40 Compared with the original proposal, WACM 1 is better as it recovers the additional cost from suppliers a year later, giving them a better opportunity to manage the associated risk on behalf of their customers. WACMs 2 and 3, whilst better than the baseline, are not as cost reflective as the original and WACM1 as they seek to provide the rebate through an adjustment in future tariffs. In this time the chargeable capacities of affected generators may have changed, meaning that they would receive the incorrect level of refund.

8 How to Respond

8.1 If you wish to respond to this Code Administrator Consultation, please use the response pro-forma which can be found under the 'Industry Consultation' tab via the following link: http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP261/

8.2 Responses are invited to the following questions;

1. Do you believe CMP261 or its alternative solution better facilitates the Applicable CUSC Objectives? Please include your reasoning.

2. Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.

3. Do you have any other comments?

8.3 Views are invited on the proposals outlined in this consultation, which should be received by **5pm** on **16 November 2016**. Please email your formal response to: CUSC.team@nationalgrid.com

8.4 If you wish to submit a confidential response, please note the following; Information provided in response to this consultation will be published on National Grid's website unless the response is clearly marked 'Private & Confidential', we will contact you to establish the extent of this confidentiality. A response marked 'Private & Confidential' will be disclosed to the Authority in full by, unless agreed otherwise, will not be shared with the CUSC Modifications Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response. Please note an automatic confidentiality disclaimer generated by your IT System will not in itself, mean that your response is treated as if it had been marked 'Private & Confidential.

Annex 1 – CMP261 CUSC Modification Proposal Form

CUSC Modification Proposal Form (for Charging Methodology Proposals) CMP261

nationalgrid

Connection and Use of System Code (CUSC)

Title of the CUSC Modification Proposal

Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3).

Submission Date

8th March 2016

Description of the Issue or Defect that the CUSC Modification Proposal seeks to address

Having due regard for Regulation (EC) No 714/2009, the Commission Regulation (EU) No 838/2010[1] entitled "Guidelines for a Common Regulatory Approach to Transmission Charging" was introduced to provide a common regulatory approach to transmission charging across all the Member States.

This Regulation, in Part B (paragraph 3), restricts the annual average transmission charges paid by electricity generators in Great Britain to the range of €0/MWh to €2.50/MWh.

The methodology for generation transmission charges in Great Britain is defined in Section 14 of the CUSC.

In order to asses the appropriate level of generation transmission charges to be paid by generators in GB in any given charging year National Grid must forecast the following:-

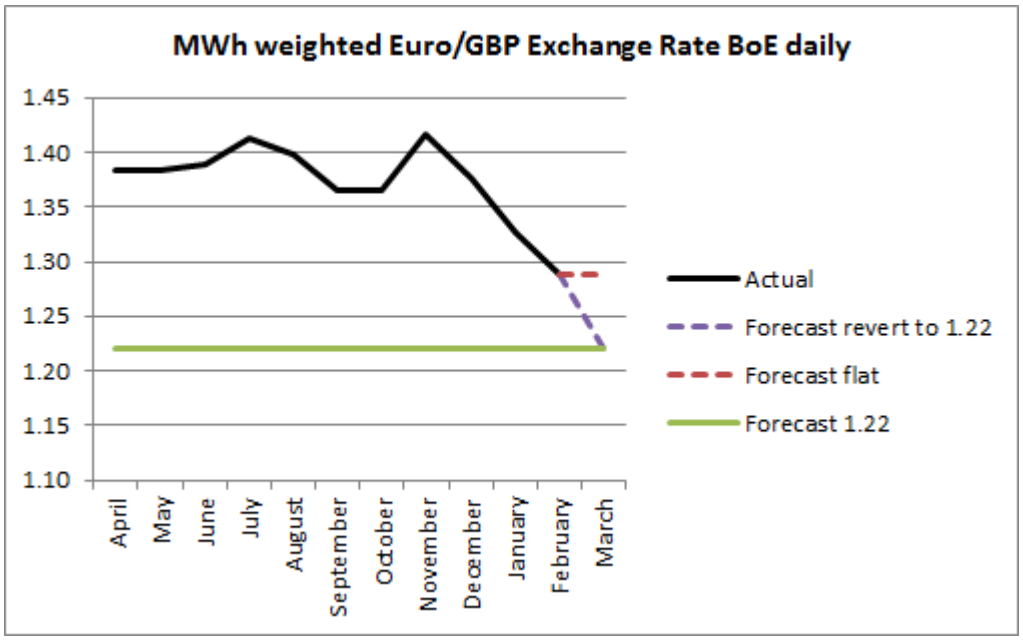
1) Total TNUoS cost in GB (£) to be recovered from Generators;
2) £/€ exchange rate for the year in question; and
3) Total MWh from generating stations which pay TNUoS

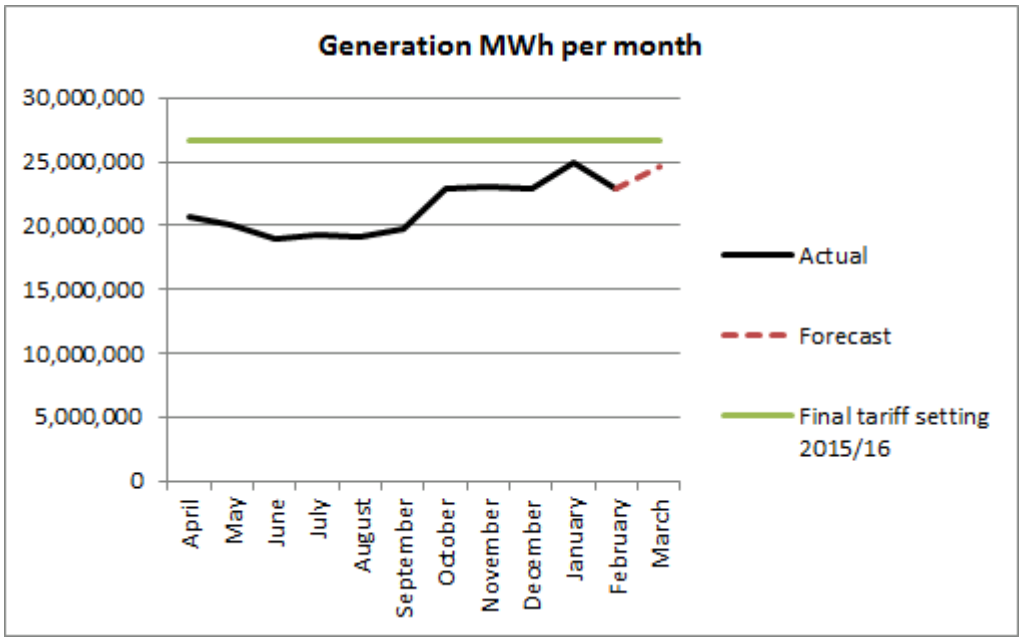
These three values allow National Grid to establish a forecast average GB generation transmission cost in €/MWh. If the upper limit of €2.50/MWh is to be exceeded, then National Gird vary the proportion of (1) - the Total TNUoS cost in GB (£) to be recovered from Generators - in order to bring the charges below the upper limit of €2.50/MWh.

It is apparent now that deviations over time from the original (January 2015) forecast of the €/£ exchange rate and the total MWh from generating stations will be such that the average annual generation cost for GB generators in charging year 2015/16 will be substantially in excess of the €2.50/MWh upper limit set in the Regulation.

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:250:0005:0011:EN:PDF

The following two graphs illustrate these deviations. As can clearly be seen, at no point from the 1st April 2015 to 29th February 2016 have either of the two variables reached the levels forecast in January 2015 (when the charges for 2015/16 were set).





If this defect is not corrected, it will result in an exceedance of the upper limit set in EU Regulation 838/2010 Part B (paragraph 3) of €2.50/MWh for the average annual amount to be recovered from generators in Great Britain in charging year 2015/16.

Our indicative estimate, based on publically available information (as at the end of February) is that this exceedance could result in the average annual TNUoS charges paid by generators in GB, in charging year 2015/16, amounting to circa €3.25 /MWh, which is approximately

€0.75/MWh, or 30%, in excess of the €2.50/MWh upper limit in the Regulation.

		NG published Jan final 2015/16	March 2016 €/£ revert to 1.22	March 2016 €/£ flat
		Jan-2015	Mar-2016	Mar-2016
Cap Euro/MWh	*€/MWh*	2.50		
Target Euro/MWh	*€/MWh*	2.34		
Expected Exchange Rate	*€:£*	1.22		
Expected Cap Sterling	*£/MWh*	1.92		
Expected Output	*TWh*	320		
Expected Revenue	*£M*	613	613	613
Expected Outturn Exchange Rate	*€:£*		1.357	1.366
Expected Outturn Generation	*TWh*		259	259
Expected Revenue collected from generators	*€m*		832	837
Expected Outturn unit revenue	*€/MWh*		3.21	3.23
Excess Unit Revenue	*€/MWh*		0.71	0.73
Excess Revenue	*€m*		184	190
Generation Capacity	*GW*		71.5	71.5
Reduction in TNUoS generation charge	*€/kW*		2.58	2.66
Exchange Rate	*€:£*		1.360	1.360
Reduction in TNUoS generation charge	*£/kW*		1.89	1.95

As can be seen from the table above, if the proposal were to taken forward and the numbers we have used here are broadly in line with the year-end outturn(s) then GB generators would, in spring 2016, receive a reconciliation payment, via the residual, in the order of £2/kW.

If there were no mechanism within the CUSC / Transmission Licence to change the TNUoS charges paid by GB generators in a given charging year once they had been set (in January of any particular year) for a charging year (starting 1st April till the following 31st March) then it would not be possible to make a reconciliation payment to generators.

However, this is not the case in GB. A 'mid-year'[2] tariff change mechanism does exist and has been used before - in charging year 2010/11 (with respect to costs associated with offshore transmission) – and can thus, if required, be used again.)

Given that a method exists to avoid exceeding the €2.50MWh upper limit set out in EU law (by way of a 'mid-year' tariff change) it is appropriate to act urgently to bring about a tariff change which will ensure that the GB generation charges conform with the limits set in the Regulation.

Description of the CUSC Modification Proposal

Based on the solution set out in the CMP251 Workgroup Consultation (dates 29th February

[2] Note 'mid-year' does not mean the mid-point in the charging year – a change could occur on, for example, the 2nd April or 30th March or anytime in between during the charging year.

2016) an *ex post* reconciliation of the TNUoS paid by GB generators during charging year 2015/16 would take place in spring 2016 with any amount in excess of the €2.50MWh upper limit being paid back, via a negative generator residual levied on all GB generators who have paid TNUoS during the period 1st April 2015 to 31st March 2016 inclusive. In other words each generator would receive a credit of '£X' for each MW of TEC they held during the period in question.

The high level detail for this was noted in paragraph 4.12 (of the CMP251 consultation) accordingly:-

"*In the event an ex post process was adopted, National Grid confirmed that a good enough set of data for Generator reconciliation is available at D+23 as per the existing standard metering settlement timescales. Presently a generation reconciliation process is carried out at the end of April (in t+1) to take account of power station demand and generation in negative TNUoS charging zones in the preceding Charging Year t*."

If this new proposal were to be approved then this reconciliation, for charging year 2015/16, would thus occur in a similar timeframe.

In respect of the reconciliation payments made to generators in spring 2016 (for charging year 2015/16) there would also need to be a corresponding payment made, via demand TNUoS charges, from suppliers.

The CMP251 Workgroup has considered (as set out in their February Consultation) three options (paragraphs 4.8-4.22). For the sake of brevity we do not repeat the details here – but those matters should be read as being incorporated here.

Of those three options we believe that Option 1 should apply, which means that with this proposal the generator reconciliation payments (for charging year 2015/16) are made in spring 2016 and would be recovered from suppliers (along with any financing cost, if applicable) during charging year 2017/18.

Impact on the CUSC

CUSC Section 14 – Part 2 – The Statement of the Use of System Charging Methodology, Section 1 – The Statement of the Transmission Use of System Charging Methodology

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

Yes.

Justification for Urgency Recommendation

This proposal should be treated as urgent as it is linked to an imminent date related issue; namely that the average annual amount to be recovered from generators in Great Britain in charging year 2015/16 will exceed the €2.50/MWh limit set out in EU law (Commission Regulation (EU) No 838/2010, Part B paragraph 3) that if not urgently addressed may cause:

1) One or more parties to be in breach of relevant legal requirement(s); and / or
2) A significant commercial impact on generator parties.

If this proposal is not treated as urgent then we believe the only alternative, to ensure GB generation costs are compliance with the €2.50/MWh limit, will be for a retrospective change to the 2015/16 generator TNUoS tariffs to occur after the end of the 2015/16 charging year.

Notwithstanding that, we note that the Ofgem Urgency Criteria does permit a retrospective modification in exceptional circumstances, on a case by case basis, and including:

"where the possibility of a retrospective action had been clearly flagged to the participants in advance, allowing the detail and process of the change to be finalised with retrospective effect"

For the avoidance of doubt given: (i) that the €2.50/MWh upper limit has been known since the Regulation was brought into effect (in 2010); (ii) that the possibility of GB exceeding this €2.50/MWh limit during charging year 2015/16 was brought to the attention of the industry previously, such as in January 2015[3], May 2015[4] and August 2015[5]; and (iii) that the possibility of corrective action being required to be taken, in the form of a 'mid-year' tariff change, was also highlighted (in, for example, January 2015 and May 2015 as referenced above); we believe that this current proposal (if judged as being 'retrospective') would fully conform with the 'retrospective' elements stated in the Ofgem Urgency Criteria.

[3] CUSC Panel minutes 4409-4411.
[4] CUSC Panel minutes 4597-4600.
[5] in the CMP251 proposal form 'description of defect' (dated 19th August 2015)

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?
Yes
Impact on Computer Systems and Processes used by CUSC Parties:
N/A
Details of any Related Modification to Other Industry Codes
N/A
Justification for CUSC Modification Proposal with Reference to Applicable CUSC Objectives for Charging:

Please tick the relevant boxes and provide justification for each of the Charging Methodologies affected.

Use of System Charging Methodology

☒ (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.
These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1.

Objective (c) 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:

In respect of (a) it (i) removes the uncertainty / risk of infraction proceedings; and (ii) it removes uncertainty / risk of changes to charges at a later date. These uncertainties / risks undermine generators/suppliers commercial positions and therefore interfere with the correct functioning of the markets in generation and supply of electricity.

In respect of (b) by ensuring that the charges are set in accordance with the regulation this will ensure they are more reflective of costs than if this change were not undertaken.

In respect of (d) Regulation (EC) No 714/2009 and Commission Regulation 838/2010 are binding for all Transmission licensees across Europe. We believe that this proposal ensures that GB remains compliant with the European legislation and properly reflects National Grid's duties in the development of its transmission business.

Additional details

Details of Proposer: (Organisation Name)	SSE
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:	Angus MacRae
Organisation:	SSE
Telephone Number:	01738 456000
Email Address:	angus.macrae@sse.com
Details of Representative's Alternate:	
Name:	Garth Graham
Organisation:	SSE
Telephone Number:	01738 456000
Email Address:	garth.graham@sse.com
Attachments (Yes/No): **If Yes, Title and No. of pages of each Attachment:**	

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 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.

Annex 2 – CMP261 Terms of Reference

CMP261 aims to ensure that there is an ex post reconciliation of the TNUoS paid by GB Generators during charging year 2015/16 which will take place in Spring 2016 with any amount in excess of the €2.5/MWh upper limit being paid back, via a negative Generator residual levied on all GB Generators who have paid TNUoS during the period 1st April 2015 to 31st March 2016 inclusive.

Responsibilities

1. **The Workgroup is responsible for assisting the CUSC Modifications Panel in the evaluation of CUSC Modification Proposal** CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015

2. /16 are in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'. **tabled by British Gas at the CUSC Modifications Panel meeting on 28th August 2015.**

3. **The proposal must be evaluated to consider whether it better facilitates achievement of the Applicable CUSC Objectives. These can be summarised as follows:**

   Use of System Charging Methodology

   (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

4. **It should be noted that additional provisions apply where it is proposed to modify the CUSC Modification provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.**

Scope of work

5. **The Workgroup must consider the issues raised by the Modification Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.**

6. **In addition to the overriding requirement of paragraph 4, the Workgroup shall consider and report on the following specific issues:**

   a) Implementation
   b) Review draft legal text
   c) Consider the legality of breaching the regulation then reconciling the difference the following year.
   d) Assess impact on competition
   e) Assess impact on Suppliers
   f) Assess impact on consumers
   g) Consider any interaction with related CUSC Modification Proposals.
   h) Consider when €2.50 is to be calculated.

i) Consider two year delay in funds being transferred between Generators and Suppliers.

7. The Workgroup is responsible for the formulation and evaluation of any Workgroup Alternative CUSC Modifications (WACMs) arising from Group discussions which would, as compared with the Modification Proposal or the current version of the CUSC, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified.

8. **The Workgroup should become conversant with the definition of Workgroup Alternative CUSC Modification which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Workgroup to put forward a WACM if the member(s) genuinely believes the WACM would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Modification Proposal or the current version of the CUSC. The extent of the support for the Modification Proposal or any WACM arising from the Workgroup's discussions should be clearly described in the final Workgroup Report to the CUSC Modifications Panel.**

9. Workgroup members should be mindful of efficiency and propose the fewest number of WACMs possible.

10. All proposed WACMs should include the Proposer(s)'s details within the final Workgroup report, for the avoidance of doubt this includes WACMs which are proposed by the entire Workgroup or subset of members.

11. There is an obligation on the Workgroup to undertake a period of Consultation in accordance with CUSC 8.20. The Workgroup Consultation period shall be for a period of 15 days as determined by the Modifications Panel.

12. Following the Consultation period the Workgroup is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Workgroup should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

    As appropriate, the Workgroup will be required to undertake any further analysis and update the original Modification Proposal and/or WACMs. All responses including any WG Consultation Alternative Requests shall be included within the final report including a summary of the Workgroup's deliberations and conclusions. The report should make it clear where and why the Workgroup chairman has exercised his right under the CUSC to progress a WG Consultation Alternative Request or a WACM against the majority views of Workgroup members. It should also be explicitly stated where, under these circumstances, the Workgroup chairman is employed by the same organisation who submitted the WG Consultation Alternative Request.

13. The Workgroup is to submit its final report to the Modifications Panel Secretary on 20th May 2016 for circulation to Panel Members. The final report conclusions will be presented to the CUSC Modifications Panel meeting on 23rd May 2016.

Membership

14. It is recommended that the Workgroup has the following members:

Role	Name	Representing
Chairman	Nikki Jamieson	Code Administrator
*National Grid Representative**	Nick Pittarello	National Grid
*Industry Representatives**	Garth Graham	SSE
	Matthew Hulks	Intergen
	Lucas Lilja	Intergen
	Guy Phillips	EON/Uniper
	Paul Jones	EON/uniper
	Peter Bolitho	Waters Wye
	Jeremy Guard	First Utility
	George Douthwaite	Npower
	Daniel Hickman	Npower
	Joe Underwood	Drax power
	Binoy Dharsi	EDF

	Simon Vicary	EDF
	George Moran	British Gas
	Karl Maryon	Haven Power
	Jeremy Guard	First Utility
Alternatives		
Authority Representatives	Donald Smith	Ofgem
Technical secretary	Ryan Place	Code Administrator
Observers		

NB: A Workgroup must comprise at least 5 members (who may be Panel Members). The roles identified with an asterisk in the table above contribute toward the required quorum, determined in accordance with paragraph 14 below.

15. The Chairman of the Workgroup and the Modifications Panel Chairman must agree a number that will be quorum for each Workgroup meeting. The agreed figure for CMP261 is that at least 5 Workgroup members must participate in a meeting for quorum to be met.

16. A vote is to take place by all eligible Workgroup members on the Modification Proposal and each WACM. The vote shall be decided by simple majority of those present at the meeting at which the vote takes place (whether in person or by teleconference). The Workgroup chairman shall not have a vote, casting or otherwise. There may be up to three rounds of voting, as follows:

- Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
- Vote 2: where one or more WACMs exist, whether each WACM better facilitates the Applicable CUSC Objectives than the original Modification Proposal*;*
- Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.

The results from the vote and the reasons for such voting shall be recorded in the Workgroup report in as much detail as practicable.

17. It is expected that Workgroup members would only abstain from voting under limited circumstances, for example where a member feels that a proposal has been insufficiently developed. Where a member has such concerns, they should raise these with the Workgroup chairman at the earliest possible opportunity and certainly before the Workgroup vote takes place. Where abstention occurs, the reason should be recorded in the Workgroup report.

18. Workgroup members or their appointed alternate are required to attend a minimum of 50% of the Workgroup meetings to be eligible to participate in the Workgroup vote.

19. The Technical Secretary shall keep an Attendance Record for the Workgroup meetings and circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the final Workgroup report.

20. The Workgroup membership can be amended from time to time by the CUSC Modifications Panel.

Appendix 1 – Indicative Workgroup Timetable

The following timetable is indicative for CMP261:

16th March 2016	Deadline for comments on Terms of Reference / nominations for Workgroup membership
23rd March 2016	Workgroup meeting 1
29th April 2016	Workgroup meeting 2
17th May 2016	Workgroup meeting 3
26th May 2016	Workgroup meeting 4
6th June 2016	Workgroup meeting 5
5th July 2016	Workgroup Consultation issued
26th July 2016	Deadline for comment
8th Aug 2016	Workgroup meeting 6

9th Aug 2016	Workgroup meeting 7
5th September 2016	Workgroup meeting 8
12th September 2016	Workgroup meeting 9
16th September 2016	Workgroup meeting 10
3rd October 2016	Workgroup meeting 11
11th October 2016	Workgroup meeting 12
17th October 2016	Submit final Workgroup Report to Panel
25th October 2016	Present Workgroup Report at Special CUSC Modifications Panel

Post Workgroup modification process

25th October 2016	Code-Administrator Consultation published
15th November 2016	Deadline for responses
17th November 2016	Draft Final Modification Report published
17th November 2016	Draft Final Modification Report issued to CUSC Panel
22nd November 2016	Deadline for comments
25th November 2016	Special CUSC Panel Recommendation vote
2nd December 2016	Final CUSC Modification Report submitted to Authority

Annex 3 – Workgroup attendance register

A – Attended
X – Absent
O – Alternate
D – Dial-in

Name	Organisation	Role	23rd March 2016	29th April 2016	17th May 2016	26th May 2016	6th June 2016	8th Aug 2016	9th Aug 2016	5th Sept 2016	12th Sept 2016	16th Sept 2016	3rd Oct 2016	11th Oct 2016
Nikki Jamieson	National Grid	Chair	A	X	A	D	A	A	X	D	D	D	A	D
Andy Wainwright	National Grid	Chair	X	X	X	X	X	X	A	X	X	X	X	X
Wayne Mullins	National Grid	Chair	X	A	X	X	X	X	X	X	X	X	X	X
Ryan Place	Code Administrator	Technical Secretary	A	A	A	D	A	A	A	D	D	D	A	D
Donald Smith	Ofgem	Authority Representative	A	A	A	D	A	A	A	D	D	D	A	X
Garth Graham	SSE	Proposer	A	A	A	D	A	A	A	D	D	D	A	D
Nick Pittarello	National Grid	Workgroup member	A	A	A	D	A	A	A	D	D	D	A	D
Damian	National Grid	Workgroup member	X	X	X	X	X	X	A	D	X	D	A	D
Stuart Boyle	National Grid	Workgroup Technical Expert	A	X	X	X	X	X	X	X	X	X	X	X
George Douthwaite	RWE Npower	Workgroup member	A	X	A	D	A	X	D	X	X	D	A	D
Daniel Hickman	RWE Npower	Workgroup alternate	X	OA	X	X	X	X	X	OD	X	X	X	X
Peter Bolitho	Waters Wye	Workgroup member	A	A	A	D	A	A	A	D	X	D	A	X
George Moran	British Gas	Worgroup member	A	A	A	D	A	A	A	D	D	D	A	X
Guy Phillips	Uniper/EON	Workgroup member	X	A	A	X	A	X	X	X	X	X	X	X
Paul Jones	Uniper/EON	Workgroup alternate	OA	X	X	X	X	X	X	X	X	X	A	D
Joseph Underwood	Drax	Workgroup member	A	A	X	D	A	A	A	X	X	X	A	X
Karl Maryon	Haven Power	Workgroup member	D	A	A	D	A	A	A	D	D	X	A	D
Binoy Dharsi	EDF Energy	Workgroup member	D	A	X	X	X	X	X	X	X	X	X	X
Simon Vicary	EDF Energy	Workgroup alternate	X	X	A	D	A	A	A	D	D	D	A	D
Matthew Hulks	Intergen	Workgroup member	D	X	X	X	X	X	X	X	D	X	D	D
Lucas Lilja	Intergen	Workgroup alternate	X	OD	X	OD	OD	OD	OD	X	X	D	X	X
Jeremy Guard	First Utility	Workgroup member	A	A	A	D	A	A	X	X	D	X	A	X

Annex 4 – Workgroup Consultation Responses

CUSC Workgroup Consultation Response Proforma

CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

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 **28th July 2016** to cusc.team@nationalgrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Ryan Place at ryan.place@nationalgrid.com

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	*George Moran* *George.moran@britishgas.co.uk*
Company Name:	*British Gas*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	For reference, the Applicable CUSC objectives are: **Use of System Charging Methodology** (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

Standard Workgroup consultation questions

Q	Question	Response

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	We do not believe CMP261 Original Proposal or any of the potential options identified better facilitate the CUSC objectives. **Applicable Objective (a)** Under CMP224, compliance with the relevant EU Regulation is managed via an ex-ante approach with no reconciliation. This was the accepted expectation of the market. The examples presented in paragraph 2.34 of the consultation show that National Grid and market participants were aware that the €2.50/MWh limit might have been exceeded during 2015/16. This demonstrates that the accepted expectation of the market was that there would be no mid-year tariff change or reconciliation in respect of the cap. National Grid did not, at any point, propose any mid-year tariff change to address the potential exceedance – which, as has been shown, would have been fully visible to it. Therefore all of the options perform worse against applicable objective (a) as the unexpected nature of this modification would damage competition because the impact on parties, and parties' ability to manage those impacts, will vary. The retrospective nature of the changes could also lead to increased risk premiums applied to future tariffs. **Applicable Objective (b)** The principles underpinning the charging methodology, including the default proportion of revenue to be recovered from generators, are approved as meeting objective (b). Therefore, any unnecessary restrictions on how these principles are translated into charges are detrimental to meeting objective (b). To the extent that the proposed retrospective change moves Generation tariffs yet further from the default position in the methodology, CMP261 performs worse against applicable objective (b). **Applicable Objective (d)** CMP261 has no impact on Objective (d) as the current methodology is compliant with the relevant EU Regulation. This is clear as: • There has been no enforcement action taken or (as far as we are aware) being considered. • The legal advice does not conclude that National Grid is not compliant. Until such time as non-compliance is found, and given the uncertainty surrounding whether such a finding would be achievable, no impact can be assessed against objective (d).

Q	Question	Response
2	**Do you support the proposed implementation approach?**	We do not support the modification. However, any implementation should seek to limit or avoid windfalls. This will require options which delay the reconciliations to G&D tariffs.
3	**Do you have any other comments?**	The workgroup should consider more fully the impact on consumers.
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	No

Specific questions for CMP261

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	The legal opinion in 9a and 9b states: a. there is a *strong argument* that a material breach of the €2.50/MWh G Charges limit in respect of the 2015/16 charging year equates to non-compliance with the Guidelines Regulation; b. as a result, we are of the view that reconciliation of G Charges for the 2015/16 charging year *would be prudent*; It is not clear for whom it would be prudent to make reconciliation, and we disagree that it is the prudent course of action. National Grid has not been found to be in breach of the Regulation. It is also highly uncertain whether it could be found to be in breach of the Regulation. In such circumstances it does not make sense to make any reconciliation payment since to do so would provide a windfall of up to £119m to generators simply in order to avoid the risk of National Grid actually being found in breach of the Regulation and being required to reconcile up to £119m to generators. We consider the 'prudent' course of action would be to consider approval of CMP261 only if National Grid is found to be in breach of the Regulation.
6	**Is ex ante certainty preferred over ex post accuracy?**	Ex-ante certainty was believed to have been provided by CMP224. Having identified defects in the CMP224 methodology, the appropriate response is to improve the methodology going forward, as is proposed by CMP251, not to retrospectively change the methodology as is now proposed by CMP261.

Q	Question	Response
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	Regardless of whether the €2.50 limit has been breached (which is unclear at this stage) we do not believe a breach of the Regulation has occurred. We agree that the nature of the Regulation is purposive and National Grid acted with the purpose of complying with the Regulation, as is clearly demonstrated by the use of an error margin. At the very least, there is significant uncertainty as to whether a breach of the Regulation has occurred. It is also highly uncertain that National Grid, even if found to be non-compliant, would be required to take retrospective actions. It is potentially more likely, given the purposive nature of EU Regulation, that action would only be required prospectively (in line with CMP251). In figure six of the consultation six calculations are presented using different potential interpretations of generation output, exchange rate and the strict/broad interpretation relating to local circuits. In only two of these potential interpretations do 2015/16 generation charges exceed €2.50/MWh. We agree with the position presented by the Ofgem representative that the CMP224 decision was based on the view that the words "charges in respect of assets required to connect to the system" were ambiguous. Ofgem, therefore, approved a CMP224 option that would comply with either the 'strict' or the 'broad' interpretation, whichever was correct, on the grounds of legal risk. This ambiguity would be required to be resolved (and would require the conclusion that the 'strict' interpretation was correct) before a breach of the €2.50 limit can be established. We would also highlight that no consideration has been given as to whether the 'actual' generation output being used in the analysis is consistent with the Regulation. It is plausible that "*Generation Output for generation liable for Transmission charges*", as is being used in the analysis, is not consistent with the Regulation definition which requires "*total measured energy injected annually by producers to the transmission system*". It is a statement of fact that National Grid has not been found to be in breach of the Regulation. As highlighted above, it is also uncertain whether it could be found to be in breach of the Regulation and further whether this would require retrospective action. In such circumstances it does not make sense to make a reconciliation payment of up to £119m to avoid the risk of being compelled to make a reconciliation payment of £119m. As this also leads to windfalls, it should be considered an imprudent course of action.

Q	Question	Response
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	We also note that the Legal advice states: *"The G Charges Guidelines do not mandate how such a reconciliation should be performed, and therefore the way in which (and the speed at which) such a reconciliation is performed under the CUSC is a matter for wider policy and financial consideration, as opposed to the G Charge Guidelines mandating an approach."* We consider that options which delay the reconciliation are preferable to adjustments with shorter notice periods. In this exceptional circumstance, given the unexpected nature of any additional costs to be passed onto suppliers, we believe any reconciliation affecting suppliers should not occur before 2018/19 at the earliest. For any generator reconciliation, we consider that the regulation applies more generally to the charging regime and to this extent we see no issues with the G adjustments being made via general tariff adjustments. Delaying the adjustment by two years would also be in line with the accepted charging approach for other elements of TNUoS – for example: • over/under recoveries of allowed revenue • Incentive payments/penalties • Pass-through cost true-ups In each of the above examples, the required adjustments to revenues are recovered via general tariffs in year t+2, i.e. not applied to the specific generators/suppliers in year t who may have over/under paid or who may have received the 'performance'. There would seem to be a strong rationale and precedence for taking such an approach to any reconciliation under CMP261 also. Delaying the G reconciliation to 2017/18, or even 2018/19 in this exceptional circumstance, would increase the likelihood of some of the windfall to generators being passed back to consumers.
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	We believe that any reconciliation that may be required should seek to limit or avoid windfalls to generators and losses to suppliers and consumers. This will require options which delay the reconciliations to G&D tariffs.
10	**Do you believe any harm has been done in the spirit of the defect identified?**	No – tariffs were set for 2015/16 under a methodology which was accepted as an ex-ante methodology. Therefore there has been no over-charging of TNUoS to generators above that which they expected once tariffs were set. Until such time as National Grid are found to be actually 'in breach' of the regulation, the concept of 'harm' is not relevant.

Q	Question	Response
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	Under CMP224 compliance with the relevant EU Regulation is managed via an ex-ante approach with no reconciliation. This was the accepted expectations of the market. The examples presented in paragraph 2.34 of the consultation which show that National Grid and market participants were aware that the €2.50/MWh limit might have been exceeded during 2015/16 simply serve as evidence that the accepted expectations of the market was that there would be no mid-year tariff change or reconciliation in respect of the cap since at no point during 2015/16 did National Grid propose any mid-year tariff change to address the potential exceedence – which, as has been demonstrated, would have been visible to it and market participants. Indeed, in two of the examples presented in the consultation it was explicitly expressed that there would be no revisiting of 2015/16 charges: In the May CUSC Panel minutes: *4598. PH* [of National Grid] *noted the CMP224 Workgroup came up with the solution and there* ***was no intention of reviewing this****.* In the August CUSC Panel minutes: *4690. GG noted that if the Urgent timetable was followed; with, potentially, implementation in late December 2015; that there would be an impact on Suppliers in January 2016 in terms of reconciling the €0.15 'overcharge' identified in the Proposers' presentation for calendar year 2015.* ***GM disagreed with this. GM Clarified that the intention was that the change would not be applied retrospectively for the 2015/16 charging year*** *but would amend the methodology from 2016/17 onwards. The Panel agreed to include this within the Terms of Reference for the Workgroup.*

CUSC Workgroup Consultation Response Proforma

CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

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 **28th July 2016** to cusc.team@nationalgrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

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Respondent:	*Lucas Lilja*
Company Name:	*InterGen*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	For reference, the Applicable CUSC objectives are: **Use of System Charging Methodology** (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

Standard Workgroup consultation questions

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	We believe there has been a breach of the €2.50/MWh CAP set by EU Regulation 838/2010, which requires a reconciliation or rebate equal to £1.71/kW, as per the SSE approach in Figure 10, Annex 5 of the workgroup report. In our opinion, either the Original Proposal or Option A best facilitates CUSC objectives a) b) d). As InterGen does not own a supply side business we are not in a position to comment on whether suppliers would prefer a tariff adjustment in 2017/18 or 2018/19. Regarding objective a) it reduces future uncertainty and risks of tariff changes. Regarding objective b), as there has been an over-recovery from GB generators, the proposal would ensure charges are more reflective of costs. Regarding objective d) this modification would ensure that the GB remains compliant with EU Regulation 838/2010.
2	**Do you support the proposed implementation approach?**	Yes, the proposed options outlined in section 5 of the workgroup report seem logical.
3	**Do you have any other comments?**	
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	*If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website[1], and return to the CUSC inbox at cusc.team@nationalgrid.com*

Specific questions for CMP261

[1] http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/forms_guidance/

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	The legal opinion, in our view, supports that there has been a material breach of the €2.50/MWh CAP and that an ex-post reconciliation is therefore required to ensure compliance with the regulation.
6	**Is ex ante certainty preferred over ex post accuracy?**	No, ex-post accuracy is a requirement in this situation. TNUoS paid by generators must remain within the 0 - €2.50/MWh range, to ensure compliance with the regulation. In principle, we prefer ex ante certainty, providing that there exists a reconciliation element (as per CMP251) that would, for example, take place the following charging year, should the TNUoS paid by generators not fall within the 0 - €2.50./MWh in a given charging year.
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	Yes, we believe there has been a material breach of the €2.50/MWh cap in the 2015/16 charging year, amounting to a generator rebate of £1.71/kW.

Q	Question	Response
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	An ex-post reconciliation should be adopted as soon as is practically possible.
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	In our opinion the €2.50/MWh has been exceeded, and a rebate of £1.71/kW is required to be compliant with the regulation. The most appropriate process must therefore carry out this rebate as soon as is practically possible to ensure compliance.
10	**Do you believe any harm has been done in the spirit of the defect identified?**	We do not believe that the concept of harm is in the scope of this modification as it currently stands, as the modification seeks to ensure that transmission charges remain within the €0 - €2.50/MWh range, so as to remain compliant with the regulation. We do, however, believe that harm has been caused to GB generators, who funded the £119.5m over-recovery, and the longer it takes for this rebate to be carried out the greater the harm done is.
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	Yes, InterGen operates on the assumption that National Grid will not exceed the €2.50/MWh Cap set by the EU regulation. National Grid have the ability to make a mid-year tariff change. InterGen has also operated on the assumption that the current charging methodology had sufficient safe guards, such as the error margin, to ensure compliance.

CUSC Workgroup Consultation Response Proforma

CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

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 **28th July 2016** to cusc.team@nationalgrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Ryan Place at ryan.place@nationalgrid.com

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	*Joe Underwood*
Company Name:	*Drax Power Limited and Haven Power Limited*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	The CMP261 Original and all Potential Alternatives better facilitate the Applicable CUSC Objectives. We believe that the Potential Option for Change A will best facilitate the Objectives. Please see the answers to the Workgroup Consultation questions below for reasoning.

Standard Workgroup consultation questions

Q	Question	Response

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	Yes. We believe that the CMP261 Original and the potential options for change all better facilitate Applicable CUSC Objectives (ACOs) (a), and (d). In the 15/16 charging year, generators were overcharged for transmission charges against the €2.50/MWh cap. This represents a breach of the technical requirements of the guidelines regulation. This position has been supported by legal advice from Addleshaw Goddard, procured by National Grid for the workgroup. Therefore, with respect to ACO (d), CMP261 realigns GB transmission charging for 15/16 with European regulation that takes precedence over the CUSC. Approving CMP261 will reduce the risk of infraction proceedings and remove the uncertainties of future changes to charges that will undermine commercial positions of suppliers and generators thereby better facilitating ACO (a). It is our view that the generator rebate should occur as soon as practical. Recouping revenue from suppliers, however, should allow sufficient time for them to correct their pricing methodology for future charging years. We therefore believe that the potential option A would best facilitate the ACOs with respect to the other options.
2	**Do you support the proposed implementation approach?**	There are a number of potential options for change currently on the table. Generators should be paid back as soon as possible to limit the damage and ensure that we comply with the 838/2010 regulation as soon as possible. Further, suppliers should be given sufficient time to correct their pricing strategies for future charging years to ensure that these costs can be recovered appropriately from customers via TNUoS tariffs.
3	**Do you have any other comments?**	Not at this time.
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	Not at this time.

Specific questions for CMP261

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	The legal opinion is heavily weighted in support of reimbursing generators for the 15/16 overcharge. We believe that the generator rebate should take place as soon as possible. Recouping revenue from suppliers, however, should allow sufficient time for them to correct their pricing methodology for future charging years.
6	**Is ex ante certainty preferred over ex post accuracy?**	The current methodology better facilitates efficient trading in the market and provides certainty to market participants. An ex post approach will detrimentally impact the predictability of TNUoS charges and will clearly result in a risk premia being factored into wholesale prices. The increased uncertainty will result in higher costs to the consumer. An ex post reconciliation process will damage competition across generators. The requirement for generators to factor in fluctuations in exchange rate would hinder smaller parties to a greater extent than larger ones, who may have the resources to better manage the risk. An ex post approach will be detrimental to Applicable CUSC Objective (a). We note that the legal opinion provided by Addleshaw Goddard states that "we are of the view that there is a robust argument that the Current Approach ensures compliance with the purpose of the Guidelines Regulation and therefore is not vulnerable to legal challenge by dint of taking [Sic] using ex-ante calculations" Further, "the issues in 2015/16 have arisen from a unique set of circumstances (rather than a fundamental deficiency in the approach to forecasting generation output and €/£ exchange rates, in combination with the use of the Error Margin)". The legal opinion concludes that there is a "robust legal arguments for maintaining the current ex-ante approach going forward." We take the view that there is no legal basis under which an ex-post methodology would better comply with the EU Regulation 838/2010. The current ex ante approach is preferred. However, there may be merit in reviewing the approach to the application of the error margin to reduce the risk of non-compliance. For the avoidance of doubt, this would need to be undertaken separately to CMP261.

Q	Question	Response
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	The regulation clearly states that average generation transmission charges should not exceed €2.50/MWh. The workgroup has shown that average generation transmission charges for the 15/16 charging year were €3.22/MWh and therefore we believe that a breach has occurred and should be remedied as soon as possible in order to be compliant with EU Regulation.
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	The legal response states that "The G Charges Guidelines do not mandate how such a reconciliation should be performed" and we therefore believe that a reconciliation that will cause minimal distortion should take place. However, the reconciliation should not be delayed too far. We believe that a suppliers should pay the difference between €2.50/MWh and €3.22/MWh in the 18/19 charging year.
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	If the reconciliation process was done in the 17/18 charging year this would seriously impact suppliers, in particular smaller suppliers who may not be able to properly respond to the impact in time. Suppliers generally fix costs within their contracts and many of these contracts covering future years and in particular 2017/18 will already have been signed meaning that increases in costs cannot be recovered directly from customers. However, it is recognised that if the reconciliation was to be delayed, there would be additional costs incurred by National Grid for holding the debt. Therefore a correct balance should be found. We believe that a reconciliation should take place in the 18/19 charging year.
10	**Do you believe any harm has been done in the spirit of the defect identified?**	Impact on market economics. Due to generators being overcharged in the 15/16 charging year, generators have higher costs to recover during period of low market spreads. There may have been an impact to the economic basis of energy flows between Europe and GB which would be detrimental to competition. We believe that the scope of the defined defect should only be to reconcile generators the amount they have been overcharged to bring GB back into alignment with EU regulation and not to address any harm caused.
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	There are many different variables that affect a generator TNUoS bill which generators have minimal/no visibility of. The difficulties are only amplified by the fact parties are only given 2 months' notice of the final charges. There are lots of variable elements and therefore year on year we don't know how it will change. We therefore rely on National Grid forecasts and therefore can only assume the €2.5/MWh cap will not be breached. It states in EU Regulation 838/2010 that UK generators should not be charged over €2.50/MWh so this is a fair assumption.

CUSC Workgroup Consultation Response Proforma

CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

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Any queries on the content of the consultation should be addressed to Ryan Place at ryan.place@nationalgrid.com

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Respondent:	*Simon Vicary (simon.vicary@edfenergy.com)*
Company Name:	*EDF Energy*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	For reference, the Applicable CUSC objectives are: **Use of System Charging Methodology** (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

Standard Workgroup consultation questions

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	We believe that CMP261 Original Proposal for change better facilitates the CUSC Objectives, in particular (d) "Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency". There is evidence, and in particular a legal opinion supporting the view that there is a breach of the €2.50/MWh annual average limit for TNUoS paid by Generators in GB in Charging Year 2015/16 as set in EU Regulation 838/2010 Part B (3). CMP261 (Original) would ensure compliance with the EU Regulation 838/2010 Part B (3).
2	**Do you support the proposed implementation approach?**	We support the proposed implementation approach preferring Option A, Generator rebates in 2016/17 and the Adjustment of Demand tariffs in 2018/19.
3	**Do you have any other comments?**	Commission Regulation (EU) No 838/2010 Part B restricts annual average transmission charges paid by electricity Generators in Great Britain to the range of €0/MWh to €2.50/MWh. The Regulation is legally binding for all Transmission licensees across Europe so it is reasonable to expect National Grid to ensure demonstration of compliance.
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	*No* *If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website[1], and return to the CUSC inbox at cusc.team@nationalgrid.com*

[1] http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/forms_guidance/

Specific questions for CMP261

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	The legal opinion provided to the workgroup is clear that where a forecast proves (despite the Error Margin) to have been inaccurate for a given year, and therefore takes the average Generator Charge above the €2.50/MWh limit, this exceedance of the Guidelines Regulation limit represents a breach of the technical requirements of the Guidelines Regulation.
6	**Is ex ante certainty preferred over ex post accuracy?**	In most cases ex-ante certainty in network charges is preferred over an ex-post change to ensure accuracy. However, in this particular case there appears to be a legal requirement to undertake an ex-post reconciliation as the average Generator Charge is above the €2.50/MWh limit, a clear breach of the EU Regulation. As EU Regulation 838/2010 sets a €2.50/MWh limit, not a target, for the average Generator Charge, it may be appropriate to amend the formula that currently sets the Error Margin to ensure any future breach is very unlikely to occur.
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	Using actual data and the strict interpretation of EU Regulation 838/2010, there has clearly been a material breach for Charging Year 2015/16. Moreover this is the view provided by expert legal opinion. Given the legal opinion, we believe that an ex post reconciliation must be carried out and support the proposed implementation approach preferring Option A, with Generator rebates in 2016/17 and the Adjustment of Demand tariffs in 2018/19.

Q	Question	Response
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	We support an implementation approach preferring Option A, with Generator rebates paid as soon as practicable in 2016/17 and the Adjustment of Demand tariffs in 2018/19. The adjustment of demand tariffs after the current charging year is very important to Suppliers and Consumers who have committed to contracts with an expectation that Final tariffs would not change in 2016/17. Significant numbers of Suppliers and Consumers have already committed to contracts for 2017/18, based on the latest TNUoS forecast information from National Grid, so we think Applicable CUSC objectives (a) and (b) would be better facilitated by any adjustment of Demand tariffs delayed until 2018/19.
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	We consider the best implementation approach is Option A, with Generator rebates paid as soon as practicable in 2016/17 and the Adjustment of Demand tariffs in 2018/19. Please see our answer to Q8 above.
10	**Do you believe any harm has been done in the spirit of the defect identified?**	Generators contracting to sell output and setting market prices for 2015/16 before Draft and Final tariffs were published would have built into their cost base forecasts of TNUoS costs on the expectation that the EU Regulation 838/2010 €2.50MWh cap would be complied with. As Final 2015/16 tariffs were set that actually had an average Generator Charge in excess of the EU Regulation 838/2010 €2.50MWh cap they will have under-forecast the TNUoS cost, suffering additional unexpected costs.
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	Generators were contracting to sell output and setting market prices for 2015/16 before Draft and Final tariffs were published. It was reasonable for Generators to build into their cost base a forecast of TNUoS costs on the expectation that the EU Regulation 838/2010 €2.50MWh cap would be complied with. As Final 2015/16 tariffs were set that actually had an average Generator Charge well in excess of the EU Regulation 838/2010 €2.50MWh cap, they will have under-forecast the TNUoS cost.

CUSC Workgroup Consultation Response Proforma

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These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	*Herdial Dosanjh*
Company Name:	*RWE npower on behalf of the RWE companies in the UK.*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	For reference, the Applicable CUSC objectives are: **Use of System Charging Methodology** (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

Standard Workgroup consultation questions

Q	Question	Response

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	We do not believe the original change proposal facilitates the CUSC as outlined below: *(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;* This change would introduce uncertainty of costs where customers have already been contracted and priced. Energy contracts would also be impacted in a similar manner which could lead to windfall gains and losses for industry parties. Overall this would lead to increased costs for the end consumer. *(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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard condition C26 (Requirements of a connect and manage connection);* No this does not better reflect the costs as these are being skewed by EU legislation. Less cost reflective as customers have been priced on an ex ante basis and we believe the generators would have priced on published tariffs rather than an accurate forecast of the exchange rate. This would lead to windfall gains for generators. We feel this is an arbitrary change to the model output which we can't see as being more cost reflective. *(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.* Worse against the objective as it is taking the output of the tariff & transport model, all CUSC code and making an adjustment to it. Adjusting it on the basis of developments that are not related to the transmission network. *(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.* We believe it is neutral against this objective as the agreed ex ante approach complies with the spirit of the EU legislation. Overall we believe this change is worse against the CUSC objectives than baseline.

Q	Question	Response
2	**Do you support the proposed implementation approach?**	We do not support the ex post reconciliation but should Ofgem choose to award this money. In the event of Ofgem awarding this money we believe that 3 years notice would be required from the date of the decision for these costs to be included in customer contracts / prices.
3	**Do you have any other comments?**	It is unclear whether any CUSC changes are required as no legal text changes have been provided. This can only mean that the current arrangement (money is not given back to generators) remains in place. Reference made to section 14 of the CUSC however no legal text changes have been included.
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	*If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website*[1]*, and return to the CUSC inbox at* *cusc.team@nationalgrid.com* 3 years notice for implementation of recovery from suppliers / consumers post the decision.

Specific questions for CMP261

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	Legal opinion may be misled as certain local connection charges for offshore generation are included in the total costs recovered through the tariff & transport model. If these costs were excluded from the calculation as shown in section 2.45 then there is no breach of the EU legislation.
6	**Is ex ante certainty preferred over ex post accuracy?**	Yes this is preferred as it provides competitive certainty. Provides cost reflectivity for future customer / energy contracts and pricing of generation. Ex post reconciliation of prices leads to the potential need for risk premia being applied. This in turn increases costs for the end consumer. Windfall gains can also occur leading to additional costs for consumers.

[1] http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/forms_guidance/

Q	Question	Response
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	We do not believe a breach has occurred as certain local connection charges for offshore generation are included in the total costs recovered through the tariff & transport model. If these costs were excluded from the calculation as shown in section 2.45 then there is no breach of the EU legislation. Ex post reconciliation of prices leads to the potential need for risk premia being applied. This in turn increases costs for the end consumer. Windfall gains can also occur leading to additional costs for consumers. The current methodology uses best endeavours, and an ex-ante approach. This has been agreed as the basis for the charging methodology, with no mention in the CUSC of ex-post reconciliation and so on that basis no breach has occurred. This modification does not propose that this methodology should change. In fact this modification does not suggest any changes to the CUSC and on that basis is not a true modification proposal and so would appear to be an inappropriate route to dispute historic tariffs.

Q	Question	Response
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	3 years notice for implementation of recovery from suppliers / consumers post the decision.
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	Should Ofgem choose to award this money we believe that 3 years notice would be required from the date of the decision for recovery from the demand side of tariffs. We recognise the same timescales would need to apply to the generator reconciliation, given this would be a windfall gain for them.
10	**Do you believe any harm has been done in the spirit of the defect identified?**	We do not believe any harm has been done as generators will have priced in the short term based on published tariffs rather than an accurate forecast of the exchange rate. There is harm to suppliers and customers on pass through TNUoS contracts if this modification is approved. As a result of the windfall gains to generators.
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	Both the supply and generation businesses use the published tariff where available and do not expect ex post variations. We wouldn't have the information to be able to anticipate, nor would we expect, any other outcome.

CUSC Workgroup Consultation Response Proforma

CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

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 **28th July 2016** to cusc.team@nationalgrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Ryan Place at ryan.place@nationalgrid.com

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	*Colin Prestwich*
Company Name:	*SmartestEnergy*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	For reference, the Applicable CUSC objectives are: **Use of System Charging Methodology** (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

Standard Workgroup consultation questions

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	No. The whole point about the current arrangements is that there is an error margin to try to avoid breaching the cap. If a breach were illegal there would have been no point to the error margin; the whole calculation would have had to include a reconciliation.
2	**Do you support the proposed implementation approach?**	No
3	**Do you have any other comments?**	Yes – if the proposal is to go ahead then the reconciliation should be two ways; if generators have been given an additional discount beyond that which is necessary for the €2.50 cap, it should be refunded to suppliers.
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	No

Specific questions for CMP261

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	We agree with the NGT interpretation that “a pure ex ante approach, by its nature, is never guaranteed to be 100% precise or accurate and is the approved GB approach to compliance with the Regulation.”

Q	Question	Response
6	**Is ex ante certainty preferred over ex post accuracy?**	In this instance, yes.
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	No
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	Before the end of the calendar year.
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	Yes. There must be an element of pricing certainty for suppliers.
10	**Do you believe any harm has been done in the spirit of the defect identified?**	No
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	We do not believe that commercially astute generators would have been so foolish as to take this risk. The current arrangements are perfectly clear: an ex ante approach with an error margin (but no agreed reconciliation) would always imply the possibility of exceeding the €2.50MWh cap.

CUSC Workgroup Consultation Response Proforma

CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

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 **28th July 2016** to cusc.team@nationalgrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Ryan Place at ryan.place@nationalgrid.com

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	*Garth Graham (garth.graham@sse.com)*
Company Name:	*SSE*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	For reference, the Applicable CUSC objectives are: **Use of System Charging Methodology** (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

Standard Workgroup consultation questions

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	See [A] below.
2	**Do you support the proposed implementation approach?**	We believe that the implementation of the Original and potential option A[1] can be undertaken within 14 calendar days from an Authority decision. Or to put it another way, if Ofgem approved CMP261 Original (or potential option A) on the 1st day of the month that generators would receive the appropriate paperwork and funds for the reconciliation from National Grid on the 15th day of the month. In this respect we note that National Grid has already issued monthly bills / credit notes etc., at least thirteen times to all the generator parties concerned (monthly for the period April 2015 to March 2106 plus the end of year Generator Reconciliation Statement). As such the processes, procedures and systems already existing within National Grid to perform this task; it being a repeat of the Generator Reconciliation Statement processes and procedures already undertaken (in April 2016) prepared; in accordance with 3.13.2 of the CUSC; for charging year 2015/16 with the sole amount in question being the £/kW of TEC to be reconciled which, as we set out in answer to Question 3, amounts to £1.97/kW .

[1] As set out in paragraph 5.4 of the CMP261 Workgroup consultation document.

Q	Question	Response
3	**Do you have any other comments?**	See [B] below.
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	*No*

Specific questions for CMP261

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	We strongly agree with the legal opinion in respect of the fact that there has been a breach of the Regulation and that a remedy is required. Reference is made elsewhere in this response in respect of certain elements contained within the legal opinion received by the CMP 261 Workgroup from Addleshaw Goddard. We reserve our position in relation to the legal opinion as a whole at this time but would comment that there is no express requirement for any breach of the Regulations to be a material breach before it constitutes a breach.

Q	Question	Response
6	**Is ex ante certainty preferred over ex post accuracy?**	Whilst we appreciate the desirability of having ex ante certainty when compared with ex post accuracy, the overriding requirement must be to comply with the law. If either an ex ante or an ex post approach would (in both cases) ensure compliance with the law (in this case that GB generators did not pay, in charging year 2015/16, in excess of the €2.50/MWh figure) then, an ex ante approach would seem preferable. However, this is not the case here. As confirmed by the legal opinion from Addleshaw Goddard[2] the ex ante approach did not ensure compliance with the €2.50/MWh figure and therefore steps have to be taken to correct this and ensure compliance. In this regard we note that had CMP261 been dealt with in accordance with the urgent timetable we were seeking in March 2016 that the generator TNUoS tariffs for 2015/16 would have been changed ('mid-year') within 2015/16 such that compliance (on an ex ante basis) would have been achieved. It is a cornerstone of the GB regulatory regime and market arrangements that parties will act in accordance with their legal obligations. In this respect we are mindful of the Authority's statement in the recent 'Enforcement Overview 2015/16'[3] that their "*vision [is] for enforcement to achieve a culture where businesses put energy consumers first and act in line with their obligations*" [emphasis added] It is not an option to sacrifice legal compliance for 'ex ante certainty' as this is both misguided and wrong. Furthermore, all market participants and National Grid have been fully aware of the possibility of a breach of the €2.50/MWh limit up to five years prior to the start of charging year 2015/16[4] and since the start of charging year 2015/16 the increasing probability that a breach, in 2015/16, would occur (and later in the charging year, had occurred) based on the evidence set out in paragraphs 2.34 and 2.35 plus Figures 3-5 in the CMP261 Workgroup consultation document.

[2] 22nd April 2016 see, for example, the Introduction plus paragraphs 2, 4, and 9 (a).

Q	Question	Response
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	See [C] below.

[3] https://www.ofgem.gov.uk/system/files/docs/2016/07/ofg839_ofgem_enforcement_overview_2015_16_web.pdf

[4] As detailed in paragraph 2.9 (i)-(v) of the CMP261 Workgroup consultation document.

Q	Question	Response
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	As we set out in response to Question 2 above, the reconciliation should be undertaken within 14 calendar days from an Authority decision (noting that the processes, procedures and systems already existing within National Grid to perform this task; it being a repeat of the Generator Reconciliation Statement processes and procedures already undertaken (in April 2016) for charging year 2015/16 in accordance with 3.13.2 and 3.13.3 of the CUSC. The longer the delay after the 31st March 2016 that the reconciliation takes to remedy the breach, the greater the harm being done to GB generators, the internal market and the greater the distortionary affects on cross border trade as we detail in our answer to Question 10. We are also mindful that, according to the Authority, where (as in this case) a breach has occurred that "*in all cases the [breaching] company's priority should be to compensate customers adversely affected by the breach*[5]." We concur with the Authority and believe that the priority of National Grid should be the reconciliation of the GB generators affected by the breach of the €2.50 /MWh limit set in the EU Regulation by way of the earliest possible reconciliation of the exceedance (of the €2.50 /MWh limit).

5 https://www.ofgem.gov.uk/sites/default/files/docs/guidance_on_the_allocation_of_voluntary_redress_payments_open_letter_14_december_2015.pdf

Q	Question	Response
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	For the reasons we outlined in our answers to Questions 2 and 8 above, the most appropriate process is that already approved by the Authority (as set out in 3.13.2[6] and 3.13.3[7] of the CUSC). There is no need for another process – any suggestion otherwise is a '*red herring*'. Given that National Grid has, by virtue of undertaking this process annually for many years we see there being no practical 'trade-off' between 'speed' and 'process' – the existing process can be undertaken quickly (within 14 calendar days of an Authority decision). Under the CUSC (3.13.2 and 3.13.3) National Grid has already determined (in April 2016) the TEC held by all those generators who paid TNUoS in charging year 2015/16. Indeed these numbers; from Abernedd to Wylfa power stations; have been published in Annex 5 of the CMP261 Workgroup consultation document. These TEC figures, on a per generator basis for charging year 2015/16, will not have changed between April 2016 (or indeed there publication in July 2016) and the date of the Authority decision on CMP261. Having determined, in a straightforward way, the £/kW over recovery figure on the basis of the calculation approach illustrated in Figure 6 of the consultation document (and detailed in Annex 5) it is then a very simple exercise to multiply the published TEC figure held, per generator, in 2015/16 by the £/kW figure and then to issue the Generator Reconciliation Statement accordingly to the parties concerned. This is a process National Grid has done on numerous other occasions. As we set out in our answer to Question 3, we calculate the amount to be reconciled to GB generators for charging year 2015/16 as totalling £137M or circa £1.97/kW for TEC held during that period.

[6] "As soon as reasonably practicable and in any event by 30 April in each **Financial Year The Company** shall prepare a generation reconciliation statement (the "**Generation Reconciliation Statement**") in respect of generation related **Transmission Network Use of System Charges** and send it to the **User**. Such statement shall specify the **Actual Amount** and the **Notional Amount** of generation related **Transmission Network Use of System Charges** for each month during the relevant **Financial Year** and, in reasonable detail, the information from which such amounts were derived and the manner in which they were calculated."

[7] "Together with the **Generation Reconciliation Statement**, **The Company** shall issue a credit note in relation to any sums shown by the **Generation Reconciliation Statement** to be due to the **User** or an invoice in respect of sums due to **The Company** and in each case interest thereon calculated pursuant to Paragraph 3.13.6 below."

Q	Question	Response
10	**Do you believe any harm has been done in the spirit of the defect identified?**	See [D] below.
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	See [E] below.

[A]

Question 1

Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.

We believe that the Original Proposal better facilitates the Applicable CUSC Objectives.

We set out, in the proposal itself, the reasoning for this.

In addition, with respect to Applicable Objective (a) we note that CMP261 would better facilitate effective competition by correcting the third and fourth examples of harm (regarding competition and market distortions) that we identify in our answer to Question 10.

In addition, with respect to Applicable Objective (d) we note that CMP261 would better facilitate compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency by correcting the first and second examples of harm (regarding the internal market and cross border trade affect) that we identify in our answer to Question 10.

We note that there are five potential options (A to E[8]) identified in section 5 of the CMP261 Workgroup consultation document.

However, as per footnotes 34, 35 and 36 in the consultation document, four of those potential options (B to E) would entail the reconciliation of the excess amount paid by generators in charging year 2015/16 being returned via a change to the Generator TNUoS tariff in subsequent charging years.

[8] Set out in Paragraphs 5.4-5.8 respectively.

This would mean (with potential options B to E) that any Generators who had paid TNUoS in 2015/16 but who had during the period or subsequently closed (such as the circa 5GW of plant which closed during, or shortly after, charging year 2015/16) would receive no reconciliation for having paid in excess of €2.50/MWh in 2015/16. This would therefore not ensure compliance with the Regulation. Neither would it facilitate effective competition or be cost reflective. For example, it introduces the precedent that a legal obligation does not have to be complied with. This will in turn lead to fundamental undermining of the regulatory certainty which will have negative consequences for competition. It would also lead to participants questioning the basis of costs that have been signalled in the future and this in turn lead to an undermining of participants belief in cost reflectivity going forward.

This would therefore not better facilitate Applicable Objective (d) (and neither would it better facilitate Applicable Objectives (a) and (b).

Furthermore, those generators who paid no TNUoS in 2015/16 but connected (or increased their TEC) after the end of charging year 2015/16 (31st March 2016) would (in respect of options B to E) receive a windfall gain. This would distort competition and would not be cost reflective.

This would therefore not better facilitate Applicable Objectives (a) and (b).

In terms of potential option A, this has all the positive attributes of the Original (all be it with an extra year for the recovery of the reconciliation amount from demand in 2018/19) and as such we agree that this option A does better facilitate the Applicable CUSC Objectives (a), (b) and (d) for the same reasoning as we have given for the Original.

However, of the two (the Original and potential option A) the Original is best.

[B]

Question 3

Do you have any other comments?

We wish to make a number of other pertinent comments.

1) Alternative Recourse and Double Recovery

Notwithstanding this response to the CMP261 Workgroup consultation document of 7th July 2016, we fully reserve our rights to seek alternative recourse in relation to this breach of the Regulation and any losses we have suffered. This is also without prejudice to any further comments we may make at a future date.

In the event that we (or indeed any other party) takes and is successful in respect of an alternative recourse, we wish to make clear as the proposer of CMP261 that no party for whom a rebate is due in accordance with CMP261 for charging year 2015/16 should be able to 'double recover' any amount due in respect of the breach of the Regulation.

2) Treatment of Small Generator Discount

We note that the analysis presented in Figure 6 is (as set out in paragraph 2.47[9]) is based on an amount of £578M having been recovered, in respect of transmission charges, from GB generators in charging year 2015/16. However, this amount (£578M) excludes the 'small generator discount'[10] . We believe this is an error and that the small generator discount of £18.3M should be included, taking the total (from £578M) to £596M which equates to an exceedance of the €2.50/MWh by €0.75/MWh (to €3.25/MWh in total) or £1.97/kW for charging year 2015/16.

The reason for this is that the discount is an indirect reduction in the costs paid by certain generators and does not directly reduce the amount paid by GB generators during charging year 2015/16.

If the Small Generator Discount were to be taken off the calculation of the average generator charge within the €2.50/MWh upper limit, then this would result in higher TNUoS costs for all TNUoS paying generators such that the cost of collecting the Small Generator Discount would be paid for by generators, not demand.

This would run counter to the Transmission Standard License Condition 13 and the Ofgem decision (of 22nd January 2016) to modify this condition, which are both clear that the intention is the opposite; i.e. the licence condition states that the cost of funding the Small Generator Discount should be borne by demand and not generation and applied after the charges for use of system have already been calculated subject to condition C4:

"When calculating use of system charges (other than charges relating to the provision of balancing services) to customers who are taking demand from the national electricity transmission system the licensee shall set charges in conformance with the use of system charging methodology in accordance with standard condition C4 (Charges for use of system) plus a unit amount…" [emphasis added] (Transmission Standard License Condition 13 paragraph 2)

"The level of the small generator discount was determined by Ofgem in 2005 and is 25% of the sum of the generation and demand residual5 Transmission Network Use of System (TNUoS) tariffs in a given charging year. This is recovered from demand consumers across GB." [emphasis added] (Ofgem Decision to modify Standard Licence Condition C13 of the electricity transmission licence (Adjustment to use of system charges (small generators)) January 2016.

When National Grid determine TNUoS tariffs, they do not deduct the value of the Small Generator Discount from generation charges when they calculated compliance with the €2.50/MWh upper limit, as illustrated in the National Grid, Final TNUoS tariffs for 2016/17 table 10. It would therefore be inconsistent with the way the TNUoS tariffs are calculated to do the reverse and deduct the value of the Small Generator Discount from generator costs when ensuing compliance with the €2.50/MWh after the event.

[9] Of the CMP261 Workgroup consultation document

[10] As set out in Special Licence Condition 13 of the Transmission Licence.

For the avoidance of doubt, the figure of £596M (or indeed £578M) and the total exceedance of £137M for charging year 2015/16 excludes any interest payment due for the period 1st April 2016 to the date when National Grid finally issues the revised Generator Reconciliation Statements (for charging year 2015/16) to the GB generators. In regard to interest due, we expect this to be calculated in accordance with the principles set out in paragraph 3.13.6 (b)[11] of the CUSC, and paid by National Grid to those generators in the same Generator Reconciliation Statements.

3) Generation Only Spurs

We note the CMP261 Workgroup deliberations with respect to generation only spurs, as set out in paragraphs 2.17, 2.18, 2.43 and 2.44 of the consultation document .

It is important to recognise a number of factors.

First, it is clear from the Addleshaw Goddard legal opinion specifically commissioned by the CMP261 Workgroup in, for example, paragraph 20, which identifies that:-

> *"… we [*Addleshaw Goddard*] agree with the conclusions reached in respect of the CMP224 that it is reasonable that such spurs should be included within the average G charge calculation*".

Second, related to the first item, the conclusion reached in respect of CMP224 took account of the detailed arguments that fully justified including generation only spurs. We have provided some of those detailed arguments in our response to the CMP224 Workgroup consultation of 23rd January 2014 and to assist the Workgroup, CUSC Panel and Ofgem, in considering CMP261, we reproduce that response in **Annex 1 to this CMP261 consultation response**.

Third, these detailed arguments in support of including generation only spurs stand in stark contrast to any counter arguments that would, in some way, justify excluding generation only spurs - despite CUSC parties having at least four separate opportunities[12] to provide such justification. As Addleshaw Goddard (in their legal opinion for the CMP261 Workgroup, at the end of the same paragraph 20) highlighted:-

> "*In contrast, it is not clear on what basis the exclusion of "charges paid by producers for physical assets required for connection to the system" justifies the exclusion of TNUoS charges (as opposed to connection charges) in respect of generation only spurs, and therefore the justification for such a specific carve-out appears lacking*".

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[11] "Interest on all amounts due under this Paragraph 3.13 shall be payable by the paying **CUSC Party** to the other on such amounts from the date of payment applicable to the month concerned until the date of actual payment of such amounts and such interest shall be calculated on a daily basis at a rate equal to the **Base Rate** during such period."

[12] At the CMP224 Workgroup consultation, the CMP224 Code Administrator consultation, the Ofgem CMP224 RIA consultation, and the CMP251 Workgroup Consultation.

Fourth, as noted in paragraph 2.43[13], this *apparent* uncertainty around the inclusion of generator only spurs has not been present when stakeholders (and the CMP251 Workgroup) were assessing / considering CMP251, even though CMP251 and CMP261are comparable Modifications in this regard.

[C]

Question 7

Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?

Yes, we do firmly believe that a breach of the Regulation has occurred in charging year 2015/16 as transmission charges paid by GB generators during the period were in excess of the permitted range of €0-2.50/MWh.

To us this is self-evident by the detailed analysis we have presented (i) to the CUSC Panel (during 2015 and 2016) and (ii) to the CMP261 Workgroup (during 2016) as well as the analysis others have presented, such as British Gas in their CMP251 Proposal and presentation to the CUSC Panel (which identified – as at the end of June 2015 – that the figure stood then at €2.65/MWh).

Indeed, as the CMP261 Workgroup consultation document makes clear at paragraphs 2.34-2.35 and illustrates in Figures 3-5 this breach was not some form of '*sudden*' occurrence ,or '*a bolt out of the blue*' if you will, but rather the breach was very well signposted (throughout 2015 and 2016) prior to it occurring and indeed since it occurred such that steps could (and should) have been taken to firstly prevent it occurring and, once it occurred, to secondly rectify it with the utmost alacrity and without any undue delay.

Furthermore, that a breach has occurred is confirmed by the legal opinion commissioned specifically for that purpose by the CMP261 Workgroup from Addleshaw Goddard.

> *"….it has become apparent that the generation output and €/£ exchange rate forecasts which underpin the Current Approach are inaccurate in respect of the 2015/16 TNUoS charging year and that, consequently, if they are unmodified the resulting G Charges actually paid are likely to significantly exceed the cap set out in the Guidelines Regulation*."[14]
>
> *"Where a forecast proves (despite the Error Margin) to have been inaccurate for a given year, and therefore takes the average G Charge above the €2.5/MWh limit, this exceeding of the Guidelines Regulation limit represents a breach of the technical requirements of the Guidelines Regulation.[15] "* [emphasis added]

[13] Of the CMP261 Workgroup consultation document.

[14] Addleshaw Goddard, 22nd April 2016, Introduction

[15] Addleshaw Goddard, 22nd April 2016, paragraph 2

> *"…the outturn figures for a charging year demonstrate average €/MWh G Charges which are materially above the G Charge Guidelines limit (as is the case for the 2015/16 charging year)…."*[16]
>
> *"there is a strong argument that a material breach of the €2.5/MWh G Charges limit in respect of the 2015/16 charging year equates to non compliance with the Guidelines Regulation "*[17]

It being the case that a breach has occurred it therefore follows that a remedy such as an ex post reconciliation must take place and must do so at the earliest possible opportunity in order to minimise the harm which has occurred, due to the breach, and the harm which is continuing to occur pending the timely remedy. Examples of the harm that have arisen, and continue to this day, are detailed in our answer to Question 10.

That an ex post reconciliation must take place in respect of the breach for charging year 2015/16 is confirmed by the legal opinion commissioned specifically by the CMP261 Workgroup from Addleshaw Goddard.

> *"….in circumstances where the outturn figures for a charging year demonstrate average €/MWh G Charges which are materially above the G Charge Guidelines limit (as is the case for the 2015/16 charging year), on balance we would suggest that the G Charges paid for the relevant year should be adjusted on a backward looking basis in order to bring them materially in line with the €2.5/MWh limit and in order to demonstrate compliance with the Guidelines Regulation.* "[18]
>
> *"[a]. there is a strong argument that a material breach of the €2.5/MWh G Charges limit in respect of the 2015/16 charging year equates to non compliance with the Guidelines Regulation;*
> *[b]. as a result, we are of the view that reconciliation of G Charges for the 2015/16 charging year would be prudent;* "[19]
>
> "*In circumstances where the outturn G Charge level for a charging year has materially exceeded the G Charges limitation in the Guidelines Regulation, we are of the view that the G Charge level for the relevant year should be reconciled on a backward looking basis.*"[20]

For the avoidance of doubt, any such reconciliation should be with respect to only those parties who paid generator TNUoS during charging year 2015/16 and should not, for example, be paid to parties who (either as new generators or as generators who increased their level of TEC in a subsequent charging year) paid TNUoS in a charging year(s) after 2015/16.

[D]

Question 10

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[16] Addleshaw Goddard, 22nd April 2016, paragraph 4

[17] Addleshaw Goddard, 22nd April 2016, paragraph 9 (a).

[18] Addleshaw Goddard, 22nd April 2016, paragraph 4.

[19] Addleshaw Goddard, 22nd April 2016, paragraph 9.

[20] Addleshaw Goddard, 22nd April 2016, paragraph 10.

Do you believe any harm has been done in the spirit of the defect identified?

As we set out in detail in our answer to Question 7 above there has been a clear breach of the EU Regulation 838/2010 Part B.

That being the case it is self-evident that where the law has been broken that harm has arisen. Whilst there maybe discussion to be had as to the quantum of the harm, it cannot be denied that breaking the law (any law) causes harm.
In terms of the harm arising as a result of the breach (in this case; of the recovery, from GB generators, on average, of an amount in excess of the €2.50/MWh upper limit set out in the Regulation for charging year 2015/16 together with its non-rectification, to date, during 2015/16); it takes a number of forms including but not limited to those that we have highlighted here.

The **first** example of harm is that this breach undermines the internal market in electricity which, National Grid are duty bound to facilitate and support (rather than, as in this case, undermine).

As Addleshaw Goddard makes clear (in paragraph 15 (b)[21] of their advice to the CMP261 Workgroup) "*the recitals setting out the objectives of the Guidelines Regulation have weight and are relevant to interpreting the requirements of the G Charge Guidelines as a whole*".

Recital 10[22] of the Regulation states that the reason for average charges for access to the network in Member States being kept within a range (of €0-2.5/MWh for GB) is so that charges paid by generators for accessing the transmission system do not undermine the internal market whilst also helping to ensure that the benefits of harmonisation are realised.

It therefore follows that by failing to comply with the Regulation during and after charging year 2015/16 (by breaching the €2.50/MWh upper limit without remedying it) that the first harm has arisen in this case.

The **second** example of harm, which is related to the first, is that this breach affects cross border trade.

On the basis of the calculation approach illustrated in Figure 6 of the consultation document (and detailed in Annex 5 of the consultation document) we calculate that GB generators paid, in charging year 2015/16, in the region of £137M of TNUoS in excess of what they should have, had the €2.50/MWh upper limit been complied with .

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[21] "*…the European Court of Justice takes a purposive approach to the interpretation of EU law (an approach which has in turn been adopted by the Courts of England and Wales when they consider compliance with EU law). The result of this is that the courts will look to the broader purpose and objectives of EU legislation in interpreting the meaning of the specific provisions. In particular, the recitals setting out the objectives of the Guidelines Regulation have weight and are relevant to interpreting the requirements of the G Charge Guidelines as a whole*."

[22] ''*Variations in charges faced by producers of electricity for access to the transmission system should not undermine the internal market. For this reason average charges for access to the network in Member States should be kept within a range which helps to ensure that the benefits of harmonisation are realised*.''

This will result in GB wholesale prices being greater than they should have been because, for example, GB generators will have to factor in the increased risk of regulatory non-compliance when forward planning their trading activities this will, in turn lead to greater electricity imports into GB (plus lower GB generator production and fewer electricity exports from GB) which affects cross border trade.

This is evidenced by, for example, Ofgem comments on interconnectors[23] in a recent blog[24] as well as three representatives of National Grid during their oral submissions to the House of Commons Energy & Climate Change Select Committee on 24th November 2015[25]:-

> *[Q72] "What we typically see is that when there are lower prices on the continent there are higher flows through the interconnectors into our markets."*[26]
>
> *[Q80] "a trend of increasing flows from the continent, which is linked to pricing".*[27]
>
> *[Q88] "We believe that interconnectors do allow GB consumers to access the lower prices seen in the European market".* [28]

This effect, of higher GB wholesale prices leading to greater imports into GB (and thus, lesser GB generator production and lower exports from GB) was also echoed by National Grid in their 2015/16 results statement[29]:-

> *"The Group's Other activities contributed £183m more to operating profit than last year on a constant currency basis, led by increased revenues in the French Interconnector business due to higher price arbitrage between the UK and mainland Europe".* [emphasis added]
>
> "*National Grid's share of post-tax results of joint ventures for the year was £59m, an increase of £13m compared with 2014/15. This reflected a significant increase in the contribution from the BritNed Interconnector reflecting increased power price differentials between the Netherlands and the UK."* [emphasis added]

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[23] "generally importing electricity into GB when our price is higher, and exporting electricity when the price in neighbouring countries is higher."

[24] https://www.ofgem.gov.uk/news-blog/our-blog/what-drives-wholesale-electricity-prices-britain

[25] https://www.parliament.uk/business/committees/committees-a-z/commons-select/energy-and-climate-change-committee/inquiries/parliament-2015/security-of-supply/publications/

[26] Cordi O'Hara, Director of the UK System Operator, National Grid

[27] Duncan Burt, Head of Operate the System for Electricity Transmission, National Grid

[28] Ro Quinn, Head of UK Energy Strategy, National Grid

[29] http://investors.nationalgrid.com/~/media/Files/N/National-Grid-IR/results-centre/full-year-results-statement-2015-16.pdf

It therefore follows that by failing to comply with the Regulation during and after charging year 2015/16 (by breaching the €2.50/MWh upper limit without remedying it) that the second harm has arisen in this case.

In considering the quantum of the effect in this particular case, where GB generators paid in the region of £137M (during charging year 2015/16) in excess of the legal upper limit (of €2.50/MWh) set by the Regulation we are reminded that the EU '*Guidelines*[30] *on effect of trade concept*' quantifies that an affect arises where the amount involved is greater than a threshold of €40M[31], which is certainly the case here (where the £137M, using the average €/£ exchange rate of 1.37 during 2015/16 equates to some €187M or more than four times greater than the €40M threshold figure used in EU law in respect of an affect on cross border trade).

[30] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3Al26113

[31] "Analysis of the concept of affecting trade requires that three aspects in particular be addressed:

- **the concept of "trade between EU countries"**: the concept of "trade" is not limited to traditional exchanges of goods and services across borders. It is a wider concept, covering all cross-border economic activity including establishment. This interpretation is consistent with the fundamental objective of the Treaty to promote free movement of goods, services, persons and capital. The requirement that there must be an effect on trade "between EU countries" implies that there must be an impact on cross-border economic activity involving at least two EU countries;
- **the notion "may affect"**: the function of the notion "may affect" is to define the nature of the required impact on trade between EU countries. According to the standard test developed by the Court of Justice, the notion "may affect" implies that it must be possible to foresee with a sufficient degree of probability on the basis of a set of objective factors of law or fact that the agreement or practice may have an influence, direct or indirect, actual or potential, on the pattern of trade between EU countries. In cases where the agreement or practice is liable to affect the competitive structure inside the EU, EU law jurisdiction is established;
- **the concept of "appreciability"**: the effect on trade criterion incorporates a quantitative element, limiting EU law jurisdiction to agreements and practices that are capable of having effects of a certain magnitude. Appreciability can be appraised in particular by reference to the position and the importance of the relevant undertakings on the market for the products concerned. The assessment of appreciability depends on the circumstances of each individual case, in particular the nature of the agreement and practice, the nature of the products covered and the market position of the undertakings concerned. In its notice on agreements of minor importance, the Commission states that agreements between small and medium-sized enterprises rarely affect trade between EU countries to a significant degree. The Commission holds the view that in principle agreements are not capable of appreciably affecting trade between EU countries when the following cumulative conditions are met:

The **threshold of EUR 40 million** [emphasis added] is calculated on the basis of total EU sales excluding tax during the previous financial year by the undertakings concerned, of the products covered by the agreement (the contract products). Sales between entities that form part of the same undertaking are excluded. In order to apply the market share threshold, it is necessary to determine the relevant market.

The Commission will apply the negative presumption to the application of the concept of affecting trade to all agreements, including agreements that by their very nature are capable of affecting trade between EU countries as well as agreements that involve trade with undertakings located in non-EU countries. Outside the scope of negative presumption, the Commission will take account of qualitative elements relating to the nature of the agreement or practice and the nature of the products that they concern.

The positive presumption relating to appreciability in the case of agreements also takes into account whether and how agreements and practices cover several EU countries, whether they are confined to a single EU country or to part of a single EU country. Agreements and practices involving non-EU countries are also dealt with. In the case of agreements and practices whose object is not to restrict competition inside the EU, it is normally necessary to proceed with a more detailed analysis of whether or not cross-border economic activity inside the EU, and thus patterns of trade between EU countries, are capable of being affected."

The **third** example of harm, linked to the second harm, is in respect of competition (both within the GB market and between the GB market and other Member States[32]).

The harm, in competition terms, arises from the affect on cross border trade that paying TNUoS charges greater than the legal limit (of €2.50/ MWh, totalling in the region of £137M[33]) has for GB generators.

As a result of paying in excess of €2.50/ MWh, which totals in the region of £137M, during charging year 2015/16 generators in GB have been less competitive in the provision of, for example, balancing services within GB to the System Operator when compared with other non-generation providers of those services.

Furthermore, as a result of paying in excess of €2.50/ MWh, which totals in the region of £137M, during charging year 2015/16 generators in GB have been less competitive in the provision of, for example, electricity within GB to the (GB) System Operator and other market participants when compared with imports from other Member States (and within the UK in terms of Northern Ireland) and have been less competitive, in terms of the exporting of the provision of electricity to System Operators and other market participants in other Member States (and within the UK in terms of Northern Ireland).

It therefore follows that by failing to comply with the Regulation during and after charging year 2015/16 (by breaching the €2.50/MWh upper limit without remedying it) that the third harm has arisen in this case.

The **fourth** example of harm is in respect of market distortions. As Ofgem highlighted in their CMP224 decision letter[35]:-

> "*Bringing transmission charges for GB generators more closely into line with those of their EU counterparts should reduce market distortions, which, in principle, should result in more efficient competition between GB and other EU member states and improved competition in the generation of electricity compared with the current baseline*."

However, far from 'bringing transmission charges for GB generators more closely into line with those of their EU counterparts' and thus 'reduc[ing] market distortions' the failure to comply with the €2.50/MWh upper limit has resulted in GB generators being more out of line (to the tune of in excess of £137M) with those of their EU counterparts which should increase market distortions. This, in turn, should result in less efficient competition between GB and other EU Member States and be detrimental to competition in the generation of electricity.

It therefore follows that by failing to comply with the Regulation during and after charging year 2015/16 (by breaching the €2.50/MWh upper limit, without remedying it) that the fourth harm has arisen in this case.

[E]

Question 11

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[32] The GB market being linked directly to France, Ireland and the Netherlands (via electricity interconnectors) and, indirectly, via France and the Netherlands, to many other Member States.

[33] As we set out in our response to Question 3.

[35] Ofgem CMP224 decision letter 8th October 2014, page 4.

Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.

All parties must operate on the basis that they and all other parties will fully comply with the prevailing law at all time.

To do otherwise would not only be irrational and call into question a central tenant of how both business and the regulatory arrangements work (and indeed those of the wider society) but would also invite the party (a) who believes that party (b) will not comply with a certain law to then themselves (party (a)) instead 'substitute' what level or standard of 'law' (rather than the prevailing law itself) that party (b) would comply with.

Such an approach can only lead to illogical and unreasonable outcomes as various parties seek to apply their 'substitute' level(s) or standard(s) of 'law' that, in their individual view, would be applied (in our simple example) by party (b), rather than the prevailing law itself.

It is for this reason that Generators will have operated, in charging year 2015/16, on the basis that the €2.50/MWh upper limit set out in the Regulation will be complied with by National Grid, as charges would have remained within the €0-2.50/MWh range (set in the Regulation) by, for example, either (i) a mid-year tariff change[36] as has happened before[37] with GB TNUoS tariffs or (ii) National Grid itself[38] complying with its legal obligations, not applying the charges to GB generators in a way that resulted in those generators paying in excess of the €2.50/MWh annual average upper limit.

Notwithstanding the above, Ofgem clearly indicated, in their 8th October 2014 CMP224 decision letter[39], that the intention of CMP224 was to restrict the average transmission charges recovered from GB generators in a year period so as to ensure compliance with the Regulation.

> "*CMP224 proposes to limit the total costs recovered from generators in Great Britain (GB) through Transmission Network Use of System (TNUoS) charges in a given year. This is to comply with European Commission Regulation (EU) No. 838/2010 (the Regulation), which restricts the average transmission charges paid by generators in European Union (EU) member states*."

The Ofgem decision letter clearly outlined that the upper limit was €2.50/MWh.

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[36] In this regard, it should be remembered that when CMP261 was submitted 'urgency' was sought for the proposal such that the TNUoS tariffs for charging year 2015/16 would have been changed within charging year 2015/16 ('mid-year') such that the tariffs would have been in compliance with the €2.50/MWh upper limit.

[37] Autumn / Winter 2010.

[38] See, for example, paragraph 2.1 of the CMP261 Workgroup consultation document and the CMP224 proposal submitted by National Grid which makes clear the legal obligations, with respect to complying with Regulation 838/2010, applying to National Grid in its own right.

[39] http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP224/

"*The Regulation sets ranges of allowable average transmission charges paid by electricity generators in the EU. For GB, the allowable range is €0-2.5/MWh. The average charge for each member state is the total transmission charges collected from generators in that member state in a given year divided by the total output of those generators in that year*."

The Ofgem decision letter also outlined that there is a risk of breach that should be mitigated by the use of an error margin in the calculation.

"*CMP224 proposes making changes to the methodology so that the proportion of revenue recovered from generation is set each year to the lower of either:*

- *the current level of 27% or*
- *the maximum amount that results in the average transmission charge for GB not exceeding*
  the upper limit set by the Regulation."

"*The proposals would set the G:D split ahead of the relevant charging year based on forecasts of the relevant variables. So there is a risk that charges exceed the upper limit of the Regulation because of forecast error. To mitigate this risk, the proposals include an 'error margin', ie the G:D split would be set with the target of an average transmission charge for generation that is below (rather than equal to) the upper limit allowed by the Regulation. The error margin would be set by NGET each year based on its historical forecast*."

Ofgem directed that of the CMP224 options available the option with the shortest lead time was implemented – shortest lead time – smallest error margin.

However, Ofgem felt that the option with the largest error margin best facilitated the competition objective of the CUSC.

" *Based on the evidence available, we consider that the effects on competition of better aligning charges for GB generators with charges in other EU member states are likely to be more significant than the increased risk associated with changing the G:D split from year to year. Taking this into account, we consider that all the proposals submitted to us better facilitate this objective compared to the current baseline and that WACM1 best achieves this objective followed by the original proposal, WACM2 and WACM3.*"

This indicates that Ofgem felt that a breach of the €2.50/MWh upper limit was an impediment to competition. From this one can clearly infer that generators competitive position was compromised by the breach in 2015/16 of the €2.50/MWh upper limit.

Generators have been in a position where they have been led to believe that the €2.50/MWh upper limit cannot be breached right back from when the Regulation was itself first enacted back in 2010[40].

[40] The possibility of a breach of the €2.50/MWh upper limit was highlighted to GB market participants over many years, examples of which are listed in paragraph 2.9 of the CMP261 Workgroup consultation.

More recently, from the time of the original CMP224 proposal[41], it was also clear that generators could have been expected to assume that the average charge would not breach the limit:-

> "*European Commission Regulation 838/2010 applies a range of 0 - 2.5 €/MWh that average annual transmission charges payable by generators in GB must remain within. If in any given year the average annual generation transmission charges do not fall within this range, National Grid runs the risk of being non-compliant with the regulation. This range applies until the end of December 2014. ACER is currently carrying out a review of the appropriateness of this range for the period beyond December 2014 and will provide its opinion to the Commission by 1st January 2014. Therefore it is important that the average annual generation transmission charges remain within the current prescribed range until December 2014, and within the revised range (if modified after ACER's review) that may come into force from 1st January 2015*."

The CMP224 proposal goes on to further strengthen this position.

> "*This proposal suggests putting a cap on the annual generation TNUoS revenue so that theaverage annual transmission charges payable by generators always stay within the range specified by the EC regulation.*"

Further into the proposal the notion that the average generator charge is capped is reinforced.

> "*Linking this cap to the range specified by the regulation mitigates risk of any future revisions to this range. This would ensure that National Grid always remains compliant with the EC Regulation*."

CMP224 industry consultation[42] outlines the modification aim as:-

> "*This proposal seeks to introduce a cap on the annual generation TNUoS revenue so that the annual average transmission charges payable by generators in GB* ***always*** *stay within the range specified by the European Commission Regulation 838/2010*." [emphasis added]

The use of **always** suggests that the limit will never be breached. CMP224 industry consultation[43] gives further detail:-

> "*The Proposer's solution is to introduce a cap on the proportion of TO allowed revenue recovered through GB generation transmission charges, to* ***ensure*** *that the €2.5 /MWh upper limit specified in European Commission Regulation 838/2010 Part B (paragraph 3) or any subsequent EC Regulation that applies a revision to that limit is not exceeded. Such a cap would be applied in a way that would fix the proportion of TO allowed revenues recovered through GB generation transmission charges at*

[41] 19th September 2013

[42] 28 March 2014, subtitle, page 1

[43] 28 March 2014, section 3.2

> *the minimum of either (i) 27% of TO allowed revenues or (ii) such a lower amount as set to recover as close to 27% of TO allowed revenues as possible from GB generation Users whilst **ensuring** no breach of the aforementioned EC Regulation range.*" [emphasis added]

The use of **ensuring** also suggests that the aim here is to ensure that, not try to prevent, the charge exceeding the €2.50/MWh upper limit.

Both these elements of the consultation outline that parties would be acting reasonably if they counted on charges not exceeding the €2.50/MWh upper limit.

The Ofgem CMP224 decision letter outlines the distortive impact of a breach of the limit as it is clear that breach of the limit drives generation charges for GB generators further away from their EU counterparts.

> "*Bringing transmission charges for GB generators more closely into line with those of their EU counterparts should reduce market distortions, which, in principle, should result in more efficient competition between GB and other EU member states and improved competition in the generation of electricity compared with the current baseline*."

In summary it is clear from the CMP224 modification proposal and from Ofgem's decision letter of 8th October 2014 that the interpretation of the 838/2010 Regulation was unequivocal – the limit of €2.50/MWh should not be breached and the charging regime should be designed to **ensure** that this limit was not breached. It is on this basis that generators, in charging year 2015/16 (and indeed other charging years) presumed that their charges would not breach the €2.50/MWh upper limit, and acted accordingly.

Annex 1

The SSE response to the CMP224 Workgroup consultation (dated 23rd Janaury 2014)

CMP224 - Cap on the total TNUoS target revenue to be recovered from Generation Users

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 **23 January** to cusc.team@nationalgrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Tushar Singh at tushar.singh@nationalgrid.com.

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent: Garth Graham (garth.graham@sse.com)

Company Name: SSE

Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)

We express our views regarding this Workgroup Consultation (including our rationale) in our responses to the specific questions posed in this consultation by the Workgroup (as set out below).

However, we do have some additional observations:-

i) since the calculation approach currently **includes** local charges, it would look odd to the European Commission to find that GB, when faced with breaching the €2.5 upper limit, changes the calculation approach itself. Furthermore since it is a 'Regulation' it is binding on all relevant parties; and not just the Member State; including National Grid and Ofgem and it would be open to anyone raising the issue with the European Commission.

ii) since the interpretation can only be tested at the European Commission, it would seem sensible to err on the safe side, continue with existing calculation approach and cap GB average annual transmission charges at less than €2.5/MWh. Doing otherwise would seem to highlight the issue and ask for it to be taken to the European Commission.

ii) has anyone considered the position that Ofgem could put National Grid in if they approve a calculation approach that would put National Grid in breach of the Regulation?

Do you believe that the proposed original or any of the alternatives better facilitate the Applicable CUSC Objectives? Please include your reasoning.

As we understand the CMP224 Original proposal, as set out by the Proposer at the 6th December 2013 Workgroup meeting, it means that all local charges currently applied, by National Grid, to generators would be **included** in the calculation of the annual average transmission charges paid by generators in GB.

Given this we believe that CMP224 (as its currently set out by the Proposer) does better meet Applicable CUSC (Charging) Objective (c) in so far as it is consistent with sub-paragraphs (a) and (b), the use of system charging methodology, and as far as is reasonably practicable, properly takes account of the developments in transmission licensees' transmission businesses. Furthermore, it would also be consistent, in our view, with the terms of EU Regulation 838/2010 Part B (the 'Regulation'), and in particular paragraphs 1, 2 (1) and 3 thereof.

However, if at a later stage in the proceedings with this Modification (as per the Proposer Ownership principle) the Proposer were to redefine CMP224 Original so as to **exclude** some or all elements of the local charges currently applied, by National Grid, to generators in the calculation of the annual average transmission charges paid by generators in GB then this would, in our view, mean that CMP224 Original (in this scenario[44]) would not better meet Applicable CUSC (Charging) Objective (c) nor would it be consistent, in our view, with the terms of EU Regulation 838/2010 Part B, and in particular paragraphs 1, 2 (1) and 3 thereof.

Standard Workgroup consultation questions

1 Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.

We note the proposed implementation timescale set out in paragraph 7.1 and, at this stage, we concur in principle with what is being proposed.

We note that the Workgroup has considered the potential implementation issues that could arise with CMP224 given that the date of any change in the €2.5 upper limit (which is subject to a review by ACER at the moment) may come into effect on 1st January 2015; i.e. during the (GB) Charging Year 2014/15. Of the two options set out in paragraph 7.8 we would, at this stage, support the second option as this should ensure that, over the calendar year 2015, the average annual transmission charges paid by GB generators will be in compliance with Regulation (all be it that it may not do so over the first three months up to 31st March 2015).

2 Do you have any other comments?

We are mindful that CMP224 is directly related to the terms of EU Regulation 838/2010 (Part B). A key element of that Regulation is the matter of harmonisation of transmission charges amongst the Member States. Currently, according to the Regulation, 21 of the Member

[44] Or any Workgroup Alternative(s), if raised, which excluded some or all local elements.

States have generation transmission charges that are within a range €0 - €0.5 with the remaining six countries having a higher range of either (i) €0-€1.2 (Denmark, Sweden and Finland) or (ii) €0-€2 (Romania) or (iii) €0-€2.5 (UK and Ireland).

We are aware of a recent detailed independent study[45] undertaken into generator transmission charges across four countries in Europe[46] on the matter of harmonisation. The conclusions of that report are shown below and these clearly show that harmonisation of generator transmission charges is the economically correct thing to do.

> *A lack of harmonisation or changes to generator transmission charges which reduce harmonisation between countries for reasons other than to reflect differences in forward looking costs can have three different types of impact on economic welfare.*
>
> *First, they can result in distorted operational decisions. If a low cost generator in country A faces high transmission charges, it may not produce electricity, with demand instead being satisfied by a higher cost generator in country B where transmission charges are lower. This reduces economic welfare, because demand is not met using the lowest cost combination of resources.*
>
> *Second, they can result in distorted investment decisions. If generator transmission charges are high in country A, investors may opt to locate in country B and export power to country A. This would be inefficient if other aspects of cost (e.g. land, labour) were higher in country B.*
>
> *Third, they may increase investors' perceptions of risk. If generation transmission charges increase in country A for reasons unrelated to cost reflectivity and generators cannot pass through all of the cost increase, it will reduce returns on investment. Investors may take the view that the same or similar changes could take place in the future and will therefore demand a higher return on investment to compensate this regulatory risk. This will tend to reduce investment in the country's power sector, resulting in demand not being met in the most efficient way (e.g. overreliance on older, less efficient plant). It will also tend to result in under-consumption of electricity over time (e.g. through larger, more mobile customers locating in other markets).*

We endorse these conclusions. It is clear to us that the higher range of average annual transmission tariffs paid for by generators in GB (plus Northern Ireland and Ireland) are having a distorting effect on the GB[47] generation market.

In our view rather than seeking to 'fiddle' with the way the calculation is done (to seek to give the 'appearance' that GB is complying with the current €2.5 upper limit) as some stakeholders appear to want, more effort should be given to seeking to reduce the €2.5 limit

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[45] The study has been provided to us in confidence. We have provided the reference etc., to the Authority under separate cover in response to their recent consultation on "Impact assessment on CMP201 - proposal to remove balancing charges from generators".

[46] France, Germany, Belgium and the Netherlands.

[47] plus Northern Ireland and Ireland

itself to bring the transmission charges paid by GB[48] generation more into line with the rest of continental Europe with whom, in a very short space of time, we will be actively coupled with via the planned 'Target Model' arrangements and the associated European Network Codes (such as those covering Capacity Allocation & Congestion Management, Forward Capacity Allocation and Balancing).

It appears to us that some stakeholders seem to believe that CMP224 should be used to 'gerrymander' the average annual transmission tariff figure paid by generators in GB such that they seem (for the sake of 'appearance) to remain within the €2.5 upper limit (even when, in reality, they do not).

The way this 'gerrymandering' manifests itself is in the efforts to seek to exclude various charges paid by generators from the calculation of the annual average transmission charges paid by (GB) generators. This is most clearly shown by the various options set out in Table 1 of the Workgroup consultation.

3 Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?

No.

4 Do you believe that the Workgroup has considered all potential interpretations of "charges paid by producers for physical assets required for connection to the system or the upgrade of the connection" to be excluded from the annual average transmission charge referred to under EC Regulation 838/2010?

Yes. In our view the interpretation of "charges paid by producers for physical assets required for connection to the system or the upgrade of the connection" to be excluded from the annual average transmission charge referred to under EC Regulation 838/2010 is clear – it does not mean excluding some or all charges for the local network.

5 Do you believe that any Local Generation TNUoS Charges (or a subset thereof listed in Table 1 or otherwise) should be excluded from the annual average transmission charge as part of defining a cap on the proportion of TNUoS charges paid by generation under the proposed solution?

No. In our view the correct legal interpretation of EU Regulation 838/2010 Part B, and in particular paragraphs 1, 2 (1) and 3 thereof, is that <u>all</u> local generation TNUoS charges should be **included** within the annual average transmission charges as part of defining a cap on the proportion of TNUoS charges paid by generation in GB under the proposed solution. We have provided compelling reasons as to why this should be the case in our answer to Question 6 below.

6 Do you believe that based upon the summary legal opinion from National Grid it would be sensible to include assets subject to local TNUoS charges within the calculation of the annual average transmission charges for GB for the reason set out?

[48] plus Northern Ireland and Ireland

In our view it would be wholly sensible based on (a) National Grid's summary legal opinion and (b) our view of the legal matters that arise from CMP224 to **include** all assets subject to local TNUoS charges within the calculation of the annual average transmission charges when calculating the GB position with respect to €2.5 limit.

In our view this would be consistent with the terms of EU Regulation 838/2010 Part B, and in particular paragraphs 1, 2 (1) and 3 thereof.

The Regulation imposes a limit on the annual average transmission charges which are paid by producers (generators) in each Member State. The issue that the CMP224 Workgroup has been considering relates to the interpretation of what constitutes "transmission charges" within the Regulation and the exclusions therefrom.

We considers that the CUSC is the most relevant document to consult when seeking to determine, in the context of GB, the practical application of Regulation 838/2010 Part B as it deals, explicitly, with the connection to and charges arising from the connection to and use of the transmission system in GB.

In order to assist the Workgroup to consider this matter, National Grid provided (at the first Workgroup meeting) an illustrative example of the GB electricity transmission system. The relevant slide is number 12 ('Local Charges').

It is common ground amongst the Workgroup members that (i) the red 'Local' network and the black 'Wider' network (shown on slide 12) are, collectively, known as the National Electricity Transmission System (or 'NETS') and that the 'Wider' network, as illustrated on the slide, is the Main Integrated Transmission System (or 'MITS') and that (ii) the green Generator specific assets are neither part of the NETS or MITS.

Part B of the Regulation includes the following pertinent passages:-

> *"Annual average transmission charges paid by producers is annual total transmission tariff charges paid by producers divided by the total measured energy injected annually by producers to the transmission system of a Member State." [Statement 1]*
>
> *"For the calculation set out at Point 3[Statement 3], transmission charges shall exclude:*
> *charges paid by producers for physical assets required for connection to the system or the upgrade of the connection" [Statement 2]*
>
> *"The value of the annual average transmission charges paid by producers shall be within a range of 0 to 0,5 EUR/MWh, except those applying in ..... Great Britain.... Annual average transmission charges paid by producers in ... Great Britain... shall be within a range of 0 to 0,25 EUR/MWh..." [Statement 3]*

[emphasis added]

It is common ground amongst the Workgroup members that it is necessary for GB to ensure that the average transmission charges paid by generators in GB remain within a range of €0-€2.5 (as per paragraph 3 [Statement 3] of Part B of the Regulation) or such other figure as maybe amended from time to time by the European Commission.

The question which has arisen within the Workgroup is what item(s) does or does not make up the definition of "transmission charges" and in particular which aspects, if any, of those charges should be treated as **excluded** as '*charges*' for '*connection'* to '*the system*', as set out in Statement 2.

We believe there are clear reasons to **include** (rather than **exclude**) all assets subject to local TNUoS charges within the calculation of the annual average transmission charges when calculating the GB position with respect to the €2.5 limit.

These reasons include:-

(a) It is our contention that it is possible to determine (in the context of GB) what is (i) meant by '*connection*', including by reference to the CUSC definition[49] of it and (ii) the '*system*', by noting that Statement 2 is written to ensure the calculation set out in Statement 1 is undertaken in order to determine the range set out in Statement 3 is not exceeded. Those who drafted the Regulation must have given specific consideration to what was included in the definition of "transmission charges" within each Member State and the GB system in particular, in order to arrive at the different caps provided for each Member State.

(b) It is our contention that it cannot sensibly be concluded that Statement 2 of the Regulation has no meaning within the GB system since the Regulation would, in effect, be rendered unenforceable. On the contrary, read in the context of both Statement 1 and Statement 3, the only reasonable conclusion is that the '*system*' referred to in Statement 2 is one and the same as the '*transmission system*' in Statement 1.

(c) It is our contention that as the CUSC currently defines[50] (i) what is meant by 'Connection Charges' and (ii) that National Grid produces invoices and issues these to generators for the said 'Connection Charges' (in accordance with CUSC Section 2.14.1[51]) that it is possible today to complete the calculation required in Statement 2 by reference to said 'Connection Charges' paid by GB generators to connect to said '*system*' in GB.

(d) It is our contention that the section of the CUSC[52] which deals with "Connections" (Section 2) refers only to NETS[53] and does so on no less than 26 occasions, whilst there is (in Section 2) no reference to MITS. Therefore, it is contended that the only sensible interpretation is to view '*connection*', in a GB context, in terms of the '*system*' being the

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[49] This is shown in Appendix 1 to this response.

[50] This is shown in Appendix 1 to this response.

[51] This is shown in Appendix 1 to this response.

[52] This is shown in Appendix 1 to this response.

[53] 2.1.1 x**1**, 2.1.2 x**2**, 2.2.1 x**1**, 2.2.2 (b) x**1**, 2.2.3 x**1**, 2.2.4 x**2**, 2.3.1 x**2**, 2.3.2 x**2**, 2.4 x**1**, 2.5 x**1**, 2.7 x**1**, 2.12.1 (a) x**1**, 2.12.1 (b) x**2**, 2.12.1 (c) x**1**, 2.12.1 (d) x**1**, 2.12.2 x**1**, 2.13.7 x**1**, 2.13.11 (a) x**2**, 2.13.11 (b) (i) x**1** and 2.13.12 x**1.**

NETS (and not the MITS).

(e) Furthermore, it is our contention that the matter of where a generator connects to the '*system*' should be clear to National Grid as, for example, it was recently the subject of an opinion by the Authority in its decision letter of CAP189[54] where it was noted that:-

> *"A generator or a distribution network is generally connected to the transmission network through a substation to provide both protection and control to the transmission network. The substation assets form an electrical boundary. The CUSC (section 2.12) defines the standard boundary and sets out how ownership of the assets at the boundary is split between the connecting user and the National Electricity Transmission System (NETS) for different types of asset."*

The Authority's decision letter goes on to note that CAP189 was raised by National Grid itself (in July 2010) and that *"[t]he proposal seeks to amend the CUSC so that a user requesting a connection to the NETS through a GIS substation can elect to do so using either of two standard ownership boundaries*".

(f) It is our contention that National Grid has already set a precedent in how to undertaken the calculation in Statement 2 when it undertook that same calculation to inform the Authority's Project Transmit Technical Working Group as witnessed by its presentation[55] to that group in August 2011 and in particular slides 5, 6, 7, 9, 10 and 11 which were calculated, by National Grid, "*in accordance with the European Tarification Guidelines*"[56] .

For these reasons we strongly believe that the legal position is clear that it is appropriate for CMP 224 to be adopted such that all charges paid by producers for connection to the "local" network are **included** in the calculation of the "annual average transmission charges" for the purposes of Part B of the Regulation.

7 Do you believe that the application of an additional bandwidth to manage the risk of potential breaches of the limit set out in EC Regulation 838/2010 is appropriate?

Yes. We note the Workgroup deliberations on option (c) outlined in paragraph 4.37 and explored, in detail, in paragraphs 4.43-4.56.

In our view there is a case for a bandwidth to be adopted to ensure that GB does not breach the Regulation. This, in our view is appropriate given the inherent variability of the three elements that go into calculating the annual average transmission charges paid for by GB generators; namely:-

i) the total level of generation output;
ii) TO Allowed Revenue; and
iii) the £/€ exchange rate.

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[54] http://www.nationalgrid.com/NR/rdonlyres/7BE14FC7-7AE6-409F-82F6-1A8A117D0B8B/51173/CAP189D.pdf

[55] https://www.ofgem.gov.uk/sites/default/files/docs/2011/08/transmit-wg-postmtg4_eu-tarification-guidelines.pdf

[56] page 9 of the group's minutes 18th August 2011 https://www.ofgem.gov.uk/sites/default/files/docs/2011/09/minutes---working-group-meeting-4-%28version-1.0%29.pdf

Not having a bandwidth could lead to repeated breaching by GB of the limit (be that, as currently, €2.5 or some other higher or lower figure depending on the outcome of the ongoing ACER review and the European Commission determination). This would not be desirable, both in terms of compliance with the law but also in terms of the increase in regulatory risk that would arise if this were to happen as parties would be unsure what, if any, rectification to the GB transmission charges might be required to rectify the breach for the rest of the year in question.

8 Do you believe that the G/D split should revert back to 27:73 in charging years following the application of the proposed cap (assuming no breach of the EC Regulation)?

Yes. Assuming there is no breach of the limit set in the Regulation then, in our view, it would appear correct to return to the situation we have today.

However, that having been said, we note the compelling economic case which we set out in response to our answer to Question 2 above that harmonisation of the annual average transmission tariffs paid by generators in GB with those for neighbouring areas, such as Holland and France, is highly desirable. Given this we could see a case being made for the GB G:D split not reverting back to 27:73 if that would run counter to the creation and ongoing operation of the Internal Market in electricity.

Annex 1 CMP224 Legal aspects – extracts from relevant documents

[1] EU Regulations

COMMISSION REGULATION (EU) No 838/2010 [57]

of 23 September 2010

on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging

PART B

Guidelines for A Common Regulatory Approach to Transmission Charging

1. Annual average transmission charges paid by producers in each Member State shall be within the ranges set out in point 3.

2. Annual average transmission charges paid by producers is annual total transmission tariff charges paid by producers divided by the total measured energy injected annually by producers to the transmission system of a Member State.

For the calculation set out at Point 3, transmission charges shall exclude:

(1) charges paid by producers for physical assets required for connection to the system or the upgrade of the connection;
(2) charges paid by producers related to ancillary services;

(3) specific system loss charges paid by producers.

3. The value of the annual average transmission charges paid by producers shall be within a range of 0 to 0,5 EUR/MWh, except those applying in Denmark, Sweden, Finland, Romania Ireland, Great Britain and Northern Ireland.

The value of the annual average transmission charges paid by producers in Denmark, Sweden and Finland shall be within a range of 0 to 1,2 EUR/MWh.

Annual average transmission charges paid by producers in Ireland, Great Britain and Northern Ireland shall be within a range of 0 to 2,5 EUR/MWh, and in Romania within a range of 0 to 2,0 EUR/MWh.

4. The Agency shall monitor the appropriateness of the ranges of allowable transmission charges, taking particular account of their impact on the financing of transmission capacity needed for Member States to achieve their targets under the Directive 2009/28/EC (1) of the European Parliament and of the Council and their impact on system users in general.

[57] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:250:0005:0011:EN:PDF

5. By 1 January 2014 the Agency shall provide its opinion to the Commission as to the appropriate range or ranges of charges for the period after 1 January 2015.

DIRECTIVE 2009/72/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL[58]
of 13 July 2009
concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC

Article 2

3 'transmission' means the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply;

4 'transmission system operator' means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity;

[2] CUSC

Section 11 – Definitions[59]

"**Attributable Works**"

those components of the **Construction Works** which are required (a) to connect a **Power Station** which is to be connected at a **Connection Site** to the nearest suitable **MITS[60] Node**; or (b) in respect of an **Embedded Power Station** from the relevant **Grid Supply Point** to the nearest suitable **MITS Node** (and in any case above where the **Construction Works** include a **Transmissio**n substation that once constructed will become the **MITS Node**, the **Attributable Works** will include such **Transmission** substation) and which in relation to a particular **User** are as specified in its **Construction Agreement**;

"Connection"

a direct connection to the **National Electricity Transmission System** by a **User**;

[58] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0055:0093:EN:PDF

[59] **http://www.nationalgrid.com/NR/rdonlyres/FC669161-44F9-4FE6-90A2-1B59CC855107/62918/CUSCSection11_v155_CMP218_16_Oct_2013.pdf**

[60] References to 'MITS' and 'NETS' are highlighted here for ease of identification.

"Connection Application"

an application for a **New Connection Site** in the form or substantially in the form set out in Exhibit B to the **CUSC**;

"Connection Boundary"

shall be the boundary defined by Paragraph 14.2.6 of the Statement of the Connection Charging Methodology;

"Connection Charges"

charges made or levied or to be made or levied for the carrying out (whether before or after the date on which the **Transmission Licence** comes into force) of works and provision and installation of electrical plant, electric lines and ancillary meters in constructing entry and exit points on the **National Electricity Transmission System**, together with charges in respect of maintenance and repair of such items in so far as not otherwise recoverable as **Use of System Charges**, all as more fully described in the **Transmission Licence**, whether or not such charges are annualised, including all charges provided for in the statement of **Connection Charging Methodology** (such as **Termination Amounts** and **One-off Charges**);

"Connection Conditions" or "CC"

that portion of the **Grid Code** which is identified as the **Connection Conditions**;

"Connection Entry Capacity"

the figure specified as such for the **Connection Site** and each **Generating Units** as set out in Appendix C of the relevant **Bilateral Connection Agreement**;

"Connection Offer"

an offer or (where appropriate) the offers for a **New Connection Site** in the form or substantially in the form set out in Exhibit C including any revision or extension of such offer or offers;

"Connection Site"

each location more particularly described in the relevant **Bilateral Agreement** at which a **User's Equipment** and **Transmission Connection Assets** required to connect that **User** to the **National Electricity Transmission System** are situated. If two or more **Users** own or operate **Plant** and **Apparatus** which is connected at any particular location that location shall constitute two (or the appropriate number of) **Connection Sites**;

"Connection Site Demand Capability"

the capability of a **Connection Site** to take power to the maximum level forecast by the **User** from time to time and forming part of the **Forecast Data** supplied to **The Company** pursuant to the **Grid Code** together with such margin as **The Company** shall in its reasonable opinion consider necessary having regard to **The Company's** duties under its **Transmission Licence;**

"MITS Connection Works"

means those **Transmission Reinforcement Works** (inclusive of substation works) that are required from the **Connection Site** to connect to a **MITS Substation** (and in the context of an **Embedded Power Station**, "connection site" shall mean the associated **Grid Supply Point** identified as such in the relevant **Bilateral Agreement**);

"National Electricity Transmission System" or "NETS"

the system consisting (wholly or mainly) of high voltage electric wires owned or operated by transmission licensees within **Great Britain** and **Offshore** and used for the transmission of electricity from one **Power Station** to a sub-station or to another **Power Station** or between sub-stations or to or from any **External Interconnection** and includes any **Plant** and **Apparatus** or meters owned or operated by any transmission licensee within **Great Britain** and **Offshore** in connection with the transmission of electricity but shall not include **Remote Transmission Assets**;

"New Connection Site"

a proposed **Connection Site** in relation to which there is no **Bilateral Agreement** in force between the **CUSC Parties**;

"Site Specific Maintenance Charge"

the element of the **Connection Charges** relating to maintenance and repair calculated in accordance with the **Connection Charging Methodology**;

"Site Specific Requirements"

those requirements reasonably required by **The Company** in accordance with the **Grid Code** at the site of connection of a **Relevant Embedded Medium Power Station** or a **Relevant Embedded Small Power Station**;

"Termination Amount"

in relation to a **Connection Site**, the amount calculated in accordance with the **Charging Statements**;

"Transmission"

means, when used in conjunction with another term relating to equipment, whether defined or not, that the associated term is to be read as being part of or directly associated with the **National Electricity Transmission System** and not of or with the **User System**;

"Transmission Business"

the authorised business of **The Company** or any **Affiliate** or **Related Undertaking** in the planning, development, construction and maintenance of the **National Electricity Transmission System** (whether or not pursuant to directions of the Secretary of State made under section 34 or 35 of the **Act**) and the operation of such system for the transmission of electricity, including any business in providing connections to the **National Electricity Transmission System** but shall not include (i) any other **Separate Business** or (ii) any other business (not being a **Separate Business**) of **The Company** or any **Affiliate** or **Related Undertaking** in the provision of services to or on behalf of any one or more persons;

"Transmission Connection Assets"

the **Transmission Plant** and **Transmission Apparatus** necessary to connect the **User's Equipment** to the **National Electricity Transmission System** at any particular C**onnection Site** in respect of which **The Company** charges **Connection Charges** (if any) as listed or identified in Appendix A to the **Bilateral Connection Agreement** relating to each such **Connection Site**;

"Transmission Connection Asset Works"

in relation to a particular **User**, as defined in its **Construction Agreement**;

“Transmission Licensees Assets”

The Plant and Apparatus owned by Transmission Licensees necessary to connect the User's Equipment to the **National Electricity Transmission System** at any particular Connection Site in respect of which **The Company** charges Connection

"User's Equipment"

the **Plant** and **Apparatus** owned by a **User** (ascertained in the absence of agreement to the contrary by reference to the rules set out in Paragraph 2.12) which: (a) is connected to the **Transmission Connection Assets** forming part of the **National Electricity Transmission System** at any particular **Connection Site** to which that **User** wishes so to connect, or (b) is connected to a **Distribution System** to which that **User** wishes so to connect but excluding for the avoidance of doubt any **OTSUA**;

"User System"

any system owned or operated by a **User** comprising **Generating Units** and/or **Distribution Systems** (and/or other systems consisting (wholly or mainly) of electric lines which are owned or operated by a person other than a **Public Distribution System Operator** and **Plant** and/or **Apparatus** connecting **Generating Units**, **Distribution Systems** (and/or other systems consisting wholly or mainly of electric lines which are owned or operated by a person other than a **Public Distribution System Operator** or **Non-Embedded Customers** to the **National Electricity Transmission System** or (except in the case of **Non-**

Embedded Customers) to the relevant other **User System**, as the case may be, including any **Remote Transmission Assets** operated by such **User** or other person and any **Plant** and/or **Apparatus** and meters owned or operated by such **User** or other person in connection with the distribution of electricity but does not include any part of the **National Electricity Transmission System**;

Section 14 – Charging Methodologies[61]

Connection/Use of System Boundary

14.2.4 The first step in setting charges is to define the boundary between connection assets and transmission system infrastructure assets.

14.2.5 In general, connection assets are defined as those assets solely required to connect an individual User to the National Electricity Transmission System, which are not and would not normally be used by any other connected party (i.e. "single user assets").

For the purposes of this Statement, all connection assets at a given location shall together form a connection site.

14.2.6 Connection assets are defined as all those single user assets which:

a) for Double Busbar type connections, are those single user assets connecting the User's assets and the first transmission licensee owned substation, up to and including the Double Busbar Bay;

b) for teed or mesh connections, are those single user assets from the User's assets up to, but not including, the HV disconnector or the equivalent point of isolation;

c) for cable and overhead lines at a transmission voltage, are those single user connection circuits connected at a transmission voltage equal to or less than 2km in length that are not potentially shareable.

14.2.7 Shared assets at a banked connection arrangement will not normally be classed as connection assets except where both legs of the banking are single user assets under the same Bilateral Connection Agreement.

14.2.8 Where customer choice influences the application of standard rules to the connection boundary, affected assets will be classed as connection assets. For example, in England & Wales The Company does not normally own busbars below 275kV, where The Company and the customer agree that The Company will own the busbars at a low voltage substation, the assets at that substation will be classed as connection assets and will not automatically be transferred into infrastructure.

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[61] http://www.nationalgrid.com/NR/rdonlyres/8FFA9408-9DC7-44C2-AF68-93E684A176D8/59890/CUSC_Section_14_v15combined_CMP203_1April2013.pdf

14.2.9 The design of some connection sites may not be compatible with the basic boundary definitions in 14.2.6 above. In these instances, a connection boundary consistent with the principles described above will be applied.

Section 2 – Connection[62]

2.12 PRINCIPLES OF OWNERSHIP

2.12.1 Subject to the **Transfer Scheme** or any contrary agreement in any **Bilateral Agreement** or any other agreement the division of ownership of **Plant** and **Apparatus** shall be at the electrical boundary, such boundary to be determined in accordance with the following principles:

In the case of air insulated switchgear:

(a) in relation to **Plant** and **Apparatus** located between the **National Electricity Transmission System** and a **Power Station**, the electrical boundary is at the busbar clamp on the busbar side of the busbar isolators on
Generators and **Power Station** transformer circuits;

(b) save as specified in Paragraph 2.12.1(c) below, in relation to **Plant** and **Apparatus** located between the **National Electricity Transmission System** and a **Distribution System**, the electrical boundary is at the busbar clamp on the busbar side of the **Distribution System** voltage busbar selector isolator(s) of the **National Electricity Transmission System** circuit or if
a conventional busbar does not exist, an equivalent isolator. If no isolator exists an agreed bolted connection at or adjacent to the tee point shall be
deemed to be an isolator for these purposes;

(c) in relation to **Transmission Plant** and **Transmission Apparatus** located between the **National Electricity Transmission System** and a **Distribution System** but designed for a voltage of 132KV or below in England and Wales and below 132kV in Scotland, the electrical boundary is at the busbar clamp on the busbar side of the busbar selector isolator on the **Distribution System**
circuit or, if a conventional busbar does not exist, an equivalent isolator. If no isolator exists, an agreed bolted connection at or adjacent to the tee point shall be deemed to be an isolator for these purposes;

(d) in relation to **Plant** and **Apparatus** located between the **National Electricity Transmission System** and the system of a **Non-Embedded Customer**, the electrical boundary is at the clamp on the circuit breaker side of the cable disconnections at the **Non-Embedded Customer's** sub-station; and In the case of metal enclosed switchgear, that is not **Gas Insulated Switchgear:**

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[62] http://www.nationalgrid.com/NR/rdonlyres/D1B64625-6919-4001-A90A-62AAEAF1C56F/62916/CUSC_Section_2_CMP218_V112_16Oct_2013.pdf

(e) the electrical boundary will be the equivalent of those specified in this Paragraph 2.12.1 save that for rack out switchgear, the electrical boundary will be at the busbar shutters.

In the case of **Gas Insulated Switchgear**:

(f) the electrical boundary will be the equivalent of those specified in this Paragraph 2.12.1 save that the electrical boundary will be at:

(i) the first component on the outside of the **Gas Insulated Switchgear Circuit Breaker** gas zone on the **User's** side of that gas zone or, where a circuit disconnector is fitted, the first component on the outside of the **Gas Insulated Switchgear** circuit disconnector gas zone, on the **User's** side of that gas zone; or

(ii) the first gas zone separator on the busbar side of the busbar selection devices, and in such case the busbar selection devices' gas zone
may contain a single section of the busbar as agreed between **The Company** and the **User** and a diagram showing these electrical boundaries is attached
at Schedule 1 to this Section 2.

2.12.2 If a **User** wants to use transformers of specialised design for unusual load characteristics at the electrical boundary, these shall not be owned by the **User** and shall form part of the **National Electricity Transmission System** but the **User** shall pay **The Company** for the proper and reasonable additional cost thereof as identified by **The Company** in the **Offer** covering such transformers. In this Paragraph 2.12.2 "unusual load characteristics" means loads which have characteristics which are significantly different from those of the normal range of domestic, commercial and industrial loads (including loads which vary considerably in duration or magnitude).

2.12.3 For the avoidance of doubt nothing in this Paragraph 2.12 shall
effect any transfer of ownership in any **Plant** or **Apparatus**.

2.14 CONNECTION CHARGES

2.14.1 Introduction

Subject to the provisions of the **CUSC**, and the relevant **Bilateral Connection Agreement,** each **User** shall, as between **The Company** and that **User**, with effect from the relevant date set out in the relevant **Bilateral Connection**
Agreement, be liable to pay to **The Company** the **Connection Charges** calculated and applied in accordance with the **Statement of the Connection Charging Methodology** and as set out in the relevant **Bilateral Connection Agreement**. The **User** shall make those payments in accordance with the
provisions of the **CUSC**. **The Company** shall apply and calculate the **Connection Charges** in accordance with the **Statement of the Connection Charging Methodology**.

2.14.3 (b)

The Company shall be entitled to invoice each **User** for **Connection Charges** payable in accordance with the **CUSC** in respect of any **Plant** and **Apparatus** installed as part of the **Transmission Connection Asset Works**
on the basis set out in the **Statement of the Connection Charging Methodology**, until the final cost of carrying out the said **Transmission Connection Asset Works** shall have been determined.

(c) As soon as practicable after the **Completion Date** and in any event within one year (or such later period as **The Company** and the relevant **User** shall agree) thereof. **The Company** shall, as between **The Company** and that **User**, provide to the **User** a written statement specifying the **Connection Charges** calculated in accordance with the **Charging Statements** based on the cost of carrying out the **Transmission Connection Asset Works** (the "**Cost Statement**"). **The Company** shall be entitled to revise Appendix B to the relevant **Bilateral Connection Agreement** accordingly.

2.14.5 Connection Charges – Site Specific Maintenance Charge

(a) **The Company** shall be entitled to invoice each **User** for the indicative **Site Specific Maintenance Charge** in each **Financial Year** as set out in the **Statement of the Connection Charging Methodology**.

2.17 REPLACEMENT OF TRANSMISSION CONNECTION ASSETS

2.17.1 **The Company** will provide information to each **User** on an ongoing basis with regards to its long term intentions and any programme for the replacement of any **Transmission Connection Assets** at a **Connection Site**.

2.17.2 Where in **The Company's** reasonable opinion to enable **The Company** to comply with its statutory and licence duties and\or to enable any **Relevant Transmission Licensee** to comply with its statutory and licence duties it is necessary to replace a **Transmission Connection Asset The Company** shall give written notice of this (a "**Replacement Notice**") such notice to be given (subject to Paragraph 2.17.7) as soon as practicable.

2.17.3 Following the issue of the **Replacement Notice The Company**
shall provide an explanation of the economic and engineering reasons to asset replace and the parties shall meet as soon as practicable to consider options, programme and costs associated with the replacement.

2.17.4 **The Company** shall make an offer to the **User(s**) (subject to Paragraph 2.17.7) no earlier than 6 months after the date of the **Replacement Notice** detailing the variations it proposes to make to Appendices A and B of and any other changes required to the **Bilateral Connection Agreement** and if appropriate enclosing a **Construction Agreement** in respect of the replacement of the **Transmission Connection Assets**.

2.17.5 If after a period of 3 months from receipt of the offer or such longer period as the parties might agree the **User(s)** and **The Company** have failed to reach agreement on the offer then either party may make an application to the **Authority** under Standard Condition C9 of the **Transmission Licence** to settle any dispute about the replacement of the **Transmission Connection Assets**.

2.17.6 Subject to Paragraph 2.17.7, **The Company** shall not replace the **Transmission Connection Assets** until the offer has been accepted by the **User(s)** or until the determination of the **Authority** if an application to the **Authority** has been made.

2.17.7 **The Company** shall take all reasonable steps to avoid exercising its rights pursuant to this Paragraph but in the event that **The Company** has reasonable grounds to believe, given its licence and statutory duties or the statutory and licence duties of a **Relevant Transmission Licensee** that a **Transmission Connection Asset** should be replaced prior to or during the process outlined above then **The Company** shall consult with the **User(s)** as far as reasonably practicable and shall be entitled to replace such **Transmission Connection Asset** and shall advise the **User(s)** of this and as soon as practicable make an offer for such replacement which can be accepted or referred in accordance with Paragraph 2.17.5 above.

2.17.8 Subject to Paragraph 2.17.9 **Connection Charges** shall be payable in respect of such replaced **Transmission Connection Assets** in accordance with the **Statement of the Connection Charging Methodology** and **The Company** shall give the **User(s)** not less than 2 months prior written notice of such varied charges and specify the date upon which such charges become effective. **The Company** shall be entitled to invoice the **Connection Charges** based on an estimate of the cost and the provisions of Paragraphs 2.14.3 and 2.14.4 shall apply.

2.17.9 Where **Transmission Connection Assets** have been replaced pursuant to Paragraph 2.17.7 **The Company** shall not be entitled to vary the **Connection Charges** until the offer has been accepted or the matter has been determined by the **Authority** and until such time the **User(s)** shall continue to pay **Connection Charges** as if the **Transmission Connection Assets** had not been replaced. If the matter is determined in **The Company's** favour then **The Company** shall be entitled to issue a revised Appendices A and B and the **User(s)** shall pay to **The Company** the difference between the two amounts plus interest at **Base Rate** on a daily basis from completion of the replacement to the date of payment by the **User(s)**. if the matter is not determined in **The Company's** favour **Connection Charges** shall be payable as directed by the **Authority**.

(CUSC) EXHIBIT B[63]

THE CONNECTION AND USE OF SYSTEM CODE CONNECTION APPLICATION

Please note that certain terms used in the application form are defined in the Interpretation and Definitions (contained in Section 11 to the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold.

[63] **http://www.nationalgrid.com/NR/rdonlyres/70F60213-EC10-42C1-BB21-7F604AAB71C6/51399/CUSC_Exhb_B_V113_CAP189_30Jan12.pdf**

11 **The Company's Offer** will be based upon its standard form terms of **Connection Offer** and the **Charging Statements** issued by **The Company** under Standard Conditions C4 and C6 of the **Transmission Licence**.

Section B

1. Please identify (preferably by reference to an extract from an Ordnance Survey Map for **Onshore** locations, or with the latitude and longitude or some other corresponding equivalent for **Offshore** locations) the intended location (the "**Connection Site**") of the **Plant** and **Apparatus** (the "**User Development**") which it is desired should be connected to the **National Electricity Transmission System** and where the application is in respect of a proposed **New Connection Site** other than at an existing sub-station. Please specify the proposed location and name of the **New Connection Site** (which name should not be the same as or confusingly similar to the name of any other **Connection Site**) together with details of access to the **Connection Site** including from the nearest main road.

2. Please provide a plan or plans of the proposed **Connection Site** indicating (so far as you are now able) the position of all buildings, structures, **Plant** and **Apparatus** and of all services located on the **Connection Site**.

3. Give details of the intended legal estate in the **Connection Site** (to include leasehold and freehold interests and in the case of **Connection Sites** in Scotland legal interests and heritable or leasehold interests including servitudes or other real rights and in the case of **Connection Sites** located **Offshore** leaseholds granted by the Crown Estate) in so far as you are aware.

4. Who occupies the **Connection Site** in so far as you are aware?

5. If you believe that a new sub-station will be needed, please indicate by reference to the plan referred to in Section B question 2 above the **Applicant's** suggested location for it - giving dimensions of the area.

6. If you are prepared to make the land necessary for the said sub-station available to **The Company** or, for **Connection Sites** in Scotland or **Offshore**, make the land or **Offshore Platform** available to the **Relevant Transmission Licensee** ` please set out brief proposals for their interest in it including (if relevant) such interest and the consideration to be paid for it.

7. Is space available on the **Connection Site** for working storage and accommodation areas for **The Company** contractors or, for **Connection Sites** in Scotland, the contractors of the **Relevant Transmission Licensee**? If so, please indicate by reference to the plan referred to in Section B question 2 above the location of such areas, giving the approximate dimensions of the same.

8. For **Connection Sites** located **Onshore**, please provide details (including copies of any surveys or reports) of the physical nature of land in which you

have a legal estate or legal interest at the proposed **Connection Site** including the nature of the ground and the sub-soil.

9. Please give details and provide copies of all existing relevant planning and other consents (statutory or otherwise) relating to the **Connection Site** and the **User Development** and/or details of any pending applications for the same.

10. Is access to or use of the **Connection Site** for the purposes of installing, maintaining and operating **Plant** and **Apparatus** subject to any existing restrictions? If so, please give details.

11. If you are aware of them, identify by reference to a plan (if possible) the owners and (if different) occupiers of the land adjoining the **Connection Site**. To the extent that you have information, give brief details of the owner's and occupier's estates and/or interests in such land.

APPLICATION FOR A NEW CONNECTION

8. Do you wish to suggest an ownership boundary different from that set out in **CUSC** Paragraph 2.12?

9. Please confirm which ownership boundary at **CUSC** Paragraph 2.12.1 (f) you would want in the event that the **Transmission** substation at which the **Applicant** is to be connected is to be of a **Gas Insulated Switchgear** design:

(a) **CUSC** Paragraph 2.12.1 (f) (i) [ ]

(b) **CUSC** Paragraph 2.12.1 (f) (ii) [ ]

Please note that in the case where the ownership boundary is in accordance with **CUSC** Paragraph 2.12.1 (f) (i) restrictions on availability as described within **CUSC** Schedule 2 Exhibit 1 will apply in the event of a **GIS Asset Outage**.

10. Are you considering building any assets that would be identified as **Transmission Connection Assets**? If you indicate yes **The Company** will contact you to discuss further details.

CONNECTION APPLICATION

1. We hereby apply to connect our **Plant** and **Apparatus** to the **National Electricity Transmission System** at a **New Connection Site**. We agree to pay **The Company's** Engineering Charges on the terms specified in the **Notes** to the **Connection Application**.

[end]

CUSC Workgroup Consultation Response Proforma

CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

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 **28th July 2016** to cusc.team@nationalgrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Ryan Place at ryan.place@nationalgrid.com

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	*Mary Teuton (mteuton@vpi-i.com; 0207 312 4469)*
Company Name:	*VPI Immingham*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	For reference, the Applicable CUSC objectives are: **Use of System Charging Methodology** (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

Standard Workgroup consultation questions

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	Yes, we believe that CMP261 better facilitates the applicable CUSC objectives. Most obviously, it better delivers objective (d) - Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. There has clearly been a breach of Regulation 838/2010 in year 2015/16 with zero effort from National Grid to rectify the issue once it became apparent that the Regulation was going to be breached. This modification would rectify the breach and hence better facilitate objective (d). In addition, we also believe that the modification better delivers applicable objective (a) – better facilitation of competition. With some companies using their TNUoS as set by NGET before the charging year and other companies potentially limiting their TNUoS to €2.5/MWh, there would be a natural distortion of competition due to the different approaches.
2	**Do you support the proposed implementation approach?**	We would support option A in terms of implementation. We think it is right that generators who held TEC in 2015/16 are given an immediate rebate whereas the costs are recovered from suppliers further in the future. This is on the basis that a large amount of generation that paid TEC in 2015/16 is no longer operational so any future reconciliation would not recompense the affected parties. Given that one of these non-operational plant stated TNUoS as a key factor in their decision making, we think it right that these also be recompensed. However, given that suppliers already have contracts in place for 17/18, we think it more fair that the costs are recovered further in the future to allow for the costs to be included in tariffs as opposed to suppliers taking a hit against already agreed fixed price contracts.

Q	Question	Response
3	**Do you have any other comments?**	We do not support the argument that CMP261 creates a windfall payment for generators. Looking at thermal generators' profits over the last few years, it becomes obvious that most have been suffering from serious financial issues. One such reason for this has been the inability for generators to recover their fixed costs, including TNUoS, via the wholesale market. Given very few generators made a profit in these years, rather than be a windfall profit, any rebate would in fact be a contribution to fixed costs and reduce operating losses. It will not be known whether the plant that had closed would have made a different decision had their TNUoS been lower. However, the impact of these plants closing and subsequent impact on the costs of ancillary services, namely blackstart and SBR, would seem to far outweigh the cost of the rebate to generators.
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	No

Specific questions for CMP261

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	We are in full agreement with the Legal opinion. Despite the ex-ante approach being in place, it is clear that Regulation 838/2010 has been breached, and a material breach at that. As a result, National Grid are non-compliant with the law and we believe that immediate recompense should be made to affected parties. Furthermore, to prevent the situation happening in future years, it may be appropriate for the variables that feed into the ex-ante approach to be reassessed as to whether they are appropriate.

Q	Question	Response
6	**Is ex ante certainty preferred over ex post accuracy?**	We support the principle of ex-ante certainty over ex-post accuracy, however not at any cost. Ex-ante certainty must also be compliant with the relevant Regulations (in this case Regulation 838/2010) and therefore the error margin included in the ex-ante approach must be appropriate to ensure compliance. Whilst we support the current approach, a review of the error margin and variables, such as exchange rate should take place to ensure that it remains accurate and compliant. Variable, volatile costs are a key issue when it comes to longer term investment in generating assets so the principle of certainty, as far as is possible, is key for future investment and hence security of supply.
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	Yes, we believe a significant breach, close to 30%, has occurred which has resulted in a huge over-payment by generators and National Grid being non-compliant with EU law. Given the significance of this breach, we think it appropriate that an immediate ex-post reconciliation take place to rectify the situation.

Q	Question	Response
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	Immediately. All of the data is available to assess the size of the breach and to calculate monies owed to generators. Given that there has been a clear breach of the law and that all necessary information is available, we see no reason to delay such payments.
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	There is a trade off between payments to generators and when these costs can be recovered from suppliers and the costs associated with bearing this debt. However, given the increasing volatility of charges and the volume of unexpected short notice charges hitting market participants, we do think that recovery from suppliers should be delayed to allow the costs to be factored into future tariffs. However, given National Grid have been aware of this issue for some time and have taken no steps to rectify it, and given National Grid have a lower cost of capital than other market participants, we do not think it unreasonable for National Grid to bear the costs for a further year.
10	**Do you believe any harm has been done in the spirit of the defect identified?**	Yes, we do believe that there has been harm as a result of this defect. Most obviously is the impact on higher transmission charges on GB thermal generators compared to their competitors on the continent, many of whom do not pay transmission charges and those that do, pay considerably lower charges. The capping of GB Generation transmission charges was introduced to help mitigate this discrepancy and disadvantage. The ongoing discrepancy make it ever hard to harmonise the EU Energy market. In addition, we do not think that transmission costs can be looked at in isolation as the impacts can be felt in other areas. Arguably, with higher TNUoS being one factor of coal plant closing, the burden of costs of balancing the system (BSUoS costs) is borne by fewer generators so short run marginal costs are higher. This would impact the cost of GB generation versus imported electricity from the BritNed and IFA interconnectors, hence impacting the merit order and volume of generation from GB plant.

Q	Question	Response
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	We are not in a position to comment on our own or other generators' approach to contracting in the market or setting prices. However, given that this issue has been flagged to National Grid and a corresponding modification raised, it would not be unreasonable to assume that some parties actively monitor TNUoS against the €2.5/MWh limit.

CUSC Workgroup Consultation Response Proforma

CMP261 'Ensuring the TNUoS paid by Generators in GB in Charging Year 2015/16 is in compliance with the €2.5/MWh annual average limit set in EU Regulation 838/2010 Part B (3)'

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 **28th July 2016** to cusc.team@nationalgrid.com Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Ryan Place at ryan.place@nationalgrid.com

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

Respondent:	*James Anderson* *james.anderson@scottishpower.com*
Company Name:	*ScottishPower Energy Management*
Please express your views regarding the Workgroup Consultation, including rationale. **(Please include any issues, suggestions or queries)**	For reference, the Applicable CUSC objectives are: **Use of System Charging Methodology** (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard 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.

Standard Workgroup consultation questions

Q	Question	Response
1	**Do you believe that CMP261 Original Proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives? Please give your reasoning.**	We believe that the Original Proposal and Option A overall better meet the Applicable CUSC Charging Objectives than the baseline principally by ensuring compliance with Electricity Regulation 838/2010 and ensuring that the average charge paid by GB generators does not exceed €2.50/MWh. Options B, C, D and E do not better meet the Applicable CUSC Charging Objectives as they describe a reconciliation process which makes reconciliation payments to generators which were not impacted by the original "overcharge" (i.e. they have increased TEC between charging years) and fails to make payments to others affected by the "overcharge" (i.e. they have reduced TEC between charging years). Such an arrangement would represent an unjustified redistribution.
2	**Do you support the proposed implementation approach?**	We support the implementation approaches outlined in Section 5 for the Original Proposal and Option A. As outlined above we do not support implementation of Options B, C, D & E.
3	**Do you have any other comments?**	No
4	**Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?**	No

Specific questions for CMP261

Q	Question	Response

Q	Question	Response
5	**Do you have any comments on the legal opinion?**	We agree with the legal opinion in Annex 4 that; - the average generation charge has materially exceeded the G Charge Guidelines limit (Key Conclusion 4) - that taking the average G Charge above €2.50/MWh and exceeding the Guidelines Regulation limit represents a breach of the technical requirements of the Guidelines Regulation (Key Conclusion 3) - that reconciliation of G Charges for the 2015/16 charging year would be prudent (paragraph 9 (b)) - that the breach in respect of the 2015/16 charging year does not automatically mean the methodology for future charging years requires amending
6	**Is ex ante certainty preferred over ex post accuracy?**	There will always be a trade-off between the certainty provided by ex-ante charge-setting and ex-post accuracy and the current charging methodology allows for ex-post reconciliation of demand charges and charges payable to generators in negative charging zones. However, CMP261 is concerned with remedying a material breach of Regulation 838/2010 which has exceeded any reasonable expectations of accuracy.
7	**Do you believe a breach of the Regulation has occurred for Charging Year 2015/16? If so do you believe that an ex post reconciliation should be carried out?**	As outline in our response to question 5 we believe that there has been a material breach of Regulation 838/2010 and that an ex-post reconciliation should be carried out.

Q	Question	Response
8	**If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?**	For the parties which have been adversely affected by the breach, namely generators paying TNUoS charges during charging year 2015/16, the reconciliation should be completed as soon as reasonably practicable. Any unwarranted delay only continues the breach, prolongs the harm to generators and increases the likelihood of enforcement action. For demand TNUoS payees who will be required to pay addition sums, sufficient time should be allowed to enable them to factor the increased cost into their forward tariff offerings and therefore we would recommend that Option A be adopted.
9	**Are there trade-offs between speed of reconciliation and the most appropriate process?**	We do not foresee the need for any trade-off between the speed of reconciliation and the most appropriate process. National Grid now has access to all the data required to perform the calculation of how much on average generators paid in charging year 2015/16 (TNUoS costs, generation output, exchange rate) and so there should be no compromise on accuracy. Reconciliation payments should therefore be made to generators without undue delay. Subsequent recovery of the under-recovered sums from demand should then follow according to the option approved by the Authority.
10	**Do you believe any harm has been done in the spirit of the defect identified?**	Yes. The intent of regulation 838/2010 is to promote a common approach to transmission charging with a view to supporting the internal energy market through competition. Breach of Regulation 838/2010 has resulted in GB generators suffering an undue burden of transmission charges relative to other European generators and is detrimental to competition.
11	**Do you believe that Generators contracting to sell output or set market prices do so at a level that assumes the €2.50MWh CAP will be complied with regardless of the tariffs set by National Grid? If you have any supporting information please provide this directly to Ofgem directly.**	In examining the costs to be recovered through electricity contracts, GB generators will consider, amongst other factors, the anticipated level of TNUoS tariffs. Each generator has access to the TNUoS tariff model and is able to use its own assumptions to determine its own view of TNUoS tariffs not only for the current charging year but for future charging years for which tariffs have not yet been set. One of the key assumptions has been that future generation tariffs will be constrained by the cap contained within Regulation 838/2010. Therefore, to the extent that generators contract forward, their assumption is that the €2.50/MWh cap will be complied with both in years for which TNUoS tariffs have not formally been published and in the current charging year.

ADDLESHAW GODDARD

Annex 5 – Legal Response

Legal Analysis of CUSC Modification Proposal 261 in the context of Regulation (EU) 838/2010 Compliance

In this note:

- the term "**Current Approach**" refers to the way in which Transmission Network Use of System (**TNUoS**) charges are currently calculated for any financial year (1 April to 31 March) pursuant to Part 2 of Section 14 of the CUSC;
- the term "**SSE Proposal"** refers to SSE plc's (**SSE**'s) proposal to amend the Current Approach (as set out in CMP261)
- the term **"BG Proposal"** refers to British Gas Trading Limited's (**British Gas**'s) proposal to amend the Current Approach (as set out in CMP251); and
- the term **"G Charges"** refers to TNUoS Charges recovered from generation (as opposed to demand).

The Current Approach, the BG Proposal and the calculation of G Charges pursuant to the CUSC are outlined in more detail in the Appendix to our note of 23 November 2015, which is reproduced and expanded in this note to include developments since.

Other defined terms used in this note adopt the same definitions as used in our note of 23 November 2015 or are defined (**in bold in brackets**) within the body of this note.

Introduction

This note supplements our note of the 23 November 2015 (**Previous AG Note**) and has been prepared in order to set out our preliminary legal analysis in respect of your initial legal queries following SSE's Connection and Use of System Code (**CUSC**) modification 261 (**CMP261**). The Previous AG Note set out the Guidelines Regulation, the context for it, and assessed the extent to which the Current Approach or BG Proposal better facilitated compliance with the Guidelines Regulation and, from a legal perspective, the pros and cons of each approach.

The context for CMP261 is that it has become apparent that the generation output and €/£ exchange rate forecasts which underpin the Current Approach are inaccurate in respect of the 2015/16 TNUoS charging year and that, consequently, if they are unmodified the resulting G Charges actually paid are likely to significantly exceed the cap set out in the Guidelines Regulation. The SSE Proposal therefore seeks a mid year tariff modification[78] to enable a reconciliation payment to be made in Spring 2016 to take account of G

[78] As provided for pursuant to paragraph 14.14.10 of the CUSC

Charge overpayments made in the 2015/16 TNUoS charging year. In that context, you have asked us to address the following questions:

(i) If under the current methodology (which uses an ex-ante approach with error margin and no reconciliation) GB's average Generator charge exceeds €2.5/MWh due to forecast error for the 2015/16 Charging Year, is it compliant with the Guidelines Regulation (ie no action is required) and, if not, what action is required:

(a) reconciliation for the 2015/16 charging year;

(b) changes to the methodology to apply for future charging years?

(ii) If changes are required for future charging years, should they ensure we do not exceed €2.5/MWh, eg by introducing ex-post reconciliation, or would changes to reduce the risk of exceeding €2.5/MWh, eg a larger error margin, be sufficient?

(iii) If a G Charge reconciliation is required for 2015/16, how quickly should this happen?

(iv) Should the charges for Generation only Spurs be included in the calculation of the average G Charge (see CMP224 Report and Responses)?

(v) Would the use of the exchange rate at the time the Regulation was set be reasonable?

Key Conclusions

1. Our view remains that both ex-ante and ex-post reconciliation approaches can facilitate G Charges that are consistently compliant with the G Charge Guidelines.

- **The position for the 2015/16 charging year**

2. Where a forecast proves (despite the Error Margin) to have been inaccurate for a given year, and therefore takes the average G Charge above the €2.5/MWh limit, this exceeding of the Guidelines Regulation limit represents a breach of the technical requirements of the Guidelines Regulation.

3. In circumstances where the €2.5/MWh limit is *only exceeded to a minor extent* for a given charging year, we can see robust arguments that the approach still falls within the purpose of the Guidelines Regulation and therefore the legal position does not necessitate a backward looking adjustment to G Charges[79].

4. However, in circumstances where the outturn figures for a charging year demonstrate average €/MWh G Charges which are *materially above* the G Charge Guidelines limit (as is the case for the 2015/16 charging year), on balance we would suggest that the G Charges paid for the relevant year should be adjusted on a backward looking basis in order to bring them materially in line with the €2.5/MWh limit and in order to demonstrate compliance with the Guidelines Regulation.

5. The G Charges Guidelines do not mandate how such a reconciliation should be performed, and therefore the way in which (and the speed at which) such a reconciliation is performed under the CUSC[80] is a matter for wider policy and financial consideration, as opposed to the G Charge Guidelines mandating an approach. We would of course be happy to consider any specific suggestions from a legal perspective, if this would be helpful.

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[79] As set out in the Previous AG Note (and as discussed at length during the CMP 224 process), the use of ex-post adjustment to G Charges introduces uncertainty, which in the round may be detrimental to cross border electricity trading (which is the stated aim of the Network Access Regulation). Therefore we can see that this point in particular would weigh against such an adjustment in the context of a minor incursion of the €2.5/MWh. No doubt there would be other policy and implementation considerations which would be relevant to the Working Group's decision on whether or not to reconcile in such a scenario.

[80] For example whether through the CUSC provisions at paragraph 14.14.10, an amendment to the ex-ante formula at paragraph 14.4.5 such that it factors in overpaid G Charges for the previous charging year, or through some other mechanism or amendment.

- **The position regarding the use of the ex-ante approach for future charging years**

6. If it is reasonable to conclude that:

    a. the issues in 2015/16 have arisen from a unique set of circumstances (rather than a fundamental deficiency in the approach to forecasting generation output and €/£ exchange rates, in combination with the use of the Error Margin); and

    b. the Current Approach, in the round, continues to represent a reasonable and good faith method of forecasting the relevant outturn figures and thereby complying with the €2.5/MWh limit, we can see robust legal arguments for maintaining the current ex-ante approach going forward.

7. Given that the forecasting in respect of 2015/16 has been sufficiently far out (despite the use of the Error Margin) to result in the €2.5/MWh limit being materially exceeded, this may be indicative of the current approach to forecasting (or its application), in combination with the current Error Margin approach, requiring improvement (or in extremis fundamentally not being a reasonable approach to rely upon for providing robust outturn figures). This, however, is a technical question rather than a legal one.

8. In circumstances, as is the case in GB, where a tariff cannot be set up on an ex-ante basis with reasonable certainty upfront that the outturn will be compliant, industry participants, including Generators, suppliers and National Grid will need to allocate the risks of that between them. However, our view is that there are no clear legal drivers that determine how to do this. Rather it is a question for the Working Group as to how best to meet the CUSC Objectives overall.

Question (i):

If under the current methodology (which uses an ex-ante approach with error margin and no reconciliation) GB's average Generator charge exceeds €2.5/MWh due to forecast error for the 2015/16 Charging Year, is it compliant with the Guidelines Regulation (ie no action is required) and, if not, what action is required:

(a) reconciliation for the 2015/16 charging year;

(b) changes to the methodology to apply for future charging years?

9. In short:

    a. there is a strong argument that a material breach of the €2.5/MWh G Charges limit in respect of the 2015/16 charging year equates to non compliance with the Guidelines Regulation;

    b. as a result, we are of the view that reconciliation of G Charges for the 2015/16 charging year would be prudent;

    c. we are not of the view that the breach in respect of the 2015/16 charging year automatically means the methodology for future charging years requires amending.

    All of these points are discussed in more detail below.

- **Should there be reconciliation for the 2015/16 charging year? (Question (i)(a)):**

10. In circumstances where the outturn G Charge level for a charging year has materially exceeded the G Charges limitation in the Guidelines Regulation, we are of the view that the G Charge level for the relevant year should be reconciled on a backward looking basis. Given the wider financial and policy considerations, whether this reconciliation is by way of an amendment to the ex-ante calculations in paragraph 14.14.5[81] of the CUSC, the broad tariff update provision included at paragraph 14.14.10 of the

[81] We would note that the Error Margin (set out in definition "y" in paragraph 14.1.4.5 of the CUSC) is stated as being "based on previous years [forecasting] error […]". We understand the way in which the Error

CUSC, or through mechanisms available elsewhere in the CUSC is a question more suited to consideration by the Working Group rather than in the first instance being driven by legal tramlines.

- **Should there be changes to the methodology to apply for future charging years? (Question (i)(b)):**

11. Our understanding of the Current Approach's ex-ante formula (as set out at paragraph 14.14.5(v) of the CUSC) is that it can be characterised as aiming to mitigate the inherent risks of an ex-ante approach through (i) using robust forecasts, and (ii) using an error margin which adjusts the €2.5/MWh cap, in order to reduce the risk of a breach of the G Charge Guidelines' cap due to erroneous forecasting.

12. In our view, provided that for future charging years the ex-ante formula and the way in which the calculations are implemented continues to represent (at the time the calculation is performed) a reasonable and good faith mechanism for securing (ex-ante) compliance with the Guidelines Regulation there is a robust argument for continuing to use the Current Approach for future charging years.

13. In respect of the 2015/16 charging year, we understand the degree of error is a result of an unusual combination of factors[82]. If, however, the Current Approach proved to regularly result in G Charges that exceeded the permitted range, for example because it was clear that in ordinary circumstances the forecasting process combined with the Error Margin was not robust, then it may be right to say that a reconciliation approach whether based on the BG Proposal or SSE Proposal is better fitted to ensuring compliance with the Guidelines Regulation. However, on the basis of a single year's outturn, it is not possible to say this.

14. In circumstances, as is the case in the GB, where a tariff cannot be set up front with reasonable confidence that the outturn will ultimately be compliant with the G Charge Guidelines, industry participants, including Generators, suppliers and National Grid will need to allocate the risks of that between them. However, our view is that there are no clear legal drivers that determine how to do this. Rather it is a question for the Working Group as to how best to meet the CUSC Objectives overall.

15. Our conclusion (as discussed in the Previous AG Note) that the ex ante approach is inherently capable of complying with the Guidelines Regulation is driven by a number of factors:

    a. The Guidelines Regulation itself does not set any timetable or mechanism for how and when charges should comply. As GB G Charges are set on a £/KWh basis and the Guidelines Regulation sets the permitted range of G Charges on an energy basis and in euro (€/MWhs) at the time of tariff setting, it will never be possible to be know that the outturn will fall within the permitted range and the CUSC will always need to conduct the conversion and check that average outturn over the year proves accurate. The issue is therefore not so much whether charges are compliant at a particular point in time, but when and how they are adjusted to secure compliance.

    b. As noted in our previous advice, the European Court of Justice takes a *purposive* approach to the interpretation of EU law (an approach which has in turn been adopted by the Courts of England and Wales when they consider compliance with EU law). The result of this is that the courts will look to the broader purpose and objectives of EU legislation in interpreting the meaning of the specific provisions. In particular, the recitals setting out the objectives of the Guidelines Regulation have weight and are relevant to interpreting the requirements of the G Charge Guidelines as a whole.

Margin is calculated cannot reasonably be characterised as having the effect of introducing a form of reconciliation in respect of a previous charging year through its adjustment of the coming year's G Charges; and instead should be characterised purely as a mechanism to assist with the Error Margin being appropriate for the coming charging year. It may be, however, that this calculation could be developed such that it does introduce a form of reconciliation into the ex-ante calculations. However, this is of course ultimately a financial point rather than a legal one.

[82] We understand unexpected weather conditions, increases in embedded generation and mis-forecasting of the exchange rate, because of volatility in the euro, have had a particular impact.

c. The upfront certainty on G Charges and demand side TNUoS charges afforded by an ex-ante approach arguably better encourages cross-border electricity trading than an ex-post approach. While an ex-post approach guarantees the reconciliation of annual average G Charges where they exceed the G Charge Guidelines, given the overall aim of the Network Access Regulation is explicitly stated to be to encourage the cross border trading of electricity this provides argument for the Current Approach.

d. The use of the risk margin for forecasting error (at paragraph 14.14.5(v) of the CUSC) (**Error Margin**), and the careful weighing up of the implementation options at the time the original CUSC modification was made, demonstrate a clear desire on the part of Ofgem and NGET to implement the intent of the G Charge Guidelines and provides sound reason for avoiding an ex-post approach on grounds of the uncertainty it would create. Again, this gives robust legal argument for defending the Current Approach, even where, on a particular occasion, the Error Margin is insufficient to prevent the average charge, at the end of a given year, from exceeding the permitted range.

Question (ii): If changes are required for future charging years, should they ensure we do not exceed €2.5/MWh, eg by introducing ex-post reconciliation, or would changes to reduce the risk of exceeding €2.5/MWh, eg a larger error margin, be sufficient?

16. As set out above, our view is that the current position does not automatically mean that the current ex ante methodology as set out in the CUSC requires amendment for future years. As discussed in the Previous AG Note, we do not view the Guidelines Regulation as mandating either an ex-ante or ex-post approach.

17. Looking to future years, the wider pros and cons in relation to an ex-post reconciliation versus an ex-ante approach continue to be key in any consideration of a move to ex-post (as was the case at the time of CMP224). Similarly, changes to the Current Approach while maintaining a wholly ex-ante methodology (eg through an increase in the Error Margin) should be considered in the light of whether the Current Approach represents a reasonable and robust approach to securing Guidelines Regulation compliant G Charges, or whether the relevant changes are appropriate to meet this threshold.

Question (iii): If Generator charge reconciliation is required for 2015/16, how quickly should this happen?

18. The G Charge Guidelines do not mandate any timescale for such a reconciliation There will of course be wider advantages and disadvantages of each approach, including the balance of risk between industry participants and how best to achieve the CUSC Objectives, which the Working Group will no doubt consider.

Question (iv): should the charges for Generation only Spurs be included in the calculation of the average G Charge (see CMP224 Report and Responses))?

19. As was concluded during the CMP224, we would agree with the view that it is a reasonable interpretation of the Guidelines Regulation for TNUoS in respect of generation only spurs to be included within the TNUoS charges subject to the Guidelines Regulation G Charge limits (as implemented under the CUSC).

20. We say this on the basis of the wording at Part B of the Annex to the Guidelines Regulation, which refers to the Guidelines Regulation's G Charge limits applying to "total transmission tariff charges" and taking into account the exclusions (including in respect of "charges paid by produces for physical assets required for connection to the system or the upgrade of the connection") set out at paragraph 2 of the same Part B. While these terms are not given specific definitions within the Guidelines Regulation, given that generation only spurs are treated as part of the transmission system in GB and TNUoS charges include charges for the use of such spurs, we agree with the conclusions reached in respect of the CMP224 that it is reasonable that such spurs should be included within the average G charge

calculation. In contrast, it is not clear on what basis the exclusion of "charges paid by produces for physical assets required for connection to the system" justifies the exclusion of TNUoS charges (as opposed to connection charges) in respect of generation only spurs, and therefore the justification for such a specific carve-out appears lacking.

Question (v): Would the use of the exchange rate at the time the Guidelines Regulation was set in 2010 be reasonable?

21. In the context of ex-ante G Charge calculations for future years, we would note that paragraph 14.14.6(v) of the CUSC refers to the forecast exchange rate calculation being calculated on the basis of "OBR Spring Forecast €/£ Exchange Rate in charging year n-1". Under the current drafting of the CUSC this would therefore be the appropriate currency forecasting basis to use for ex-ante G Charge calculations.

22. In the context of a a reconciliation of G Charges (in the context where a reconciliation is deemed appropriate) the Guidelines Regulation does not mandate a specific approach on exchange rates. However, we would suggest that a robust and reasonable approach would be to use average actual exchange rates during the period of the 2015/16 charging year.

23. By way of example, the EU Merger Regulation 139/2004/EC sets mandatory thresholds for notification in euro and the Commission's Consolidated Jurisdictional Notice made under that Regulation states that the annual turnover should be converted at the average rate for the 12 months concerned.[83] We believe that the same approach to currency conversion would be expected in this context, as it would be more consistent with the purpose of the Guidelines Regulation to use an exchange rate for the relevant year, which better represents the economic reality in that year.

Appendix

Background

The Network Access Regulation notes in its preamble that "at present, there are obstacles to the sale of electricity on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State, and isolated markets persist". While much of the Network Access Regulation specifically concerns itself with appropriately compensating national transmission system operators for hosting cross-border flows of electricity, the Network Access Regulation also empowers the European Commission (**Commission**) to adopt Guidelines which "determine appropriate rules leading to progressive harmonisation of the underlying principles for the setting of charges applied to producers and consumers (load) under national tariff systems […]".

Pursuant to this, the Guidelines Regulation was enacted by the European Commission on 23 September 2010. This states in its preamble that "Variations in charges faced by producers of electricity for access to the transmission system should not undermine the internal market. For this reason average charges for access to the network in Member States should be kept within a range which helps to ensure that the benefits of harmonisation are realised." Under Article 2, and Part B of the Annex, the Guidelines Regulation sets out guidelines on the level of transmission charges which each Member State may permit to be levied on electricity Generators.

In the case of Great Britain, these guidelines state that annual total transmission charges paid by Generators divided by the total measured energy injected annually by Generators onto Great Britain's transmission system ("annual average transmission charges") shall be within a range of 0 to 2.5 Euros/MWh (**G Charge Guidelines**). (The Guidelines Regulation provides for the Agency for the Cooperation of Energy Regulators (**ACER**) to, by 1 January 2014, provide an opinion to the Commission on the appropriate range/ranges of these charges for the period after 1 January 2015. This opinion was provided by ACER on 15 April 2014 – the Commission has not yet responded.)

[83] Jurisdictional Notice, paragraph 204.

While the range of transmission charges are referred to as "guidelines", the Network Access Regulation requires that Member States lay down rules on effective, proportionate and dissuasive penalties for infringements of the provisions of the Network Access Regulation (Article 22).

Under Article 19 of the Network Access Regulation, Ofgem (in the context of Great Britain) is required to ensure compliance with the G Charge Guidelines. As a result, the Electricity and Gas (Internal Markets) Regulation 2011 amended the Electricity Act 1989 (**EA89**) such that Ofgem is empowered to enforce compliance (including by way of penalties) by National Grid Electricity Transmission PLC (**NGET**) with the G Charge Guidelines (Sections 25 – 27F of the EA89).

As a result of the need to implement the G Charge Guidelines, NGET raised CUSC Modification Proposal 224 in September 2013. Following a consultation, this proposal was accepted in its original form by Ofgem on 8 October 2014 and implemented as a modification to the CUSC on 22 October 2014.

Prior to the consultation the relevant provisions of the CUSC operated on the following basis (much of this remains unchanged by the modification):

- Part 2 Section 14 of the CUSC sets out the basis upon which Transmission Network Use of System charges (**TNUoS**) are calculated for any financial year (1 April to 31 March). This takes as its starting point NGET's Maximum Allowed Revenue (as determined under Ofgem's price control processes in conjunction with NGET's Transmission Licence) for the relevant financial year. (By way of example, for the financial year 1 April 2014 to 31 March 2015 this Maximum Allowed Revenue was set at £2,477 million.) This Maximum Allowed Revenue takes into account under or over recovery in a previous year.

- This Maximum Allowed Revenue was then split between Generators and demand in a fixed proportion of generation at 27% and demand at 73%. (Applied to the example, this gives an aggregate total of £669m to be recovered from generation (**G Charge**) and £1808m to be recovered from demand.)

- The TNUoS charges paid by each Generator are then calculated on a £/kW basis. This is achieved through firstly calculating location specific TNUoS charges, based upon marginal costs of investment in the transmission system as the result of increased generation in a relevant area. This, for example, might produce a charge of £25/kW for a Generator located in North Scotland, with additional locational charges also applying for specific local circuits (for example, Hartlepool at £0.53/kW), specific types of local substation, and specific areas of offshore generation. Under the CUSC, the forecast aggregate level of these locational charges is then subtracted from the total G Charge to leave a "residual" component of the G Charge. For example, from the £669m G Charge referred to above, £326m might be taken by the aggregate locational G Charges.

- This scenario would leave a total of £343m residual G Charges to be levied on Generators in the worked example. This residual amount is simply spread across the total generation capacity (based upon generating stations' Transmission Entry Capacity) to give a consistent £/kW payment for all generation capacity. So, to complete the example, the £343m residual amount would be divided by aggregate total capacity (for example, 71.5GWs) which would produce a payment of £4.81/kW for each Generator in relation to the residual charge element of the G Charge.

- In this way, the aggregate annual TNUoS Charges were split between generation and demand on a 27%/73% basis.

Following the CUSC modification, the above approach has remained the same except that the 27%/73% split between generation and demand has been amended (see paragraph 14.14.5(v) of the CUSC) (**Current Approach**) such that the G Charge is set at the *lower of:*

- 27%; or

- the percentage achieved from:

- taking the Guidelines Regulation €2.5/MWh maximum, amending this based on a risk margin for forecasting error (**Error Margin**), and multiplying this by forecast GB generation output for the relevant year (calculated two months ahead of the time) to give a total €x figure;

- and taking this €x figure as a proportion of forecast transmission operator maximum allowed revenues (converted from pound Sterling into Euros based on forecast exchange rates, in order to ensure consistency of units),

(**Forecasting Equation**)

By way of example, for financial year 15/16 this has led to the Generator/demand split being set at 23.2%/76.8% rather than at the 27%/73% level.

The Error Margin is set each year by NGET based upon the level of historical error in forecast generation output and forecast transmission operator maximum allowed revenues. In its original consultation and decision on the CUSC modification, Ofgem confirm that this Error Margin is included to mitigate the risk of forecast errors causing the actual outturn average G Charges level to exceed the Guidelines Regulation €2.5/MWh maximum.

Fundamentally, this calculation is needed in the context of GB G Charges because GB G Charges are charged on a £/kW basis (power based charges) rather than on a £/kWh basis (energy based charges). Given the Guidelines Regulation sets the permitted range of G Charges on an energy basis (€/MWhs), the CUSC will always need (whether the check against the Guidelines Regulation permitted range of G Charges is conducted on an ex-ante or ex-post basis) to conduct this conversion from power to energy.

British Gas Trading Limited (**British Gas**), in its capacity as a CUSC party, made a CUSC modification proposal on 19 August 2015 (**BG Proposal**). This modification proposal suggests that the Forecasting Equation is carried out without the use of the Error Margin and (instead of relying on the Error Margin to allow for forecasting error on an ex-ante basis) an ex-post reconciliation is conducted to establish whether the Guidelines Regulation cap on G Charges has been exceeded or alternatively whether the G Charges proportion can be increased (up to a maximum of 27%) without exceeding the Guidelines Regulation cap. British Gas suggest any reconciliation would be paid by way of an adjustment to the subsequent year's G Charge/demand side charge levels. That proposal remains under consideration. As part of its work, the CMP251 Working Group Consultation (dated 29 February 2016) looked at 3 reconciliation options, including Option 1, an ex-post reconciliation in Spring 2016 whereby each Generator would receive a credit for overpayment over the charging year, with recovery from suppliers over the following charging year..

SSE, also in its capacity as a CUSC party made a further CUSC modification proposal on 8 March 2016 (**SSE Proposal**). This proposal observes that for a number of reasons, the forecasts which underpin the Current Approach to generation transmission charges are proving inaccurate and if not corrected, the actual outturn average G Charges level are currently likely to substantially exceed the permitted maximum charge of €2.5/MWh for the charging year 2015/16. SSE are therefore proposing a mid-year tariff change, to achieve an ex-post reconciliation for the current charging year, seeking to apply "Option 1" of the methodologies considered in the CMP251 Working Group Consultation i.e. reconciliation payments to Generators in Spring 2016 and recovery of such payments from suppliers during the charging year 2017/16.

Summary of EU Regulation 838/2010 Interpretations

Exceedance

		Exchange Rate Interpretation					
		Risk Excluded Forecast data used		Risk Included Actual data used			
Generation Output Interpretaion	Using Actual Data	Outturn €/MWh	2.81	Outturn €/MWh	3.15	Include (Strict)	Local Circuits Interpretation
		G Charge over-recovery £m	64.12	G Charge over-recovery £m	119.50		
		£/KW over-recovery	0.92	£/KW over-recovery	1.71		
	Using Forecast Data	Outturn €/MWh	2.21	Outturn €/MWh	2.47	Include (Strict)	
		G Charge over-recovery £m	N/A	G Charge over-recovery £m	N/A		
		£/KW over-recovery	N/A	£/KW over-recovery	N/A		
	Using Actual Data	Max Outturn €/MWh	2.02	Max Outturn €/MWh	2.26	Exclude (Broad)	
		G Charge over-recovery £m	N/A	G Charge over-recovery £m	N/A		
		£/KW over-recovery	N/A	£/KW over-recovery	N/A		

***Figure 8**: Summary of EU Regulation 838/2010 Interpretations.*

CMP224 Approach

Exchange Rate Risk: Excluded based on Spring 2014 OBR Forecast

Interpretation: Strict

TEC	
69,784	MW

Inputs

	Final Tariffs 2015/16	CMP224 Methodology	Using Forecast Output
Energy (TWh)	319.6	250.7	319.6
Limit (€/MWh)	2.34	2.34	2.34
Allowed Revenue (£m)	2637	2637	2637
Exchange Rate (€/£)	1.22	1.22	1.22
G %	23.2%	18.2%	23.2%
D %	76.8%	81.8%	76.8%
Revenue from Generators (£m)	612	480	612
Actual Recovery from Generators (£m) including Cancellation Charges	578	578	578
Capped €2.5/MWh Revenue from Generators (£m)		514.2	654.0
Balance (£m)		64.1	-75.6
Outturn €/MWh		2.81	2.21

0.92	£/kW

***Figure 9**: Calculation of the Euro Per MWh outturn based on the CMP224 Methodology.*

SSE Approach

Exchange Rate Risk: *Included (actual for 2015/16)*

Interpretation: *Strict*

Inputs

	Final Tariffs 2015/16	SSE Methodology	Using Forecast Output
Energy (TWh)	319.6	250.7	319.6
Limit (€/MWh)	2.34	2.34	2.34
Allowed Revenue (£m)	2637	2637	2637
Exchange Rate (€/£)	1.22	1.37	1.37
G %	23.2%	16.3%	20.8%
D %	76.8%	83.7%	79.2%
Revenue from Generators (£m)	612	430	548
Actual Recovery from Generators including Cancellation Charges (£m)	578	578	578
Capped €2.5/MWh Revenue from Generators (£m)		458.8	585.4
Balance (£m)		119.5	-7.1
Outturn €/MWh		3.15	2.47

TEC	
69,784	MW
1.71	£/kW

Figure 10: *Calculation of the Euro Per MWh outturn based on the SSE approach.*

Other Approach 1

Exchange Rate Risk: *Excluded based on Spring 2014 OBR Forecast*

Interpretation: *Broad*

Inputs

Variables	Final Tariffs	Outturn
Volume (TWh)	319.60	250.7
Exchange Rate £/€	1.22	1.22

			Based on Outturn Data					
			Wider & Residual Only		Remove Offshore Local		Remove Local CCTs onshore and offshore, but retain Substations	
Elements of Tariff from Final Tariff	£m		£m	€/MWh	£m	€/MWh	£m	€/MWh
Zonal Tariff		47.6	47.6	0.23	47.6	0.23	47.6	0.23
Offshore Local Circuit & Substation		186.6		-		-	55.98	0.27
Onshore Substation		20.1		-	20.1	0.10	20.1	0.10
Onshore Local Circuit		13.8		-	13.8	0.07		-
Residual		343.68	343.68	1.67	343.68	1.67	343.68	1.67
Total		611.78	391.28	1.90	425.18	2.07	467.36	2.27
Small Gen Discount	-£	18		- 0.09		- 0.09		- 0.09
TEC Under-recovery	-£	34		- 0.17		- 0.17		- 0.17
Cancellation Charges	£	18		0.09		0.09		0.09
Recovered from Gen		578		1.65		1.82		2.02

Figure 11*: Calculation of the Euro Per MWh outturn based on a broad interpretation of the EU Regulation using the forecast exchange rate.*

Other Approach 2

Exchange Rate Risk: *Included (actual for 2015/16)*

Interpretation: *Broad*

Inputs

Variables	Final Tariffs	Outturn
Volume (TWh)	319.60	250.7
Exchange Rate £/€	1.22	1.37

			Based on Outturn Data					
			Wider & Residual Only		Remove Offshore Local		Remove Local CCTs onshore and offshore, but retain Substations	
Elements of Tariff from Final Tariff	£m		£m	€/MWh	£m	€/MWh	£m	€/MWh
Zonal Tariff		47.6	47.6	0.26	47.6	0.26	47.6	0.26
Offshore Local Circuit & Substation		186.6		-		-	55.98	0.31
Onshore Substation		20.1		-	20.1	0.11	20.1	0.11
Onshore Local Circuit		13.8		-	13.8	0.08		-
Residual		343.684	343.684	1.87	343.684	1.87	343.684	1.87
Total		611.784	391.28	2.13	425.18	2.32	467.36	2.55
Small Gen Discount	-£	18	-	0.10	-	0.10	-	0.10
Under-recovery	-£	34	-	0.19	-	0.19	-	0.19
Cancellation Charges	£	18		0.10		0.10		0.10
Recovered from Gen		578		1.85		2.03		2.26

***Table 12**: Calculation of the Euro Per MWh outturn based on a broad interpretation of the EU Regulation using the actual exchange rate*

Annex 7 – Outturn Analysis and Small Generator Discount

Power Station	2015/16 TEC Forecast Used at Charge Setting	TEC Actual/MW	Cancellation charge percentage	Adjusted TEC Actual/MW	Chargeable?	2015/16 Generation Output (MWh)	Total TNUoS Charge (£)	2015/16 Pre Connection Cancellation Charges related to the Forecast Used at Charge Setting (£m)	2015/16 Post Connection Cancellation Charges (£m)	(Adjusted TEC/Total TEC) * Total Rebate	Rebate Payment
Abernedd	500	0		250				£ 10,833,186.00		£ 413,990.15	£ 413,990.15
Aberthaw	1620	1620	n/a	1620	Yes	7,248,030.751	£6,217,780.32			£ 2,682,656.15	£ 2,682,656.15
Achruach	43	43	n/a	43	Yes	9,012.686	£722,360.61			£ 71,206.31	£ 71,206.31
Afton	68	0		59				£ 108,736.02		£ 97,701.67	£ 97,701.67
Aigas	20	20	n/a	20	Yes	0.000	£324,013.08			£ 33,119.21	£ 33,119.21
An Suidhe	20.7	20.7	n/a	20.7	Yes	44,283.751	£324,850.83			£ 34,278.38	£ 34,278.38
Arecleoch	114	114	n/a	114	Yes	245,792.746	£1,857,838.96			£ 188,779.51	£ 188,779.51
Baglan Bay	552	552	n/a	552	Yes	1,370,272.070	£2,328,330.48			£ 914,090.24	£ 914,090.24
Barrow	90	90	n/a	90	Yes	307,724.649	£3,932,901.54			£ 149,036.45	£ 149,036.45
Barry	235	235	n/a	235	Yes	40,589.057	£777,579.51			£ 389,150.74	£ 389,150.74
Beauly Cascade			n/a	0		285,631.275	£0.00			£ -	£ -
Black Law	118	118	n/a	118	Yes	62,552.740	£1,704,811.49			£ 195,403.35	£ 195,403.35
Blacklaw Extension	69	69	n/a	69	Yes	114,837.728	£373,112.67			£ 114,261.28	£ 114,261.28
Brigg	155	0		99					£ 131,243.28	£ 163,940.10	£ 131,243.28
Brimsdown	408	408	n/a	408	Yes	557,951.682	-£204,340.68			£ 675,631.92	£ 675,631.92
Carraig Gheal	46	46	n/a	46	Yes	123,914.449	£777,267.84			£ 76,174.19	£ 76,174.19
Carrington	910	910	n/a	910	Yes	299.400	£4,615,044.98			£ 1,506,924.13	£ 1,506,924.13
Clunie	61.2	61.2	n/a	61.2	Yes	314,948.381	£751,783.31			£ 101,344.79	£ 101,344.79

Clyde (North)	220.8	220.8	n/a	220.8	Yes	617,577.504	£2,997,069.87				£ 365,636.10	£ 365,636.10
Clyde (South)	128.8	128.8	n/a	128.8	Yes	330,610.210	£1,750,269.12				£ 213,287.72	£ 213,287.72
Cockenzie	0	0	n/a	0	No	0.000	£0.00				£ -	£ -
Conon Cascade			n/a	0		429,245.117					£ -	£ -
Connahs Quay	1380	1380	n/a	1380	Yes	3,292,264.080	£7,281,380.94				£ 2,285,225.61	£ 2,285,225.61
Corby	401	401	n/a	401	Yes	156,127.174	£837,776.42				£ 664,040.20	£ 664,040.20
Corriegarth	69	0		0							£ -	£ -
Cour	23	0		20.5				£ 35,565.00			£ 33,947.19	£ 33,947.19
Coryton	800	800	n/a	800	Yes	1,673,970.350	-£413,922.40				£ 1,324,768.47	£ 1,324,768.47
Cottam	2000	2000	n/a	2000	Yes	5,696,719.150	£10,552,726.00				£ 3,311,921.17	£ 3,311,921.17
Cottam DC	395	395	n/a	395	Yes	949,937.310	£2,084,163.39				£ 654,104.43	£ 654,104.43
Cowes	99.9	99.9	n/a	99.9	No	3,854.667	£0.00				£ 165,430.46	£ 165,430.46
Cruachan	440	440	n/a	440	Yes	314,247.534	£8,679,370.92				£ 728,622.66	£ 728,622.66
Crystal Rig	138	138	n/a	138	Yes	356,201.354	£1,920,511.91				£ 228,522.56	£ 228,522.56
Culligran	19.1	19.1	n/a	19.1	Yes	0.000	£327,884.93				£ 31,628.85	£ 31,628.85
Damhead Creek	805	805	n/a	805	Yes	4,512,455.055	-£456,953.42				£ 1,333,048.27	£ 1,333,048.27
Deanie	38	38	n/a	38	Yes	0.000	£690,239.90				£ 62,926.50	£ 62,926.50
Deeside	515	260	75%	451	Yes	382,357.900	£1,371,854.38		£ 406,425.38		£ 747,252.21	£ 747,252.21
Derwent	0	0	n/a	0	No	0.000	£0.00				£ -	£ -
Didcot	0	0	n/a	0	No	0.103	£0.00				£ -	£ -
Didcot B	1550	1550	n/a	1550	Yes	5,343,618.650	-£3,009,948.10				£ 2,566,738.91	£ 2,566,738.91
Didcot GTs	99.9	99.9	n/a	99.9	No	3,836.932	£0.00				£ 165,430.46	£ 165,430.46
Dinorwig	1644	1644	n/a	1644	Yes	2,090,202.750	£16,554,971.50				£ 2,722,399.21	£ 2,722,399.21
Drax	3906	3906	n/a	3906	Yes	24,982,374.840	£25,954,991.12				£ 6,468,182.05	£ 6,468,182.05

Dumnaglass Wind Farm	94	0		0							£ -	£ -
Dungeness B	1081	1081	n/a	1081	Yes	6,417,326.047	-£613,623.16				£ 1,790,093.39	£ 1,790,093.39
Dunlaw Extension	29.75	29.75	n/a	29.75	Yes	53,988.092	£141,374.50				£ 49,264.83	£ 49,264.83
Edinbane Wind	41.4	41.4	n/a	41.4	Yes	103,464.263	£1,037,796.94				£ 68,556.77	£ 68,556.77
Eggborough	1940	1940	n/a	1940	Yes	4,341,099.803	£12,891,111.82				£ 3,212,563.54	£ 3,212,563.54
Errochty	75	75	n/a	75	Yes	143,218.730	£921,303.08				£ 124,197.04	£ 124,197.04
Fallago	144	144	n/a	144	Yes	359,382.336	£2,091,033.07				£ 238,458.32	£ 238,458.32
Farr Windfarm	92	92	n/a	92	Yes	218,981.410	£1,633,816.59				£ 152,348.37	£ 152,348.37
Fasnakyle G1 & G3	46	46	n/a	46	Yes	201,521.917	£622,130.54				£ 76,174.19	£ 76,174.19
Fawley	0	0	n/a	0	No	0.000	£0.00				£ -	£ -
Fawley CHP	158	158	n/a	158	Yes	386,203.971	-£623,222.31				£ 261,641.77	£ 261,641.77
Ferrybridge B	980	980	n/a	980	Yes	1,948,644.898	£6,373,473.12				£ 1,622,841.38	£ 1,622,841.38
Ffestiniog	360	360	n/a	360	Yes	107,419.666	£1,879,098.84				£ 596,145.81	£ 596,145.81
Fiddlers Ferry	1953	1953	n/a	1953	Yes	4,348,006.682	£13,256,678.86				£ 3,234,091.03	£ 3,234,091.03
Fife	0	0	n/a	0	No	0.000	£0.00				£ -	£ -
Finlarig	16.5	16.5	n/a	16.5	Yes	91,043.537	£198,000.89				£ 27,323.35	£ 27,323.35
Foyers	300	300	n/a	300	Yes	259,030.553	£7,899,875.40				£ 496,788.18	£ 496,788.18
Garry Cascade			n/a	0		196,199.435	£0.00				£ -	£ -
Glandford Brigg	99	99	n/a	99	No	15,787.643	£0.00				£ 163,940.10	£ 163,940.10
Glendoe	99.9	99.9	n/a	99.9	No	213,159.013	£1,515,610.97				£ 165,430.46	£ 165,430.46
Glenmoriston	37	37	n/a	37	Yes	250.521	£544,158.26				£ 61,270.54	£ 61,270.54
Gordonbush	70	70	n/a	70	Yes	188,975.599	£1,876,749.84				£ 115,917.24	£ 115,917.24
Grain	1517	1517	n/a	1517	Yes	5,057,484.440	-£545,325.09				£ 2,512,092.21	£ 2,512,092.21
Grangemouth	120	120	n/a	120	Yes	542,046.250	£2,058,398.76				£ 198,715.27	£ 198,715.27

Great Yarmouth	405	405	n/a	405	Yes	2,081,676.684	£846,133.29				£ 670,664.04	£ 670,664.04
Greater Gabbard	500	500	n/a	500	Yes	2,064,370.305	£23,436,765.00				£ 827,980.29	£ 827,980.29
Griffin Wind Farm	188.6	188.6	n/a	188.6	Yes	334,021.947	£4,580,223.05				£ 312,314.17	£ 312,314.17
Gunfleet Sands I	99.9	99.9	n/a	99.9	Yes	373,212.003	£2,471,003.52				£ 165,430.46	£ 165,430.46
Gunfleet Sands II	64	64	n/a	64	Yes	239,762.906	£1,583,025.28				£ 105,981.48	£ 105,981.48
Gwynt y Mor	565	574	increased TEC	574	Yes	1,642,771.510	£21,651,083.12				£ 950,521.38	£ 950,521.38
Hadyard Hill	117	99.9	75%	113	Yes	225,901.520	£588,830.38		£ 143,116.10		£ 186,668.16	£ 186,668.16
Harestanes	146	146	n/a	146	Yes	222,791.630	£2,421,077.70				£ 241,770.25	£ 241,770.25
Hartlepool	1207	1207	n/a	1207	Yes	5,432,122.545	£11,315,925.54				£ 1,998,744.43	£ 1,998,744.43
Heysham	2433	2433	n/a	2433	Yes	14,929,122.762	£19,748,536.92				£ 4,028,952.11	£ 4,028,952.11
Hinkley Point B	1261	1261	n/a	1261	Yes	7,153,439.985	-£4,749,275.30				£ 2,088,166.30	£ 2,088,166.30
Humber Gateway	220	220	n/a	220	Yes	785,673.253	£1,415,476.70				£ 364,311.33	£ 364,311.33
Hunterston	1074	1074	n/a	1074	Yes	7,430,630.268	£17,075,694.62				£ 1,778,501.67	£ 1,778,501.67
Immingham	1218	1218	n/a	1218	Yes	6,884,108.700	£7,839,943.23				£ 2,016,960.00	£ 2,016,960.00
Indian Queens	140	140	n/a	140	Yes	872.380	-£802,292.96				£ 231,834.48	£ 231,834.48
Invergarry	20	20	n/a	20	Yes	0.000	£295,884.46				£ 33,119.21	£ 33,119.21
Ironbridge	680	385	75%	606	Yes	1,241,065.032	£872,943.61		£ 577,535.51		£ 1,003,926.11	£ 1,003,926.11
Keadby	0	0	n/a	0	No	718,254.100	£0.00				£ -	£ -
Kilbraur	67	67	n/a	67	Yes	177,221.360	£1,787,789.21				£ 110,949.36	£ 110,949.36
Killin Cascade			n/a	0		284,563.334	£0.00				£ -	£ -
Killingholme (Centrica)	685	0	75%	499	No	7,726.320	£0.00		£ 1,558,513.95		£ 826,324.33	£ 826,324.33
Killingholme (Eon)	900	0	75%	675	No	0.000	£0.00		£ 2,109,267.00		£ 1,117,773.40	£ 1,117,773.40
Kilmorack	20	20	n/a	20	Yes	0.000	£315,839.02				£ 33,119.21	£ 33,119.21
Kingsnorth	0	0	n/a	0	No	0.000	£0.00				£ -	£ -

Langage	905	905	n/a	905	Yes	1,191,307.500	-£4,558,652.42				£ 1,498,644.33	£ 1,498,644.33
Lincs Wind Farm	250	256	increased TEC	256	Yes	1,026,191.671	£18,119,162.11				£ 423,925.91	£ 423,925.91
Little Barford	740	740	n/a	740	Yes	2,537,847.500	£1,677,865.64				£ 1,225,410.83	£ 1,225,410.83
Littlebrook D	800	800	n/a	800	Yes	0.000	-£454,115.20				£ 1,324,768.47	£ 1,324,768.47
Lochay	47	47	n/a	47	Yes	0.000	£565,927.24				£ 77,830.15	£ 77,830.15
Lochluichart	69	69	n/a	69	Yes	121,177.139	£1,262,195.47				£ 114,261.28	£ 114,261.28
London Array	630	630	n/a	630	Yes	2,578,592.491	£25,106,396.49				£ 1,043,255.17	£ 1,043,255.17
Longannet	2260	2260	n/a	2260	Yes	7,320,079.885	£39,962,698.60				£ 3,742,470.93	£ 3,742,470.93
Luichart	34	34	n/a	34	Yes	0.000	£565,506.90				£ 56,302.66	£ 56,302.66
Marchwood	900	920	increased TEC	920	Yes	3,910,922.100	-£3,150,420.40				£ 1,523,483.74	£ 1,523,483.74
Mark Hill	53	53	n/a	53	Yes	109,107.106	£802,635.18				£ 87,765.91	£ 87,765.91
Medway	700	700	n/a	700	Yes	1,960,728.195	-£251,633.20				£ 1,159,172.41	£ 1,159,172.41
Millennium Wind	65	65	n/a	65	Yes	174,242.870	£973,698.90				£ 107,637.44	£ 107,637.44
Moriston Cascade			n/a	0		313,096.999	£0.00				£ -	£ -
Mossford	18.66	18.66	n/a	18.66	Yes	0.000	£357,612.85				£ 30,900.22	£ 30,900.22
Nant	15	15	n/a	15	Yes	43,334.130	£177,884.13				£ 24,839.41	£ 24,839.41
Ormonde	150	150	n/a	150	Yes	559,688.000	£10,825,059.45				£ 248,394.09	£ 248,394.09
Orrin	18	18	n/a	18	Yes	0.000	£281,072.68				£ 29,807.29	£ 29,807.29
Pembroke	2199	2199	n/a	2199	Yes	11,874,370.921	£13,898,047.23				£ 3,641,457.33	£ 3,641,457.33
Peterborough	245	245	n/a	245	Yes	19,125.462	£728,719.92				£ 405,710.34	£ 405,710.34
Peterhead	400	400	n/a	400	Yes	661,352.666	£8,531,878.80				£ 662,384.23	£ 662,384.23
Pogbie Wind Farm	12	0		0							£ -	£ -
Ratcliffe-on-Soar	2021	2021	n/a	2021	Yes	3,294,535.333	£5,003,094.63				£ 3,346,696.35	£ 3,346,696.35
Robin Rigg East	92	92	n/a	92	Yes	232,816.830	£3,407,557.55				£ 152,348.37	£ 152,348.37

Robin Rigg West	92	92	n/a	92	Yes	277,786.853	£3,407,557.55				£ 152,348.37	£ 152,348.37
Rocksavage	810	810	n/a	810	Yes	1,153,232.630	£4,033,740.87				£ 1,341,328.08	£ 1,341,328.08
Roosecote	99	99	n/a	99	No	0.000	£0.00				£ 163,940.10	£ 163,940.10
Rugeley B	1018	980	75%	1008.5	Yes	3,451,044.244	£2,222,038.28		£ 74,394.41		£ 1,670,036.25	£ 1,670,036.25
Rye House	715	715	n/a	715	Yes	481,018.729	-£405,865.46				£ 1,184,011.82	£ 1,184,011.82
Saltend	1100	1100	n/a	1100	Yes	5,160,702.150	£7,482,257.20				£ 1,821,556.65	£ 1,821,556.65
Seabank	1234	1234	n/a	1234	Yes	2,856,752.444	£475,779.81				£ 2,043,455.36	£ 2,043,455.36
Sellafield	155	155	n/a	155	Yes	379,215.740	£1,198,245.01				£ 256,673.89	£ 256,673.89
Severn Power	850	850	n/a	850	Yes	1,308,692.150	£3,020,752.10				£ 1,407,566.50	£ 1,407,566.50
Sheringham Shoal	315	315	n/a	315	Yes	1,172,463.876	£15,638,472.99				£ 521,627.58	£ 521,627.58
Shoreham	420	420	n/a	420	Yes	1,731,220.837	-£1,072,515.36				£ 695,503.45	£ 695,503.45
Sizewell B	1212	1216	n/a	1216	Yes	10,545,282.266	£2,757,141.38				£ 2,013,648.07	£ 2,013,648.07
Sloy G2 & G3	80	80	n/a	80	Yes	63,549.930	£648,031.20				£ 132,476.85	£ 132,476.85
South Humber Bank	1285	540	75%	1098.75	Yes	2,052,546.880	£3,883,383.54		£ 1,746,004.35		£ 1,819,486.70	£ 1,819,486.70
Spalding	880	880	n/a	880	Yes	3,327,517.550	£3,013,680.56				£ 1,457,245.32	£ 1,457,245.32
Staythorpe	1728	1728	n/a	1728	Yes	9,971,680.050	£9,117,555.26				£ 2,861,499.89	£ 2,861,499.89
Strathy North & South Stage 1	76	67.65	75%	73.9125	Yes	91,654.000	£1,347,205.24		£ 235,727.58		£ 122,396.19	£ 122,396.19
Strathy North & South Stage 2	0	0	50%	8.7				£ 327,477.83			£ 14,406.86	£ 14,406.86
Sutton Bridge	819	819	n/a	819	Yes	945,659.400	£2,581,926.17				£ 1,356,231.72	£ 1,356,231.72
Taylors Lane	144	144	n/a	144	Yes	1,685.729	-£750,552.62				£ 238,458.32	£ 238,458.32
Thanet	300	300	n/a	300	Yes	979,869.379	£13,811,352.90				£ 496,788.18	£ 496,788.18
Tilbury B	0	0	n/a	0	No	0.000	£0.00				£ -	£ -
Toddleburn	27.6	27.6	n/a	27.6	Yes	62,853.239	£131,157.52				£ 45,704.51	£ 45,704.51
Torness	1215	1215	n/a	1215	Yes	8,686,834.358	£16,464,288.83				£ 2,011,992.11	£ 2,011,992.11

Uskmouth	0	115	increased TEC	115	Yes	318,994.500	£426,052.00			£ 190,435.47	£ 190,435.47
Walney I	182	182	n/a	182	Yes	679,278.024	£11,928,356.08			£ 301,384.83	£ 301,384.83
Walney II	182	182	n/a	182	Yes	501,731.686	£11,964,485.44			£ 301,384.83	£ 301,384.83
West Burton	1987	1987	n/a	1987	Yes	5,296,885.442	£10,484,133.28			£ 3,290,393.69	£ 3,290,393.69
West Burton B	1332	1332	n/a	1332	Yes	6,485,491.250	£7,028,115.52			£ 2,205,739.50	£ 2,205,739.50
West Of Duddon Sands	382	382	n/a	382	Yes	539,950.384	£15,153,568.70			£ 632,576.94	£ 632,576.94
Westermost Rough	205	205	n/a	205	Yes	766,974.194	£1,318,966.93			£ 339,471.92	£ 339,471.92
Whitelee	305	305	n/a	305	Yes	507,764.920	£4,886,985.72			£ 505,067.98	£ 505,067.98
Whitelee Extension	206	206	n/a	206	Yes	312,897.990	£3,335,556.53			£ 341,127.88	£ 341,127.88
Wilton	99	99	n/a	99	Yes	140,337.908	£875,656.29			£ 163,940.10	£ 163,940.10
Wylfa	450	450	n/a	450	Yes	2,573,308.511	£3,538,256.85			£ 745,182.26	£ 745,182.26
	73,495	**69,784**		**72,164**		**250,037,379.44**	**£551,256,727.59**	**£11,304,964.85**	**£6,982,227.56**	**£119,915,222.61**	**£119,501,232.46**

£0.00

Temporary TEC Charges	672,186.00	£ 5,748,799.00	SSE Rebate amount £ 119,501,232.46
Adjustments		£ 3,046,513.46	SSE Rebate as £/kW £ 1.66
Total TNUoS Tariff Charges	**250,709,565.44**	**£560,052,040.05**	
Total Charges including Cancellation Charges			**£578,339,232.46**

Figure13: Forecast and actual Generator TEC, output, total TNUoS charges and cancellation charges.

Small Gen Discount 2015/16

Station	Discount	TEC
Achruach	-£434,756.36	43
An Suidhe	-£209,289.69	20.7
Barrow	-£909,955.17	90
Robin Rigg East	-£930,176.40	92
Robin Rigg West	-£930,176.40	92
Farr Windfarm	-£930,176.40	92
Carraig Gheal	-£465,088.20	46
Gunfleet Sands II	-£647,079.23	64
Gunfleet Sands I	-£1,010,050.24	99.9
Lochluichart	-£697,632.30	69
Millennium Wind	-£657,189.85	65
Blacklaw Extension	-£697,632.30	69
Dunlaw Extension	-£300,790.74	29.75
Aigas	-£202,212.26	20
Clunie	-£618,769.52	61.2
Culligran	-£193,112.71	19.1
Deanie	-£384,203.29	38
Errochty	-£758,295.98	75
Fasnakyle G1 & G3	-£465,088.20	46
Finlarig	-£166,825.11	16.5
Glendoe	-£1,010,050.24	99.9
Glenmoriston	-£374,092.68	37
Hadyard Hill	-£1,010,050.24	99.9
Invergarry	-£202,212.26	20
Kilmorack	-£202,212.26	20
Lochay	-£475,198.81	47
Luichart	-£343,760.84	34
Mossford	-£188,664.04	18.66
Nant	-£151,659.20	15
Orrin	-£181,991.03	18
Sloy G2 & G3	-£808,849.04	80
Strathy North & South	-£683,982.97	67.65
Toddleburn	-£279,052.92	27.6
Edinbane Wind	-£418,579.38	41.4
Total	**-£17,938,856.22**	

Figure 14: Calculation of the small Generator discount.

Annex 8 – Analysis on Network Connections

The Workgroup in conjunction with National Grid and Ofgem have produced some supporting analysis on local circuit connection which is displayed in the attached Excel document.

Connection Asset Examples_v8.xlsx

Annex 9 – Proposer's Questions

Costs Attributed to the exceedance of the €2.50 CAP
A) the overpayment made by Generators in CY 2015/16.
A1) the Generators cost of finance of (A) during CY 2015/16.
A2) the Generator cost of finance of (A) plus (A1) from 1st April 2016 to the date of payment to Generators of (A) plus (A1).
A3) any additional consequential costs or losses (such as a proportion of power station closure costs?) suffered by Generators arising from (A) and / or (A1) and / or (A2).
B) the recovery of item (A) from suppliers (see item (C) below).
B1) the suppliers cost of finance of (B) if recovery of (B) is ahead of charging year CY 2017/18.
B2) any additional consequential costs or losses suffered by suppliers in respect of paying (B) and / or (B1) ahead of CY 2017/18.
C) the recovery of item (A) from National Grid (rather than, as per (B), from Suppliers).
C1) the recovery of item (A1) from National Grid.
C2) the recovery of item (A2) from National Grid.
C3) the recovery of item (A3) from National Grid.
C4) the recovery of item (B1) from National Grid.
C5) the recovery of item (B2) from National Grid.
In respect of the items under (C) - (C5) it is possible that one or more (or all) of the six items is applicable (depending on the legal advice - or Court determination?).
D) the cost of finance for National Grid of (A) and / or (A1) and / or (A2) till 1st April 2017 (assuming (B) is applicable).

Figure 15: List of possible items of cost arising from the breaching of the €2.50/MWh limit in 2015/16.

Annex 10 – Emails provided by the Proposer

-----Original Message-----
From: Graham, Garth
Sent: 19 January 2015 09:27
To: Hynes, Patrick
Cc: '.Box.Cusc.Team'; [CUSC Panel members]
Subject: CMP224 - £/€ cap

Patrick,

Just wanted to enquire about the ongoing effects that the recent changes in the £/€ rate might have in terms of the €2.5 cap on GB Generator TNUoS.

Clearly CMP224 has now been implemented and should, via the agreed 7% 'bandwidth', address any variances in currency (as well as the other two variables needed for the €2.5 cap calculation, namely (i) the total level of generation output and (ii) the TO Allowed Revenues).

As per the CMP224 Modification we will be using the OBR forecast for the £/€ exchange rate from the Budget last March for the purposes of the forthcoming (2015/16) charging year TNUoS charges.

As I'm sure you appreciate, this OBR forecast (as set out, for example, in Table 4.1 of their Budget report* on page 92) is £/€ 1.22 for 2015/16.

However, as we are seeing the situation has changed (hence why we built in the7% 'bandwidth') and the £/€ rate stands at circa 1.31 as at Friday's close.

On the face of it this is a circa 7% variance between the OBR forecast and the current exchange rate. Clearly in isolation this may not be an issue given (a) that there are two other variables (items (i) and (ii) noted above) which may have gone in the 'opposite direction' such that they counter-act the £/€ variance and (b) we are only in the first month of the 12 month period[84].

However, absent of knowing what is happening with respect to those other two variables, it might be said that the £/€ variance 'wipes out' the 7% 'bandwidth' that we have built in via CMP224.

I was just wondering if there might be merit in National Grid perhaps providing an update to the CUSC Panel in due course on this matter if there is a possibility, over the course of the year, of the 7% 'bandwidth' not being sufficient to avoid the €2.5 cap being exceeded, especially given that the €2.5 cap applies for the calendar, rather than charging, year and we are applying two sets of Generator TNUoS charges over that period (namely those for 2014/15 from 1st January up to the 31st March (on a 27:73 basis) and those for 2015/16 from 1st April up to – for the purposes of the cap – 31st December 2015 (on a ~23:77 basis)).

Regards

Garth

*http://cdn.budgetresponsibility.org.uk/37839-OBR-Cm-8820-accessible-web-v2.pdf

-----Original Message-----

[84] Note – prior to the Addleshaw Goddard advice of November 2015, for the CMP251 Workgroup, there was some uncertainty as to whether the measurement year (for the purposes of the Regulation) was a 'calendar year' (1st January 2016-31st December 2015) or 'charging year' (1st April 2015-31st March 2016). The correspondence etc., in January 2015 was on the basis that it was calendar year; i.e. the warnings on 19th and 30th January assumed that the measurement year had already started, and that (at that time) there was an exceedance (due to £/€ variances) in excess of the 'error margin' introduced into the CUSC by CMP224.

From: Graham, Garth
Sent: 29 May 2015 13:48
To: 'Hynes, Patrick'
Cc: '.Box.Cusc.Team'; [CUSC Panel members]
Subject: RE: CMP224 - £/€ cap

Folks,

As per the discussion a few moments ago at the Panel - the email that I circulated back in January, when the £/€ rate was circa 1.31 - compared to circa 1.41 today.

Regards

Garth

Annex 11 – Email from the Authority

[Email sent from Donald Smith, Ofgem, the Authority representative on the CMP261 Workgroup to the Workgroup on Monday 8th August 2016 @ 16:58.]

All

We have sought advice on CMP261 from a leading junior barrister from Blackstone chambers. He advised us in a conference last Wednesday [3rd August 2016] as follows:

- We are not bound by the approach to constructing a compliant charge under CMP224
- The Regulation says you *must* exclude charges associated with physical assets required to connect in calculating the average charge.
- The Regulation requires us to look beyond the names we give charges and look instead at the nature of the underlying asset.
- Before we can work out whether there has been a breach of the regulation we need to make clear that we are applying the calculation correctly and excluding charges in respect of physical assets required to connect to the transmission system.
- CMP 224 was a legitimate and reasonable approach to constructing a compliant charge, but it did not set out the rules for how we calculate whether we are in fact compliant – that is in the Regulation.

This means that we need to look in more detail at local TNUoS charges to work out whether we should exclude some or all of these from the calculation of GB's average charge for 2015/16 before we make a decision on the Mod (which is all about compliance with the Regulation). We ask the work group to include this analysis in their report and deliberations.

Kind regards

Donald

[end]

Annex 12 – Email from the Authority

[Email sent from Donald Smith, Ofgem, the Authority representative on the CMP261 Workgroup to the Workgroup on Monday 17th August 2016 @ 16:48.]

Hi all

I've set out a list of what we think the examples that Damian's working on need to illustrate. I'm not sure that this will be do-able for next week's meeting and I expect the examples will warrant some face to face discussion with the workgroup. Could I suggest meeting on the 30th to discuss draft scenarios? (If that gives Damian sufficient time)

- What should the diagrams for different scenarios show?
    a. What exists pre connection request
    b. what's built
    c. who owns what assets
    d. who uses the assets
    e. how the assets are sized
    f. what assets are 'enabling' and what assets are 'wider' [different from wider v local charge]
    g. How the costs of different assets are recovered
        i. Generation now
        ii. Generation pre local charges
        iii. Demand

- What should the different scenarios should illustrate?
    h. Onshore and offshore connections
    i. New assets built/owned by the generator (including any different choices that generators can make in this respect)
    j. New assets paid for through connection charges
    k. New assets paid for through local that are for one specific generator
    l. New assets paid for through local that may be shared in future
    m. New assets paid for through local charges that will be shared
    n. Reinforcement of exiting local assets
    o. Reinforcement of existing MITS assets
    p. Differences between Scotland and E&W

Kind regards

Donald

[end]

The Original Proposal

Part 2 - The Statement of the Use of System Charging Methodology

Section 1 – The Statement of the Transmission Use of System Charging Methodology

14.14 Principles

14.14.1 Transmission Network Use of System charges reflect the cost of installing, operating and maintaining the transmission system for the Transmission Owner (TO) Activity function of the Transmission Businesses of each Transmission Licensee. These activities are undertaken to the standards prescribed by the Transmission Licences, to provide the capability to allow the flow of bulk transfers of power between connection sites and to provide transmission system security.

14.14.2 A Maximum Allowed Revenue (MAR) defined for these activities and those associated with pre-vesting connections is set by the Authority at the time of the Transmission Owners' price control review for the succeeding price control period. Transmission Network Use of System Charges are set to recover the Maximum Allowed Revenue as set by the Price Control (where necessary, allowing for any K_t adjustment for under or over recovery in a previous year net of the income recovered through pre-vesting connection charges).

14.14.3 The basis of charging to recover the allowed revenue is the Investment Cost Related Pricing (ICRP) methodology, which was initially introduced by The Company in 1993/94 for England and Wales. The principles and methods underlying the ICRP methodology were set out in the The Company document "**Transmission Use of System Charges Review: Proposed Investment Cost Related Pricing for Use of System (30 June 1992)"**.

14.14.4 In December 2003, The Company published the Initial Thoughts consultation for a GB methodology using the England and Wales methodology as the basis for consultation. The Initial Methodologies consultation published by The Company in May 2004 proposed two options for a GB charging methodology with a Final Methodologies consultation published in August 2004 detailing The Company's response to the Industry with a recommendation for the GB charging methodology. In December 2004, The Company published a Revised Proposals consultation in response to the Authority's invitation for further review on certain areas in The Company's recommended GB charging methodology.

14.14.5 In April 2004 The Company introduced a DC Loadflow (DCLF) ICRP based transport model for the England and Wales charging methodology. The DCLF model has been extended to incorporate Scottish network data with existing England and Wales network data to form the GB network in the model. In April 2005, the GB charging methodology implemented the following proposals:

i.) The application of multi-voltage circuit expansion factors with a forward-looking Expansion Constant that does not include substation costs in its derivation.

ii.) The application of locational security costs, by applying a multiplier to the Expansion Constant reflecting the difference in cost incurred on a secure network as opposed to an unsecured network.

iii.) The application of a de-minimus level demand charge of £0/kW for Half Hourly and £0/kWh for Non Half Hourly metered demand to avoid the introduction of negative demand tariffs.

iv.) The application of 132kV expansion factor on a Transmission Owner basis reflecting the regional variations in network upgrade plans.

v.) The application of a Transmission Network Use of System Revenue split between generation and demand where the proportion of the total revenue paid by generation, for the purposes of tariff setting, is the lower of 0.27 or x times the total revenue, where x for a charging year n is calculated as:

$$x_n = \frac{(Cap_{EC} * (1 - y)) * GO}{MAR * ER}$$

Where;

Cap_{EC} = Upper limit of the range specified by European Commission Regulation 838/2010 Part B paragraph 3 (or any subsequent regulation specifying such a limit) on annual average transmission charge payable by generation

y = Error margin built in to adjust Cap_{EC} to account for difference in one year ahead forecast and outturn values for MAR and GO, based on previous years error at the time of calculating the error for charging year n

GO = Forecast GB Generation Output for generation liable for Transmission charges (i.e. energy injected into the transmission network in MWh) for charging year n

MAR = Forecast TO Maximum Allowed Revenue (£) for charging year n

ER = OBR Spring Forecast €/£ Exchange Rate in charging year n-1

vi.) The number of generation zones using the criteria outlined in paragraph 14.15.42 has been determined as 21.

vii.) The number of demand zones has been determined as 14, corresponding to the 14 GSP groups.

14.14.6 The underlying rationale behind Transmission Network Use of System charges is that efficient economic signals are provided to Users when services are priced to reflect the incremental costs of supplying them. Therefore, charges should reflect the impact that Users of the transmission system at different locations would have on the Transmission Owner's costs, if they were to increase or decrease their use of the respective systems. These costs are primarily defined as the investment costs in the transmission system, maintenance of the transmission system and maintaining a system capable of providing a secure bulk supply of energy.

The Transmission Licence requires The Company to operate the National Electricity Transmission System to specified standards. In addition The Company with other transmission licensees are required to plan and develop the National Electricity Transmission System to meet these standards. These requirements mean that the system must conform to a particular Security Standard and capital investment requirements are largely driven by the need to conform to both the deterministic and supporting cost benefit analysis aspects of this standard. It is this obligation, which provides the underlying rationale for the ICRP approach, i.e. for any changes in generation and demand on the system, The Company must ensure that it satisfies the requirements of the Security Standard.

14.14.7 The Security Standard identifies requirements on the capacity of component sections of the system given the expected generation and demand at each node, such that demand can be met and generators' output over the course of a year (capped at their Transmission Entry Capacity, TEC) can be accommodated in the most economic and efficient manner. The derivation of the incremental investment costs at different points on the system is therefore determined against the requirements of the system both at the time of peak demand and across the remainder of the year. The Security Standard uses a Demand Security Criterion and an Economy Criterion to assess capacity requirements. The charging methodology therefore recognises both these elements in its rationale.

14.14.8 The Demand Security Criterion requires sufficient transmission system capacity such that peak demand can be met through generation sources as defined in the Security Standard, whilst the Economy Criterion requires sufficient transmission system capacity to accommodate all types of generation in order to meet varying levels of demand efficiently. The latter is achieved through a set of deterministic parameters that have been derived from a generic Cost Benefit Analysis (CBA) seeking to identify an appropriate balance between constraint costs and the costs of transmission reinforcements.

14.14.9 The TNUoS charging methodology seeks to reflect these arrangements through the use of dual backgrounds in the Transport Model, namely a Peak Security background

representative of the Demand Security Criterion and a Year Round background representative of the Economy Criterion.

14.14.10 To recognise that various types of generation will have a different impact on incremental investment costs the charging methodology uses a generator's TEC, Peak Security flag, and Annual Load Factor (ALF) when determining Transmission Network Use of System charges relating to the Peak Security and Year Round backgrounds respectively. For the Year Round background the diversity of the plant mix (i.e the proportion of low carbon and carbon generation) in each charging zone is also taken into account.

14.14.11 In setting and reviewing these charges The Company has a number of further objectives. These are to:

- offer clarity of principles and transparency of the methodology;
- inform existing Users and potential new entrants with accurate and stable cost messages;
- charge on the basis of services provided and on the basis of incremental rather than average costs, and so promote the optimal use of and investment in the transmission system; and
- be implementable within practical cost parameters and time-scales.

14.14.12 Condition C13 of The Company's Transmission Licence governs the adjustment to Use of System charges for small generators. Under the condition, The Company is required to reduce TNUoS charges paid by eligible small generators by a designated sum, which will be determined by the Authority. The licence condition describes an adjustment to generator charges for eligible plant, and a consequential change to demand charges to recover any shortfall in revenue. The mechanism for recovery will ensure revenue neutrality over the lifetime of its operation although it does allow for effective under or over recovery within any year. For the avoidance of doubt, Condition C13 does not form part of the Use of System Charging Methodology.

14.14.13 The Company will typically calculate TNUoS tariffs annually, publishing final tariffs in respect of a Financial Year by the end of the preceding January. However The Company may update the tariffs part way through a Financial Year.

14.14.14 Forecast and reconciliation of x in the Transmission Network Use of System Revenue Split between Generation and Demand ("the G:D Split") for the Charging Year 2015/16

In setting the G:D split, at paragraph 14.14.5(v), for Charging Year 2015/16, x has been calculated on a forecast of "GO" and "MAR" and "ER" was the OBR Spring 2014 Forecast €/£ Exchange Rate.

In 2016/17 only, the Company shall recalculate the G:D Split for the previous Financial Year (Charging Year 2015/16) in accordance with paragraph 14.14.5(v) and:

i. Adjustment of Generator Charges: Where CAP_{EC} is exceeded, The Company shall, within 14 calendar days of CMP261 being implemented in the CUSC, prepare and send to each User a statement showing the annual Generation Charges paid by that User in Charging Year 2015/16 against the Generation Charges payable with the adjusted G:D split. In relation to any sum shown in this statement as being due to the User The Company shall make a one off payment to the User of £1.71/KW.

ii. Adjustment to the demand TNUoS tariffs: the demand TNUoS tariffs for Charging Year 2017/18 shall be adjusted to reflect the reconciliation of generator charges made or received in Charging Year 2016/17 in respect of Charging Year 2015/16. The Company will notify market participants of this change in revenue with the TNUoS forecast following charge setting in 2016/17 for Charging Year 2017/18.

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1. **The Residual Tariff**

14.15.132 As a result of the factors above, in order to ensure adequate revenue recovery, a constant non-locational **Residual Tariff** for generation and demand is calculated, which includes infrastructure substation asset costs. It is added to the initial transport tariffs for both Peak

Security and Year Round backgrounds so that the correct generation / demand revenue split is maintained and the total revenue recovery is achieved.

$$RT_D = \frac{(p \times TRR) - ITRR_{DPS} - ITRR_{DYR}}{\sum_{Di=1}^{14} D_{Di}}$$

$$RT_G = \frac{[(1-p) \times TRR] - ITRR_{GPS} - ITRR_{GYRNS} - ITRR_{GYRS} - LCRR_G}{\sum_{Gi=1}^{n} G_{Gi}}$$

Where

RT	=	Residual Tariff (£/MW)
p	=	Proportion of revenue to be recovered from demand

14.15.133 For Charging Year 2017/18, the Demand Residual Tariff will be set as follows:

$$RT_D = \frac{p(TRR - GDSadj_{2015/16}) - ITRR_{DPS} - ITRR_{DYR}}{\sum_{Di=1}^{14} D_{Di}}$$

$$RT_G = \frac{[(1-p) \times TRR] - ITRR_{GPS} - ITRR_{GYRNS} - ITRR_{GYRS} - LCRR_G}{\sum_{Gi=1}^{n} G_{Gi}}$$

Where

RT	=	Residual Tariff (£/MW)
p	=	Proportion of revenue to be recovered from demand
$GDSadj_{2015/16}$	=	The under recovery which relates to the G:D Split adjustment to ensure compliance with European Regulation 838/2010 in Charging Year 2015/16. The value of $GDSadj_{2015/16}$ is the sum of the rebate made to generators described in paragraph 14.14.5.

WACM1

Part 2 - The Statement of the Use of System Charging Methodology

Section 1 – The Statement of the Transmission Use of System Charging Methodology

14.14 Principles

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viii.) The application of multi-voltage circuit expansion factors with a forward-looking Expansion Constant that does not include substation costs in its derivation.

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x.) The application of a de-minimus level demand charge of £0/kW for Half Hourly and £0/kWh for Non Half Hourly metered demand to avoid the introduction of negative demand tariffs.

xi.) The application of 132kV expansion factor on a Transmission Owner basis reflecting the regional variations in network upgrade plans.

xii.) The application of a Transmission Network Use of System Revenue split between generation and demand where the proportion of the total revenue paid by generation, for the purposes of tariff setting, is the lower of 0.27 or x times the total revenue, where x for a charging year n is calculated as:

$$x_n = \frac{(Cap_{EC} * (1 - y)) * GO}{MAR * ER}$$

Where;

Cap_{EC} = Upper limit of the range specified by European Commission Regulation 838/2010 Part B paragraph 3 (or any subsequent regulation specifying such a limit) on annual average transmission charge payable by generation

y = Error margin built in to adjust Cap_{EC} to account for difference in one year ahead forecast and outturn values for MAR and GO, based on previous years error at the time of calculating the error for charging year n

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ER = OBR Spring Forecast €/£ Exchange Rate in charging year n-1

xiii.) The number of generation zones using the criteria outlined in paragraph 14.15.42 has been determined as 21.

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14.14.16 The underlying rationale behind Transmission Network Use of System charges is that efficient economic signals are provided to Users when services are priced to reflect the incremental costs of supplying them. Therefore, charges should reflect the impact that Users of the transmission system at different locations would have on the Transmission Owner's costs, if they were to increase or decrease their use of the respective systems.

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14.14.18 The Demand Security Criterion requires sufficient transmission system capacity such that peak demand can be met through generation sources as defined in the Security Standard, whilst the Economy Criterion requires sufficient transmission system capacity to accommodate all types of generation in order to meet varying levels of demand efficiently. The latter is achieved through a set of deterministic parameters that have been derived from a generic Cost Benefit Analysis (CBA) seeking to identify an appropriate balance between constraint costs and the costs of transmission reinforcements.

14.14.19 The TNUoS charging methodology seeks to reflect these arrangements through the use of dual backgrounds in the Transport Model, namely a Peak Security background representative of the Demand Security Criterion and a Year Round background representative of the Economy Criterion.

14.14.20 To recognise that various types of generation will have a different impact on incremental investment costs the charging methodology uses a generator's TEC, Peak Security flag, and Annual Load Factor (ALF) when determining Transmission Network Use of System charges relating to the Peak Security and Year Round backgrounds respectively. For the Year Round background the diversity of the plant mix (i.e the proportion of low carbon and carbon generation) in each charging zone is also taken into account.

14.14.21 In setting and reviewing these charges The Company has a number of further objectives. These are to:

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14.14.22 Condition C13 of The Company's Transmission Licence governs the adjustment to Use of System charges for small generators. Under the condition, The Company is required to reduce TNUoS charges paid by eligible small generators by a designated sum, which will be determined by the Authority. The licence condition describes an adjustment to generator charges for eligible plant, and a consequential change to demand charges to recover any shortfall in revenue. The mechanism for recovery will ensure revenue neutrality over the lifetime of its operation although it does allow for effective under or over recovery within any year. For the avoidance of doubt, Condition C13 does not form part of the Use of System Charging Methodology.

14.14.23 The Company will typically calculate TNUoS tariffs annually, publishing final tariffs in respect of a Financial Year by the end of the preceding January. However The Company may update the tariffs part way through a Financial Year.

14.14.24 Forecast and reconciliation of x in the Transmission Network Use of System Revenue Split between Generation and Demand ("the G:D Split") for the Charging Year 2015/16

In setting the G:D split, at paragraph 14.14.5(v), for Charging Year 2015/16, x shall be calculated on a forecast of "GO" and "MAR" and "ER" shall be the OBR Spring Forecast €/£ Exchange Rate.

In 2016/17 only (or 2017/18 only if an Authority implementation decision on CMP261 is received during 2017/18), the Company shall recalculate the G:D Split for the Charging Year 2015/16 in accordance with paragraph 14.14.5(v) and:

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2. **The Residual Tariff**

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WACM2

Part 2 - The Statement of the Use of System Charging Methodology

Section 1 – The Statement of the Transmission Use of System Charging Methodology

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xx.) The number of generation zones using the criteria outlined in paragraph 14.15.42 has been determined as 21.

xxi.) The number of demand zones has been determined as 14, corresponding to the 14 GSP groups.

14.14.26 The underlying rationale behind Transmission Network Use of System charges is that efficient economic signals are provided to Users when services are priced to reflect the incremental costs of supplying them. Therefore, charges should reflect the impact that Users of the transmission system at different locations would have on the Transmission Owner's costs, if they were to increase or decrease their use of the respective systems. These costs are primarily defined as the investment costs in the transmission system, maintenance of the transmission system and maintaining a system capable of providing a secure bulk supply of energy.

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14.14.30 To recognise that various types of generation will have a different impact on incremental investment costs the charging methodology uses a generator's TEC, Peak Security flag, and Annual Load Factor (ALF) when determining Transmission Network Use of System charges relating to the Peak Security and Year Round backgrounds respectively. For the Year Round background the diversity of the plant mix (i.e the proportion of low carbon and carbon generation) in each charging zone is also taken into account.

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- be implementable within practical cost parameters and time-scales.

14.14.32 Condition C13 of The Company's Transmission Licence governs the adjustment to Use of System charges for small generators. Under the condition, The Company is required to reduce TNUoS charges paid by eligible small generators by a designated sum, which will be determined by the Authority. The licence condition describes an adjustment to generator charges for eligible plant, and a consequential change to demand charges to recover any shortfall in revenue. The mechanism for recovery will ensure revenue neutrality over the lifetime of its operation although it does allow for effective under or over recovery within any year. For the avoidance of doubt, Condition C13 does not form part of the Use of System Charging Methodology.

14.14.33 The Company will typically calculate TNUoS tariffs annually, publishing final tariffs in respect of a Financial Year by the end of the preceding January. However The Company may update the tariffs part way through a Financial Year.

14.14.34 Forecast and reconciliation of x in the Transmission Network Use of System Revenue Split between Generation and Demand ("the G:D Split") for the Charging Year 2015/16

In setting the G:D split, at paragraph 14.14.5(v), for Charging Year 2015/16, x shall be calculated on a forecast of "GO" and "MAR" and "ER" shall be the OBR Spring Forecast €/£ Exchange Rate.

In 2016/17, the Company shall recalculate the G:D Split for the previous Financial Year (Charging Year 2015/16) in accordance with paragraph 14.14.5(v) and will notify market participants of adjustments to generator and demand TNUoS tariffs with the TNUoS forecast following charge setting in 2016/17 for Charging Year 2017/18.

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3. **The Residual Tariff**

14.15.136 As a result of the factors above, in order to ensure adequate revenue recovery, a constant non-locational **Residual Tariff** for generation and demand is calculated, which includes infrastructure substation asset costs. It is added to the initial transport tariffs for both Peak Security and Year Round backgrounds so that the correct generation / demand revenue split is maintained and the total revenue recovery is achieved.

$$RT_D = \frac{(p \times TRR) - ITRR_{DPS} - ITRR_{DYR}}{\sum_{Di=1}^{14} D_{Di}}$$

$$RT_G = \frac{[(1-p) \times TRR] - ITRR_{GPS} - ITRR_{GYRNS} - ITRR_{GYRS} - LCRR_G}{\sum_{Gi=1}^{n} G_{Gi}}$$

Where

RT	=	Residual Tariff (£/MW)
p	=	Proportion of revenue to be recovered from demand

14.15.137 For Charging Year 2017/18, the Demand and Generation Residual Tariff will be set as follows:

$$RT_D = \frac{p(TRR - GDSadj_{2015/16}) - ITRR_{DPS} - ITRR_{DYR}}{\sum_{Di=1}^{14} D_{Di}}$$

$$RT_G = \frac{[(1-p) \times TRR - GDSadj_{2015/16})] - ITRR_{GPS} - ITRR_{GYRNS} - ITRR_{GYRS} - LCRR_G}{\sum_{Gi=1}^{G} G_{Gi}}$$

Where

RT	=	Residual Tariff (£/MW)
p	=	Proportion of revenue to be recovered from demand
$GDSadj_{2015/16}$	=	The under recovery which relates to the G:D Split adjustment to ensure compliance with European Regulation 838/2010 in Charging Year 2015/16.

WACM3

Part 2 - The Statement of the Use of System Charging Methodology

Section 1 – The Statement of the Transmission Use of System Charging Methodology

14.14 Principles

14.14.13 Transmission Network Use of System charges reflect the cost of installing, operating and maintaining the transmission system for the Transmission Owner (TO) Activity function of the Transmission Businesses of each Transmission Licensee. These activities are undertaken to the standards prescribed by the Transmission Licences, to provide the capability to allow the flow of bulk transfers of power between connection sites and to provide transmission system security.

14.14.14 A Maximum Allowed Revenue (MAR) defined for these activities and those associated with pre-vesting connections is set by the Authority at the time of the Transmission Owners' price control review for the succeeding price control period. Transmission Network Use of System Charges are set to recover the Maximum Allowed Revenue as set by the Price Control (where necessary, allowing for any K_t adjustment for under or over recovery in a previous year net of the income recovered through pre-vesting connection charges).

14.14.15 The basis of charging to recover the allowed revenue is the Investment Cost Related Pricing (ICRP) methodology, which was initially introduced by The Company in 1993/94 for England and Wales. The principles and methods underlying the ICRP methodology were set out in the The Company document "**Transmission Use of System Charges Review: Proposed Investment Cost Related Pricing for Use of System (30 June 1992)"**.

14.14.16 In December 2003, The Company published the Initial Thoughts consultation for a GB methodology using the England and Wales methodology as the basis for consultation. The Initial Methodologies consultation published by The Company in May 2004 proposed two options for a GB charging methodology with a Final Methodologies consultation published in August 2004 detailing The Company's response to the Industry with a recommendation for the GB charging methodology. In December 2004, The Company published a Revised Proposals consultation in response to the Authority's invitation for further review on certain areas in The Company's recommended GB charging methodology.

14.14.35 In April 2004 The Company introduced a DC Loadflow (DCLF) ICRP based transport model for the England and Wales charging methodology. The DCLF model has been extended to incorporate Scottish network data with existing England and Wales network data to form the GB network in the model. In April 2005, the GB charging methodology implemented the following proposals:

xxii.) The application of multi-voltage circuit expansion factors with a forward-looking Expansion Constant that does not include substation costs in its derivation.

xxiii.) The application of locational security costs, by applying a multiplier to the Expansion Constant reflecting the difference in cost incurred on a secure network as opposed to an unsecured network.

xxiv.) The application of a de-minimus level demand charge of £0/kW for Half Hourly and £0/kWh for Non Half Hourly metered demand to avoid the introduction of negative demand tariffs.

xxv.) The application of 132kV expansion factor on a Transmission Owner basis reflecting the regional variations in network upgrade plans.

xxvi.) The application of a Transmission Network Use of System Revenue split between generation and demand where the proportion of the total revenue paid by generation, for the purposes of tariff setting, is the lower of 0.27 or x times the total revenue, where x for a charging year n is calculated as:

$$x_n = \frac{(Cap_{EC} * (1 - y)) * GO}{MAR * ER}$$

Where;

Cap_{EC} = Upper limit of the range specified by European Commission Regulation 838/2010 Part B paragraph 3 (or any subsequent regulation specifying such a limit) on annual average transmission charge payable by generation

y = Error margin built in to adjust Cap_{EC} to account for difference in one year ahead forecast and outturn values for MAR and GO, based on previous years error at the time of calculating the error for charging year n

GO = Forecast GB Generation Output for generation liable for Transmission charges (i.e. energy injected into the transmission network in MWh) for charging year n

MAR = Forecast TO Maximum Allowed Revenue (£) for charging year n

ER = OBR Spring Forecast €/£ Exchange Rate in charging year n-1

xxvii.) The number of generation zones using the criteria outlined in paragraph 14.15.42 has been determined as 21.

xxviii.) The number of demand zones has been determined as 14, corresponding to the 14 GSP groups.

14.14.36 The underlying rationale behind Transmission Network Use of System charges is that efficient economic signals are provided to Users when services are priced to reflect the incremental costs of supplying them. Therefore, charges should reflect the impact that Users of the transmission system at different locations would have on the Transmission Owner's costs, if they were to increase or decrease their use of the respective systems. These costs are primarily defined as the investment costs in the transmission system,

maintenance of the transmission system and maintaining a system capable of providing a secure bulk supply of energy.

The Transmission Licence requires The Company to operate the National Electricity Transmission System to specified standards. In addition The Company with other transmission licensees are required to plan and develop the National Electricity Transmission System to meet these standards. These requirements mean that the system must conform to a particular Security Standard and capital investment requirements are largely driven by the need to conform to both the deterministic and supporting cost benefit analysis aspects of this standard. It is this obligation, which provides the underlying rationale for the ICRP approach, i.e. for any changes in generation and demand on the system, The Company must ensure that it satisfies the requirements of the Security Standard.

14.14.37 The Security Standard identifies requirements on the capacity of component sections of the system given the expected generation and demand at each node, such that demand can be met and generators' output over the course of a year (capped at their Transmission Entry Capacity, TEC) can be accommodated in the most economic and efficient manner. The derivation of the incremental investment costs at different points on the system is therefore determined against the requirements of the system both at the time of peak demand and across the remainder of the year. The Security Standard uses a Demand Security Criterion and an Economy Criterion to assess capacity requirements. The charging methodology therefore recognises both these elements in its rationale.

14.14.38 The Demand Security Criterion requires sufficient transmission system capacity such that peak demand can be met through generation sources as defined in the Security Standard, whilst the Economy Criterion requires sufficient transmission system capacity to accommodate all types of generation in order to meet varying levels of demand efficiently. The latter is achieved through a set of deterministic parameters that have been derived from a generic Cost Benefit Analysis (CBA) seeking to identify an appropriate balance between constraint costs and the costs of transmission reinforcements.

14.14.39 The TNUoS charging methodology seeks to reflect these arrangements through the use of dual backgrounds in the Transport Model, namely a Peak Security background representative of the Demand Security Criterion and a Year Round background representative of the Economy Criterion.

14.14.40 To recognise that various types of generation will have a different impact on incremental investment costs the charging methodology uses a generator's TEC, Peak Security flag, and Annual Load Factor (ALF) when determining Transmission Network Use of System charges relating to the Peak Security and Year Round backgrounds respectively. For the Year Round background the diversity of the plant mix (i.e the proportion of low carbon and carbon generation) in each charging zone is also taken into account.

14.14.41 In setting and reviewing these charges The Company has a number of further objectives. These are to:

- offer clarity of principles and transparency of the methodology;
- inform existing Users and potential new entrants with accurate and stable cost messages;
- charge on the basis of services provided and on the basis of incremental rather than average costs, and so promote the optimal use of and investment in the transmission system; and
- be implementable within practical cost parameters and time-scales.

14.14.42 Condition C13 of The Company's Transmission Licence governs the adjustment to Use of System charges for small generators. Under the condition, The Company is required to reduce TNUoS charges paid by eligible small generators by a designated sum, which will be determined by the Authority. The licence condition describes an adjustment to generator charges for eligible plant, and a consequential change to demand charges to recover any shortfall in revenue. The mechanism for recovery will ensure revenue neutrality over the lifetime of its operation although it does allow for effective under or over recovery within any year. For the avoidance of doubt, Condition C13 does not form part of the Use of System Charging Methodology.

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14.14.44 Forecast and reconciliation of x in the Transmission Network Use of System Revenue Split between Generation and Demand ("the G:D Split") for the Charging Year 2015/16

In setting the G:D split, at paragraph 14.14.5(v), for Charging Year 2015/16, x shall be calculated on a forecast of "GO" and "MAR" and "ER" shall be the OBR Spring Forecast €/£ Exchange Rate.

In 2016/17, the Company shall recalculate the G:D Split for the previous Financial Year (Charging Year 2015/16) in accordance with paragraph 14.14.5(v) and will notify market participants of adjustments to generator and demand TNUoS tariffs with the TNUoS forecast following charge setting in 2017/18 for Charging Year 2018/19.

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4. **The Residual Tariff**

14.15.138 As a result of the factors above, in order to ensure adequate revenue recovery, a constant non-locational **Residual Tariff** for generation and demand is calculated, which includes infrastructure substation asset costs. It is added to the initial transport tariffs for both Peak Security and Year Round backgrounds so that the correct generation / demand revenue split is maintained and the total revenue recovery is achieved.

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$$RT_G = \frac{[(1-p) \times TRR] - ITRR_{GPS} - ITRR_{GYRNS} - ITRR_{GYRS} - LCRR_G}{\sum_{Gi=1}^{n} G_{Gi}}$$

Where

RT	=	Residual Tariff (£/MW)
p	=	Proportion of revenue to be recovered from demand

14.15.139 For Charging Year 2018/19, the Demand and Generation Residual Tariff will be set as follows:

$$RT_D = \frac{p(TRR - GDSadj_{2015/16}) - ITRR_{DPS} - ITRR_{DYR}}{\sum_{Di=1}^{14} D_{Di}}$$

$$RT_G = \frac{[(1-p) \times TRR - GDSadj_{2015/16})] - ITRR_{GPS} - ITRR_{GYRNS} - ITRR_{GYRS} - LCRR_G}{\sum_{Gi=1}^{G} G_{Gi}}$$

Where

RT	=	Residual Tariff (£/MW)
p	=	Proportion of revenue to be recovered from demand
$GDSadj_{2015/16}$	=	The under recovery which relates to the G:D Split adjustment to ensure compliance with European Regulation 838/2010 in Charging Year 2015/16.