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for energy consumers

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Dear Mr. Toms,

**CUSC Modifications Panel recommendation not to grant urgency for 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)'**

On 8 March 2016, SSE (the Proposer) raised CUSC modification proposal CMP261¹, which seeks to introduce a rebate for generators to ensure compliance with European Union (EU) Regulation 838/2010 (the Regulation) for the 2015/16 charging year. The Proposer requested that CMP261 be progressed on an urgent timetable. The CUSC Modifications Panel (the Panel) considered CMP261 at a special Panel meeting on 9 March 2016.

On 11 March 2016, the Panel wrote to us with its recommendation not to treat this proposal as urgent. The Panel also set out its view that, subject to our decision on the urgency request, CMP261 would require Workgroup assessment and suggested that an accelerated timetable be followed.

This letter confirms that we are in agreement with the Panel and do not consider that the modification proposal should be progressed on an urgent basis.

Background to the proposal

The Regulation limits average transmission charges for generators in EU member states. The range of allowable average transmission charges for generators in Great Britain (GB)

¹ The CMP261 modification proposal form is available on National Grid's website, here <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP261/>

is €0-2.5/MWh. GB charges were forecast to exceed €0-2.5/MWh at some stage over the period 2015/16 to 2020/21, depending on the interpretation of Paragraph 2(1) Annex Part B of the Regulation. To prevent this, we approved CUSC Modification Proposal CMP224 in October 2014.² As a result, the average generation TNUoS charge in GB is “capped” each year to ensure compliance with the Regulation.

Charges are set in advance of the charging year based on forecasts. To mitigate the risk of exceeding the limits due to inaccurate forecasts, the calculation of the G:D split includes an error margin and includes all local charges in the calculation of the average charge.

The error margin is set by NGET and was 7% for 2015/16. This resulted in a forecast average transmission charge of €2.33/MWh, based on a forecast £/€ exchange rate of 1.22. Since 1 April 2015, the average £/€ exchange rate has averaged around 1.36. This is significantly higher than the forecast. Assuming the forecasts for other components are correct an exchange rate of 1.36 would result in an average charge of around €2.60/MWh for 2015/16 (this calculation includes all local charges). In the Proposer’s view, demand is also likely to be lower than expected resulting in an average charge of around €3.25/MWh (including all local charges).

The proposal

CMP261 proposes that if the average charge does exceed the €2.5/MWh cap (based on one interpretation of the Regulation) generators would receive a rebate on their charges. The level of the rebate would be determined such that the total average charge paid by generators (including the rebate) for 2015/16 would be equal €2.5/MWh. The rebate would be paid for through higher charges for suppliers/demand customers in 2017/18.

Panel Discussion

The Panel discussed CMP261 at its meeting on 9 March 2016. The Panel voted by majority that CMP261 should not be treated as an urgent modification when considered against the urgency criteria set out in Ofgem’s guidance. Panel members noted that there are legal questions around the interpretation of the Regulation that may need clarification. The Panel’s view was that CMP261 should be assessed by a Workgroup. The Panel noted that the urgent process holds an inherent risk of unintended consequences, which may arise should there be insufficient time to consider all aspects of a modification proposal. Ultimately the Panel’s majority view was that the benefit gained from taking time to develop the modification is greater than that of delivering it in line with the Proposer’s suggested urgent timetable. The Panel recommended that the proposal is assessed on an accelerated timetable with the final modification report being submitted to us for decision in early July 2016.

Our Views

In reaching our decision, we have considered the details contained within the proposal, the Proposer’s justification for urgency and the views of the Panel. We have assessed the request against the criteria set out in Ofgem’s published guidance, in particular whether it is linked to “*an imminent issue or a current issue that if not urgently addressed may cause a significant commercial impact on parties, consumers or other stakeholder(s)*”.

² Our decision on CMP224 is published on our website here: <https://www.ofgem.gov.uk/publications-and-updates/connection-and-use-system-code-cusc-cmp224-cap-total-tnuos-target-revenue-be-recovered-generation-users>

If CMP261 were approved and the Proposer's forecasts are correct, generator charges for 2015/16 would fall by around £1.90/kW and demand charges for 2017/18 would increase by around £2.80/kW. We recognise that charge changes of this size are significant and that there will be uncertainty in this respect until our decision on CMP261 is made. We are particularly conscious of the potential impact that an increase in demand charges may have on small suppliers. However, we note that parties including small suppliers may price uncertainty relating the CMP261 into their contracts while industry considers this issue. Therefore, we do not consider that failure to deal with this *urgently will have a significant commercial impact on parties, consumers or other stakeholder(s)*.

We note the Proposer's concerns that, if this issue is not dealt with by 31 March 2016, there may be a risk of breaching the Regulation. We note that any rebate for generators would necessarily take place after the end of the 2015/16 charging year. Our view is that, if there are issues in respect of compliance with the Regulation, these can be appropriately dealt with by considering CMP261 on the accelerated timetable proposed by the Panel. We also agree with the Panel that progressing CMP261 on an urgent timetable would increase the risk of unintended consequences. On balance, therefore, our view is that the increased risk of unintended consequences associated with an urgent timetable outweighs the benefits of making a decision before 31 March 2016.

We also note that the CUSC modification process is designed to allow sufficient opportunity for industry to consider and submit their views in respect of a modification proposal, and we consider it should apply in this case, albeit on an accelerated timetable as proposed by the Panel.

For the avoidance of doubt, in not granting this request for urgency, we have made no assessment of the merits of the proposal and nothing in this letter in any way fetters the discretion of the Authority in respect of this proposal.

Yours sincerely,

Frances Warburton
Partner, Energy Systems Integration
Duly authorised on behalf of the Authority