

Stage 02: Workgroup Consultation

Connection and Use of System Code (CUSC)

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)’

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.

This document contains the discussion of the Workgroup which formed in March 2016 to develop and assess the proposal. Any interested party is able to make a response in line with the guidance set out in Section 6 of this document.

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Length of Consultation: 15 Working Days
Responses by: 28th July 2016



High Impact:

Users who pay either Generation or Demand TNUoS tariffs



Medium Impact:



Low Impact:

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

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Any Questions?

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About this document

This document is a Workgroup consultation which seeks the views of CUSC and interested parties in relation to the issues raised by the Original CMP261 CUSC Modification Proposal which was raised by Garth Graham SSE and developed by the Workgroup. Parties are requested to respond by **5pm** on **28th July 2016** to CUSC.team@nationalgrid.com using the Workgroup Consultation Response Proforma which can be found on the following link:<http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP261>

Document Control

Version	Date	Author	Change Reference
0.1	03/05/2016	Code Administrator	Draft Workgroup Consultation
0.2	06/05/2016	Code Administrator	Workgroup Comments
0.3	19/05/2016	Code Administrator	Workgroup Comments
0.4	23/05/2016	Code Administrator	Workgroup Comments
0.5	06/06/2016	Code Administrator	Workgroup Comments
0.6	16/06/2016	Code Administrator	Workgroup Comments
0.7	24/06/2016	Code Administrator	Workgroup Analysis Insertion
0.8	05/07/2016	Code Administrator	Final Workgroup Consultation

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 inclusive¹.
- 1.4 This Workgroup Consultation 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.

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 Debate

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 CMP224² "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 2014³.
- 2.2 Under CMP224, and as now codified in the CUSC⁴, 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 report⁵ 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

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 <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>

- 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 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*

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.

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 counterfactual, '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 2015/16⁹;

(v) it was recognised in Ofgem's October 2014 CMP224 Decision Letter¹⁰ 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 occasions¹¹ 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 licence¹² 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 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 Ofgem¹³ of CMP224¹⁴ 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

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).

¹³ In its decision letter of 8th October 2014.

¹⁴ Which was implemented on 22nd October 2014.

€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 had adopted the "stricter" interpretation of the Regulation, not that they had accepted the principle that local circuit charges should be included in the calculation although, as the Proposer noted, this was the practical effect.
- 2.18 Subsequently, at the second Workgroup meeting¹⁵, 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 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 2014¹⁶. 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 meeting¹⁷ 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

¹⁵ 29th April 2016.

¹⁶ Pages 97-119 of the CMP224 Final Modification Report.

¹⁷ 23rd March 2016.

paid by Generators in Charging Year 2015/16 would have occurred as part of the existing Generation Reconciliation process set out in the CUSC¹⁸. 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/kWh) 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 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?

¹⁸ Section 3.13.2-3

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 9.519 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 discussions²⁰ 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:-
- January 2015
 - 30th at the CUSC Panel (minute 4409-4411) raised on the back of an email sent on
 - 19th²¹ 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 email²² 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 Proposal²³ 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

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."

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)".

- 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 of 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 breach²⁴ that has occurred in Charging Year 2015/16: “...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.”

²⁴ “...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 a 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

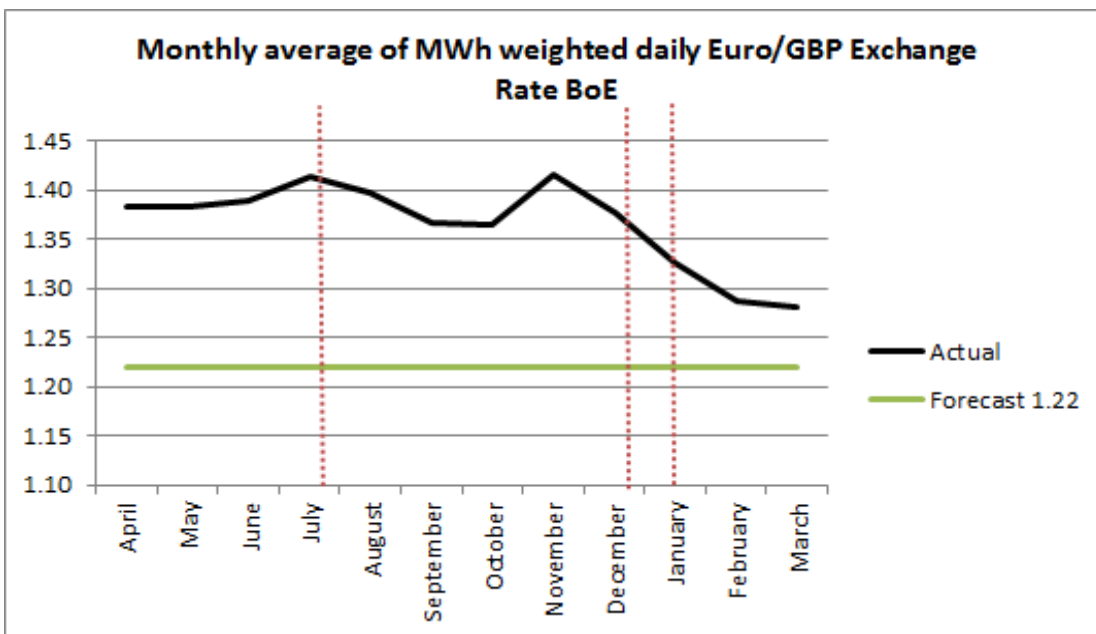


Figure 3: Graph showing the Daily Bank of England €:£ Exchange Rate for 2015/16 and the forecast rate used in tariff setting for 2015/16

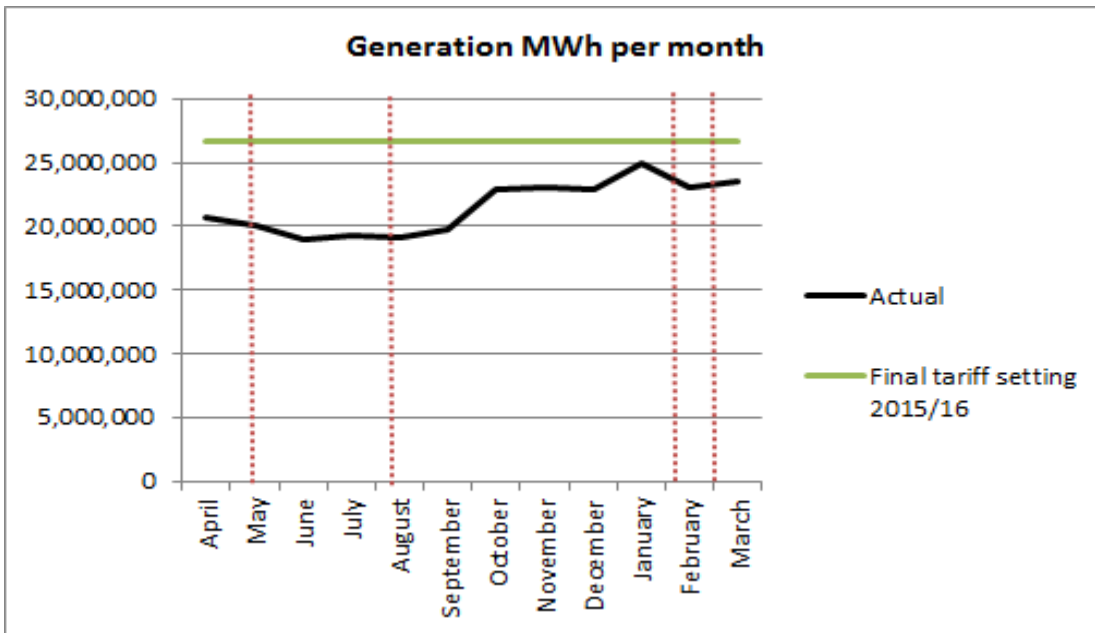


Figure 4: Graph showing the actual Generation Output and the forecast figure used in tariff setting for 2015/16

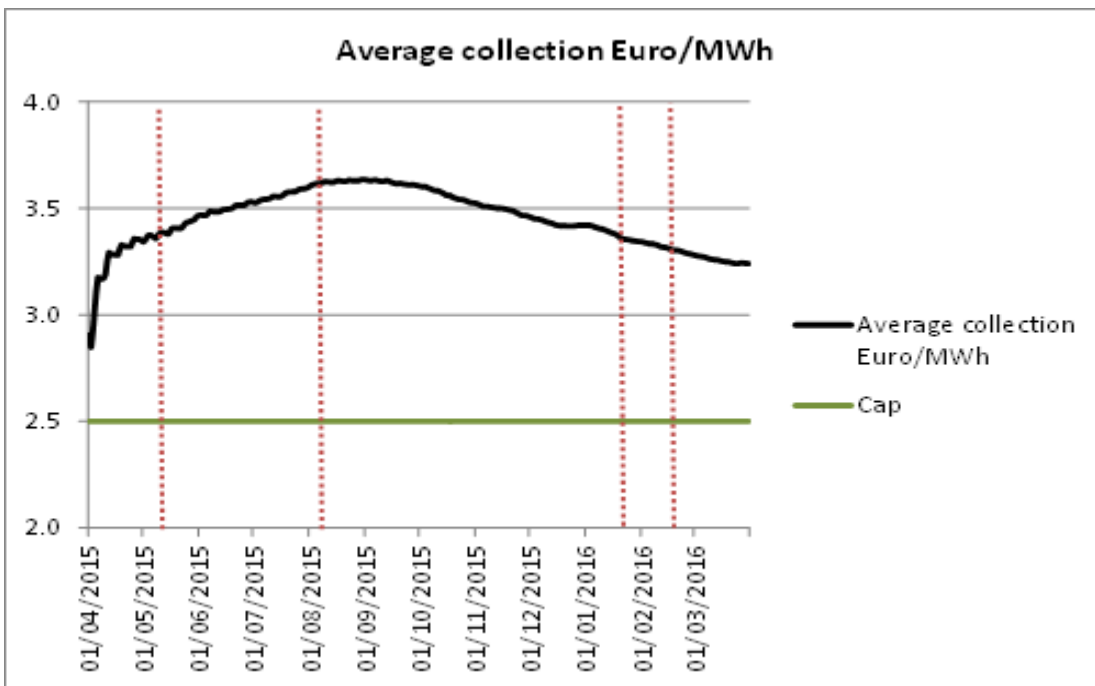


Figure 5: Graph showing the combined effect of the two individual items shown in Figures 3 and 4 in 2015/16

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 24²⁵; 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 text²⁶ 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 2²⁷ and 3²⁸ (i.e. the options that were based on the ‘broad’ / exclude approach to Generator only spurs) specifically had a ‘REC spurs’ element²⁹. However, the relevant legal text for CMP224 Original³⁰ and WACM1³¹ (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.

²⁵ [para 23] “In the context of 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”.

[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)

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)

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' approach³² 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 Sweden³³. 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 Interpretation	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 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

³² Further details of which can be found in the CMP224 Final Modification report.

³³ CMP251 Workgroup Report Annex 9.

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 by 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 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.

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

3 Workgroup Alternatives

3.1 Yet to be agreed by the Workgroup.

4 Impact and Assessment

Impact on the CUSC

4.1 Changes to Section 14

Impact on Greenhouse Gas Emissions

4.2 None identified.

Impact on Core Industry Documents

4.3 None identified.

Impact on other Industry Documents

4.4 None identified.

5 Proposed Implementation and Transition

- 5.1 Over the course of its five 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:

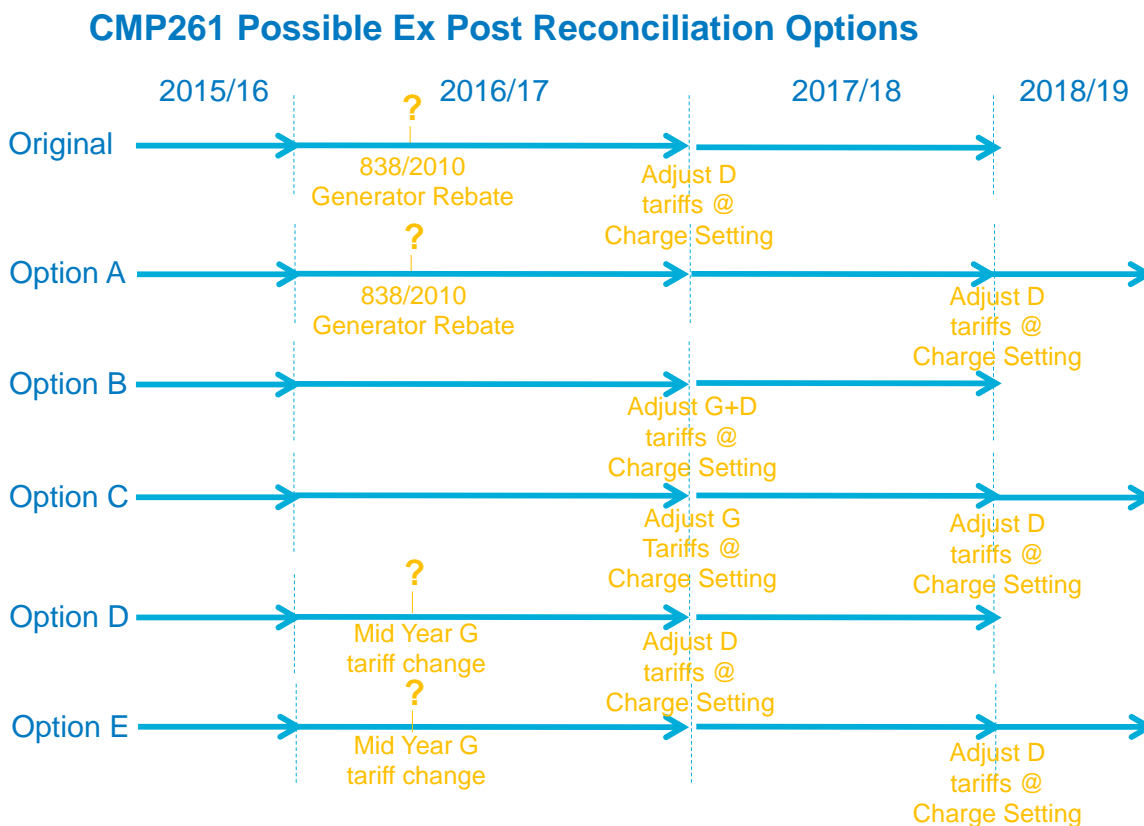


Figure 7 : Possible Ex Post Reconciliation Options

- 5.2 The Workgroup identified five possible reconciliation options in addition to the Original approach to a possible reconciliation.
- 5.3 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.
- 5.4 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).
- 5.5 Option B would adjust Generators³⁴ 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.
- 5.6 Option C, based on Option B, with Generator³⁵ 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.
- 5.7 Option D proposes a mid-year tariff change for Generators³⁶ 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.

³⁴ 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 Charging Year 2015/16.

³⁵ 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 Charging Year 2015/16.

- 5.8 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).
- 5.9 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 group 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.
- 5.10 According to National Grid the Original Proposal, and Options A, 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 such that process, for Charging Year 2015/16, in April 2016).
- 5.11 The Original Proposal and Option A 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.
- 5.12 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.

³⁶ 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

- 6.1 This Workgroup is seeking the views of CUSC Parties and other interested parties in relation to the issues noted in this document and specifically in response to the questions highlighted in the report and summarised below:

Standard Workgroup Consultation questions;

1. Do you believe that CMP261 Original proposal or either of the potential options for change better facilitates the Applicable CUSC Objectives?
 2. Do you support the proposed implementation approach?
 3. Do you have any other comments?
 4. Do you wish to raise a Workgroup Consultation Alternative request for the Workgroup to consider? Please see 6.3.
 5. Do you have any comments on the legal opinion?
 6. Is ex ante certainty preferred over ex post 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?
 8. If an ex post reconciliation was to be adopted how quickly should the reconciliation be completed?
 9. Are there trade-offs between speed of reconciliation and the most appropriate process?
 10. Do you believe any harm has been done in the spirit of the defect identified?
 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.
- 6.2 Please send your response using the response proforma which can be found on the National Grid website via the following link: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP261/>
- 6.3 In accordance with Section 8 of the CUSC, CUSC Parties, BSC Parties, the Citizens Advice and the Citizens Advice Scotland may also raise a Workgroup Consultation Alternative Request. If you wish to raise such a request, please use the relevant form available at the web link below: http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/forms_guidance/
- 6.4 Views are invited upon the proposals outlined in this report, which should be received by **5pm** on **28th July 2016**. Your formal responses may be emailed to: cusc.team@nationalgrid.com
- 6.5 If you wish to submit a confidential response, please note that 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 the confidentiality. A response marked "Private & Confidential" will be disclosed to the Authority in full but, 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.
- 6.6 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 and Confidential".

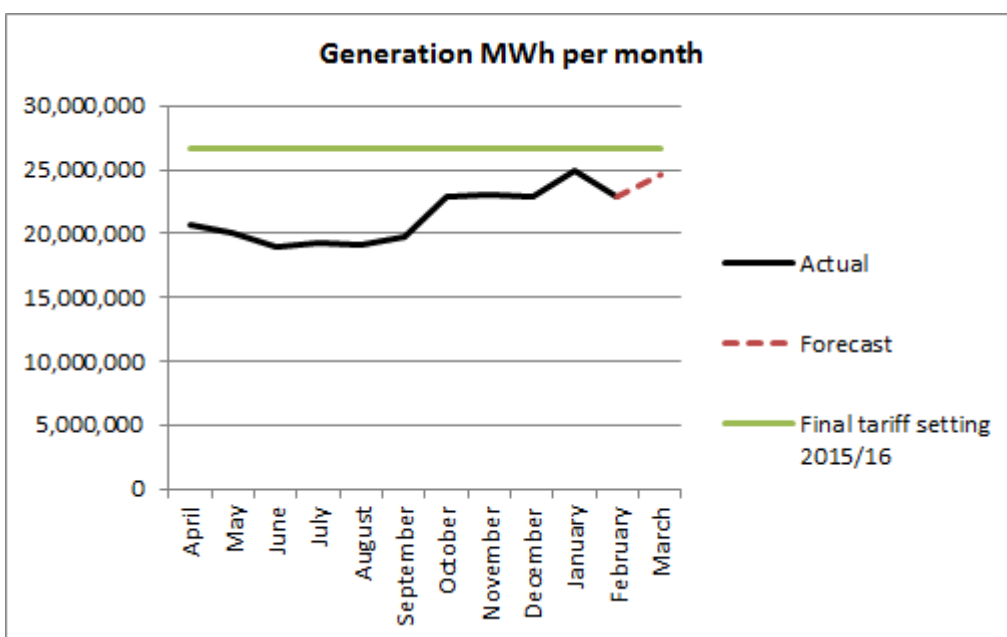
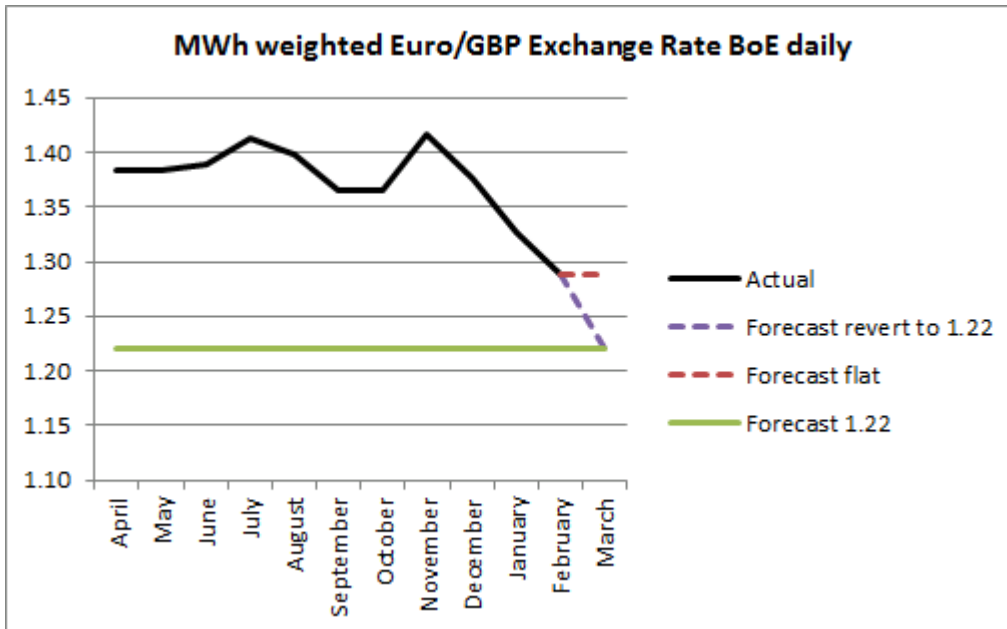
CUSC Modification Proposal Form (for Charging Methodology Proposals) CMP261

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
8 th March 2016
Description of the Issue or Defect that the CUSC Modification Proposal seeks to address
<p>Having due regard for Regulation (EC) No 714/2009, the Commission Regulation (EU) No 838/2010¹ 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.</p> <p>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.</p> <p>The methodology for generation transmission charges in Great Britain is defined in Section 14 of the CUSC.</p> <p>In order to assess 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:-</p> <ol style="list-style-type: none">1) Total TNUoS cost in GB (£) to be recovered from Generators;2) £/€ exchange rate for the year in question; and3) Total MWh from generating stations which pay TNUoS <p>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 Grid 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.</p> <p>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.</p>

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 be 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 €2.50/MWh 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 2015³, May 2015⁴ and August 2015⁵; 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:
<p>Please tick the relevant boxes and provide justification for each of the Charging Methodologies affected.</p> <p>Use of System Charging Methodology</p> <p><input checked="" type="checkbox"/> (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;</p> <p><input checked="" type="checkbox"/> (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);</p>

- (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: Organisation: Telephone Number: Email Address:	Angus MacRae SSE 01738 456000 angus.macrae@sse.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Garth Graham SSE 01738 456000 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.
3. /16 is 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.**
4. **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.
5. **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

6. **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.**
7. **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.

8. 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.
9. **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.**
10. Workgroup members should be mindful of efficiency and propose the fewest number of WACMs possible.
11. 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.
12. 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.
13. 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.

14. 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

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

Role	Name	Representing
<i>Chairman</i>	Nikki Jamieson	Code Administrator
<i>National Grid Representative*</i>	Nick Pittarello	National Grid
<i>Industry Representatives*</i>	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
<i>Alternatives</i>		
<i>Authority Representatives</i>	Donald Smith	Ofgem
<i>Technical secretary</i>	Ryan Place	Code Administrator
<i>Observers</i>		

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.

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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:

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

28 th July 2016	Deadline for comment
18 th August 2016	Submit final Workgroup Report to Panel
26 th August 2016	Present Workgroup Report at CUSC Modifications Panel

Post Workgroup modification process:

30 th August 2016	Code-Administrator Consultation published
20 th September 2016	Deadline for responses
23 rd September 2016	Draft Final Modification Report published
30 th September 2016	Deadline for comments
20 th October 2016	Draft Final Modification Report issued to CUSC Panel
28 th October 2016	CUSC Panel Recommendation vote
8 th November	Final CUSC Modification Report submitted to Authority

Annex 3 – Workgroup attendance register

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

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

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 modification³⁷ to enable a reconciliation payment to be made in Spring 2016 to take account of G Charge overpayments made in the 2015/16 TNUoS charging year. In that context, you have asked us to address the following questions:

³⁷ As provided for pursuant to paragraph 14.14.10 of the CUSC

- (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 Charges³⁸.
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 CUSC³⁹ 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.

- **The position regarding the use of the ex-ante approach for future charging years**

³⁸ 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.

³⁹ 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.

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 14.14.5⁴⁰ of the CUSC, the broad tariff update provision included at paragraph 14.14.10 of the

⁴⁰ 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 Margin is calculated cannot reasonably be characterised as having the effect of introducing a form of

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 factors⁴¹. 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.

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.

⁴¹ 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 producers 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 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.

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 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.⁴² 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.)

⁴² 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 Interpretation	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
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Capped €2.5/MWh Revenue from Generators (£m)	514.2	654.0
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Balance (£m)	64.1	-75.6
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0.92 £/kW

Outturn €/MWh	2.81	2.21
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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*

TEC
69,784 MW

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
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Capped €2.5/MWh Revenue from Generators (£m)	458.8	585.4
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Balance (£m)	119.5	-7.1
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Outturn €/MWh	3.15	2.47
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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

Elements of Tariff from Final Tariff	£m
Zonal Tariff	47.6
Offshore Local Circuit & Substation	186.6
Onshore Substation	20.1
Onshore Local Circuit	13.8
Residual	343.68
Total	611.78

Small Gen Discount	-£	18
TEC Under-recovery	-£	34
Cancellation Charges	£	18
Recovered from Gen		578

Based on Outturn Data					
Wider & Residual Only		Remove Offshore Local		Remove Local CCTs onshore and offshore, but retain Substations	
£m	€/MWh	£m	€/MWh	£m	€/MWh
47.6	0.23	47.6	0.23	47.6	0.23
-	-	-	-	55.98	0.27
-	-	20.1	0.10	20.1	0.10
-	-	13.8	0.07	-	-
343.68	1.67	343.68	1.67	343.68	1.67
391.28	1.90	425.18	2.07	467.36	2.27
-	0.09	-	0.09	-	0.09
-	0.17	-	0.17	-	0.17
	0.09		0.09		0.09
	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

Elements of Tariff from Final Tariff	£m
Zonal Tariff	47.6
Offshore Local Circuit & Substation	186.6
Onshore Substation	20.1
Onshore Local Circuit	13.8
Residual	343.684
Total	611.784

Small Gen Discount	-£	18
Under-recovery	-£	34
Cancellation Charges	£	18
Recovered from Gen		578

Based on Outturn Data					
Wider & Residual Only		Remove Offshore Local		Remove Local CCTs onshore and offshore, but retain Substations	
£m	€/MWh	£m	€/MWh	£m	€/MWh
47.6	0.26	47.6	0.26	47.6	0.26
-	-	-	-	55.98	0.31
-	-	20.1	0.11	20.1	0.11
-	-	13.8	0.08	-	-
343.684	1.87	343.684	1.87	343.684	1.87
391.28	2.13	425.18	2.32	467.36	2.55
-	0.10	-	0.10	-	0.10
-	0.19	-	0.19	-	0.19
	0.10		0.10		0.10
	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

Power Station	2015/16 TEC Forecast Used at Charge Setting	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)
Abernedd	552	0				£ 10,833,186.00	
Aberthaw	1620	1620	Yes	7,248,030.751	£6,217,780.32		
Achruch	43	43	Yes	9,012.686	£722,360.61		
Afton	68	0				£ 108,736.02	
Aigas	20	20	Yes	0.000	£324,013.08		
An Suidhe	20.7	20.7	Yes	44,283.751	£324,850.83		
Arcleoch	114	114	Yes	245,792.746	£1,857,838.96		
Baglan Bay	552	552	Yes	1,370,272.070	£2,328,330.48		
Barrow	90	90	Yes	307,724.649	£3,932,901.54		
Barry	235	235	Yes	40,589.057	£777,579.51		
Beaully Cascade				285,631.275	£0.00		
Black Law	118	118	Yes	62,552.740	£1,704,811.49		
Blacklaw Extension	69	69	Yes	114,837.728	£373,112.67		
Brigg	155	0					£ 131,243.28
Brimsgown	408	408	Yes	557,951.682	-£204,340.68		
Carraig Gheal	46	46	Yes	123,914.449	£777,267.84		
Carrington	910	910	Yes	299.400	£4,615,044.98		
Clunie	61.2	61.2	Yes	314,948.381	£751,783.31		
Clyde (North)	220.8	220.8	Yes	617,577.504	£2,997,069.87		
Clyde (South)	128.8	128.8	Yes	330,610.210	£1,750,269.12		
Cockenzie	0	0	No	0.000	£0.00		
Conon Cascade				429,245.117			
Connahs Quay	1380	1380	Yes	3,292,264.080	£7,281,380.94		
Corby	401	401	Yes	156,127.174	£837,776.42		

Corriegarth	69	0					
Cour	23	0				£	
Coryton	800	800	Yes	1,673,970.350	-£413,922.40	35,565.00	
Cottam	2000	2000	Yes	5,696,719.150	£10,552,726.00		
Cottam DC	395	395	Yes	949,937.310	£2,084,163.39		
Cowes	99.9	99.9	No	3,854.667	£0.00		
Cruachan	440	440	Yes	314,247.534	£8,679,370.92		
Crystal Rig	138	138	Yes	356,201.354	£1,920,511.91		
Culligran	19.1	19.1	Yes	0.000	£327,884.93		
Damhead Creek	805	805	Yes	4,512,455.055	-£456,953.42		
Deanie	38	38	Yes	0.000	£690,239.90		
Deeside	515	260	Yes	382,357.900	£1,371,854.38	£	
Derwent	0	0	No	0.000	£0.00	406,425.38	
Didcot	0	0	No	0.103	£0.00		
Didcot B	1550	1550	Yes	5,343,618.650	-£3,009,948.10		
Didcot GTs	99.9	99.9	No	3,836.932	£0.00		
Dinorwig	1644	1644	Yes	2,090,202.750	£16,554,971.50		
Drax	3906	3906	Yes	24,982,374.840	£25,954,991.12		
Dumnaglass Wind Farm	94	0					
Dungeness B	1081	1081	Yes	6,417,326.047	-£613,623.16		
Dunlaw Extension	29.75	29.75	Yes	53,988.092	£141,374.50		
Edinbane Wind	41.4	41.4	Yes	103,464.263	£1,037,796.94		
Eggborough	1940	1940	Yes	4,341,099.803	£12,891,111.82		
Errochty	75	75	Yes	143,218.730	£921,303.08		
Fallago	144	144	Yes	359,382.336	£2,091,033.07		
Farr Windfarm	92	92	Yes	218,981.410	£1,633,816.59		
Fasnakyle G1 & G3	46	46	Yes	201,521.917	£622,130.54		
Fawley	0	0	No	0.000	£0.00		
Fawley CHP	158	158	Yes	386,203.971	-£623,222.31		

Ferrybridge B	980	980	Yes	1,948,644.898	£6,373,473.12	
Ffestiniog	360	360	Yes	107,419.666	£1,879,098.84	
Fiddlers Ferry	1953	1953	Yes	4,348,006.682	£13,256,678.86	
Fife	0	0	No	0.000	£0.00	
Finlarig	16.5	16.5	Yes	91,043.537	£198,000.89	
Foyers	300	300	Yes	259,030.553	£7,899,875.40	
Garry Cascade				196,199.435	£0.00	
Glandford Brigg	99	99	No	15,787.643	£0.00	
Glendoe	99.9	99.9	No	213,159.013	£1,515,610.97	
Glenmoriston	37	37	Yes	250.521	£544,158.26	
Gordonbush	70	70	Yes	188,975.599	£1,876,749.84	
Grain	1517	1517	Yes	5,057,484.440	-£545,325.09	
Grangemouth	120	120	Yes	542,046.250	£2,058,398.76	
Great Yarmouth	405	405	Yes	2,081,676.684	£846,133.29	
Greater Gabbard	500	500	Yes	2,064,370.305	£23,436,765.00	
Griffin Wind Farm	188.6	188.6	Yes	334,021.947	£4,580,223.05	
Gunfleet Sands I	99.9	99.9	Yes	373,212.003	£2,471,003.52	
Gunfleet Sands II	64	64	Yes	239,762.906	£1,583,025.28	
Gwynt y Mor	565	574	Yes	1,642,771.510	£21,651,083.12	
Hadyard Hill	117	99.9	Yes	225,901.520	£588,830.38	£143,116.10
Harestanes	146	146	Yes	222,791.630	£2,421,077.70	
Hartlepool	1207	1207	Yes	5,432,122.545	£11,315,925.54	
Heysham	2433	2433	Yes	14,929,122.762	£19,748,536.92	
Hinkley Point B	1261	1261	Yes	7,153,439.985	-£4,749,275.30	
Humber Gateway	220	220	Yes	785,673.253	£1,415,476.70	
Hunterston	1074	1074	Yes	7,430,630.268	£17,075,694.62	
Immingham	1218	1218	Yes	6,884,108.700	£7,839,943.23	
Indian Queens	140	140	Yes	872.380	-£802,292.96	
Invergarry	20	20	Yes	0.000	£295,884.46	
Ironbridge	680	385	Yes	1,241,065.032	£872,943.61	£

						577,535.51
Keadby	0	0	No	718,254.100	£0.00	
Kilbraur	67	67	Yes	177,221.360	£1,787,789.21	
Killin Cascade				284,563.334	£0.00	
Killingholme (Centrica)	685	0	No	7,726.320	£0.00	£ 1,558,513.95
Killingholme (Eon)	900	0	No	0.000	£0.00	£ 2,109,267.00
Kilmorack	20	20	Yes	0.000	£315,839.02	
Kingsnorth	0	0	No	0.000	£0.00	
Langage	905	905	Yes	1,191,307.500	-£4,558,652.42	
Lincs Wind Farm	250	256	Yes	1,026,191.671	£18,119,162.11	
Little Barford	740	740	Yes	2,537,847.500	£1,677,865.64	
Littlebrook D	800	800	Yes	0.000	-£454,115.20	
Lochay	47	47	Yes	0.000	£565,927.24	
Lochluichart	69	69	Yes	121,177.139	£1,262,195.47	
London Array	630	630	Yes	2,578,592.491	£25,106,396.49	
Longannet	2260	2260	Yes	7,320,079.885	£39,962,698.60	
Luichart	34	34	Yes	0.000	£565,506.90	
Marchwood	900	920	Yes	3,910,922.100	-£3,150,420.40	
Mark Hill	53	53	Yes	109,107.106	£802,635.18	
Medway	700	700	Yes	1,960,728.195	-£251,633.20	
Millennium Wind	65	65	Yes	174,242.870	£973,698.90	
Moriston Cascade				313,096.999	£0.00	
Mossford	18.66	18.66	Yes	0.000	£357,612.85	
Nant	15	15	Yes	43,334.130	£177,884.13	
Ormonde	150	150	Yes	559,688.000	£10,825,059.45	
Orrin	18	18	Yes	0.000	£281,072.68	
Pembroke	2199	2199	Yes	11,874,370.921	£13,898,047.23	
Peterborough	245	245	Yes	19,125.462	£728,719.92	
Peterhead	400	400	Yes	661,352.666	£8,531,878.80	

Pogbie Wind Farm	12	0					
Ratcliffe-on-Soar	2021	2021	Yes	3,294,535.333	£5,003,094.63		
Robin Rigg East	92	92	Yes	232,816.830	£3,407,557.55		
Robin Rigg West	92	92	Yes	277,786.853	£3,407,557.55		
Rocksavage	810	810	Yes	1,153,232.630	£4,033,740.87		
Roosecote	99	99	No	0.000	£0.00		
Rugeley B	1018	980	Yes	3,451,044.244	£2,222,038.28	£	74,394.41
Rye House	715	715	Yes	481,018.729	-£405,865.46		
Saltend	1100	1100	Yes	5,160,702.150	£7,482,257.20		
Seabank	1234	1234	Yes	2,856,752.444	£475,779.81		
Sellafield	155	155	Yes	379,215.740	£1,198,245.01		
Severn Power	850	850	Yes	1,308,692.150	£3,020,752.10		
Sheringham Shoal	315	315	Yes	1,172,463.876	£15,638,472.99		
Shoreham	420	420	Yes	1,731,220.837	-£1,072,515.36		
Sizewell B	1212	1216	Yes	10,545,282.266	£2,757,141.38		
Sloy G2 & G3	80	80	Yes	63,549.930	£648,031.20		
South Humber Bank	1285	540	Yes	2,052,546.880	£3,883,383.54	£	1,746,004.35
Spalding	880	880	Yes	3,327,517.550	£3,013,680.56		
Staythorpe	1728	1728	Yes	9,971,680.050	£9,117,555.26		
Strathy North & South	76	67.65	Yes	91,654.000	£1,347,205.24	£	563,205.40
Sutton Bridge	819	819	Yes	945,659.400	£2,581,926.17		
Taylors Lane	144	144	Yes	1,685.729	-£750,552.62		
Thanet	300	300	Yes	979,869.379	£13,811,352.90		
Tilbury B	0	0	No	0.000	£0.00		
Toddleburn	27.6	27.6	Yes	62,853.239	£131,157.52		
Torness	1215	1215	Yes	8,686,834.358	£16,464,288.83		
Uskmouth	0	115	Yes	318,994.500	£426,052.00		
Walney I	182	182	Yes	679,278.024	£11,928,356.08		

Walney II	182	182	Yes	501,731.686	£11,964,485.44		
West Burton	1987	1987	Yes	5,296,885.442	£10,484,133.28		
West Burton B	1332	1332	Yes	6,485,491.250	£7,028,115.52		
West Of Duddon Sands	382	382	Yes	539,950.384	£15,153,568.70		
Westermost Rough	205	205	Yes	766,974.194	£1,318,966.93		
Whitelee	305	305	Yes	507,764.920	£4,886,985.72		
Whitelee Extension	206	206	Yes	312,897.990	£3,335,556.53		
Wilton	99	99	Yes	140,337.908	£875,656.29		
Wylfa	450	450	Yes	2,573,308.511	£3,538,256.85		

	73,547	69,784		250,037,379.44	£551,256,727.59	£10,977,487.02	£7,309,705.38
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Temporary TEC Charges

672,186.00	£ 5,748,799.00
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Adjustments

£ 3,046,513.46

Total TNUoS Tariff Charges

250,709,565.44	£560,052,040.05
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Total Charges including Cancellation Charges

£578,339,232.45

Figure 13: Forecast and actual Generator TEC, output, total TNUoS charges and cancellation charges.

Small Gen Discount 2015/16

Station	Discount	TEC
Achruch	-£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 6 – 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 1 st 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 7 – 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 the 7% '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 period⁴³.

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>

⁴³ 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.

-----Original Message-----

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