

Minutes

Meeting name	CUSC Modifications Panel
Meeting number	208
Date of meeting	20 June 2017
Location	Teleconference

Attendees

Name	Initials	Position
Mike Toms	MT	Panel Chair
John Martin	JM	Code Administrator
Heena Chauhan	HC	Panel Secretary
Louise Schmitz	LS	National Grid Panel Member
Garth Graham	GG	Users' Panel Member
Cem Suleyman	CS	Users' Panel Member
Paul Jones	PJ	Users' Panel Member
James Anderson	JA	Users' Panel Member
Paul Mott	PM	Users' Panel Member
Kyle Martin	KM	Users' Panel Member
Craig Lowrey	CL	Consumer Panel Member (alternate)
Nadir Hafeez	NH	Authority Representative
Caroline Wright	CW	Observer

1 Introductions and Apologies for Absence

Apologies were provided by Simon Lord (SL) and Andy Pace (AP). Paul Jones was asked to be SL's alternate and Craig Lowrey (CL) attended the Panel as AP's alternate.

All presentations given at this CUSC Modifications Panel meeting can be found in the CUSC Panel area on the National Grid website:

<http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Panel-information/>

2 Panel Recommendation Vote

6454. **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 to 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.

6455. HC presented the voting presentation to the Panel. The CUSC Panel provided their recommendation vote and voting statement on CMP261 against the Applicable CUSC Objectives (a) to (e). For the avoidance of doubt, the voting opinions has been abbreviated as follows;

- Y = Yes
- N = No
- - = Neutral

6456. **CMP261 Vote 1 – Better than the Baseline:**

James Anderson						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)
Original	Y	-	-	Y	-	Y
WACM1	Y	-	-	Y	-	Y
WACM2	Y	-	-	Y	-	Y
WACM3	No	-	-	N	-	N
Craig Lowrey (alternate for Andy Pace)						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)
Original	N	N	-	-	N	N
WACM1	N	N	-	-	N	N
WACM2	N	N	-	-	N	N
WACM3	N	N	-	-	N	N
Kyle Martin						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)
Original	Y	-	-	Y	-	Y
WACM1	Y	-	-	Y	-	Y
WACM2	Y	-	-	Y	-	Y
WACM3	N	-	-	N	-	N
Garth Graham						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)
Original	Y	Y	-	Y	-	Y
WACM1	Y	Y	-	Y	-	Y
WACM2	Y	Y	-	Y	-	Y
WACM3	N	N	-	N	-	N
Louise Schmitz						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)
Original	Y	Y	-	N	Y	Y
WACM1	Y	Y	-	N	Y	Y
WACM2	Y	Y	-	N	Y	Y
WACM3	Y	Y	-	N	Y	N
Paul Jones						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)

Original	-	-	-	-	Y	Y
WACM1	-	-	-	-	Y	Y
WACM2	-	-	-	-	Y	Y
WACM3	-	-	-	-	Y	Y
Simon Lord (Paul Jones voted as Simon Lord's alternate)						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)
Original	N	N	-	-	N	N
WACM1	N	N	-	-	N	N
WACM2	N	N	-	-	N	N
WACM3	N	N	-	-	N	N
Cem Suleyman						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)
Original	-	-	-	Y	-	Y
WACM1	-	-	-	Y	-	Y
WACM2	N	N	N	N	N	N
WACM3	-	-	-	N	-	N
Paul Mott						
	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Better facilitates ACO (e)?	Overall (Y/N)
Original	-	Y	-	Y	-	Y
WACM1	-	Y	-	Y	-	Y
WACM2	-	Y	-	Y	-	Y
WACM3	-	N	-	Y	-	-

6457. **CMP261 Vote 2 – Which option is best?**

Panel Member	CMP261
James Anderson	WACM1
Craig Lowrey (alternate for Andy Pace)	Baseline
Kyle Martin	WACM1
Garth Graham	Original
Louise Schmitz	WACM2
Paul Jones	WACM2
Simon Lord (Paul Jones voted as Simon Lord's alternate)	Baseline
Cem Suleyman	WACM1
Paul Mott	WACM1

6458. **Voting Statements:**

James Anderson

The Original Proposal, WACM1 and WACM2 overall better meet the Applicable CUSC Charing Objectives (ACCOs) than the current baseline by ensuring compliance with Electricity Regulation 838/2010 and ensuring that the average charge paid by GB generators in 2015/16 did not exceed €2.50/MWh (ACCO (d)).

In this regard I note Key Conclusion 4 from Addleshaw Goddard that:

"in circumstances where the outturn figures for a charging year demonstrate average €/MWh G Charges which are materially above the G Charge Guidelines (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".

In addition, the Original Proposal and WACMs 1 and 2 better facilitate competition (ACCO (a)) than the current baseline by providing certainty to generator parties that generator TNUoS charges will not exceed €2.50/MWh

The Original Proposal and WACMs 1 and 2 are neutral against the other ACCOs.

WACM3 does not better meet the ACCOs as it provides a reconciliation process which makes reconciliation payments to generators who were not impacted by the original "overcharge" (i.e. they have increased TEC between charging years) and fails to make payments to others affected by the "overcharge" (i.e. they have reduced TEC between charging years). Such arrangements would represent a windfall gain to the first category of generators which would be detrimental to competition (Applicable CUSC Charging Objective (a)).

By not refunding the generator parties who overpaid in charging year 2015/16, WACM3 fails to ensure that the charges faced by those generators did not exceed €2.50/MWh and therefore is not better than the current baseline in respect of Applicable Charging Objective (d).

Overall, WAM3 does not better meet the ACCOs than the current baseline.

Proposals which give supplier parties a greater amount of time to factor the recovery of the generator refund into customer tariffs provide greater certainty and are more likely to better facilitate competition. WACM 1 which recovers the generator rebate from suppliers in year T+2 is therefore the best option.

Craig Lowrey alternate for Andy Pace

The acceptance of this proposal or any of the WACMs will result in a substantial payment to transmission connected generators which will ultimately be paid for by consumers. There remains uncertainty regarding whether the cap has been breached and determination of this proposal will be significantly influenced by legal opinion. There are various views in the draft final modification report that make it difficult to come to a robust view that the proposal or alternatives are better than baseline. As a consequence, I do not believe that the original proposal or any of the WACMs better meet the objectives and that the best option is to retain the baseline.

Kyle Martin

Approving CMP261 will reduce the risk of infraction proceedings (as supported by the legal opinion) which better facilitates objective (d). Additionally, providing generators with cost reflective charges removes distortions in the charging regime and improves the commercial position of suppliers and generators, thereby, better facilitating CUSC objective (a). WACM1 recovers costs in the 18/19 charging year, therefore, suppliers can benefit from the extra notice being given before costs are recovered through demand changes. There is a further question as to whether suppliers should pay back

the money owed to generation at all. If a breach has occurred - the question is then whether National Grid should face the cost of this charge.

Following the send back from Ofgem and the revised modification report I now consider that WACM2 better facilitates the CUSC objectives a) and d) as this will ensure compliance with European regulations and promotes cost reflective charging. It should be noted that the WACM 2 presented in the updated FMR is significantly different from the original which I considered did not meet the applicable CUSC objectives. Although I support the updated modification I still consider WACM1 to be the best option. This is because the full TNUoS rebate (including cancellation charges) is recovered and the supplier charging year is deferred until 2018/19.

Garth Graham

This vote takes place after the Ofgem send back letter of 22 February 2017, with the subsequent deliberations by the Workgroup and Code Administrator Consultation which closed on 9 June 2017.

In respect of CMP261 Original, WACM1, (*un-amended*) WACM2 and WACM3 my vote remains unchanged from that which I provided at the November 2016 CUSC Panel meeting, although I recognise that WACM2 has been *amended* and, accordingly my vote with respect to this (*amended*) WACM2 is different to what I'd previously voted last November.

As I said last November, the reason for this is that it is clear that a breach, by over 25%, of the upper limit of €2.50/MWh; set out in (EU) Guidelines Regulation 838/2010 Part B; occurred in Charging Year 2015/16.

This was not some sort of 'minor' breach that had no material impact on the affected parties. Rather; as set out in the Workgroup report (pre and post send back) and in the responses from stakeholders to the various consultations; this breach caused (and continues to cause) significant harm to GB generators, was (and continues to be) detrimental to competition, undermined (and continues to undermine) the internal market, did not (and does not) help to ensure that the benefits of harmonisation are realised and affected (and continues to affect) cross border trade. All of these elements, either individually or collectively, are in contravention of various legal obligations set out in Regulations (including, but not limited to, 838/2010) and Directives as well as of the Treaty on the Functioning of the European Union.

Only the CMP261 Original, WACM1 and (*amended*) WACM2 address this breach and so better facilitate Applicable Objective (d) and in so doing are better in terms of Applicable Objectives (a) competition and (b) cost reflectivity.

In addition only the CMP261 Original, WACM1 and (*amended*) WACM2 ensure that the CUSC is compliant with Article 8(7) of EU Regulation 714/2009 as the current (baseline) national network code (namely the CUSC) affects cross-border trade by virtue of the annual average transmission charges paid by generators (in 2015/16) not being in compliance with the €2.50/MWh cap set in the Guidelines Regulation (including for the reasons that the Commission set out in their documentation that accompanied the Guidelines Regulation, which Ofgem highlighted to the CMP261 Workgroup).

Turning, specifically, to (*amended*) WACM2 I vote on the basis that the changes (summarised in red in the table in paragraph 11.17 on pages 122-124) are deemed, by Ofgem, to be legally permissible in the context of the send back process. Legal advice was sought by the Proposer and National Grid on this matter. I do not intend to repeat those arguments here. Suffice to say that it will be for Ofgem to satisfy themselves as to what extent any change(s) to the proposals before it; in the updated (post send back) CMP261 Final Modification Report; are, or are not, legally permissible for them to opine on.

If Ofgem determines that WACM2 cannot be *amended* then, in this case, my vote (and reasoning), of last November, in respect of the *un-amended* WACM2 would replace my vote here on the *amended* WACM2.

Taking account of the Workgroup update to the CMP261 Modification Report arising from the send back, and the responses to the recent (May 2017) Code Administrator Consultation, I believe that the *amended* WACM2 does better facilities better facilitate Applicable Objective (d) as it addresses the breach of EU law which ensures “compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency”. Furthermore, in so doing it is better in terms of Applicable Objectives (a) competition and (b) cost reflectivity. However, when compared to the CMP261 Original (and WACM1), then (*amended*) WACM2 is not better as the cancellation amount (£M) / amount to be rebated (£/kW) do not ensure that the right parties receive the right amount of money when compared with the CMP261 Original (and, for the avoidance of doubt, WACM1).

For the sake of brevity, I avoid repeating here the comments I made back in November, in the respect of the November 2016 Code Administrator Consultation responses (although they remain relevant here).

Instead I focus my comments on the responses to the latest (post send back) May 2017 Code Administrator Consultation.

In particular I focus on three aspects: (i) the level of interest to be paid (raised by a number of respondents); (ii) compensating generators for the loss of revenue from reduced operating hours in 2015/16, because of displacement by cheaper (by €0.65/MWh in 2015/16) imported power (raised by Calon Energy and VPI Immingham) and (iii) congestion management netting (raised by British Gas).

(i) the level of interest to be paid

In respect of the level of interest to be paid, I believe that it is relevant to take account of the Ofgem letter of 12 August 2016¹, that where a breach has occurred that customers (such as GB generators in this case) who have been overcharged (in this case by over 25%) should; in addition to being repaid the original amount; receive an appropriate rate of interest applied to the original amount.

¹ Which can be found at Annex 17 of the Modification Report.

Before looking at what an ‘appropriate rate of interest’ might be, I note that it is proposed (with *amended* WACM2) that this might be 2% plus the applicable base rate (of 0.25%); although, as noted, at paragraph 10.16, such a level of interest is “*consistent with current CUSC arrangements (base rate + 2% in the context of the treatment of K) in any rebate*”.

However, in my view this misses the difference between the two situations.

For the ‘K factor’ reconciliation this arises due to the natural ebbing and flowing of the payments of TNUoS in a particular Charging Year; as in a colder than forecast year can result in a greater recovery of TNUoS (primarily from demand users) whilst the opposite is the case in a warmer than forecast year (where demand for electricity is lower than forecast, leading to less recovery).

This is not the case with CMP261 as it relates to the 25% breach of the legal limit in the Charging Year (2015/16). This breach could, and was, easily foreseeable for the reasons set out exhaustively in (i) the Workgroup Report and (ii) responses to the two² preceding consultations.

In my view the situation that arises with respect to a breach of the law (by 25% greater than the legal limit) warrants the payment of a greater level of interest than 2% plus base.

In further consideration of this matter I am also mindful of two recent Court cases; one before the Supreme Court (the ‘Lehman Brothers’ case³) the other before the Court of Appeal (the ‘Glencore’ case⁴); that address the matter of interest to be paid, which concluded with judgements published on 10th May 2017 and 17th May 2017 (so are timely in terms of this post send back CMP261 situation).

Taking these cases into account, and mindful of the harm⁵ that this 25% breach has caused to the affected GB generators, in my view the level of interest should be set at the statutory interest level (of 8%) to appropriately recompense the affected parties (namely generators in GB who paid charges that were 25% greater than the legal limit in 2015/16) for the time value of money effects they have suffered during and after 2015/16.

In addition, taking account, for example, of the warnings issued before⁶ and during⁷ 2015/16 and that even a cursory look at the freely available data; as shown in Figures 3, 4 and 5⁸ of the 26 May 2017 post send back Code Administrator Consultation document; during 2015/16 would have alerted the relevant parties to the impending

² Workgroup and (November 2016) Code Administrator

³ <https://www.supremecourt.uk/cases/uksc-2015-0139.html>

⁴ <https://www.thetimes.co.uk/article/awarding-enhanced-interest-after-settlement-offer-rejected-ccl7f7jht>

⁵ Which is, for example, detailed at length in the SSE response to the CMP261 Workgroup Consultation - which can be found at pages 191-231 of the 26th May 2017 CMP261 Code Administrator Consultation document

⁶ As listed in paragraph 2.9, pages 7-8, of the 26th May 2017 CMP261 Code Administrator Consultation document.

⁷ As listed in paragraph 2.34, pages 13-14, of the 26th May 2017 CMP261 Code Administrator Consultation document.

⁸ Which can be found at pages 16-17 of the 26th May 2017 CMP261 Code Administrator Consultation document.

(then actual) breach then, in my view, it seems wholly appropriate to apply the statutory interest level (of 8%) in this case.

Furthermore, such a level will also act as an appropriate incentive (if one is needed) to those concerned to ensure they fully comply with their legal obligations.

Finally, in respect of the appropriate level of interest, I'm mindful of Ofgem's recent decision letter⁹ of 26 May 2017 regarding 'interest during construction for Offshore Transmission and interconnectors'. Being conscious that the operations of those (T) assets are inherently (with, for example, a 'cap & floor' revenue safety net) less risky than, say, GB generators who operated in a competitive market in 2015/16 (with the associated revenue uncertainty risks); it would seem strange that those GB generators should not receive a commensurate time value of money of circa 7.44% for 2016/17¹⁰ (and 6.83% for 2017/18) but rather, for the same period (since 31 March 2016), they would receive a substantially lesser figure of 2.25% which is approximately a third of the level Ofgem has agreed for transmission system operators for the same period (circa 15 months to date).

(ii) compensating generators for the loss of revenue

As has been articulated by two respondents to the recent (May 2017) Code Administrator Consultation (and has been set out elsewhere within the Modification Report) GB generators who paid annual average transmission charges in 2015/16 that were, on average, €0.65/MWh higher than the €2.50/MWh legal limit will have seen their revenues fall as a result, for example, of greater imports (which is witnessed by the growth of interconnector imports to GB, in 2015/16, highlighted in paragraphs 10.71-10.74 of the Modification Report).

This is separate to any time value of money related interest that should be paid (in respect of the principle rebated) noted in (i) above, and was one of the items identified (as 'A3') in Annex 12 of the Modification Report.

It is also relevant to take account of the Ofgem letter of 12 August 2016¹¹ in regard to a breaching party making an additional payment (to the customers - in this case GB generators - affected) which is reflective of the detriment suffered by the parties (GB generators) caused by the breaching of the €2.50/MWh upper limit in 2015/16.

Therefore, in my view, Ofgem should address this matter in its CMP261 decision letter by, for example, opining that this is something that is worthy of taking forward (either voluntarily by the relevant party or by the raising of a CUSC Modification to address this aspect).

(iii) congestion management netting

⁹ https://www.Ofgem.gov.uk/system/files/docs/2017/05/decison_on_idc_for_ic_and_ofto_260517.pdf

¹⁰ as per Table 1 in the 26th May 2017 Ofgem letter.

¹¹ Which can be found at Annex 17 of the Modification Report.

In the British Gas response of 9 June 2017, to the post send back Code Administrator Consultation, in answer to Question 1, the following statement is made:

“It is possible that these [constraint] payments should be netted off TNUoS charges for any assessment of compliance with the Regulation. Footnote 98 highlights that the European Commission suggests Constraint Management is **not** an Ancillary service. **Directive of European parliament and of the Council on common rules for the Internal Market in Electricity** dated 30th November 2016, page 55, para 38: “*Ancillary service*” means a service necessary for the operation of a Transmission or Distribution System including balancing and non-frequency Ancillary services **but not for Congestion Management.**” [emphasis comes from British Gas]

They go on to suggest that, as a result, congestion management revenue received by GB generators should, in some way, be netted off in terms of ancillary services in order; it seems to me; to ‘fudge’ the breach. In this regard, I’m mindful of the Judge’s comments (highlighted at paragraph 2.66 along with footnotes 41 and 42 in the Modification Report) “*By the word “fudging” I mean choosing an outcome, and manipulating the evaluation to reach that outcome*”; the outcome, in this case being to ‘fudge’ away the exceedance of the €2.50/MWh limit.

Furthermore, this whole approach suggested by British Gas is flawed for a number of reasons.

First, it is clear from paragraph 2 Part B of the Guideline Regulation that those items to be *excluded* are only those charges paid by (GB) generators and not revenue received by those same (GB) generators. Any suggestion to the contrary is wholly false and misleading.

Second, to be clear, the document that is being referred to here by British Gas is not a ‘Directive of European parliament and of the Council on common rules for the Internal Market in Electricity’ but is, in fact, as the title page shows, a “Proposal for a Directive of European Parliament and of the Council on common rules for the Internal Market in Electricity” [emphasis added].

As at 30th November 2016 (when it was issued by the Commission), this proposal had not been subject to (a) stakeholder consultation or (b) the Comitology process or (c) approval by the Council and the Parliament (in whose name it will, if approved, be made). As such this is not law, and is some way from being law, and it would be wrong, in law, to apply it to the CMP261 situation. Furthermore, this proposed change may not survive stages (a) –(c) and thus may never become law.

Third, it is suggested by British Gas that a proposed draft (but not agreed) law produced eight months after the end of 2015/16 and (as of the timing of writing) some way off being approved, let alone implemented, should, nevertheless, be applied retrospectively to Charging Year 2015/16. This stands in stark contrast with what British Gas themselves say elsewhere in their 9 June 2017 Code Administrator Consultation where they argue (unconvincingly in my view) against retrospective action.

Fourth, it should be noted, that, on closer examination, the particular paragraph (38, on page 55 of the Commission’s 30 November 2017 document) which British Gas

refers to has two types of text namely (i) that which exists in Regulation 2009/72 (which is shown without grey shading); and (ii) the Commission proposed new text (shown with grey shading). I have reproduced the relevant paragraph below:

“ancillary service’ means a service necessary for the operation of a transmission or distribution system including balancing and non-frequency ancillary services but not for congestion management.” [emphasis from the Commission 30 November 2016 document]

From this complete representation of the Commission document it can be seen that it is the proposed new (grey shaded) text that British Gas is seeking to rely upon.

However, this text is very informative in the completely opposite sense (to what British Gas is seeking) in that it is clear that, currently, the law does not see ancillary services as ‘including balancing and non-frequency ancillary services but not for congestion management’ – because if the law did already do so then there would be no need for the Commission (in its 30 November 2016 Clean Energy Package) to propose such a change to the law (as such a change would be superfluous).

Thus it can be concluded, for the purposes of Charging Year 2015/16 and CMP261, that (for the avoidance of doubt) no netting in respect of ancillary services and congestion management is legally applicable.

Louise Schmitz

As it is not clear there has been a breach of the EU regulation and as National Grid followed the approved CUSC process put in place through CMP224 via an industry-led approach to comply with Regulation 838/2010, I consider that the defect is yet to be proven. My position on the solutions is given on the assumption that a defect does exist and a solution is required as I consider this a pragmatic way forward. Note that, I believe no solution can be said to meet applicable CUSC objective (d).

I consider the statement on finding solutions to the alleged breach of EU regulation that pay the right people the right amount of money means that those options which exclude cancellation charges from the rebate amount and include interest in some form to best meet this deficiency in the FMR as submitted to the Authority last December. This therefore means that solutions which meet this requirement do in my view better meet applicable CUSC objectives (b), furthermore I would propose that options that rebate swiftly are better meeting applicable CUSC objective (b).

The recovery through published rates whether exclusively for this process or tariffs that are set in advance of the recovery period will better meet applicable CUSC objective (a), in the event that breach is determined, a lack of notice period for tariffs or rates could be argued to be detrimental to competition, it is worthy of note though that this modification has been subject to industry debate for a significant period and Suppliers have already had adequate time to make appropriate provision.

Those solutions which allow the rebate and recovery mechanisms to be held separate from the longer term impacts on the K term and future years’ tariffs are in my opinion more appropriate from a process and practicalities perspective. Options that therefore rebate and recover within the same charging year, or keep the recovery mechanism

separate from ongoing tariffs are more efficient and better meet applicable CUSC objective (e). Whilst the recovery rates is a significant process for National Grid to follow, being one-off in nature this remains arguably more efficient and, equivalent to options that use existing tariff processes equally for generation and demand.

Paul Jones

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

Of the options, WACM 2 represents the best solution as it does not include cancellation charge revenue and volumes. Cancellation charges are not made for using the transmission network, are not based on TNUoS and do not affect the calculation of the cap ex ante. WACM 3, whilst better than the baseline seeks to provide the rebate through an adjustment in future tariffs. In this time the chargeable capacities of affected generators may have changed, meaning that they would receive the incorrect level of refund.

Simon Lord (Paul Jones as Simon Lord's alternate)

TNUoS is a forward looking charge to re-allocate the charges because of circumstances that happen post event is not cost reflective as the change in charge is not able in influence actions. There is no reconciliation in circumstances where demand forecasts errors lead to over/under recovery or similarly when generation joins or leaves the TNUoS charging base. The regulation are silent on post event reconciliation and is assumed that this was not contemplated by those setting the regulation. None of the options improve on the baseline.

Cem Suleyman

Despite amendments to the Original, WACM1 and WACM3 following Ofgem Send Back, the original intent of the proposals has been preserved. Therefore my opinion on the merits of these proposals is unchanged. However, changes have been made to WACM2 which go far beyond the original intent of the proposal. Based on the evidence available I do not consider that such changes are or should be permitted following Ofgem Send Back. As such I consider WACM2 to be ultra vires and therefore not better than the Baseline measured against any of the ACOs. As before and for the same reasons previously expressed, I consider WACM1 to be the best option.

Paul Mott

It is clear that there has been a non-trivial, very material breach of EC838/2010 in charging year 2015/16. Therefore, CMP261 and its variants, notably better facilitate CAO (d) "Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency".

As to the merits of WACM2, 838/2010 has a list of 3 items to be excluded from the capped amount paid by generators – cancellation charges are not on this list, which is why WACM2 isn't the best remedy to the defect, although overall it represents an improvement on baseline. WACM1 has a slightly better if more complicated approach to demand cost recovery, than the original.

WACM3 (rebate via Generation residual at Tariff setting) does not rebate the right amount of money to the correct (from 2015/16 error year) generators, and so is far less effective as to cost-reflectivity, to the point where it represents no net improvement on baseline.

6459. The Panel agreed by majority that the Original, WACM1 and WACM2 were all better than the Baseline. In summary for Vote 1 (better than the Baseline), the Panel voted as follows;

- Seven Panel members considered that Original and WACM1 were better than the baseline.
- Six Panel members considered that WACM2 better than the baseline.
- Two Panel members did not consider that either the Original or any of the WACMs better than the baseline.
- One Panel member considered that WACM3 was better than the baseline.

6460. For Vote 2, most votes were received for WACM1 with four out of the seven Panel members considering this as the best option. This was followed by two votes each for the Baseline and WACM 2. One Panel member considered the Original as being the best option.

6461. KM highlighted that in the case of Panel members providing their draft votes ahead of the Panel meeting, each member should be provided with an opportunity to provide a verbal summary of their votes. GG agreed with this view and also noted that in the event of Urgent modifications, providing electronics votes ahead of the Panel meeting added efficiency to the process.

6462. GG noted the statement from British Gas in their Code Administrator Consultation response in terms of enforcement which (i) was similar to what they had raised in November 2016, and which GG had asked Ofgem about at the November CUSC Panel and (ii) was raised in the CMP261 Workgroup at the end of February 2016, as set out in Annex 14. Ofgem had provided an answer on those two previous occasions that no enforcement action was underway in this regard. In light of this GG asked NH if any enforcement action had been taken by the Authority since the answers provided to the February 2017 questions. NH confirmed that he had spoken with the enforcement team and Ofgem would be unable to provide any information and was unable to comment on the matter any further.

6463. HC confirmed that the Final Modification Report would be populated with the Panel's Recommendation vote and asked the Panel to provide their confirmation of the Final Report prior to it being issued the Authority on 23 June 2017.

3 Workgroup Update

6464. **CMP268 'Recognition of sharing by Conventional Carbon plant of Not-Shared Year-Round circuits'**. CMP268 proposes to change the charging methodology to more appropriately recognise of the impact of "Conventional Carbon" generation on transmission network investment costs in areas with low diversity of generation ideally ahead of the December 2016 Capacity Auction.
6465. JM presented the Workgroup conclusion slides to the Panel and noted that the Workgroup had considered, as required under the send back letter, whether a Workgroup Consultation should be carried out. The Workgroup concluded that this was not required and considered that a Code Administrator Consultation would be sufficient due to the fact that the Workgroup had considered CMP213 in more depth and concluded that there would be no change in the outcome of this analysis. No WACMs were raised by the Workgroup in either the Original or send back process, as recommended by the Panel during the send back process.
6466. MT noted that there is a substantial amount to read within the Workgroup Report and asked the Panel if they considered 5 days sufficient for a Code Administrator Consultation for this Proposal. CS appreciated that this was a requirement to align with the Special CUSC Panel requested to carry out the Panel vote as per the proposed timetable. However, CS considered that additional consultation time was required to reflect the substantial material produced since Send Back. LS confirmed that essentially the Workgroup Report was not providing any new solutions in the form of WACMs and the timescale suggested should be sufficient. PJ considered that the Industry would be presented with a lot of new information and this was quite technical in parts. PM was also cognisant that there is a lot of new material in the Workgroup post send back Report and may take a significant amount of time to read and that 5 days may not be sufficient.
6467. GG confirmed when asked by MT from a Proposers perspective, that the GEMA board was due to meet on 13 July 2017 and that GG understood that SSE would be keen to ensure that the Final Modification Report be with the Authority by 7 July at the latest. PJ noted that the original requirement to implement this proposal been aligned to the December 2016 Capacity Auctions and that that requirement had now passed. GG confirmed that he was unable to comment on the situation.
6468. PJ highlighted that it was not evident why Urgency was still effective for this Proposal and noted that as a Workgroup member this in turn had distressed the progress of the Workgroup. PJ stated that he did not support the timetable followed by the Workgroup and noted that this timetable should not also be forced on the Industry, PM agreed with PJ's comments.
6469. JA noted that a significant amount of new material had been added to the Report and that the Code Administrator Consultation was likely to attract the same respondents that had responded to previous consultations.
6470. LS agreed and felt similar parties that had responded previously to the consultation would respond again.

6471. PJ also noted that as member of the CMP268 Workgroup, a significant amount of time had been spent re-discussing, re-analysis and re-interpreting information. PJ highlighted that the Proposer had provided a very late views which were included within the Workgroup Report which in his opinion had not provided the Workgroup with sufficient time to balance adequately. PJ highlighted that CMP268 had been a difficult Workgroup to participate in and that although he did not endorse the Workgroup Report he was happy to let it progress to the next stage of the process.
6472. The Panel approved the CMP268 timetable and agreed it could progress to Code Administrator Consultation. GG suggested that it would be useful to clarify at the start of the Report which sections contained post and pre send back material.

4 AOB

6473. NH confirmed that the CMP264/CMP265 decision has been issued out to the Industry confirming that the approved WACM (WACM4) was the same WACM that had been noted in Ofgem's 'minded to' decision letter. NH also confirmed that the detailed rationale for this decision would follow. MT queried the reason for the delay. NH responded that the Ofgem Policy team were keen to provide a comprehensive update to the Industry.
6474. PM asked LS if the use of the new number has been included in the draft forecast and what the impact would be on the publishing the new tariffs timetable and whether this could be covered at the next TCMF. LS confirmed that she would take this away and cover at the next TCMF.

3 Next meeting

6475. The next normal Panel meeting will take place on 30 June 2017 at National Grid House, Warwick. The Panel also agreed to a Special CUSC Panel to vote on CMP268 on 4 July 2017 at 10am via teleconference.