

CUSC Panel and other interested
parties

Direct Dial: 020 7901 7000

Email: harriet.harmon@ofgem.gov.uk

Date: 19 May 2021

**Open letter on updating the Connection and Use of System Code (CUSC) to
provide for the correct interpretation of Commission Regulation (EU) No.
838/2010 (as incorporated into retained EU Law): CMP368 and CMP369**

On 17 December 2020, we¹ issued our decision on CUSC Modification Proposal CMP317/327 (our 'CMP317/327 Decision')². As part of our CMP317/327 Decision, we stated that we expected National Grid Electricity System Operator ('NGESO') to raise one or more CUSC Modification Proposals in order to remedy deficiencies in the CUSC. Our CMP317/327 Decision was unsuccessfully appealed to the Competition and Markets Authority ('the CMA'), with the appeal dismissed on all grounds by a decision dated 30 March 2021 (the 'CMA 2021 Decision'³). Following the CMA 2021 Decision, on 14 April 2021, NGESO raised CMP368⁴ and CMP369⁵ ('the Proposals') in line with the expectations we set out in our CMP317/327 Decision.

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work.

² CMP317/327: *Removing Generator Residual and excluding assets required for connection*: https://www.ofgem.gov.uk/system/files/docs/2020/12/cmp317327_decision_171220.pdf Our CMP317/327 Decision was published alongside our decision on CMP339: *Consequential changes for CMP317/327* - https://www.ofgem.gov.uk/system/files/docs/2020/12/cmp339_decision_171220.pdf

³ https://assets.publishing.service.gov.uk/media/60632cd6d3bf7f0c8c97d9f2/SSE_v_GEMA_-_pdf

⁴ CMP368: *Updating Charges for the Physical Assets Required for Connection, Generation Output and Generator charges for the purpose of maintaining compliance with the Limiting Regulation* <https://www.nationalgrideso.com/document/190196/download>

⁵ CMP369: *Consequential changes to Section 14 of the CUSC* <https://www.nationalgrideso.com/document/190201/download>

The Proposals (and previous proposals brought forward under CMP317/327) concern the provisions of the CUSC which aim to ensure compliance with Part B of the Annex to Commission Regulation (EU) No. 838/2010 ('the Limiting Regulation')⁶, in particular those provisions which give effect to the so-called 'Connection Exclusion'.⁷

When raising the Proposals, NGESO requested that they be treated as Urgent CUSC Modification Proposals. On 21 April 2021, we issued our decision that the Proposals should not be treated as urgent.⁸ Nevertheless, we were clear that we expect the Proposals to be implemented in full from 1 April 2022, and noted that a decision by the Authority prior to 31 October, as provided for in the timetable provided by the CUSC Panel, would allow sufficient time for implementation ahead of April 2022. We indicated that we would issue guidance to the Workgroup ahead of the first Workgroup meeting.

This guidance is intended to reiterate the Authority's expectations as to the scope of the Proposals, which we hope will mitigate the risk that the modification process could result in no proposals being developed that are fully aligned with the correct interpretation of the Limiting Regulation, as occurred in CMP317/327. We hope that this guidance will also reduce any perceived requirement for industry to develop multiple alternative proposals, providing for different outcomes, e.g. by adding unnecessary additional elements to the proposals. In this way, this guidance should also facilitate the proposed timetable which will ensure implementation in April 2022.

The Proposals

In our CMP317/327 Decision, we set out what we consider to be correct interpretation of the Connection Exclusion and concluded that none of the proposals brought forward by the Workgroup were fully aligned with this interpretation.⁹ We therefore asked NGESO to bring forward proposals to update the CUSC to incorporate the correct interpretation of the Connection Exclusion for implementation in full from 1 April 2022.

In addition to this, we noted that we did not consider the Limiting Regulation to apply to Large Distributed Generators¹⁰ and as such, regarded the provisions of the CUSC as incorrect in its treatment of the charges paid and the volumes generated by Large Distributed Generators. We therefore also asked NGESO to bring forward a proposal, or

⁶ In the CMA 2021 Decision, this is referred to as the ITC Regulation. The Limiting Regulation came into force in 2011 and has been adopted into UK domestic law pursuant to s.3 of the European Union (Withdrawal) Act 2018 following our exit from the EU.

⁷ Pages 3 and 4 of our CMP317/327 Decision provide an overview of the relevant provisions of the Limiting Regulation.

⁸ https://www.ofgem.gov.uk/system/files/docs/2021/04/cmp368_369_urgency_decision_letter.pdf

⁹ Notwithstanding this, we determined that, as a stop-gap measure for Charging Year 2021/22, the Original Proposal be implemented.

¹⁰ This relates solely to TNUoS-liable Distributed Generators who are party to a Bilateral Embedded Generation Agreement and are licensable.

proposals, to revise the CUSC so that, when assessing compliance with the Limiting Regulation, the sums payable by Large Distributed Generation and their associated volumes of MWh exports are not taken into consideration.

Following the CMA 2021 Decision, which upheld the CMP 317/327 Decision in full, NGESO raised the Proposals as we outlined in our CMP317/327 Decision.

Required outcomes for CMP368/369

In summary, our expectation is that the Proposals will amend the CUSC, with full effect from 1 April 2022 to:

1. give effect to the correct legal interpretation of the Connection Exclusion; and
2. remove the charges paid and the volumes generated by Large Distributed Generators from the calculation determining compliance with the Limiting Regulation.

In the following sections, we reiterate our expectations for each of these aspects of the Proposals.

Connection Exclusion

To recap, the Connection Exclusion encompasses '*charges paid by producers for physical assets required for connection to the system or the upgrade of the connection*'. The proposals to update the CUSC must fully align with this.

Interpretation

In our CMP317/327 Decision, we set out our conclusion as to how the Connection Exclusion should apply in the context of GB charging arrangements. We stated:

'In summary, we consider that the Connection Exclusion includes all charges paid by generators in respect of Local Assets (whether shared / shareable or otherwise) that were required to connect the generator(s) in question to the NETS as the NETS existed at the time the generator(s) wished to connect. We consider that charges paid by generators in relation to Local Assets which existed at the point at which such generator(s) wished to connect to the NETS do not fall within the Connection Exclusion.'

Further, we considered that:

"In terms of the relevant point in time at which determination is made as to which Local Assets are considered "pre-existing" (i.e. part of the NETS), our initial view is that the date of execution of the contracts between NGESO and the relevant generator would be a

reasonable proxy as to when a generator wished to connect. This is the point at which the generator and NGESO enter into a binding commitment under which NGESO agrees to provide the generator with a connection”

Our analysis of the correct interpretation of the Connection Exclusion is set out in full in Legal Annex Two to our CMP317/327 Decision; this analysis included but was not limited to finding:

“We have considered whether “sharing” and/or “shareability” of assets is informative as to their treatment with regards the Connection Exclusion. We do not consider that the fact that an asset is shared and/or shareable precludes it from falling within the Connection Exclusion. There is nothing in the wording of the Limiting Regulation to indicate that the fact that an asset is shared or shareable is determinative of whether charges in respect of the asset fall within the Connection Exclusion.”

And

“...our interpretation of the Connection Exclusion is that charges paid by a generator fall within the Connection Exclusion if they are for assets that were required to connect that generator to the system, as the system existed at the time when the generator wished to connect, or for the upgrade of that connection. In this context we consider the system to be the ‘NETS’.”

Further, we provided illustrative examples of how we expect this to operate in practice at page 19.

The CMA 2021 Decision upheld our CMP 317/327 Decision in all respects and rejected all grounds of appeal. We maintain the position set out in our CMP317/327 Decision.

We expect proposals developed by the Workgroup for the Proposals to be consistent, and not conflict with, the terms of our CMP317/327 Decision.

Large Distributed Generation

Interpretation

As we set out in our CMP317/327 Decision¹¹, in our view, the Limiting Regulation does not apply to Large Distributed Generators. In summary, this is because we do not consider that Large Distributed Generators ‘inject’ energy to the transmission system as provided for in

¹¹ See page 25

the Limiting Regulation. It is necessary, therefore, to revise the CUSC so that the sums payable by Large Distributed Generators and their associated volumes of MWh exports are not taken into consideration when determining compliance with the Limiting Regulation.

Implementation

The Proposals are to be implemented in full from 1 April 2022. We expect that the Panel will, as indicated, treat the Proposals as high priority to ensure this timeline is met. As we have previously indicated, if sufficient progress is not being made during the process, we may use measures available to us to ensure the timely implementation of the necessary changes by 1 April 2022.

Harriet Harmon

Head of Electricity Network Charging, Energy Systems Management & Security