

**Code Administrator Consultation Response Proforma****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 & CMP369: Consequential changes to Section 14 of the CUSC as a result of the updated definitions introduced by CMP368**

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com) by **5pm on 1 September 2021**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration.

If you have any queries on the content of this consultation, please contact Jennifer Groome [Jennifer.Groome@nationalgrideso.com](mailto:Jennifer.Groome@nationalgrideso.com) or [cusc.team@nationalgrideso.com](mailto:cusc.team@nationalgrideso.com)

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**I wish my response to be:**

(Please mark the relevant box)

☒ Non-Confidential☐ Confidential

*Note: A confidential response will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.*

**CMP368****For reference the Applicable CUSC (non-charging) Objectives are:**

- The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;*
- Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;*
- Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency \*; and*
- Promoting efficiency in the implementation and administration of the CUSC arrangements.*

*\*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).*

**CMP369****For reference the Applicable CUSC (charging) Objectives are:**

- a. *That compliance with the use of system charging methodology facilitates effective competition in the generation and supply of electricity and (so far as is consistent therewith) facilitates competition in the sale, distribution and purchase of electricity;*
- b. *That compliance with the use of system charging methodology results in charges which reflect, as far as is reasonably practicable, the costs (excluding any payments between transmission licensees which are made under and accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard licence 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 \*; and*
- e. *Promoting efficiency in the implementation and administration of the system charging methodology.*

*\*Objective (d) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).*

Please express your views in the right-hand side of the table below, including your rationale.

CMP368 Standard Code Administrator Consultation questions		
1	Do you believe that the CMP368 Original Proposal or WACM1, WACM 2, WACM3, WACM4, WACM5, WACM6, WACM7, WACM8, WACM9, WACM10, WACM11, WACM12, WACM13, WACM14, WACM15, WACM16, WACM17, WACM18, WACM19 better facilitates the Applicable Objectives?	<p><b>Overall View:</b></p> <p>Below, we offer our views on the various modules which has informed our assessment of the Original and 19 WACMs. For the reasons set out below, we consider that the <b>Original</b> better facilitates applicable objectives (a) and (c).</p> <p><b>WACM1</b> differs only from the Original in that it includes Station Demand charges in the compliance calculation. Whether station demand charges should be treated as '<i>charges paid by producers</i>' will require a legal opinion by Ofgem. If it is concluded they should be included in the compliance calculation, then WACM1 would better facilitate applicable objectives (a) and (c), although we expect that the values for Station Demand will be negligible once the demand residual charge is removed from station demand.</p> <p><b>Treatment of distribution connected generation</b></p> <p>Options which <b>exclude both the volumes and the charges</b> ensure a consistent and common-sense interpretation of the Regulation and are in line with the direction given by Ofgem in its CMP317/327 Decision. Therefore, these options better facilitate objectives (a) and (c).</p> <p>Options which <b>include both the volumes and the charges</b> also ensure a consistent approach, but Ofgem has concluded this is not a compliant interpretation of the Regulation. We note this approach represents the status quo and so consider it neutral against objective (c), but by not taking account of Ofgem's direction this approach is negative against objective (a).</p> <p>Options which seek to <b>exclude the volumes but include the charges</b> from distribution connected generation require an illogical interpretation of the Regulation and are not in line with the direction given by Ofgem. They perform negatively against objectives (a) and (c).</p>

**Treatment of station demand charges**

Whether station demand charges should be treated as '*charges paid by producers*' will require a legal opinion by Ofgem. If it is concluded they should be included in the compliance calculation, then options which include this element will better facilitate applicable objective (c). If it is concluded that they should not be included then they will have a negative impact on objective (c). We note, however, that the values for Station Demand will be negligible once the demand residual charge is removed from station demand.

**Timestamp for Pre-existing assets**

We consider that the timestamp for a 'pre-existing' network asset must be when it is commissioned and fully operational since prior to that point the asset will not be being '*used for the transmission of electricity*' and so will not come under the definition of the NETS i.e. will not form part of 'the system' for the purposes of the Regulation.

Options which use the NETS as it existed at the point at which the Generator in question wished to connect better facilitate objectives (a) and (c).

Options which seek to include in the definition of 'pre-existing assets' those assets which have not yet been built, but which have been approved by either the TO and or the Authority to be built, are inconsistent with the Regulation and perform negatively against objectives (a) and (c).

**Definition of Interconnectedness**

Unfortunately, as the CMA decision rightly points out, these matters are complex and call for highly specialist technical expertise and the exercise of judgement by reference to the particular facts of the case. This does not easily lend itself to a straightforward definition.

However, it is clear the CMA ruled out a **Generation Only Spurs (GOS)** approach:

*6.99(b): We did not need to reach a concluded view on the meaning of the term 'GOS', contrary to the Appellants' position. That concept, as variously described, was relied upon by the Appellants in support*

*of their general propositions that: (i) save for GOS, no Local Assets should be treated as connection assets as they were used for the purposes of transmitting electricity across the system, not for connection; and (ii) any sharing of an asset was sufficient to render the asset outside the scope of the Connection Exclusion. We have rejected these arguments for the reasons given above.”*

Therefore, options which propose a GOS approach perform negatively against objectives (a) and (c).

We also have concerns with the options which propose to use a **multi route approach** as these seek to impose a simple definition of sufficient interconnectedness which we do not believe is consistent with the CMA view that such matters are complex and require highly specialist technical expertise and the exercise of judgement by reference to the particular facts of the case. Therefore, options which propose a multi-route approach also perform negatively against objectives (a) and (c).

We note that WACM19 does not include any proposed definition for a sufficient level of interconnectedness. Whilst we have sympathy with the difficulty in defining the required level of interconnectedness on a case by case basis, we consider that an approach with no definition would at least require some detailed guidance to be followed, which has not been included with this option. Therefore, this option also performs negatively against objectives (a) and (c).

Our preference, for now, is to use the **MITs approach** on the grounds of administrative ease, but even this approach is not consistent with the CMA’s use of interconnectedness and so it will need to be kept under review as the system and charging methodology develops over time.

We note that Ofgem’s evidence to the CMA does not make the claim that the *nature of assets* changes once they become part of the MITs, but rather that the *nature of charges changes* i.e. from local charges specific to an asset to wider charges not specific to an asset. Ofgem’s interpretation is that because they do not relate to a specific asset, they fall outside of the connection exclusion. This may be an administratively simple solution for the near/medium term, but it does not address the question of interconnectedness. It means that it may be possible for there to be assets that would rightly be classified as physical assets required by

		<p>generators for connection to the system, for which there would be no associated charge specific to those assets.</p> <p>If the effect of this approach is that an increasing distortion is created between transmission connected generation (in receipt of the negative tariff adjustment to comply with the regulation) and distribution connected generation (not in receipt of the negative adjustment), then it may become necessary in the future to consider extending the local asset charging regime to include some assets forming part of the MITs.</p> <p>We consider options which use the MITs to better facilitate objectives (a) and (c), for the near/medium term.</p>
2	Do you support the proposed implementation approach?	Yes.
3	Do you have any other comments?	No.

#### CMP369 Standard Code Administrator Consultation questions

1	Do you believe that the CMP369 Original Proposal better facilitates the Applicable Objectives?	CMP369 facilitates the implementation of the associated definition change proposals under CMP368. It takes account of developments in the licensees' transmission business, facilitates compliance with the Regulation, and promotes efficiency in the implementation of the charging methodology. Therefore, it better facilitates objectives (c), (d) and (e).
2	Do you support the proposed implementation approach?	Yes.
3	Do you have any other comments?	No.