

Workgroup Consultation Response Proforma**CMP368 & CMP369**

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 by **5pm on 2 July 2021**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

If you have any queries on the content of this consultation, please contact Jennifer Groome Jennifer.Groome@nationalgrideso.com or cusc.team@nationalgrideso.com

Respondent details	Please enter your details
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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, the Workgroup 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 regarding the Workgroup Consultation in the right-hand side of the table below, including your rationale.

CMP368 Standard Workgroup Consultation questions		
1	Do you believe that the CMP368 Original Proposal better facilitates the Applicable Objectives?	No, we do not. This is because the Original proposal is not legally compliant because it does not use an autonomous definition of assets required for connection as examined in the recent CMA Appeal.
2	Do you support the proposed implementation approach?	<p>As we have already advised the Workgroup, permission has been sought for a judicial review of the CMA's 30th March 2021 decision on the matter of GEMA's December 2020 decision in respect of CMP317/327 and CMP339.</p> <p>In our view it would be better to await the outcome of that judicial review case as, otherwise, there could be a lot of wasted time and resource from the ESO in implementing a solution that is found to be not legally compliant with the Limiting Regulation.</p>
3	Do you have any other comments?	<p>This modification must identify and implement a legally compliant enduring interpretation of the Limiting Regulation (also known as the 'ITC Regulation' in the CMA appeal documentation).</p> <p>It is essential to:</p> <ol style="list-style-type: none"> 1) Codify in the CUSC the correct legal interpretation; 2) Codify in the CUSC a legally correct procedure for carrying out the assessment of compliance; and 3) Place an obligation on the ESO to carry out the compliance assessment in a transparent way. <p>Without these elements, Suppliers, consumers and Generators will not have a transparent view of what interpretation will be applied by the ESO in future years (let alone what has happened up to now) and about how the compliance assessment will be carried out, or have any ability to independently verify the ESO's assessment, or make accurate forecasts of their own regarding future Generator Adjustments, Demand Residual, or reconciliation charges/credits.</p> <p>This lack of transparency would expose Suppliers and Generators to unnecessarily high commercial risk which</p>

		<p>would tend to be passed on to end consumers in the form of higher risk margins.</p> <p>The Workgroup should not propose (and Ofgem should not accept) known simplifications of the compliance calculation based on the 'justification' that the resulting error is "probably small enough that it does not matter".</p> <p>The evolution of the GB transmission network and, in particular, the new coordinated offshore transmission grid is likely to mean that small errors can become very material in the next few years. It would be inappropriate and inefficient with industry time to implement a solution now that knowingly may require revision in the very near future.</p> <p>The Workgroup and Ofgem should consider that if it appears to require a disproportionate and impractically high degree of time and resource to accurately assess compliance according to an assumed legal interpretation of the Limiting Regulation, then this may mean that the legal interpretation being assumed by the particular proposal is a wrong interpretation.</p> <p>Furthermore, the European Commission, in their creation of the Limiting Regulation, expected Member States to transparently carry out an assessment of compliance in a legally correct way that does not require an unreasonable resource to carry out. This was on the basis of the <i>travaux Préparatoires</i> which, in the case of GB, included evidence provided by Ofgem and the ESO (NGET at the time) as to what the position was, at the time, for the relevant elements of the compliance calculation.</p>
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<p>No.</p> <p>However, in answer to the questions below, we have identified a number of features that we believe would present a better and legally compliant CUSC modification and believe these should be taken forward as alternative proposals once the Workgroup has seen the consultation responses before raising specific alternative proposals.</p>

CMP369 Standard Workgroup Consultation questions

5	Do you believe that the CMP369 Original Proposal better facilitates the Applicable Objectives?	Our answer above, in respect of CMP368, applies also to CMP369. For the sake of brevity we do not repeat them here.
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6	Do you support the proposed implementation approach?	Our answer above, in respect of CMP368, applies also to CMP369. For the sake of brevity we do not repeat them here.
7	Do you have any other comments?	Our answer above, in respect of CMP368, applies also to CMP369. For the sake of brevity we do not repeat them here.
8	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	Our answer above, in respect of CMP368, applies also to CMP369. For the sake of brevity we do not repeat them here.
CMP368 & CMP369 Modification Specific Workgroup Consultation questions		
9	The Proposer is proposing that the both the volumes <u>and</u> charges of Large Distributed Generators are excluded in the compliance calculation, whereas the potential alternative proposes that only the volumes are excluded. Which option do you support and why?	<p>We support the Alternative option.</p> <p>This is because we can see no legal basis for excluding transmission charges paid by generators from the calculation. The Limiting Regulation, as noted on page 9 of the consultation, states that:</p> <p><i>“Annual average transmission charges <u>paid by producers</u> is annual total transmission tariff charges <u>paid by producers</u>” [emphasis added]</i></p> <p>Therefore, the Original proposal by seeking to exclude charges paid by generators is; in this respect (and others); incompatible with the Limiting Regulation.</p> <p>The Alternative as it only excludes volume and <u>not</u> the transmission charges paid by generators is compliant with the Limiting Regulation.</p>
10	Station demand charges (TNUoS Triad charges on power station demand) would, with the original, be excluded, however the potential alternative would include them. Which option do you support and why?	<p>We support the Alternative option.</p> <p>This is because we can see no legal basis for excluding transmission charges; which includes (power) station demand transmission charges paid by generators; from the calculation. The Limiting Regulation, as noted on page 9 of the consultation, states that:</p> <p><i>“Annual average transmission charges <u>paid by producers</u> is annual total transmission tariff charges <u>paid by producers</u>” [emphasis added]</i></p>

		<p>Therefore, the Original proposal by seeking to exclude the (power) station demand transmission charges paid by generators is; in this respect (and others); incompatible with the Limiting Regulation.</p> <p>The Alternative as it includes (power) station demand transmission charges paid by generators is thus compliant with the Limiting Regulation.</p> <p>We note also, in respect of transparency, that the treatment of (power) station demand transmission charges, in the context of the compliance calculation, was not something that we were fully aware of until seeing slide 15 in the May 2021 TCMF meeting¹ which stated that “<i>Net station demand charges of £5.95m are not included</i>”. We have no certainty, from the ESO, that this approach to the treatment of (power) station demand transmission charges was a one off for the 2020/21 charging year or had in fact been applied to some or all of the previous years when the ESO was required to performed the compliance calculation.</p>
11	<p>The Original proposal would not change the current treatment of transmission charges or the associated volumes relating to storage when assessing compliance with the Limiting Regulation. Do you agree with this approach, and if so why?</p>	<p>Pending clarification of Ofgem’s licence treatment of storage as generation then, at this time, we would tend to agree with this approach.</p> <p>However, the Workgroup should also consider the treatment; for the purposes of compliance with the Limiting Regulation; of all transmission charges paid by new types of producers which may also be considered as a type of storage, such as electric vehicles and batteries operating as a producer by exporting electricity.</p> <p>As per our answer to question 10, transmission charges these producers pay relating to both demand and generation charges, should be included in the compliance calculation.</p>
12	<p>Do you believe that both generation charges and volumes of storage assets should be included in the compliance calculation (page 11)? Does this depend on</p>	<p>As per our answers above, any transmission charges paid by generators (which if they are producing includes, according to the Licence changes, storage) should be included in the compliance calculation.</p>

¹ <https://www.nationalgrideso.com/document/191341/download>

	<p>whether the storage is transmission or distribution connected? Please provide your rationale.</p>	<p>In terms of the associated volume, if that volume (as per the wording in the Limiting Regulation) concerns “<i>energy injected annually by producers to the transmission system</i>” then it should also be taken into account when performing the compliance calculation.</p> <p>In terms of Distribution connected producer assets if (i) they pay transmission charges and (ii) the volume is being injected to the transmission system then, likewise, this should be taken into account when performing the compliance calculation.</p> <p>That having been said, it is our understanding, from the Workgroup discussions to date, that in terms of item (ii) that there is no injection, from Distribution connected storage assets, to the transmission system and, in that case, the associated volumes (from Distribution connected storage) should not be taken into account when performing the compliance calculation (even if the associated transmission charges paid by those assets are taken into account).</p> <p>For the avoidance of doubt, given the time available, the above response does not take into account the Ofgem consultation² issued two days ago on Access & Forward-Looking Charges which we understand may lead to small distribution connected generators paying some transmission charges in the future.</p> <p>If this were to occur then as these are transmission charges paid by generators then they too would need to be taken into account within the compliance calculation (as we have already set out above should occur with transmission charges paid by distribution connected generators).</p>
13	<p>What do you think is the appropriate time stamp for defining whether a network asset is “pre-existing” (page</p>	<p>In our view the appropriate time stamp is (a).</p> <p>This is because if a network asset is already planned to be built before a particular generator wished to connect,</p>

² <https://www.ofgem.gov.uk/publications/access-and-forward-looking-charges-significant-code-review-consultation-minded-positions>

	<p>11)? E.g. when a generator wished to connect, was the network asset:</p> <ul style="list-style-type: none"> a. Already planned to be built b. Already committed to be built c. Already under construction d. Finished construction e. Commissioned and fully operational 	<p>then it is clear that the purpose of that network asset is not for connecting of that generator.</p>
14	<p>Do you consider there to be any specific changes to a BCA that may trigger the reclassification of assets? If so, please provide your rationale.</p>	<p>In our view only changes that result in new connection assets being required to connect should be considered. Anything else that changes in a BCA is irrelevant in terms of the Connection Exclusion and the Limiting Regulation.</p>
15	<p>Do you think an obligation should be placed on the ESO to publish the outturn value and transparently show the working for calculating the average transmission charge paid by generators (page 15)? Please explain your rationale.</p>	<p>Yes.</p> <p>Our rationale has two parts; one legal and one policy; but before examining each of these in turn we note that the ESO says they are apparently performing the compliance calculation; so, if this is the case, it's in no way a burden to them to simply publish the information – however, the more the ESO want to keep the calculation secret the more we worry they have something to hide.</p> <p>In terms of legality, the continued obfuscation, even now (after two CMA appeals about this very compliance calculation) by the ESO around:</p> <ul style="list-style-type: none"> (a) the actual calculation it performs each year – that is each and every component element, including the actual numbers used, for each year, that go into the compliance calculation; and (b) the actual annual outcome (in terms of the annual average transmission charges, in €/MWh, paid by generators in GB) from the compliance calculation; <p>Gives cause for serious concern as to whether, in reality, any fully compliant (with the Limiting Regulation) calculation has ever actually been</p>

	<p>undertaken by the ESO for GB over the past ten years and; if even if this was not to be the case; whether there has been a consistency in the composition and the approach followed, by the ESO, performing that compliance calculation.</p> <p>In this regard we are mindful of the <i>travaux Préparatoires</i>³ of the Limiting Regulation which sets out that:</p> <p><i>“For each Member State, the average G charge will have to remain within the specified range, <u>which should be transparently and nondiscriminatory calculated for each country.</u>” [emphasis added]</i></p> <p>For the avoidance of doubt there has been no transparency of the compliance calculation in GB and, accordingly, we cannot say therefore that the calculation has been done on a non-discriminatory basis.</p> <p>Why, if the ESO is so confident that it does the calculation fully in compliance with the Limiting Regulation, does the ESO not only fail to make the evidence public but, instead, goes to such great lengths to keep it secret from stakeholders?</p> <p>In terms of policy we are mindful of the ongoing Ofgem consultation⁴ on the publication of data by Network Operators (including, in this case, the ESO) where the emphasis on justification would switch from a presumption of not publishing (unless justified as to why to publish) to a presumption of publication (unless having justified why not).</p> <p>Given the above, we believe the answer to this question is Yes.</p> <p>We also believe, as per the Ofgem consultation, that it should have been framed as:</p> <p><i>“Do you think an obligation should not be placed on the ESO to publish the outturn value and transparently show the working for calculating the</i></p>
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³ <https://www.ceer.eu/documents/104400/-/-/07b5a8d0-5a98-9fe3-a2b2-365d7eeca387>

⁴ Further details on Ofgem’s consultation can be found at: <https://www.ofgem.gov.uk/publications-and-updates/consultation-data-best-practice-guidance-and-digitalisation-strategy-and-action-plan-guidance>

		<p><i>average transmission charge paid by generators..."</i></p> <p>Why is transparency of the compliance calculation that is performed by the ESO important for stakeholders – it is because it would allow us to validate the number(s) and also to improve our ongoing forecast of transmission charges by having a clearer picture of how compliance is demonstrated.</p> <p>Without this validity check and ability to forecast then stakeholders have to add a risk premium to reflect the uncertainty that the compliance calculation will outturn outside of the statutory range as, for example, it very nearly did in 2020/21 when it came in at €0.018/MWh, according to the ESO (but which we have been unable to validate).</p> <p>The addition of this risk premium leads, in turn, to higher overall costs to consumers.</p>
16	<p>How should charges be treated relating to upgrades to local assets? Please explain your rationale.</p> <ol style="list-style-type: none"> Only exclude charges for new upgrades that are paid by a new generator. Exclude charges paid for the new upgrades that are paid by both existing and new generators. Do not exclude any cost related to new upgrades because the upgrade to pre-existing assets was not required to connect the new generator. Other 	<p>If the upgrade relates to an additional network user joining an existing user, then none of the interconnected network assets should be excluded. This is because once a network asset provides an interconnection between two, or more network users (generation, storage, or demand), then the function of that network asset changes from being one of connection, to being a network asset. This is also consistent with the CMA's 30th March 2021 decision.</p>
17	<p>Four different options are given on page 22 of the Workgroup Consultation, two of which demonstrate different interpretations of</p>	<p>Option 1.</p> <p>This is because we believe it is irrational to view the same network asset to serve two different purposes</p>

	<p>“interconnectedness”. that the CMA identified. Figures 8-11 provide simple examples to help define what network assets should have their charges captured within the Connection Exclusion. Which of the two options (1 or 2) for “sufficient interconnectedness” do you agree with, and why?</p>	<p>(network asset or connection asset) depending on the point of view of different generators.</p> <p>Once two or more network users are interconnected and networked to each other, even together at the end of a radial spur, then the transmission assets interconnecting those network users are performing the role of a network, not a connection. The relevant transmission assets would enable power to flow between those users such as a second generator may supply power for the first generator’s station load, or other on-site purposes at times when the first generator is not generating power. Additionally, power can be supplied from a generator to an interconnected source of demand, or to demand in the form of a storage asset. All of these network actions can be carried out irrespective of whether or not the radial transmission circuit is operational, or capable of flowing power at the time.</p> <p>Further, the scenario where there is more than one route for the power to flow is a clear example of the function of a section of network asset, having and performing the purpose of a network, not of connection.</p> <p>A further example of there being multiple routes to define a network asset would be if a generator and a source of demand (either storage, final demand, or station load) were to be interlinked to each other, even including, at the end of a radial circuit. In this example, the export from the generator would have more than one route for the power to flow, it could either flow to the source or demand, or it could send power along the radial circuit, or a combination of the two. Likewise, the radial circuit could be used to export power from the generator, or import power to the source of demand, or a combination of the two. This is a clear example, of an interlinked transmission asset performing the purpose of a network asset, not a connection asset.</p> <p>For the avoidance of doubt, according to the Limiting Regulation and the CMA’s 30th March 2021 decision, transmission system assets that are performing the purpose of a network asset should not form part of the connection exclusion.</p>
18	Option 3 (page 22) notes that the CMA says there may be other relevant factors - do	Not at this time, although we reserve the option of identifying other factors at a later stage in the Workgroup.

	you think any other factors should be taken into account, and if so, what?	
19	The Proposer is considering a potential alternative to utilise data that already exists within the onshore TOs' Price Control Finance Models (PCFM) (page 25-26), attached in Annex 5. This based on the assumption that a portion of total onshore local charges is associated with non pre-existing assets, and that this portion can be derived by comparing the Generation Connections Volume Driver with the total revenue across all three onshore TOs. Do you support this option? Why?	<p>This seems to be the ESO looking not for a compliant solution but rather one that is 'convenient' for them and which fits with what they do now.</p> <p>For the avoidance of doubt, as we have set out elsewhere in this consultation response, we need to ensure with CMP368/9 that a solution which is compliant with the Limiting Regulation requirements is taken forward and not one that is merely convenient and gives the impression (but not the reality) of legal compliance.</p>
20	Do you agree with the proposed definitions of non pre-existing assets 'NPEA' and pre-existing assets 'PEA'?	
21	Do you agree that the legal definitions in the Original Proposal should be limited to TNUoS charges only or include all transmission charges?	<p>As, for example, we have noted in answering questions 9 and 10 above, the Limiting Regulation refers to transmission charges paid by generators and this includes (a) connection charges (b) ancillary services, including congestion management and (c) transmission losses...hence the application of the respective exclusions... as well as, for example, BSUoS and relevant BSC Charges.</p> <p>To use a national definition ('TNUoS'), instead of all transmission charges, would be incompatible with the Limiting Regulation which is concerned with all transmission charges paid by Generators.</p> <p>What this proposition, in the Original proposal, attests to is that even now the ESO is not undertaking the compliance calculation in accordance with the Limiting Regulation requirements – and this supports the point we</p>

		make in answer to question 15 above about the need for full transparency, from the ESO, around all aspects of the compliance calculation both going forward (as well as looking back over previous charging years).
22	Do you agree that the legal text delivers the intent of the Original Proposal?	No, as it does not ensure compliance with the Limiting Regulation.