

CMP392 Workgroup 1

9 August 2022

Online Meeting via Teams

WELCOME



nationalgrid**ESO**



Modification Process

Paul Mullen - National Grid ESO Code Administrator

Code Modification Process Overview



Talk to us

Forums



Raise a
mod

Panels



Refine
solution

Workgroups
(Workgroup Consultations)



Consult

Ofgem/Panel



Decision



Implement



Refine solution

Workgroups



- If the proposed solution requires further input from industry in order to develop the solution, a Workgroup will be set up.
- The Workgroup will:
 - further refine the solution, in their discussions and by holding a **Workgroup Consultation**
 - Consider other solutions, and may raise **Alternative Modifications** to be considered alongside the Original Modification
 - Have a **Workgroup Vote** so views of the Workgroup members can be expressed in the Workgroup Report which is presented to Panel



Consult

Code Administrator Consultation

- The Code Administrator runs a consultation on the **final solution(s)**, to gather final views from industry before a decision is made on the modification.
- After this, the modification report is voted on by Panel who also give their views on the solution.





Decision



- Dependent on the Governance Route that was decided by Panel when the modification was raised
- **Standard Governance:** Ofgem makes the decision on whether or not the modification is implemented
- **Self-Governance:** Panel makes the decision on whether or not the modification is implemented
 - an appeals window is opened for 15 days following the Final Self Governance Modification Report being published



Implement

- The Code Administrator implements the final change which was decided by the Panel / Ofgem on the agreed date.





Objectives and Timeline

Paul Mullen - National Grid ESO Code Administrator

Timeline for CMP392 as at 29 July 2022

Milestone	Date	Milestone	Date
Modification presented to Panel	30 May 2022	Code Administrator Consultation	31 January 2023 to 21 February 2023 (5pm)
Workgroup Nominations (15 working days)	31 May 2022 to 23 June 2022 (5pm)	Draft Final Modification Report (DFMR) issued to Panel	16 March 2023
Workgroups 1 to 4 - education, review terms of reference and agree scope, review ESO guidance and agree principles to codify, agree what is published, draft legal text, identify potential alternative, finalise Workgroup Consultation including questions	9 August 2022, 5 September 2022, 5 October 2022 and 8 November 2022	Panel undertake DFMR recommendation vote	24 March 2023
Workgroup Consultation (15 working days)	14 November 2022 to 5 December 2022 (5pm)	Final Modification Report issued to Panel to check votes recorded correctly	28 March 2023
Workgroups 5 and 6 - Assess Workgroup Consultation Responses, finalise solutions (including legal text) and Workgroup Vote	14 December 2022 and 10 January 2023	Final Modification Report issued to Ofgem	5 April 2023
Workgroup report issued to Panel	19 January 2023	Ofgem decision	TBC
Panel sign off that Workgroup Report has met its Terms of Reference	27 January 2023	Implementation Date	TBC

Timeline for CMP392 as at 9 August 2022

Milestone	Date	Milestone	Date
Modification presented to Panel	30 May 2022	Panel sign off that Workgroup Report has met its Terms of Reference	27 January 2023
Workgroup Nominations (15 working days)	31 May 2022 to 23 June 2022 (5pm)	Code Administrator Consultation	31 January 2023 to 21 February 2023 (5pm)
Workgroup 1 - education, review terms of reference and agree scope,	9 August 2022	Draft Final Modification Report (DFMR) issued to Panel	16 March 2023
Workgroup 2 – review ESO’s guidance (commonalities), agree what is a pre-existing asset and what isn’t, agree what the interconnected test is, agree what will be published?. Discuss any possible alternatives, implementation approach, draft legal text / business rules (WG3)	5 September 2022 and 5 October 2022	Panel undertake DFMR recommendation vote	24 March 2023
Workgroup 4 - finalise Workgroup Consultation including questions including ensuring we have covered off terms of reference	8 November 2022	Final Modification Report issued to Panel to check votes recorded correctly	28 March 2023
Workgroup Consultation (15 working days)	14 November 2022 to 5 December 2022 (5pm)	Final Modification Report issued to Ofgem	5 April 2023
Workgroups 5 and 6 - Assess Workgroup Consultation Responses, finalise solutions (including legal text) and Workgroup Vote	14 December 2022 and 10 January 2023	Ofgem decision	TBC
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Workgroup Responsibilities

Paul Mullen - National Grid ESO Code Administrator

Expectations of a Workgroup Member

Contribute to the discussion

Be respectful of each other's opinions

Language and Conduct to be consistent with the values of equality and diversity

Do not share commercially sensitive information

Be prepared - Review Papers and Reports ahead of meetings

Complete actions in a timely manner

Keep to agreed scope

Your Roles

Help refine/develop the solution(s)

Bring forward alternatives as early as possible

Vote on whether or not to proceed with requests for Alternatives

Vote on whether the solution(s) better facilitate the Code Objectives

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Workgroup Alternatives and Workgroup Vote

Paul Mullen - National Grid ESO Code Administrator

Can I vote? and What is the Alternative Vote?

To participate in any votes, Workgroup members need to have attended at least 50% of meetings

Stage 1 – Alternative Vote

- Vote on whether Workgroup Alternative Requests should become Workgroup Alternative CUSC Modifications.
- The Alternative vote is carried out to identify the level of Workgroup support there is for any potential alternative options that have been brought forward by either any member of the Workgroup OR an Industry Participant as part of the Workgroup Consultation.
- **Should the majority of the Workgroup OR the Chair believe that the potential alternative solution may better facilitate the CUSC objectives than the Original then the potential alternative will be fully developed by the Workgroup with legal text to form a Workgroup Alternative CUSC modification (WACM) and submitted to the Panel and Authority alongside the Original solution for the Panel Recommendation vote and the Authority decision.**

Can I vote? and What is the Workgroup Vote?

To participate in any votes, Workgroup members need to have attended at least 50% of meetings

Stage 2 – Workgroup Vote

- 2a) Assess the original and WACMs (if there are any) against the CUSC objectives compared to the baseline (the current CUSC)
- 2b) Vote on which of the options is best.

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Terms of Reference

Paul Mullen - National Grid ESO Code Administrator

CMP392 – Terms of Reference

Workgroup Term of Reference	Location in Workgroup Report (to be completed at Workgroup Report stage)
a) Consider EBR implications	
b) Identify criteria for which particular charges fall (and which do not fall) within the Connection Exclusion	
c) Consider what principles should be codified and why	
d) Consider what the ESO should publish to demonstrate that TNUoS has been calculated in accordance with the Limiting Regulation	

Proposer's Solution:

Background;

Proposed Solution;

Scope; and

Assessment vs Terms of Reference

Garth Graham – SSE Generation Ltd.

CMP392

Garth Graham

SSE Generation (proposer)

9th August 2022

CMP392 - Introduction

- **Transparency and legal certainty as to the calculation of TNUoS in conformance with the Limiting Regulation**
- As identified in the Authority's direction to the Panel regarding CMP391 it is relevant to identify whether (or not) particular charges fall within the Connection Exclusion taking into consideration the Judgment.
- *"We appreciate that CUSC Parties may want the CUSC to indicate principles (beyond the words of the Limiting Regulation itself) which may be relevant to identifying whether particular charges fall within the Connection Exclusion. We consider that any proposed change brought forward to do so would need to take into consideration what is said in the Judgment. Any such proposed changes should be progressed through a separate CUSC Modification Proposal."*

CMP392 - Defect (a) - Quotes from Authority, CMA and Judgement set out the issue

- *“....we consider that the Connection Exclusion is unlikely to be capable of be[ing a] prescriptive definition within the CUSC, without some provision that enables further case-by case assessment when required.”* [Authority]
- This proposal introduces the provision that *enables further case-by-case assessment ...[as] required* in order to undertake the ‘CUSC Calculation’.
- *“...will self-evidently depend on the facts of any specific case. Attempts at generic definition are necessary and useful, but only up to a point.”* [Judgement]
- *“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 ”* [Authority]
- *“Local Charges paid by Generator One will fall within the Exclusion (both before and after the connection of Generator Two), but the Local Charges paid by Generator Two will not ...”* [Authority]

CMP392 - Defect (b) - Quotes from Authority, CMA and Judgement set out the issue

- *“.... that the Authority cannot lawfully approve a proposal that does not fully and correctly reflect the Connection Exclusion ” [Authority]*
- *“... Regulation 838/2010 sets ...how the annual average transmission charge is to be calculated ...Generators should pay annual average transmission charges that are both calculated in the prescribed way (requiring proper application of ... the connection exclusion...Failing to give effect to the connection exclusion is...a breach of Regulation 838/2010 ” [CMA]*
- This proposal will mean that *generators ...pay annual average transmission charges that are ... calculated in the prescribed way (by the) proper application of ... the connection exclusion* and thus *give (practical) effect to the connection exclusion.*
- This proposal will also ensure that there is transparency and legal certainty for stakeholders (including the Authority) that the CUSC Calculation is undertaken in a way that *fully and correctly reflects the Connection Exclusion* when put into practice.

CMP392 - Defect (c) - Quotes from Authority, CMA and Judgement set out the issue

The conclusions we take from these views of the Authority, the CMA and the Court, as set out above, is:

- (i) that a case-by-case assessment is required when determining, for the purposes of undertaking the CUSC Calculation, what is (and what is not) a pre-existing asset when a generator connects to the system (based on the GEMA example¹¹);
- (ii) that it is not appropriate to apply a 'one size fits all' generic approach; and
- (iii) that the performance of the CUSC Calculation needs to be transparent and ensure legal certainty for stakeholders, by setting this out in the CUSC (as, for example, the ESO proposed with CMP317 and the Authority directed with CMP327).

These are, therefore, the issue within the CUSC that this proposal will address.

CMP392 – Why Change - Legal Certainty & Transparency

1. Accepting that the application of the test will depend on a case by case assessment of the charges and assets in issue, it is clear that someone – presumably either GEMA or NGESO – will need to carry out the relevant calculation.
2. Given that the calculation arises as a result of a legally binding obligation and is an important component in the overall charging structure for network access charging for generators, it is important that the calculation is conducted in a transparent manner, so that those affected by it can understand the process and, where appropriate, challenge it if they disagree.
3. Setting out the parameters which are in fact used for assessing the charges in a given area will also be important for regulatory consistency and to ensure a common approach is adopted nationwide.
4. If the calculation process remains opaque, a generator will not be able to ascertain whether or not the calculation has been conducted correctly. That has an adverse, negative impact on its ability effectively to enforce its legal rights.
5. As a matter of legal certainty, an entity which is or might well be adversely affected by a public law decision ought to be entitled to know the reasons for that decision, so that it can consider its options for seeking a legal review of the decision. Otherwise the legal rights are not capable of effective or meaningful enforcement. Publication of the method of calculation to be used (and the case by case results) in giving effect to the Connection Exclusion (as properly construed) is therefore an important aspect of ensuring that the rule of law is observed.

CMP392 – Solution (i)

1. The methodology in terms of the broad principles the ESO will apply (when performing the CUSC Calculation) as a test to either include or exclude each (local) circuit and (local) asset, as well as how the entirety (end-to-end) of the compliance calculation will be carried out; and
2. The results of applying the broad principles on a case-by-case basis, including the rationale within the principles for either including or excluding every element of charge, as well as what and why there were exceptions to the rule. This should provide sufficient detail to stakeholders such that it is possible for them to clearly see, peer review, replicate (if they wish to) and, if necessary, challenge the ESO's result(s) in terms of the CUSC Calculation using the publicly available data (arising from this proposal's solution) regarding the classification of each circuit and asset charge all the way through the calculation to the final end result.

CMP392 – Solution (ii)

- Based on the Transport & Tariff model spreadsheet to show relevant data & date(s) and, if applicable, level of 'interconnectedness' and then apply (i.e. include or exclude) to charges paid by G, when performing CUSC Calculation.
- Step one – is it a 'Generator Only Spur' (GOS)?
- Step two – is it pre-existing (when was T and G asset built / approved / contracted)?
- Step three - if G asset ahead of T asset(s) is there a level of interconnectedness of T asset?

CMP392 – Solution (iii)

- For step one need to consider the ‘but for test’; i.e. but for the particular G asset, would the particular T asset(s) exist?
- For step two need to look at each T and G asset(s):
 1. What date was particular T asset(s) built (historical – pre 1991?) or approved (modern – post 1991?) to be built; and
 2. What date was particular G asset built (historical) or contracted (modern) to connect?

CMP392 – Solution (iv)

- For step two:
 - Is date (1) before date (2); or
 - Is date (2) before date (1)?
- If the answer is T 'before' G then '*pre-existing*' so the charge(s) paid by G for the T asset(s) should be included within the annual average charges paid by generator as part of the CUSC calculation.
- If G 'before' T then not '*pre-existing*' (so 'new') and the charge(s) paid by G for the T asset(s) *may* be excluded (subject to interconnectedness being assessed) from the annual average charges paid by generator as part of the CUSC calculation.

CMP392 – Solution (v)

- For step three:
- If the T asset is being used by others as well as the particular G asset(s) such as for non-generation (demand) purposes; in terms of the function changes as per 'interconnectedness' test per the CMA (next slide); then charge(s) paid by G for the T asset(s) should be included within the annual average charges paid by generator as part of the CUSC calculation.
- Because if a network asset is shared (with other Gs and / or demand) then its function changes such that it is no longer an asset required for connection of the G to the network, but has instead become a functional part of the network.

CMP392 – Solution (vi)

- CMA March 2021, pg 139-140:[SSE code modifications appeal 2021: Decision \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954212/SSE_code_modifications_appeal_2021_Decision.pdf)
- “Relevant factors may include the degree of interconnectedness between assets, and possibly also between Generators, suppliers and other users. However, 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”

CMP392 – Solution (vii)

- Seven new columns based on T&T model for each G asset, **case by case**, with a list of T asset(s) it is being charged for:
 - Column [A] is it **GOS** [Y, e] [N, i]
 - Column [B] date for G asset built or contracted
 - Column [C] date for T asset(s) built or approved
 - Column [D] is it new [Y, e] or **pre-existing** [N, i] (based on [B] v [C])
 - Column [E] is T asset(s) is it not **interconnected** [Y, e] or **interconnected** [N, i]
 - Column [F] justification of [E] for **interconnectedness** or **not**
 - Column [G] resulting treatment of T asset charge(s) - either 'include' or exclude'.
- 'N' equates to include the G charge(s) paid for the T asset(s) within the annual average charges paid by generator as part of the CUSC calculation ('Y' is the opposite)

CMP392 – Guidance (i)

- Mention at May's CUSC Panel CMP391 discussion by ESO Rep that considering preparing 'guidance'.
- Also mention at August TCMF, ESO to provide a draft soon.
- Guidance does not address defect in terms of legal certainty and transparency.

CMP392 – Guidance (ii)

- Recent examples of the ESO's actions, with 'guidance' type items, do not help their case now, such as:
 - the arbitrary cessation by the ESO of the publication of the System Incident Report means, in this case, we have no legal certainty or transparency as to what exactly the ESO is doing; and
 - the arbitrary publication by the ESO of the approach to Fault Ride Through which was then arbitrarily amended (without consultation or notification) means, in this case, we have no legal certainty or transparency as to what the ESO (i) is meant to do or (ii) is actually doing or (iii) has actually done.
 - See GC0105 and GC0151 (both approved by Authority) for further details.

CMP392 – Applicable Objectives / Implementation

- Positive in terms of better facilitating Applicable Objectives (a), (b), (d) and (e) whilst being neutral in terms of (c) for the reasoning provided in the proposal form.
- Implementation one Business Day after an Authority Decision.

Terms of Reference (i)

- (a) No EBR implications
- (b) See Solution
- (c) See Solution
- (d) Align with the presumption of openness principle and the key findings in joint BEIS/Ofgem commissioned Energy Data Taskforce report (next slide) plus ESO's commitment to transparency and Users need for legal certainty and transparency:
 - Publish the entire 'CUSC Calculation', as performed by the ESO – underlying data elements should be in the public domain, nothing hidden so no need for Workgroup/ESO to presume secrecy.

ToR (ii) Energy Data Taskforce *key findings* [pg 6]

[Catapult-Energy-Data-Taskforce-Report-A4-v4AW-Digital.pdf](#) ([esc-production-2021.s3.eu-west-2.amazonaws.com](#))

- **Data Visibility:** Understanding the data that exists, the data that is missing, which datasets are important, and making it easier to access and understand data.
- **Infrastructure and Asset Visibility:** Revealing system assets and infrastructure, where they are located and their capabilities, to inform system planning and management.
- **Operational Optimisation:** Enabling operational data to be layered across the assets to support system optimisation and facilitating multiple actors to participate at all levels across the system.
- **Open Markets:** Achieving much better price discovery, through unlocking new markets, informed by time, location and service value data.
- **Agile Regulation:** Enabling regulators to adopt a much more agile and risk reflective approach to regulation of the sector, by giving them access to more and better data.

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Ofgem View

Harriet Harmon – Ofgem

Connection Exclusion – Interim Guidance

Joe Henry – National Grid ESO

Connection Exclusion – Interim Guidance

- **What is the connection exclusion, and why may it require interim guidance?**
 - Average transmission charges should fall between €0-2.50/MWh in GB (EU regulation 838/2010).
 - Judicial Review appeal ongoing, CMP391 raised to define and CMP392 raised to codify process.
 - ESO proposed that guidance is published as an interim measure in line with Ofgem's decision to provide further clarity prior to the completion of CMP392.
- **What has changed?**
 - ESO have drafted interim guidance note
 - Judicial Review Appeal – to reconvene in September.
 - CMP392 – Workgroup had begun today
- **Why is this important?**
 - CMP392 raised as high priority to provide permanent solution
 - Appeal against decision of Judicial Review case still pending
 - In position to share drafting late August/September.

Ask from Workgroup: Do you have feedback?

Would it be useful for workgroup to see interim guidance?

Cross Code Impacts?

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Next Steps

Paul Mullen - National Grid ESO Code Administrator