

Public

## Workgroup Consultation Response Proforma

### CMP444: Introducing a cap and floor to wider generation TNUoS Charges

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 [usc.team@nationalenergyso.com](mailto:usc.team@nationalenergyso.com) by **5pm** on **29 January 2025**. 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 [usc.team@nationalenergyso.com](mailto:usc.team@nationalenergyso.com).

Respondent details	Please enter your details	
<b>Respondent name:</b>	Lauren Jauss	
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<b>Which best describes your organisation?</b>	<input type="checkbox"/> Consumer body <input type="checkbox"/> Demand <input type="checkbox"/> Distribution Network Operator <input checked="" type="checkbox"/> Generator <input type="checkbox"/> Industry body <input type="checkbox"/> Interconnector	<input type="checkbox"/> Storage <input type="checkbox"/> Supplier <input type="checkbox"/> System Operator <input type="checkbox"/> Transmission Owner <input type="checkbox"/> Virtual Lead Party <input type="checkbox"/> Other

### I wish my response to be:

(Please mark the relevant box)

☒ **Non-Confidential** (this will be shared with industry and the Panel for further consideration)

☐ **Confidential** (this will be disclosed to the Authority in full but, unless specified, will not be shared with the Workgroup, Panel or the industry for further consideration)

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### 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 C11 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 and the ISOP business\*;*
- 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.*

\* See Electricity System Operator Licence

\*\*The Electricity Regulation referred to in objective (d) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.

### For reference, (for consultation question 6) the Electricity Balancing Regulation (EBR) Article 3 Objectives and regulatory aspects are:

- a) *fostering effective competition, non-discrimination and transparency in balancing markets;*
- b) *enhancing efficiency of balancing as well as efficiency of national balancing markets;*
- c) *integrating balancing markets and promoting the possibilities for exchanges of balancing services while contributing to operational security;*
- d) *contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector while facilitating the efficient and consistent functioning of day-ahead, intraday and balancing markets;*
- e) *ensuring that the procurement of balancing services is fair, objective, transparent and market-based, avoids undue barriers to entry for new entrants, fosters the liquidity of balancing markets while preventing undue market distortions;*
- f) *facilitating the participation of demand response including aggregation facilities and energy storage while ensuring they compete with other balancing services at a level playing field and, where necessary, act independently when serving a single demand facility;*
- g) *facilitating the participation of renewable energy sources and supporting the achievement of any target specified in an enactment for the share of energy from renewable sources.*

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### What is the EBR?

The Electricity Balancing Regulation (EBR) is a European Network Code introduced by the Third Energy Package European legislation in late 2017.

The EBR regulation lays down the rules for the integration of balancing markets in Europe, with the objectives of enhancing Europe's security of supply. The EBR aims to do this through harmonisation of electricity balancing rules and facilitating the exchange of balancing resources between European Transmission System Operators (TSOs). Article 18 of the EBR states that TSOs such as the ESO should have terms and conditions developed for balancing services, which are submitted and approved by Ofgem.

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

### Standard Workgroup Consultation questions

1	Do you believe that the Original Proposal better facilitate the Applicable Objectives?	Mark the Objectives which you believe each solution better facilitates:
		<div>Original</div> <div> <input type="checkbox"/>A           <input type="checkbox"/>B           <input type="checkbox"/>C           <input type="checkbox"/>D           <input type="checkbox"/>E         </div>
		<p>No.</p> <p>The Original is negative against applicable objectives a, b, c, d and e for the following reasons:</p> <p><b>Negative against objective a:</b></p> <p>It distorts competition because it disproportionately impacts cost reflectivity and tariff differentials by capping tariffs at an even lower level than in NESO's 2024 5-Year forecast, despite this being NESO's best view of network expansion and a very highly likely outcome. It also unnecessarily increases risk and/or unforeseen costs for all generators that are not subject the cap due to a high probability of the cap biting and a less negative Adjustment tariff as a result.</p> <p>For existing CfD generators, this will create a windfall for generators inside the capped zone (as their TNUoS charges outturn lower than expected when investment was made) and an unrecoverable cost for those CfD generators outside of the capped zone (as their TNUoS outturns above expected levels when investment was made).</p> <p>In future, the increase in charges for all other generators would cause an increase in CFD clearing prices if the marginal generator is not located in a capped zone, and almost certainly will cause increased Capacity Market clearing prices because</p>

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		<p>the Adjustment is less negative but very few if any Capacity Market participants would benefit from the cap.</p> <p><b>Negative against objective b:</b></p> <p>The NESO 5-Year forecast shows increasing costs due to infrastructure build, but putting a cap at roughly current tariff levels means that charges will increasingly diverge from the costs incurred by TOs building network</p> <p><b>Negative against objective c:</b></p> <p>Cap levels are designed to exclude costs of network expansion from 2030.</p> <p><b>Negative against objective d:</b></p> <p>Likely to be in breach of Article 18 of the Electricity Regulation EU943/2019 because:</p> <ul style="list-style-type: none"> <li>the cap and floor are not cost-reflective and not non-discriminatory</li> <li>The introduction of a non-cost-reflective cap may be driven by the Clean Power 2030 policy, but network charges are prohibited from including unrelated costs supporting unrelated policy objectives.</li> </ul> <p><b>Negative against objective e:</b></p> <p>Introduces complexity into the methodology and charge setting process.</p>
2	Do you support the proposed implementation approach?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Any impact on other generators not subject to the cap could not have been anticipated before this modification was raised. These generators will incur unexpected costs, including, for example, those who have already fixed Capacity Market contracts, CFDs or long term PPAs.</p> <p>If approved, this non-cost reflective methodology change would impact investor confidence and may increase regulatory risk for the medium to long term, and casts doubt on decision outcomes of other future CUSC modifications.</p>

## Public

3	Do you have any other comments?	<p>The key principle that the Original calls into question is whether, in future, TNUoS should a) reflect the costs of network expansion, or b) exclude some or all of the network reinforcement that will be required as we progress from now to Net Zero.</p> <p>The Original appears to reflect the latter principle, b, but the current code objectives do not allow for this approach.</p> <p>We also believe that the latter approach, b, would result in a distortion which would attract additional generation investment to those zones where network charges are effectively discounted. This would require additional costly reinforcement, ultimately paid for by the consumer, that otherwise wouldn't have been needed had the discount not been available. Whilst the SSEP and more central planning will provide some steer on locational development of generation capacity, we would expect NESO's evolving plans to be informed by industry's assessment of the commercial viability of their own projects, taking into account their impact on network reinforcement costs.</p> <p>It cannot be contested that greater deployment of generation in northerly regions necessitates greater North-South network capacity, typically in recent times delivered through HVDC links. New HVDC links can cost in the order of £2bn each, a cost which is ultimately born by the consumer. Cost-reflective locational charges play an important role in ensuring network development is efficient. The less cost reflective charges become, the more likely it is that network development becomes sub-optimal, which at its worst could trigger one or more of these £2bn investments that could have otherwise been avoided (or better spent elsewhere).</p>
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<div> <input checked="" type="checkbox"/> Yes (the request form can be found in the Workgroup Consultation Section)         </div> <div> <input type="checkbox"/> No         </div> <div> Please see Alternative requests submitted alongside this response         </div>

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5	Does the draft legal text satisfy the intent of the modification?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		No comment
6	Do you agree with the Workgroup's assessment that the modification does not impact the Electricity Balancing Regulation (EBR) Article 18 terms and conditions held within the Code?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<p>We agree that the modification does not impact EBR Article 18.</p> <p>However, we would highlight that the workgroup is also required to consider EU2019/943, and this modification does impact the Electricity Regulation.</p>

## Specific Workgroup Consultation questions

7	Do you believe the cap and floor should have an end date? If so, how long or what is the appropriate trigger.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
		<p>A fixed cap level cannot possibly be cost-reflective if it is written into the code so as to imply perpetuity. This is because there would be no link between the planned progress of network expansion and charges, but rather the effective end date for the cap would be dependent on timing of market design and regulatory change.</p> <p>Other code obligations to conduct code reviews have not been particularly successful in ensuring that an adequate review has taken place or met the prescribed deadline. If an end date is written into the code, it is much more likely to trigger a review of the cap and/or cap levels.</p> <p>An uncertain end date increases uncertainty for all generators in forecasting their charges. If the cap is expected to become more biting in later years, whether it is there or not becomes increasingly material.</p> <p>Legal text with an enduring cap and no end date will not be interpreted as temporary, and may have enduring</p>

## Public

		unintended or unexpected implications for grandfathering of locational charges if granted under REMA.
8	What level of certainty would be required from this modification to best support investment decisions? Please justify any additional protection required (for example grandfathering rights or any other levels of protection).	<input type="checkbox"/> Yes <input type="checkbox"/> No  Calculation of the Adjustment before the cap is applied, so that the impact is minimised on other generators not subject to the cap, would help mitigate the impact of increased Capacity Market clearing prices and may help mitigate the risk of increased CFD clearing prices.
9	Does the Original proposal with no specific end date provide Developers with sufficient confidence to make an investment decision? Please justify.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  All developers may take the worst case view and add some cost of risk to their project evaluations. For example, those subject to the cap might assume an early end date, but those with a less negative Adjustment might assume the impact will be for the life of their project.
10	Does the Original Proposal and any of the Alternatives raised achieve the objectives of the Ofgem letter?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  Ofgem stipulate that their objectives are to balance: <ul style="list-style-type: none"> <li>Retaining a cost-reflective locational long-run investment signal</li> <li>Minimising system costs for consumers while reducing uncertainty to investors</li> </ul> Since the Original and all of these Alternatives propose a cap that is expected to be biting on expected charges, they cannot be cost-reflective of current plans.  Since generators are funding the cap via a change in the Adjustment, the short term risk is just redistributed across generation sites. Overall, we would expect risk



## Public

		<p>and uncertainty to generators to increase due to perceived increased GB regulatory risk.</p> <p>We would also expect the inefficient and non-cost reflective TNUoS cost signal to incentivise more generators to apply to connect in zones with a capped tariff than otherwise would, increasing infrastructure costs for consumers.</p>
11	Do you agree with the data set proposed for the calculation of the cap and floor? If not, what data set would you propose? What is your view on the use of NESO's 5-year forecast of April 2024?	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The 2024 5-Year forecast is the current most reliable data set available. Future planned network expansion should also be taken into account, however.</p>
12	Please provide your assessment of the Original Solution and the 7 Alternative Requests discussed by the Workgroup (additionally, please indicate your preferred solution with associated justification):	
<b>Alternative Request</b>		<b>Assessment</b>
Original Solution		Negative against applicable objectives a, b, c, d and e
Alternative Request 1		<p>Negative against applicable objectives a, b, c, d and e</p> <p>This Alternative is more biting than the Original and therefore our responses to all questions apply to this alternative to a greater extent.</p>
Alternative Request 2		<p>Negative against applicable objectives a, b, c, d and e</p> <p>This Alternative is more biting than the Original and therefore our responses to all questions apply to this alternative to a greater extent.</p>
Alternative Request 3		<p>Negative against applicable objectives a, b, c, d and e</p> <p>This Alternative is more biting than the Original and therefore our responses to all questions apply to this alternative to a greater extent.</p>
Alternative Request 4		Negative against applicable objectives a, b, c, d and e



## Public

	This Alternative is more biting that the Original and therefore our responses to all questions apply to this alternative to a greater extent.
Alternative Request 5	Negative against applicable objectives a, b, c, d and e  This Alternative is more biting that the Original and therefore our responses to all questions apply to this alternative to a greater extent.
Alternative Request 6	Negative against applicable objectives a, b, c, d and e  This Alternative is more biting that the Original and therefore our responses to all questions apply to this alternative to a greater extent.
Alternative Request 7	Negative against applicable objectives a, b, c, d and e  This Alternative is more biting that the Original and therefore our responses to all questions apply to this alternative to a greater extent.