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for energy consumers

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Dear Trisha,

## **CMP312 'Correcting erroneous legal text in Section 14 following implementation of CMPs 264/5 (consequential)' – decision on urgency**

On 22 February 2019, National Grid Electricity System Operator (ESO, the 'Proposer') raised Connection and Use of System Code (CUSC) modification proposal CMP312. This proposal seeks to change the Transmission Network Use of System (TNUoS) charging methodology set out in the CUSC which, in the Proposer's view, corrects an error in the legal text introduced with previous modification proposals CMP264 and CMP265.<sup>1</sup> The Proposer requested that CMP312 be treated as an Urgent CUSC Modification Proposal.

The CUSC Modifications Panel (the 'Panel') considered the Proposer's urgency request at its meeting on 25 February 2019. On the same day, the Panel wrote to inform us of its unanimous view that CMP312 should be treated as urgent because there could be a significant commercial impact on parties, consumers or other stakeholder(s) if the proposal is not treated as urgent.

We have considered both the Panel's and the Proposer's arguments. We have decided that CMP312 **should be progressed on an urgent basis**. We have set out our reasoning below.

### **The proposal**

The proposal explains that, following our approval of WACM 4 of CMP264 and CMP265 in June 2017, the CUSC was updated to reflect a move to gross rather than net TNUoS charging arrangements for demand at Supplier Balancing Mechanism Units (BMUs). The purpose of this modification was to prevent embedded generators being paid by suppliers for reducing TNUoS liabilities, with such payments being subsidised by consumers.

The proposal states that an unintended consequence of the text introduced following the approval of that modification is gross charging arrangements being applied to Licensable Power Stations under a Bilateral Embedded Generation Agreement, and Power Stations under a Bilateral Connection Agreement (collectively, for the purposes of CMP312, "relevant generators"). The Proposer argues that the CUSC should be updated to reflect that this was not the intention of CMP264 and CMP265, but is rather a clear error in the legal text which was not a solution to the defect noted under the modifications.

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<sup>1</sup> CMP264 and CMP265 sought to change electricity transmission charging arrangements for Embedded Generators: <https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/cmp265-gross-charging-tnuos-hh-demand-where>

The Proposer intends that 14.17.14 of the CUSC should be updated, to reflect that for relevant generators the Chargeable Demand Capacity will be, as previously, based on the average of the net import of the relevant BMUs. The modifications following CMP264 and CMP265 took effect from 1 April 2018. As charges for 2018/19 have yet to be invoiced, this amendment would prevent the relevant generators being subject to gross charges for 2018/19.

This CUSC Modification Proposal only affects TNUoS charging for relevant generators, and the ESO does not intend to recalculate any tariffs should this modification be approved. An early, indicative view of the financial impact of error is a total of c.£30m being charged to relevant generators, rather than the c.£3m which they would have been liable for under the arrangements that were intended to be in place under CMP264 and CMP265.

## **Panel discussion**

The Panel considered the request for urgency by reference to Ofgem's Guidance on Code Modification Urgency Criteria.<sup>2</sup> The Panel's unanimous view was that CMP312 does meet these criteria and should be treated as an Urgent CUSC Modification Proposal.

The Panel concluded that there could be a significant commercial impact on parties, consumers or other stakeholder(s) if CMP312 is not treated as urgent.

## **Our views**

We have considered the proposal and the Panel's views on urgency. We have assessed the request against the urgency criteria set out in our published guidance, and in particular, whether the proposal is linked to an imminent issue or a current issue that, if not urgently addressed, may cause a significant commercial impact on parties, consumers or other stakeholder(s).

We accept the Proposer and the Panel's case and have decided that CMP312 should be granted urgent status, because of the potential significant commercial impact on relevant generators (a potentially erroneous £27m charge), caused directly by an error in the way in which the legal text enacting a previous code modification was inserted into the CUSC. We note that, to avoid this potential impact, the modification (if approved) would need to be implemented before the end of the 2018/19 financial year, before charges for that year are levied on generators. Were this modification to be approved under a non-urgent timetable, it might result in a consequential requirement to reimburse generators.

On its own, the aggregate commercial impact of the error may not be considered to be of "significant commercial impact". But, in these circumstances, where failing to correct an apparently obvious error this charging year could result in the requirement for a re-settlement process after the fact, we believe it appropriate for the modification to proceed on an urgent basis.

We also note that the modification set out by the Proposer would correct a (potential) over-recovery of revenues from the relevant generators, if approved. It would therefore not have an impact on other users liable for 2018/19 network charges.

For the avoidance of doubt, in granting this request for urgency, we have made no assessment of the merits of the proposal and nothing in this letter in any way fetters our discretion in respect of this proposal.

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<sup>2</sup> [https://www.ofgem.gov.uk/system/files/docs/2016/02/urgency\\_criteria.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/02/urgency_criteria.pdf)

## **Next steps**

We agree with the majority view of the Panel that the timetable should follow the Code Administrator's proposed urgent timetable to maximise the chances of the change, if approved, being implemented before the end of the 2018/19 charging year.

We are disappointed that the modifications, CMP264 and CMP265, contained an apparent error in the legal text that was not identified in the review of that legal text. We also consider that such an error could reasonably have been identified far sooner rather than leading to unwelcome uncertainty so close to the end of the charging year. We encourage all parties to ensure a robust approach is taken to all change proposals.

Yours sincerely,

**Andrew Burgess**  
**Deputy Director, Charging and Access**  
Duly authorised on behalf of the Authority