

Stage 4. Final CUSC Modification Report		At what stage is this document in the process?								
<h1 style="color: #00a651;">CMP322</h1> <p>Mod Title: Updating the CUSC section 4 “Balancing Services” to ensure Ofgem have the appropriate authority to approve Terms and Conditions (T&Cs), relevant to EBGL Article 18, held within the Standard Contract Terms (SCTs)</p>	<table border="1" style="margin: auto;"> <tr> <td style="border: 1px solid black; border-radius: 5px; width: 30px; text-align: center;">01</td> <td style="border: 1px solid black; border-radius: 5px; padding: 5px;">Proposal Form</td> </tr> <tr> <td style="border: 1px solid black; border-radius: 5px; width: 30px; text-align: center;">02</td> <td style="border: 1px solid black; border-radius: 5px; padding: 5px;">Code Administrator Consultation</td> </tr> <tr> <td style="border: 1px solid black; border-radius: 5px; width: 30px; text-align: center;">03</td> <td style="border: 1px solid black; border-radius: 5px; padding: 5px;">Draft CUSC Modification Report</td> </tr> <tr> <td style="background-color: #00a651; border: 1px solid black; border-radius: 5px; width: 30px; text-align: center; color: white;">04</td> <td style="background-color: #00a651; border: 1px solid black; border-radius: 5px; padding: 5px; color: white;">Final CUSC Modification Report</td> </tr> </table>		01	Proposal Form	02	Code Administrator Consultation	03	Draft CUSC Modification Report	04	Final CUSC Modification Report
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<p>Purpose of Modification: To allow Ofgem to approve future changes to the terms and conditions for Balancing Service Providers (BSPs) and Balancing Responsible Parties (BRPs), as defined in Article 18 (A18) of the European Balancing Guidelines (EBGL), that have been identified as existing in National Grid ESO SCTs for certain Balancing Services, while maintaining the necessary flexibility required to the SCTs.</p>										
	<p>This Final Modification Report has been prepared in accordance with the terms of the CUSC. An electronic version of this document and all other CMP322 related documentation can be found on the National Grid ESO website via the following link:</p> <p>https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updating-cusc-section-4-balancing-services</p> <p>At the CUSC Panel meeting on 29 November 2019, the Panel members unanimously agreed that the Original was better than the baseline and recommended that it should be implemented.</p> <p>The purpose of this document is to assist the Authority in making its decision on whether to implement CMP322.</p>									
	<p>High Impact: None</p>									
	<p>Medium Impact: None</p>									
	<p>Low Impact: Ofgem and National Grid ESO contracts team to ensure SCT process is updated in line with CUSC requirements</p>									

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Timetable		 Lurrentia.Walker@nationalgrideso.com
The Code Administrator recommends the following timetable:		 07976 940 855
Code Administrator Consultation Report issued to the Industry	24 October 2019	Proposer: John Welch
Draft Final Modification Report presented to Panel	21 November 2019	 John.welch@nationalgrideso.com
Modification Panel decision	29 November 2019	 telephone
Final Modification Report issued to the Authority	24 December 2019	National Grid ESO Representative: John Welch
Decision implemented in CUSC	4 April 2020	 John.Welch@nationalgrideso.com
		 07866 165 532

1 About this document

CMP322 was proposed by National Grid ESO and was submitted to the CUSC Modification Panel for its consideration on 27 September 2019. The CUSC Panel, by majority, approved CMP322 to proceed to Code Administrator Consultation.

CMP322 seeks to allow Ofgem to approve future changes to the terms and conditions for Balancing Service Providers (BSPs) and Balancing Responsible Parties (BRPs), as defined in Article 18 (A18) of the European Balancing Guidelines (EBGL), that have

been identified as existing in National Grid ESO SCTs for certain Balancing Services, while maintaining the necessary flexibility required to the SCTs.

Code Administrator Consultation Responses

No responses were received to the Code Administrator Consultation.

CUSC Panel View

At the CUSC Panel meeting on 29 November 2019, the Panel voted on CMP322 against the Applicable CUSC objectives. The Panel members unanimously agreed that the Original was better than the baseline and recommended that it should be implemented.

This Final Modification Report has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid ESO website:

<https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/modifications/updating-cusc-section-4-balancing-services>

2 Summary

Defect

Ofgem do not currently have the authority to approve National Grid ESO SCTs for Balancing Services. To comply with EBGL any future changes to these T and Cs need to follow the processes laid out in EBGL Article 6 (A6) and Article 10 (A10). To enable Ofgem to approve future changes to the parts of EBGL A18, T and C's that are captured in National Grid ESO SCTs, they need to have a mechanism to do this whilst ensuring that the SCTs, remain flexible and support a competitive market place which is inclusive for all parties.

What

To facilitate this change Section 4 "Balancing Services" will need updating in paragraph 4.2B to state that new or amended terms and conditions in Balancing Servicing Agreements, namely those within the SCTs identified as in scope of the EBGL A18 must be subject to a one month consultation and must go to Ofgem for approval as laid out in EBGL A6 and A10.

T&Cs within the scope of EBGL A18 in any new forms of Balancing Servicing Agreements will likewise be subject to consultation and approval as envisaged by EBGL A6 and A10. Where balancing services are being trialled they will only be considered for the purposes of A18 once they have officially been confirmed as an active service by National Grid ESO.

Why

This change is necessary to ensure compliance with EBGL. If no change is made, then the Authority has no clear way of approving the A18 T and Cs held within the SCTs.

It also ensures that barriers to entry for all parties, specifically non-Balancing Market service providers are not created as it continues to give providers a route to market

without the requirement of signing up to the codes. Whilst ensuring that provisions in SCTs remain clear and consistent for all parties and remain flexible for National Grid ESO to respond to new technologies or approaches in the provision of balancing services in a changing energy market.

In addition, this proposed change has been signposted by Ofgem in their EBGL A18 decision letter dated 4 June 2019 where they state on page 3:

“The proposed updates to the code change process and the proposed solution to capturing any changes to SCT as part of the CUSC, will allow the Authority to have a clear and transparent role in approving and amending any future changes that will have an impact on the Article 18 T and Cs and ensures compliance with Article 6 of EBGL”

How

By updating Section 4.2B of the CUSC where general provisions for balancing services are held, Ofgem will, in a clear and transparent way, be able to approve the relevant SCTs that are affected by EBGL A18.

3 Why Change?

This change is necessary to ensure compliance with EBGL. If no change is made, then the Authority has no clear way of approving the A18 T and Cs held within the SCTs.

It also ensures that barriers to entry for all parties, specifically non-Balancing Market service providers are not created as it continues to give providers a route to market without the requirement of signing up to the codes. Whilst ensuring that provisions in SCTs remain clear and consistent for all parties and remain flexible for National Grid ESO to respond to new technologies or approaches in the provision of balancing services in a changing energy market.

In addition, this proposed change has been signposted by Ofgem in their EBGL A18 decision letter dated 4 June 2019 where they state on page three:

“The proposed updates to the code change process and the proposed solution to capturing any changes to SCT as part of the CUSC, will allow the Authority to have a clear and transparent role in approving and amending any future changes that will have an impact on the Article 18 T and Cs and ensures compliance with Article 6 of EBGL”

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4 Code Specific Matters

Technical Skillsets

Understanding of EBGL requirements generally and more specifically for A6, A10 and A18

Reference Documents

https://www.entsoe.eu/network_codes/eb/

5 Solution

By updating Section 4.2B of the CUSC (where general provisions for balancing services are held), Ofgem will, in a clear and transparent way, be able to approve the relevant SCTs that are affected by EBGL A18 whilst remaining flexible and support a competitive market place which is inclusive for all parties.

6 Impacts & Other Considerations

N/A

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

No.

Consumer Impacts

None

7 Relevant Objectives

Impact of the modification on the Applicable CUSC Objectives (Standard):

Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Positive
(b) 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;	None
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Positive
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	None

*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).

This modification positively impacts a and c. It specifically helps ensure compliance with EU law formed from the 3rd Energy package, in this case against the European Balancing Guidelines which came into force in November 2017.

To comply with EBGL the authority must be able to approve all the T and Cs (as set out in A18 of EBGL) that are present in the GB codes and SCTs. It currently cannot do this

for the SCTs and this modification makes sure that the Authority has the necessary approval powers. Whilst the SCTs remain flexible and support a competitive market place which is inclusive for all parties.

8 Implementation

This change should be implemented as soon as possible, but by 4 April 2020 (current expected implementation date for EBGL A18) at the latest to ensure we are compliant with EBGL.

If the implementation date for EBGL A18 changes then this Modification implementation date should change to reflect that.

9 Code Administrator Consultation: Responses

The Code Administrator Consultation was issued on 24 October 2019 for fifteen Working days, with a closing date of 14 November 2019. No responses were received to the Code Administrator Consultation.

10 Legal Text

Text Commentary

See Annex 1 for legal text which provides a clear route for the Authority to approve the necessary SCT changes relating to A18 in the future.

11 Impacts

There were no Workgroup meetings and one Code Administrator Consultation administered as part of this modification. There were no responses received to the Code Administrator Consultation. The Code Administrator has calculated a figure to indicate the cost for Industry reviewing the CMP322 proposal and the Code Administrator for administering the modification which is forecasted at £908.00.

12 Panel Views

At the CUSC Panel meeting on 29 November 2019, the Panel voted on CMP322 against the Applicable CUSC Standard Objectives.

Panel, in accordance with CUSC Section 8.23.4(i), first instructed the Code Administrator to make typographical changes to the legal text of the Original Proposal. These were:

- In CUSC Section 4.2B.5 EGBL Article 18, the reference in paragraph (b) to “EBL” should read “EBGL”;
- Removal of duplicated “mean” in the new definition in CUSC Section 11 for “EBGL Amendment”; and

- In CUSC Section 4.2B.5 EBGL Article 18 and the new definition in CUSC Section 11 for “EBGL Article 18 Terms and Conditions”, removal of the square brackets around the term “Electricity Balancing Guidelines”.

The Panel members unanimously then agreed that the Original was better than the baseline and recommended that it should be implemented.

For reference the Applicable CUSC Standard Objectives are:

- (a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;
- (b) 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;
- (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and
- (d) 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).

Vote 1: Does the Original facilitate the objectives better than the Baseline?

Panel Member: Andy Pace

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Yes	Neutral	Yes
Voting Statement					
CMP322 better meets objectives (a) and (c) by ensuring compliance with EU law formed from the 3rd Energy package, in this case against the European Balancing Guidelines which came into force in November 2017.					

Panel Member: Andrew Enzor (Alternate to Cem Suleyman)

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Yes	Neutral	Yes
Voting Statement					
The Original Proposal ensures compliance with EU law, and so better facilitates ACO					

(a) and ACO (c). It is neutral to ACO (b) and ACO (d).

Panel Member: Garth Graham

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Yes	Yes	Neutral	Yes

Voting Statement

(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;

Neutral

(b) 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;

In considering if CMP322 will better facilitates effective competition in the generation, supply, sale, distribution and purchase of electricity in GB it is necessary to take into account:

(i) that Article 1(1) and (2) of EBGL applies;

(ii) that according to Article 62 of EBGL there is no ability for the TSO (NGESO) or other contracting parties to seek or obtain a derogation from the Article 18 terms and conditions related to balancing in GB;

(iii) that, in the context of Article 3(1)(a) of EBGL, it would not be possible for the TSO to demonstrate “fostering effective competition, non-discrimination and transparency in balancing markets” if the TSO were to allow differential contractual treatment between parties providing balancing services when applying the EBGL Article 18 terms and conditions related to balancing in GB; and

(iv) that as the Commission’s Impact Assessment¹ (referred to repeatedly by Ofgem² in its various decision letters associated with the EBGL Article 18 proposals) makes clear, allowing parties to provide balancing services on different terms and conditions to those approved by the NRA as the Article 18 terms and conditions related to balancing for GB will lead to a less efficient operation of the electricity system and, consequently to 7% higher costs for end consumers, as stated by the Commission in its Impact Assessment³ :

“As more resources participate under the same competitive rules in the markets,

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0410&from=EN>

² See, for example, page 3 of the 4th February 2019 letter and 4th June 2019 letter from Ofgem.

³ Page 148, Volume 5.

markets would become more competitive. This implies an increase in wholesale prices as they will now reflect the actual marginal cost of generation instead of one technically lowered via rules affecting dispatch²⁶⁰. As a result, this will lead to a much more cost-efficient operation of the power system, and consequently to a 7% decrease of its total cost. [emphasis added]

CMP322 will, by bringing the CUSC into line with EU law, prevent the TSO from contracting for balancing services except in accordance with the GB terms and conditions related to balancing; established and approved according to Articles 4, 5, 6, 10 and 18 of EBGL; and as such this will, according to the Commission’s Impact Assessment, lead to more competitive markets and lower costs to end consumers. Therefore, Applicable Objective (b) will be better facilitated as a result.

(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency;

By ensuring that the TSO complies with the relevant legally binding EBGL requirements including, but not limited to, Articles 4, 5, 6, 10 and 18, this CMP322 proposal will ensure that the terms and conditions related to balancing in GB, as approved by the NRA, are applied in accordance with the Electricity Regulation and wider EU law.

(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.

Neutral

Panel Member: Grace March

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Yes	Neutral	Yes
Voting Statement					
This modification will give the Authority a clear way to approve the A18 T&Cs for Balancing Service Agreements and so be compliant with EBGL. It therefore positively impacts ACO (a) and (c).					

Panel Member: Simon Lord (Alternate to Joe Dunn)

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					

This better facilitates objective c) by ensuring that the EBGL Article 18 requirements are reflected in the CUSC. Formally setting out the EBGL Article 18 change arrangements in the CUSC will ensure that parties are aware of what the process is, and should promote more efficient development and assessment of relevant proposals, better meeting Objective d).

Panel Member: Jon Wisdom

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Yes	No	Yes
Voting Statement					
The original proposal better facilitates CUSC objective a) and c) as it allows appropriate updating and maintenance of the relevant Standard terms and Conditions (SCTs) ensuring compliance with the EBGL article 18.					

Panel Member: Mark Duffield

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Yes	Neutral	Yes	Neutral	Yes
Voting Statement					
By aligning the CUSC with the relevant requirements of the Electricity Balancing Guideline, CMP322, in my view, better facilitates the applicable CUSC objectives than the current CUSC baseline.					

Panel Member: Paul Jones

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Yes	Yes
Voting Statement					
This better facilitates objective c) by ensuring that the EBGL Article 18 requirements are reflected in the CUSC. Formally setting out the EBGL Article 18 change arrangements in the CUSC will ensure that parties are aware of what the process is,					

and should promote more efficient development and assessment of relevant proposals, better meeting Objective d).

Panel Member: Paul Mott

	Better facilitates ACO (a)	Better facilitates ACO (b)?	Better facilitates ACO (c)?	Better facilitates ACO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Yes	Neutral	Yes
Voting Statement					
The mod is necessary to give correct effect to the EU energy balancing guidelines and article 18 thereof.					

Vote 2 – Which option is the best?

Panel Member	BEST Option?
Andy Pace	Original
Cem Suleyman (Alternate to Andrew Enzor)	Original
Garth Graham	Original
Grace March	Original
Simon Lord (Alternate to Joe Dunn)	Original
Jon Wisdom	Original
Mark Duffield	Original
Paul Jones	Original
Paul Mott	Original

The CUSC Panel therefore recommended unanimously that the Original could be implemented.

13 Annex 1 – Legal Text

PROPOSED CHANGES IN LEGAL TEXT SHOWN IN RED BELOW

4.2B OTHER BALANCING SERVICES

4.2B.1 Application

The provisions of this Paragraph 4.2B shall apply to **The Company** and a **User** or other person in respect of the provision by that **User** or other person to **The Company** of **Balancing Services** other than **Mandatory Ancillary Services, Maximum Generation** and **System to Generator Operational Intertripping**.

4.2B.2 Form of Agreement

Any agreement between **The Company** and a **User** or other person in respect of the provision by that **User** or other person to **The Company** of **Balancing Services** other than **Mandatory Ancillary Services, Maximum Generation** and **System to Generator Operational Intertripping** shall be in a form to be agreed between them (but, in respect of **Commercial Services Agreements**, subject always to Paragraph 4.2B.3 where applicable).

4.2B.3 Agreed Ancillary Services

Each **User** and **The Company** shall enter into a **Commercial Services Agreement** providing for the payment for and provision of the **Agreed Ancillary Services** (other than **Maximum Generation**) and **System to Generator Operational Intertripping** (if any) set out in Appendix F1 of the relevant **Bilateral Agreement**. If, after a period which appears to **The Company** to be reasonable for the purpose, **The Company** has failed to enter into a **Commercial Services Agreement** with such **User**, **The Company** shall be entitled to initiate the procedure for resolution of the issue as an **Other Dispute** in accordance with Paragraph 7.4 to settle the terms of the said **Commercial Services Agreement**.

4.2B.4 Disclosure and Use of Information

Each **User** or other person who provides **Balancing Services** to **The Company** hereby consents to the disclosure and use by **The Company** of data and other information from any year relating to the provision by that **User** or other person of the **Balancing Service** to the extent necessary to enable **The Company** to carry out its **EMR Functions**.

13.1.1 4.2B.5 EBGL Article 18

Where and to the extent that:-

- (a) contractual arrangements for the provision of and payment for **Balancing Services** contain **EBGL Article 18 Terms and Conditions**; and
- (b) an **EBGL Amendment** to such contractual arrangements is proposed which under the **Electricity Balancing Guidelines** is subject to consultation and prior approval by the **Authority**,

then, to the extent and from such date as is required by the **Electricity Balancing Guidelines**, such **EBGL Amendment** shall be effective only after appropriate consultation and prior approval by the **Authority**. Accordingly, **The Company** shall ensure that the amendment processes contained within such contractual arrangements provide for appropriate consultation and prior approval by the **Authority** before any **EBGL Amendment** becomes effective.

Add new definitions at CUSC Section 11.

Electricity Balancing Guideline means Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing;

EBGL Amendment means any amendment to contractual arrangements for the provision of and payment for **Balancing Services** referred to in Section 4.2B5 which amends the **EBGL Article 18 Terms or Conditions** including to introduce a new provision for the purposes of Article 18 into such contractual arrangements;

EBGL Article 18 Terms and Conditions means terms and conditions which have been approved by the **Authority** pursuant to and for the purposes of Article 18 of the **Electricity Balancing Guidelines**