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CUSC Parties and interested
stakeholders

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Date: 2 November 2020

Dear Colleague,

Notice of an appeal by Muirhall Energy Limited against a self-governance decision of the CUSC Panel regarding CMP342

On 2 October 2020, we received notice of an appeal by Muirhall Energy Limited ('Muirhall Energy') in accordance with clause 8.25.14 of the Connection and Use of System Code ('CUSC').¹ This appeal was made in respect of the decision of the CUSC Panel, on 28 August 2020, to approve CUSC modification proposal CMP342 'Clarification of VAT for Securities in the CUSC' (the 'Proposal').² Muirhall Energy is the only party appealing this decision.

This letter informs you of the formal acknowledgement of the appeal and our confirmation that it is a valid appeal. It also sets out the process that we will follow to determine this appeal and to seek further evidence that will inform our decision.

Background

CMP342 was raised by National Grid Electricity System Operator (the 'Proposer'). The Proposal seeks to clarify that when calculating the amount Users are required to secure under the CUSC, the amount of applicable Value Added Tax ('VAT') is to be included. The Proposer considered that the Proposal would better facilitate the applicable CUSC Objectives as it clarifies the position on securities, allowing them to efficiently administer

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work.

² CMP342 and related papers are available here: <https://www.nationalgrideso.com/industry-information/codes/connection-and-use-system-code-cusc-old/modifications/cmp342>

the securities processes and ensure all Users secure on a consistent basis, protecting other Users, and ultimately consumers.³

The Proposer's view was that the modification should be considered as a self-governance proposal pursuant to clause 8.25 of the CUSC. The CUSC Panel, in May 2020, unanimously agreed that CMP342 should follow the self-governance route and proceed to Code Administrator Consultation. At the July 2020 CUSC Panel, the Proposer (who is also the Code Administrator for the CUSC) shared that there had been a challenge on material impacts of the proposed change from a respondent to the Code Administrator Consultation. Therefore, the CUSC Panel agreed to defer decision on the appropriate governance route until the August 2020 CUSC Panel. At the August 2020 CUSC Panel, the CUSC Panel agreed by majority to maintain their decision that CMP342 should follow the self-governance route.

The CMP342 Final Self-Governance Report highlights that on 28 August 2020 the CUSC Panel, by majority, determined that the proposal better facilitates the applicable CUSC Objectives than the status quo and should be implemented. The CUSC Panel's decision was published on 11 September 2020.

Permission to appeal

A CUSC party may raise an appeal within 15 working days of receiving notice of a self-governance modification decision where:

- it is, or is likely to be, unfairly prejudiced by the implementation of the decision; or
- if it reasonably believes that a self-governance modification which is being implemented does not better facilitate achievement of at least one of the applicable objectives of the relevant code (in this case, the CUSC Objectives); and
- the appeal is not brought for reasons that are trivial, vexatious or have no reasonable prospect of success.

We are satisfied that we were notified of Muirhall Energy's appeal within the requisite 15 working days. We are also satisfied that Muirhall Energy has made a valid appeal, which is made on the basis that the CUSC Panel's decision to approve CMP342 may unfairly prejudice Muirhall Energy and that CMP342 may not better facilitate achievement of at least one of the applicable CUSC Objectives. However, in granting permission to appeal the CUSC Panel's self-governance decision, we have not yet assessed the merits of the appeal itself.

³ The CUSC Objectives are set out in Condition C10 of the electricity transmission licence.

Procedure for determining the appeal

The procedure that Ofgem will adopt in determining this appeal is set out in our guidance on self-governance appeals.⁴ Subject to the need to request and consider further information from relevant parties, our indicative timetable is as follows:

1. Any interested party who wishes to make a written representation in respect of the appeal may do so, no later than **Monday 16 November 2020**;
2. Following publication of the representations on the Ofgem website, any interested party may then submit comments in writing on the representations made by others by no later than **Monday 23 November 2020**;
3. If we do not require additional information, we aim to publish our decision on the appeal as an open letter by **Monday 7 December 2020**, including what further action is required in respect of the appeal outcome.

Any representations and subsequent comments should be sent by email to david.mccrone@ofgem.gov.uk and connections@ofgem.gov.uk.

We may also request further information from relevant parties in order to determine this appeal, in addition to the Final Self-Governance Report and associated CMP342 papers provided to the CUSC Panel when they made their decision. We may subsequently need to revise the above timetable where this happens.

We will publish all documents submitted in relation to the appeal on the Ofgem website (www.ofgem.gov.uk) unless clearly marked confidential. Any confidential material submitted should be clearly marked as such and a non-confidential summary provided alongside it for publication. Documents submitted should be relevant to the appeal.

Outcome of the appeal

We have the following options in making our decision:

1. Reject the appeal and uphold the original decision. The proposal is approved immediately;
2. Uphold the appeal and quash the CUSC Panel's decision. We may then:
 - a. Send back the proposal to the CUSC Panel for further consideration and redetermination; or

⁴ The guidance is on the Ofgem website here: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-self-governance-modification-appeals-process>.

- b. Remove self-governance and make our own decision on the proposed modification. In this case, our decision would be appealable to the Competition and Markets Authority as the original decision would be treated as a recommendation to us.

Yours faithfully,

Andrew Self

Deputy Director, Electricity Network Charging and Access