

## CUSC Workgroup Consultation Response Proforma

### **CMP288 ‘Explicit charging arrangements for customer delays and backfeeds’**

and

### **CMP289 ‘Consequential change to support the introduction of explicit Charging arrangements for customer delays and backfeeds via CMP288’**

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 by **31 January 2019** to [cusc.team@nationalgrid.com](mailto:cusc.team@nationalgrid.com) Please note that any responses received after the deadline or sent to a different email address may not receive due consideration by the Workgroup.

Any queries on the content of the consultation should be addressed to Shazia Akhtar at [Shazia.akhtar2@nationalgrid.com](mailto:Shazia.akhtar2@nationalgrid.com)

These responses will be considered by the Workgroup at their next meeting at which members will also consider any Workgroup Consultation Alternative Requests. Where appropriate, the Workgroup will record your response and its consideration of it within the final Workgroup Report which is submitted to the CUSC Modifications Panel.

<b>Respondent:</b>	Joe Dunn ( <a href="mailto:joseph.dunn@scottishpower.com">joseph.dunn@scottishpower.com</a> , 0141 614 1957)
<b>Company Name:</b>	ScottishPower Renewables (UK) Limited (SPR)
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	<b>For reference, the Applicable CUSC Objectives for the Use of System Charging Methodology are:</b> (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 C26 requirements of a connect and manage connection);

	<p>(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;</p> <p>(d) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency. These are defined within the National Grid Electricity Transmission Plc Licence under Standard Condition C10, paragraph 1*; and</p> <p>(e) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p> <p>*Objective (d) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).</p> <p><b>The Applicable Standard CUSC objectives are:</b></p> <p>(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;</p> <p>(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;</p> <p>(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and</p> <p>(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.</p> <p>*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).</p> <p><b><u>SPR Comment.</u></b> Please note that the modifications also concern the connection charging methodology, and accordingly Transmission Standard Licence Condition C6.11 is engaged:</p> <p><i>"11. In paragraphs 2 and 3 "the relevant objectives" shall mean:</i></p> <p><i>(a) the objectives referred to in paragraph 5 of standard condition C5 (Use of system charging methodology), as if references therein to the use of system charging methodology were to the connection charging methodology; and</i></p> <p><i>(b) in addition, the objective, in so far as consistent with sub-paragraph (a), of facilitating competition in the carrying out of works for connection to the national electricity transmission system."</i></p>
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## Standard Workgroup consultation questions

Q	Question	Response
1	<p><b>Do you believe that CMP288 and CMP289 Original proposals, better facilitates the Applicable CUSC Objectives?</b></p>	<p>No. The fundamental issue, as we understand it, is that a delay by a user can cause “temporary stranding” of TO works, because they have been carried out earlier than actually required for a user’s project. NGET say that this causes two types of loss.</p> <ul style="list-style-type: none"> <li>(i) Specific additional works, e.g. de-mobilisation and re-mobilisation costs, and costs of storage of plant and apparatus.</li> <li>(ii) Financing costs for the works over the period of “temporary stranding”.</li> </ul> <p>NGET does not have the power to impose delay charges under the CUSC. There is no explicit or implicit power to levy such charges. The proposal represents a significant change to the charging methodology. This engages a range of concerns including the following.</p> <p><b>Risk transfer and asymmetric risk allocation</b></p> <p>The change involves a potentially material transfer of risk to new entrant generators and new projects. The current risk allocation under the CUSC is altered. The practical reality is that NGET rarely if ever compensate generators for delay to the connection of their projects. Thus the proposal creates an asymmetric regime for delay. The proposal will have its greatest effect in relation to the development of power stations on greenfield sites and offshore, which are common routes for new entry, and therefore competition in generation.</p> <p><b>Cost reflectivity</b></p> <p>NGET’s justification on cost reflectivity remains very difficult to understand although we appreciate that the Consultation goes some way to explaining the charging and price control background. It remains unclear how key issues are to be determined including:</p> <ul style="list-style-type: none"> <li>(i) How a user delay causes loss to the TOs, in particular in the</li> </ul>

Q	Question	Response
		<p>context of shared works. A delay by one user may not mean the relevant investment is “temporarily stranded” because the works would have proceeded in any event. Even if the works are “sole user”, users should not be liable for TO inefficiency and TOs should be under a duty to mitigate their losses.</p> <p>(ii) Much of the paper focusses on the Totex Incentive Mechanism. A totex overspend can have a range of causes. On what basis will the overspend be attributed to a generator delay as opposed to other causes?</p> <p>(iii) How the TO’s loss is to be quantified. This is very difficult to assess without access to the relevant underlying financial models. Any charges must cover actual costs/losses incurred. At present we do not have enough information to assess whether the proposed change will enable users to assess whether any charges are cost reflective.</p> <p>(iv) How the loss is to be shared across users in a cost reflective manner, in particular when several users delay sequentially. By way of example, what happens if, in respect of one set of works, users 1 and 2 delay causing no stranding but a later delay by user 3 causes temporary stranding when combined with the preceding users 1 and 2 delays?</p> <p>(v) How double recovery is avoided, although the Consultation notes that this needs to be considered further, e.g. in the context of cancellation charges.</p> <p>The consistency of the modification with the underlying policy of ‘plugs’, the wider price control and TNUoS/connection charging regime and policy needs to be thoroughly explored.</p> <p>Naturally any delay charge must be subject to appeal to Ofgem.</p> <p><b>Transparency. Importance of providing information to generators</b></p> <p>The proposals do not adequately address the importance of provision of high quality information to generators so that they can clearly understand their precise risks and liabilities under the proposed regime. NGET</p>

Q	Question	Response
		<p>should provide generators with all reasonably necessary information to enable generators to identify precisely the charges they might face in the event of a delay. NGET should also be under an obligation to notify developers when large contracts are about to be committed (as happens in both Scottish TO areas), so that generators can further manage their liabilities.</p> <p>It is unclear whether all delays will be caught. It is important to be clear about which delays will be caught. As an example would the delay charges apply if the generator encountered a force majeure issue?</p> <p>These matters need to be backed up by CUSC drafting, because the current regime does not lead to users obtaining sufficient information.</p> <p><b>The importance of incentivising efficiency by TOs</b></p> <p>Our view is that the primary CUSC Objectives engaged by these proposed reforms is efficiency:</p> <ul style="list-style-type: none"> <li>(i) of the relevant licensees; and</li> <li>(ii) in the implementation and administration of the CUSC arrangements.</li> </ul> <p>The Proposal seeks to address a particular defect as specified in the Consultation i.e. the lack of explicit, (and implicit) charging arrangements. We remain of the view, however, that there is no requirement for charging arrangements of this type. If TOs are spending efficiently (as they are incentivised to do through their licence) and engaging in a transparent manner with all of their customers and prospective customers, the scenario should never arise that there is inefficient spend. It follows that there should not be a requirement to recover these costs through the connection charging arrangements in the CUSC.</p> <p>We welcome the confirmation from the Proposer that they will seek to address the concerns raised in respect of transparency of information and it is our view that this is where the majority of effort should be focussed in order that TOs are incentivised to invest and contract in as efficient a manner as possible. Such aim is inextricably linked to their</p>

Q	Question	Response
		approach to open and constructive dialogue with their connection customers.
2	<b>Do you support the proposed implementation approach?</b>	<p>No. We strongly disagree that Option 3 set out at paragraph 9.6 is the correct way of implementing the proposed changes. This is for the following reasons.</p> <p><b>Regulatory certainty and retrospectivity</b></p> <p>The CUSC does not allow for the levying of these types of charges at present. Users have entered into agreements for new or expanded connections on the basis of the CUSC terms at the date of their agreements. The proposed change is a material variation to the existing terms of the CUSC and users' liabilities under the CUSC.</p> <p>Allowing TOs to recover the costs arising from delays in respect of expenditure undertaken by TOs before the modification is made is retrospective. This is not, in our view, competent. Such a change will undermine users' confidence in the stability of the CUSC.</p> <p><b>Lack of protection for users</b></p> <p>As we explain in this response, if users are to be liable for the proposed charges, a range of protections must be introduced to ensure that users can: (i) understand the nature and full extent of the charges they will face; and (ii) avoid charges by requesting a delay <u>before</u> a TO incurs the relevant expenditure. These protections will not have applied to expenditure incurred by TOs before any modification comes into force. It follows that delay charges should not apply to such expenditure.</p> <p><b>TO inefficiency will be shifted to users</b></p> <p>TOs must be incentivised to act efficiently. To date, in most (if not all), circumstances where a TO has made expenditure before a user has intimated a delay such expenditure will have been undertaken without the TO having informed the user about it. It follows that the user did not have the option to request a delay so as to avoid the liability.</p>

Q	Question	Response
		It is good practice to consult with users before undertaking material expenditure, (as demonstrated by the good practice of the Scottish TOs). The result of “option 3” is that the user, (and not the TO), suffers from the TO’s inefficiency.
3	<b>Do you have any other comments?</b>	No.
4	<b>Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?</b>	Our concerns should be addressed as part of the development of the proposal. If they are not we shall consider raising an alternative proposal. <i>If yes, please complete a WG Consultation Alternative Request form, available on National Grid's ESO website<sup>1</sup>, and return to the CUSC inbox at <a href="mailto:cusc.team@nationalgrid.com">cusc.team@nationalgrid.com</a></i>

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<sup>1</sup><https://www.nationalgrideso.com/codes/connection-and-use-system-code-cusc/cusc-modifications>

## Specific questions for CMP288 and CMP289

Q	Question	Response
5	<p><b>Do you believe this consultation covers all the relevant interactions between other liability/charging mechanism currently in place in addition to cancellation and connection charge? If not, please can you provide further information?</b></p>	<p>No. The interactions of the proposals need to be assessed further against:</p> <ul style="list-style-type: none"> <li>(i) The CMP192 cancellation charge regime.</li> <li>(ii) The Use of System and Connection Charging Methodologies.</li> <li>(iii) The wider policy for transmission charging.</li> </ul> <p>It is our view that the Proposals are unlikely always to yield a result which is cost reflective of the impacts of a delay. This is particularly the case in the context of the financing charges. The financing strategy of a TO is set on a portfolio basis. We find it very difficult to understand from the reasoning set out in the Consultation how a truly cost reflective charge could ever be devised in the context of individual connections which, in the context of a TO's vast portfolio, are relatively minor investments and are likely to have limited impact on the overall financing strategy adopted and, indeed, the overall TNUOS value (which we consider to be small).</p> <p>Again, we would reiterate that the best way to avoid impacts on financing and, ultimately, TNUOS charges across the network is to drive TO behaviour such that they proactively engage with customers at an early stage to ensure that the type of inefficient costs this Consultation is trying to prevent are not incurred in the first place.</p>
6	<p><b>Do you agree with the scope of the works which are proposed to be used to calculate the charge?</b></p>	<p>We do not agree with the proposal to include Wider Works as part of the scope that should be subject to these charges. More widely we believe that the inclusion of shared works raises a range of issues. In general these issues will be more complex in the context of shared Wider Works.</p> <p><b>Shared works: key overarching issues</b></p> <p>The key issues engaged by shared works include:</p> <ul style="list-style-type: none"> <li>(i) Showing that a delay by an individual customer causes loss, i.e. if</li> </ul>



Q	Question	Response
		<p>the user had delayed, the expenditure would not have gone ahead and there is “temporary stranding”. In many cases the TO would proceed in any event because the work is designed to accommodate several projects. If the TO would have proceeded with the work even if the individual user delayed we do not see how there can be a loss to the TO.</p> <p>(ii) Even if there are circumstances where some form of loss arises quantification will be difficult.</p> <p>(iii) How any “loss” is allocated between users is clearly an issue that requires further careful analysis.</p> <p>(iv) Transparency may also be difficult to achieve in the context of confidential arrangements between NGET and individual users. However, transparency is essential in this context.</p> <p>As the Consultation notes, Wider Works are largely carried out to facilitate multiple customer connections. It is our view that it would be very difficult, in the context of a delay, to attribute a cost reflective delay charge to one customer’s delay where the infrastructure is utilised by more than one customer.</p> <p>It may be that the delay by one customer causes no “loss” because the TO would have proceeded with the investment in any event. Whilst an individual customer’s connection may have necessitated further wider reinforcement of the network that investment is likely to be designed to accommodate many connection customers. The individual customer’s delay may not have any impact on the use by other connection customers of that infrastructure. Ultimately the infrastructure will, in time, be used by the customer in any event.</p> <p>The situation would, of course, be different if the customer cancelled their connection and that connection was responsible for a more expensive reinforcement solution being procured. In that situation, the current cancellation charge regime would be sufficient to protect the TO.</p> <p><b>Use of proxies to calculate TO costs</b></p> <p>The use of proxies to determine the TO’s loss should be approached</p>

Q	Question	Response
		<p>with caution. The loss incurred by a TO and the loss attributable to any one user will vary from case to case. It is possible that the calculation of loss and allocation to users will be very fact specific. It may not be possible to devise a proxy that covers all relevant scenarios. The risk is that a proxy leads to charges that are not cost reflective.</p> <p>We note that the proposer considers that one key driver for delay charging is to ensure that costs of generator delays are borne by the party requesting a delay, rather than consumers. Our view is that the impact on consumers of a delayed connection is likely to be negligible. For this reason, it is our view that the impact on a generator of using a non-cost reflective proxy to determine their liability could have the effect of disproportionately impacting generators in a negative way, in order to try and counteract an issue identified by the proposer that is likely to have minimal, if any, tangible impact on the consumer.</p> <p>Furthermore, TOs will be required to replace and repair wider shared assets and these are distinct from those that are required as a result of a generator connection. The TO will be incentivised through the price control to carry these out to timescales that are not driven by customer connections i.e. often earlier. These costs could not be included in any proxy used to determine the costs attributable to generators, and it would be difficult to separate these works when carrying out any calculation.</p> <p><b>Importance of verification mechanisms</b></p> <p>The explanation of the source of TOs' potential losses in the Consultation demonstrates the complexity of the calculation of loss and the allocation of losses to individual users.</p> <p>It is essential that users can verify that these calculations have been carried out correctly. Mechanisms need to be included in the CUSC to ensure that users can have full confidence in the TOs' calculations and are able to verify these calculations.</p>
7	<p><b>Do you agree with the proposed level of granularity, timing of the proposed information exchange and the period it covers?</b></p>	<p>No. The fundamental point is that users must be able to determine their precise liability to NGET. It follows that if the recovery of delay charges is to be permitted then NGET must be placed under clear express</p>

Q	Question	Response
		<p>obligations under the CUSC: (i) to provide regular statements setting out potential delay liabilities over the lifetime of the project, (ii) not to proceed with works unless the user has been given sufficient notice of the works.</p> <p>Our experience is that the current provisions of the CUSC do not always lead to the provision of high quality reliable information to users. Against that background it is not appropriate to rely on the existing provisions of the CUSC and informal additional processes. Rather, the CUSC must be modified to ensure that users are contractually entitled to robust information that enable them to ascertain potential delay liabilities with precision.</p> <p>In this context we refer to section 8.13 of the Consultation. The proposal for Bi-annual Cost profiles only references 12 months ahead forecasting. There is no reason why a TO cannot provide a spend profile for the entire period of construction to allow developers to make informed decisions. This information was available prior to CMP192 and indeed is something that NGENSO has been asked to provide on a number of occasions since implementation of CMP192. So far as we are aware such information has not been provided.</p> <p>Updated profiles should be available at short notice (e.g. within 1-2 weeks) to ensure when a developer is considering a delay to their connection date that its application is not delayed due to a lack of information being available.</p> <p>The proposal in 8.13 is not exact or specific enough to ensure that the proposal is acceptable. Phrases such as "...as a minimum..." and "...where possible..." are not acceptable and must be expanded to ensure developers are aware of an exact process and of what information will be available at a given time.</p> <p>The process needs to be underpinned by regular discussion between generators, TOs and the SO. TOs, the SO and generators should be required to liaise regularly so that each party is aware of the others' current timetables and the TOs' spending profiles. This will give generators forward visibility of the point at which the TO is likely to seek formal agreement to proceed with expenditure.</p>

Q	Question	Response
		<p><b>The need for clear triggers for user liability for delay</b></p> <p>When a project reaches a stage that involves material expenditure by a TO, the generator should be given the opportunity to confirm that it wants the programme to proceed according to the existing timetable. If it does so, it accepts that it may subsequently become liable for delay charges (which should be set out in transparent and unambiguous terms). If the generator declines to proceed, it would avoid liability for delay charges but may suffer consequences in terms of previously agreed milestones (which again, should be clearly set out).</p>
8	<p><b>Do you agree with the proposed quarterly reporting of/provision of milestones?</b></p>	<p>As we have noted above, we believe that transparency of information on spend and contracting profiles is absolutely vital if TOs are to spend efficiently in respect of customer connections.</p> <p>To ensure that TOs are not spending inefficiently and out of line with the expectations and schedules of their customers, TOs must engage proactively and regularly with the customers.</p> <p>Supplementary to the formal reporting there must be regular dialogue between the TO and the customer before any changes arise that may impact liabilities and require a decision on behalf of the TO and the customer as to the proposed course of action.</p> <p>We note the Proposer's reference to National Grid ESO's guidance note (the Guidance Note) and remain of the view that this Guidance Note does not provide the level of detail required to ensure that customers have a proper view of their potential liabilities. Appendix J of the Construction Agreement is noted by the Proposer as giving further transparency as to the timescales that the TO is working to. Our view is that this is not sufficient, on the basis that whilst this provides information on key milestones, it does not give any detail on the proposed timing of the placement of key contracts by the TO which are relevant to these timescales.</p>
9	<p><b>Do you believe the report has captured all the cross code/licence issues relevant to these modifications?</b></p>	<p>We have not reviewed the cross code licence issues in detail at this stage, as it is our view that there is further detail to work through on the proposals set out in CMP288/289 which may impact upon these. It is our</p>

Q	Question	Response
		view that this should be considered only once the detail of CMP288/289 are fully agreed between the parties to this Workgroup.
10	<b>Do you agree that the wording of the CUSC should be amended to clarify that one-off charges will be issued to recover additional incremental costs incurred to facilitate a User requested delay or backfeed? If so, do you think this should include a list of example such one off costs that can be incurred for delays and backfeeds?</b>	<p>We agree that, should the proposal be taken forward, the CUSC will require to be amended as it does not permit these type of charges to be levied at present.</p> <p>A non-exhaustive list of examples should be provided to allow customers greater clarity on the types of scenarios that may lead to these types of charges.</p> <p><b>Backfeed</b></p> <p>The Consultation focusses on delay charges and treats backfeed as a very similar issue. However backfeed engages different issues to a delay. As an example, the generator will pay demand TNUoS on the backfeed: accordingly the generator is making payments. It is clear from the terms of the Consultation that there has been limited workgroup focus on backfeed. We suggest that it is important to focus on the specific facts relating to backfeed and conflating backfeed with delay risks confusing matters.</p>
11	<b>Do you support either of the solutions proposed for calculating financing charges in relation to shared and wider enabling works? Do you have another solution which may be better?</b>	<p>No. This engages similar issues to the applicability of the charge to shared and wider works discussed above. A charge should only be levied on a user if that user actually causes the works to be “temporarily stranded”. If there is no “temporary stranding” there cannot be said to be any “loss”, as the works would have proceeded anyway.</p> <p>We think both options risk over-simplifying the position. What happens if a set of users delay sequentially. A delay by users 1 and 2 may not cause temporary stranding. A delay from user 3 may, in combination with the preceding delay of users 1 and 2 cause temporary stranding. In that scenario, is it just user 3 who is liable? All three users have contributed to the stranding. Should all three contribute? Where there are other causes of temporary stranding these must also be taken into account. What happens, for example if the TO contributes to the delay in part? What happens if the delay is caused in part by force majeure, or a major political change, e.g. a policy review by Government? We do</p>

Q	Question	Response
		not see how either option takes scenarios such as these into account.
12	<b>Do you agree with the proposed approach that the delay/backfeed charges should be paid as the costs are incurred? Or do you feel they should be paid in an alternative timeframe (e.g. the point of connection)?</b>	This is an area that requires further work by the workgroup and the proposer. At first sight there may be merit in offering users choices of payment methods, as happens with connection costs. However other factors need to be considered such as credit risk.
13	<b>Do you agree with the one month deadline to notify the TO of an intention to delay, to allow the TO to reassess its investment strategy?</b>	<p>The “one month” proposal is not sufficiently developed in the Consultation for us to give a clear view. However we would note the following.</p> <p>A TO will not make any changes to their investment strategy based on an <i>‘intention’</i> to delay. TOs can only change plans on the basis of firm delays, an “intention” is not firm.</p> <p>If a notice of intention is to be provided the SO/TOs must give the user sufficient information in sufficient time so that the user can make an informed decision. As an example, one month from a statement of potential delay charges being issued is not sufficient. In reality, once an update is issued, it will require discussion so that everyone is content as to its accuracy.</p> <p>Only at the point of agreement that the information provided is accurate to a level that a decision can be made is a developer in a position to consider next steps.</p> <p>Thereafter, at least 3 months should be provided which would align with licence timescales for accepting a connection or modification offer. This typically allows for assessment/ analysis by the developer and sufficient time to gain internal approval.</p> <p>NGESO is in the position to enable this by ensuring that sufficient notice ahead of large contract milestones being placed is made, e.g. 18 months to extend outside a financial year by which time budgets have been set.</p>
14	<b>Do you agree that individual TOs’ regulated Weighted Average Cost of Capital (WACC) should be used as the financing rate to calculate the proposed financing charges?</b>	It is important to ensure that any loss recovered by a TO is cost reflective. The Ofgem approved WACC is likely to be a sensible starting place for this. However this requires further work, in the context of fully transparent disclosure of precisely how the TOs’ losses arise.