

Code Administrator Consultation Response Proforma**CMP381: Defer exceptionally high Winter 2021/22 BSUoS costs to 2022/2023**

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 cusc.team@nationalgrideso.com by **5pm on 10 January 2022**. 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 Paul Mullen paul.j.mullen@nationalgrideso.com or cusc.team@nationalgrideso.com

Respondent details	Please enter your details
Respondent name:	Paul Jones
Company name:	Uniper UK Ltd
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I wish my response to be:

(Please mark the relevant box)

☒ Non-Confidential☐ Confidential

Note: A confidential response will be disclosed to the Authority in full but, unless agreed otherwise, will not be shared with the Panel or the industry and may therefore not influence the debate to the same extent as a non-confidential response.

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 C26 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;*
- 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.*

**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).*

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

Standard Code Administrator Consultation questions		
1	Do you believe that the CMP381 Original Proposal and/or WACM1, WACM2, WACM3, WACM4, WACM5 better facilitates the Applicable Objectives?	We support all of the Working Group Alternative Proposals which will benefit competition in wholesale and retail markets. We cannot support the original proposal as the change will have a retrospective effect.
2	Do you support the proposed implementation approach?	<p>For the WACMs yes. We do not support the approach for the original proposal.</p> <p>We believe that retrospective implementation and retrospective application are one and the same thing. We have failed to find any references in Ofgem's previous decisions or guidance which makes or implies any distinction between retrospective implementation and application of a change. For instance, in its decision letter for P171 Ofgem uses the terms interchangeably. In one section Ofgem notes that the modification proposal "<i>seeks to apply the proposed solution on a retrospective basis</i>", whereas in another it says P171 "<i>entails retrospective implementation</i>". We believe that if a proposal changes the rules that apply to a date that has occurred in the past, then this is a retrospective change. This seems to be consistent with Ofgem's position in its Guidance on Code Modification Urgency Criteria, in relation to retrospective changes, which says "<i>It is a general principle that rules ought not to change the character of past transactions, completed on the basis of the then existing rules</i>".</p>

3	Do you have any other comments?	No, thank you.
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