

Modification proposal:	Connection and Use of System Code (CUSC) CMP239: Grandfathering Arrangements for the Small Generator Discount		
Decision:	The Authority ¹ has decided to reject ² this modification		
Target audience:	National Grid Electricity Transmission PLC (NGET), Parties to the CUSC and other interested parties		
Date of publication:	12 August 2015	Implementation Date:	N/A

Background to the modification proposal

Standard Licence Condition C13 (SLC C13) of the electricity transmission licence requires National Grid Electricity Transmission plc (NGET) to discount the Transmission Network Use of System (TNUoS) charges for generators with a capacity of under 100MW, connected to the 132kV network in Scotland and offshore waters.

The discount, referred to as the small generator discount, was introduced³ by the UK Government at the time of BETTA⁴ in 2005. The aim of the discount was to create a level playing field between under 100MW 132kV *transmission* connected generators and those that are *distribution* connected at 132kV in England and Wales. Generators connected at 132kV to the distribution system in England and Wales are called embedded generators and are treated as negative demand⁵ for the purposes of transmission charging.

The level of the discount was determined by Ofgem and is 25% of the total generation and demand residual TNUoS tariff in a given charging year. This is recovered from demand consumers across GB.

The discount was time limited and was originally set to expire on 31 March 2008 to allow time to develop enduring charging arrangements for embedded generators. The expiry date was extended several times due to different interacting projects. The current expiry date is 31 March 2016.

In April 2013, NGET began an informal review⁶ of the charging arrangements for embedded generators in advance of the 2016 expiry date of the discount. In its review, NGET concluded that, in its view, there was a level playing field between sub-100MW generators connected to the 132kV network in Scotland and the same generators in England and Wales without the 25% discount. It therefore proposed that the small generator discount should be allowed to expire. However, NGET noted that if any party considered the arrangements should continue, they could raise a CUSC Modification Proposal (CMP) to seek to incorporate the arrangements within the charging methodology.

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. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ https://www.ofgem.gov.uk/sites/default/files/docs/2004/05/6951_9604.pdf

⁴ The British Electricity Trading and Transmission Arrangements (BETTA) joined the wholesale market in England & Wales to that in Scotland.

⁵ The volume of embedded generation is taken off the total demand volume to create a net demand for the purposes of transmission charging.

⁶ <http://www2.nationalgrid.com/UK/Industry-information/System-charges/Electricity-transmission/Transmission-Network-Use-of-System-Charges/Embedded-Benefit-Review/>

The modification proposal

CMP239 was raised by Fred Olsen Renewables on 20 October 2014 (“the Original Proposal”). CMP239 seeks to implement ‘grandfathering’ arrangements in the CUSC from the date of expiry of SLC C13 on 31 March 2016. This would set criteria as to which sub-100MW generators connecting to 132kV in Scotland or offshore would be eligible to continue to receive the discount after 31 March 2016. Any sub-100MW generators connecting to those networks and not fulfilling the criteria would not receive the discount from this date.

During the modification process, the Original Proposal and three Workgroup Alternative CUSC Modifications (WACMs) were developed by a workgroup. In particular, discussions focused around the criteria for being eligible to receive the discount, the length of time the discount would continue to be received for, and the size of the discount. The workgroup agreed that, for all options, the level of the discount would remain as it is currently, ie 25% of the total generation and demand residual TNUoS tariff in a given charging year.

The Original Proposal is as follows:

Eligible to continue to receive the discount: Sub-100MW generators that currently receive the small generator discount and those generators that will be connected by 31 March 2016 and fulfil the current criteria to receive the small generator discount.

Length of time discount applies for: End date for the discount is 25 years from an existing generator’s commissioning date or 25 years from 1 April 2016 for new generators connecting ahead of 31 March 2016.

The three WACMs supplemented the Original Proposal as follows:

- WACM 1 also includes generators who had made a significant investment decision by 31 March 2016 as eligible to continue to receive the small generator discount. For existing plant that has been refurbished before 31 March 2016, WACM 1 moves the start date of the 25 years to the date of refurbishment. This is to take account of the fact that some workgroup members considered that a decision to invest in a refurbishment may have been made assuming that they would continue to be eligible for the small generator discount.
- WACM 2 also inserts an end date for the discount as a whole, if 132kV in Scotland is reclassified as distribution; and
- WACM 3 combines WACMs 1 and 2 above. It includes generators who had made a significant investment decision by 31 March 2016 as eligible. It also moves the start date of the 25 years to the refurbishment date for those generators that had refurbished by 31 March 2016 and it includes an end date for the discount if 132kV in Scotland is reclassified as distribution.

CUSC Panel⁷ recommendation

The CUSC Panel considered the Final Modification Report (FMR) for CMP239 at its meeting on 26 June 2015. The Panel voted, by majority (7:2), that CMP239 does not better

⁷ The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

facilitate the applicable charging objectives of the CUSC compared to the current arrangements. The Panel members' views are shown in full in the FMR.⁸

Code Administrator consultation

National Grid received five responses to the Code Administrator consultation including one late response. These are published on the NGET website.

Our decision

We have considered the issues raised by the modification proposal and the FMR dated 8 July 2015. We have considered and taken into account the responses to the Code Administrator consultation on the modification proposal which are attached to the FMR. We have concluded that⁹:

- Implementation of all the CMP239 proposals will not better facilitate the achievement of the applicable objectives of the CUSC¹⁰; and
- Rejecting the modification is consistent with our principal objective and statutory duties.¹¹

Reasons for our decision

We agree with the views of the majority of Panel members that the Original Proposal and all three WACMs would not better facilitate the applicable charging CUSC Objectives compared to the current arrangements. We do not consider that any of the options are appropriate in this case for the following reasons:

- The licence condition is time limited and therefore parties should expect it to expire at some point, albeit that we recognise there have been a number of extensions.
- As a result, grandfathering would discriminate against generators connecting to 132kV in Scotland/offshore after 31 March 2016.

Below we assess the CMP239 proposals against the applicable charging CUSC objectives that we consider are impacted by the proposals, and the Authority's principal objective and statutory duties.

Objective (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'

We agree with the majority of the Panel that all of the CMP239 proposals do not better facilitate applicable charging CUSC objective (a).

We note the examples of grandfathering given by the industry and that grandfathering is appropriate in some circumstances to provide regulatory certainty. However, as stated above, we contest the premise that generators did not expect this discount to end at any

⁸ The CMP239 modification proposals, modification reports and representations can be viewed on NGET's website at: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP239/>

⁹ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

¹⁰ As set out in Standard Condition C10(1) of NGET's Transmission Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

¹¹ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 as amended.

point and that, because it is ending, this has increased risk and uncertainty in the market. SLC C13, the licence condition that provides for the small generator discount, has always been time limited and hence a temporary measure. The licence condition was extended several times but each time a new deadline was introduced.

The licence condition was originally introduced pending enduring arrangements for embedded generation. Several parties noted that no such enduring arrangements had been implemented. National Grid assessed the embedded generation charging arrangements in its embedded benefits review in 2013. At that time it developed its view on enduring arrangements, including that SLC C13 should lapse. It has also subsequently published an open consultation on its views on the treatment of exporting GSPs.¹² It is not currently intending to progress the gross charging of the demand residual or explicit charging of the generation residual.

In this context, we do not consider that grandfathering is required to provide regulatory certainty and, in our view, grandfathering the small generator discount would be discriminatory. We consider that undue discrimination will distort and is detrimental to effective competition.

Objective (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 in accordance with the STC) incurred by transmission licensees in their transmission businesses and which are compatible with standard condition C26 (Requirements of a connect and manage connection)'

Assessing cost reflectivity requires us to have a view on the merits of the small generator discount overall. We are therefore unable to say whether the options presented to us under CMP239 are more or less cost reflective than the status quo, ie letting the discount expire without any grandfathering provisions.

Objective (d) 'Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency'

In our view, this change is inconsistent with EU law in relation to the discrimination it causes as described above in relation to objective (a). As such, we consider the CMP239 proposals to be detrimental to objective (d).

The Authority's principal objective and statutory duties

We have assessed whether approving any of the CMP239 proposals would be consistent with the Authority's principal objective, when carrying out its function as decision maker, to protect the interests of consumers. This includes the Authority's fulfilment of the objectives set out in Article 36(d) (helping to achieve the development of non-discriminatory systems) of the Electricity Directive.¹³ We consider that the CMP239 proposals are inconsistent with these objectives because, as set out in relation to objective (a), we consider that grandfathering the small generator discount for some generators would be discriminatory. CMP239 would therefore lead to the distortion of competition, which could lead to inefficient outcomes and may increase the cost of generation which would impact bills in the medium to long term.

¹² <http://www2.nationalgrid.com/UK/Industry-information/System-charges/Electricity-transmission/Transmission-Network-Use-of-System-Charges/Embedded-Benefit-Review/>

¹³ Directive 2009/72/EC.

As stated above, the CMP239 proposals also do not add to regulatory certainty as SLC C13 has always been time limited and hence a temporary measure. The licence condition was extended several times but each time a new deadline was introduced.

Overall

On balance we consider that overall none of the CMP239 proposals better facilitate the CUSC charging objectives. They are negative in relation to applicable objectives (a) and (d), neutral with respect to (c) and we have not been able to reach a view of the impact in relation to (b) as explained above. They are also negative in relation to the Authority's principal objective and neutral in relation to regulatory certainty and our other statutory duties.

Decision notice

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority has decided that CMP239 '*Grandfathering Arrangements for the Small Generator Discount*' should not be made.

Kersti Berge
Partner, Electricity Transmission

Signed on behalf of the Authority and authorised for that purpose