

Modification proposal:	<b>Connection and Use of System Code (CUSC) CMP254: 'Addressing discrepancies in disconnection/de-energisation remedies'</b>		
Decision:	The Authority <sup>1</sup> directs that CMP254 WACM3 be made <sup>2</sup>		
Target audience:	National Grid Electricity Transmission plc (NGET), Parties to the CUSC, the CUSC Panel, Large Users and other interested parties		
Date of publication:	11 March 2016	Implementation date:	18 March 2016

## Background

CUSC Modification Proposal (CMP) 254 seeks to introduce provisions into the CUSC which will allow a Supplier to instruct the System Operator (SO) (who will in turn instruct the relevant Transmission Owner (TO))<sup>3</sup> to de-energise a transmission-connected Non-Embedded Customer.<sup>4</sup> This will allow the Supplier to exercise its statutory right under the Electricity Act 1989, alongside any rights of redress under the Supply Contract, to de-energise an indebted customer.

Under the terms of the Electricity Act 1989<sup>5</sup>, a Supplier has the right to de-energise/disconnect a customer site from the electricity network should its electricity charges not be paid.

At lower voltage levels on the distribution network level, for domestic/small business customers, the Supplier can give effect to the de-energisation/disconnection itself. Alternatively, at higher voltage levels, it can request that the relevant Distribution Network Operator (DNO) does so on its behalf. In this case, the process for de-energisation/disconnection is governed by the Distribution Connection and Use of System Agreement (DCUSA), placing an obligation on the DNO to action the instruction from the Supplier.

At the transmission network level, the Supplier may not have the skilled personnel to disconnect/de-energise the customer itself and would require assistance from the SO, or relevant TO, to do so. Currently there is no process set out within the CUSC in which the SO can carry out the de-energisation/disconnection of a transmission-connected Non-Embedded Customer on the request of a Supplier.

CMP254 seeks to address this issue by introducing arrangements into the CUSC for the de-energisation of a Non-Embedded Customer by the SO, at the Supplier's request, in accordance with the Supply Contract.

## The modification proposal

EDF Energy plc raised CMP254 on 30 October 2015, with a request that the modification proposal be treated as urgent and follow an urgent timetable. We rejected the request for

<sup>1</sup> 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.

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

<sup>3</sup> Throughout this document, we will only refer to the 'SO', however, it will refer to the situation described here

<sup>4</sup> Defined in the CUSC as a 'Customer except for a Public Distribution System Operator receiving electricity direct from the National Electricity Transmission System irrespective of from whom it is supplied.'

<sup>5</sup> Schedule 6 paragraph 2 (1) of the Electricity Act 1989 as amended.

urgency<sup>6</sup> to ensure wider industry participation in the assessment of the proposal within the Workgroup process and to ensure enough time for industry consultation. We directed that CMP254 should follow an accelerated timetable with longer consultation periods than set out in the original urgent timetable. We recognised the significant commercial impact of this modification on both Suppliers and consumers and considered that, on balance, an accelerated timetable would still allow the modification to proceed in a timely manner whilst also providing opportunity for wider industry participation.<sup>7</sup>

The Workgroup's assessment of CMP254 resulted in the development of 6 solutions (the Original Proposal and 5 Workgroup Alternative CUSC Modification proposals (WACMs)). These are described in more detail in the Final Modification Report (FMR)<sup>8</sup>:

1. *Original Proposal*: Aims to bring the CUSC in line with the DCUSA regarding a Supplier's rights under its Supply Contract and the Electricity Act 1989 to disconnect an indebted Non-Embedded Customer. The notification to de-energise will be given to the SO by the Supplier, who will action the request as soon as reasonably practicable.
2. *WACM1*: Allows the Supplier to instruct the SO to de-energise a Non-Embedded Customer as soon as practicably possible. However, the SO may refuse this request on 'technical grounds or otherwise'. The Supplier will indemnify the SO for 'costs, liability, loss or damage'. The SO indemnity is capped at £5million in accordance with Section 6.12.1 of the CUSC.
3. *WACM2*: Allows the Supplier to instruct the SO to de-energise a Non-Embedded Customer as soon as practicably possible. However, the SO may refuse this request on 'technical grounds'. Indemnities apply to both the SO and the Supplier, capped at £5million each way.
4. *WACM3*: This WACM is the same as the Original Proposal with a Downstream Customer process added. In this case, there would be a process for the Supplier to identify and liaise with any customers downstream of the Non-Embedded Customer prior to de-energisation, to consider possible alternative solutions to prevent interruption to their supply.
5. *WACM4*: This WACM is the same as WACM1 but with the same Downstream Customer process added (as mentioned in WACM3).
6. *WACM5*: This WACM is the same as WACM2 but with the Downstream Customer process added (as mentioned in WACM3).

While most of the options were considered better than the current CUSC baseline, there was no one option that the Workgroup unanimously agreed would best facilitate the applicable CUSC objectives compared to the baseline. Three Workgroup members voted for WACM4 as best facilitating the applicable CUSC objectives with one vote each for the Original and for WACMs 3 and 5.

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<sup>6</sup> Details of CMP254 can be found here: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/Modifications/CMP254/>

<sup>7</sup> Our reasons for rejecting the request for urgency are in a letter published on the National Grid website (see link at footnote 6).

<sup>8</sup> All documents associated with CMP254, including the FMR, are on National Grid's website (see link at footnote 6).

## **CUSC Panel<sup>9</sup> recommendation**

The CUSC Panel considered the draft FMR for CMP254 at a special meeting on 8 February 2016. The Panel voted that the Original, WACM2, WACM3 and WACM5 all better facilitate the applicable CUSC objectives compared to the baseline. A majority of the Panel also considered that the Original was the best option, and should therefore be implemented. The full views and votes of the Panel members are set out in the FMR.

## **Our decision**

We have considered the issues raised by the modification proposal and the FMR dated 10 February 2016. 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 that:

- implementation of the WACM3 option will better facilitate the achievement of the applicable objectives of the CUSC;<sup>10</sup> and
- directing that the modification be made is consistent with our principal objective and statutory duties.<sup>11</sup>

## **Reasons for our decision**

In making our decision, we have considered the following issues:

### *Downstream Users*

The Workgroup recognised that there are cases where the Non-Embedded Customer may have a downstream user connected via a private network. These downstream users will generally have bilateral arrangements in place to pay the Non-Embedded Customer directly for their electricity and do not have a direct relationship with a Supplier. In these cases, the downstream user may not have sight of any potential issues that may lead to de-energisation/disconnection of the upstream customer and which would likely be harmful for their business. Some members of the Workgroup therefore considered it appropriate to add a process into the solution, for the Supplier to contact and set up a meeting with the downstream user(s), the SO and the Non-Embedded Customer possible alternative solutions prior to de-energisation. We consider that the use of the word 'meeting' is sufficiently wide enough to include tele/videoconferencing. This process is incorporated in WACMs 3, 4 and 5.

We consider that it is essential to have a level of protection for any downstream users, both from a financial and a safety perspective. The process added will provide downstream users with the opportunity to discuss feasible options to maintain their supply as well as giving them some prior warning as to when the de-energisation will occur (if no solution can be reached). It will also provide a level of clarity to the SO of the technical layout of the private wire network, to enable it to carry out any de-energisation safely and efficiently.

EDF Energy noted in its Code Administration Consultation response that relationships between the Non-Embedded Customer and downstream users are likely to be close. EDF

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<sup>9</sup> The CUSC Panel is established and constituted from time to time pursuant to and in accordance with section 8 of the CUSC.

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

<sup>11</sup> 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.

believes that it would therefore be more appropriate for the Non-Embedded Customer to inform any downstream users of its potential de-energisation, not the Supplier. EDF also raised the issue of confidentiality, whereby the Supplier could be sued by the Non-Embedded Customer if it discussed the Non-Embedded Customer's financial situation or inability to pay its electricity bill with any downstream user(s). We do not consider that the terms of the de-energisation would have to be discussed in such a circumstance and the additional process provides an increased benefit to all parties.

In the circumstances where a Supplier intends to disconnect its customer, we consider that they must bear an element of responsibility for safeguarding the interests of any impacted downstream user and that this responsibility must lie with the Supplier, not with the defaulting customer, as the Supplier is the party issuing the instruction to de-energise. Furthermore, we consider there are ways to discuss the potential de-energisation and any options to avoid it that do not breach any confidentiality agreements.

By introducing a downstream user process, we acknowledge that the CUSC will have differences to the process set out in the DCUSA. However, the downstream user process takes into account the economic and safety impact that the de-energisation of a Non-Embedded Customer may have on any downstream users. We consider the addition of the process is an appropriate addition to the similar process within the DCUSA, it better facilitates the CUSC objectives, and is in line with our principal statutory duty to protect the interests of consumers.

### *Indemnities*

The different variants of CMP254 provide three options for indemnities between the SO and the Supplier in the event of a de-energisation instruction:

1. Equal unlimited indemnities between the Supplier and SO
2. Limited indemnities for the SO (capped at £5million) and unlimited indemnities for the Supplier
3. Limited indemnities for both parties, capped at £5million

Our view is that unlimited indemnities for both the Supplier and the SO are appropriate. This will ensure that in the case of physical damage, liabilities will reflect actual costs and this should incentivise efficient and safe practice by the Supplier and the SO. It should also ensure that the decision by the Supplier to de-energise a Non-Embedded Customer, and the potential outcomes, are fully considered and not taken lightly or without consideration of any repercussions this request by the Supplier may have on downstream users. No convincing argument has been made, as to why capped indemnities should apply.

### *SO reasons to refuse – 'Technical grounds or otherwise'*

The Workgroup considered the situations in which the SO should be able to refuse to de-energise a Non-Embedded Customer. The WACMs provide three options:

1. The SO cannot refuse to de-energise the Non-Embedded Customer unless it believes it is unsafe to do so and breaches the CUSC
2. The SO can refuse on 'technical grounds'
3. The SO can refuse on 'technical grounds or otherwise'

When the SO receives a de-energisation request from a Supplier, NGET would use its existing procedures to undertake the de-energisation. This would involve communicating with the Non-Embedded Customer to ensure that de-energisation is undertaken safely. NGET argues that in situations such as these, with an indebted customer in financial

difficulty, additional consideration may be needed, and as such, NGET should be able to take this into account and make a judgement on whether the de-energisation should occur.

Our view is that the responsibility of issuing the de-energisation instruction should lie with the Supplier, as it does under the DCUSA. We would expect Suppliers to take any such decision very seriously by previously communicating with the customer and the SO, and fully considering the consequences of the proposed de-energisation. This is also reflected in our view on how the indemnity requirements would operate. Furthermore, we consider that introducing provisions whereby the SO can refuse on 'technical grounds or otherwise' is too open to interpretation and could render the modification less effective in its objective of allowing the Supplier to exercise its rights in line with the Electricity Act 1989.

Finally, we consider that the text in the Original and WACM3, where the SO shall action the instruction of the Supplier 'to the extent that it may lawfully do so' will prevent the SO acting in a manner which would be contrary to health and safety legislation or continue with the de-energisation in a situation which is contrary to its licence obligation to comply with the CUSC.

### ***CUSC Objectives***

We set out below our views on the applicable CUSC objectives that we consider are affected by the modification proposal. We consider that the proposal better facilitates objectives (a) and (b) and is neutral in respect of objective (c).

#### ***Objective (a) 'the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence'***

Section 9(2)(b) of the Electricity Act 1989 sets out that a transmission licensee has a duty, among other things, to facilitate competition in the supply of electricity. By introducing a process within the CUSC for the de-energisation of Non-Embedded Customers, Suppliers will be able to safeguard their financial interests in the event of a defaulting customer and thereby be better able to participate in the supply market, which will support competition and benefit consumers. As all WACMs introduce this process, we feel that they all better facilitate objective (a).

We consider that the addition of a process to safeguard the downstream customer will mean that the SO has additional assurance in progressing with the de-energisation while not breaching the requirement to only de-energise customers in accordance with Section 5 of the CUSC. We also consider that consistency in the text between the CUSC and the DCUSA avoids confusion when creating different approaches for a Supplier wishing to exercise its statutory rights.

#### ***Objective (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'***

All WACMs will better facilitate objective (b) by introducing a process by which the Supplier can de-energise a Non-Embedded Customer when they are in debt to that Supplier. Introducing this process will enable the Supplier to limit its risk and financial losses when a customer is unable to pay. The absence of such a provision could have significant impact on a Supplier's ability to conduct its business (especially smaller suppliers) and which, in turn, could have a knock-on impact on their customers. Without the ability to de-energise such a customer, some Suppliers may not be able to participate in the market to supply Non-Embedded Customers. This would damage competition in supply and could have a knock-on effect on customer choice within the market.

We agree with consultation respondents that, if the SO cannot act on behalf of the Supplier to de-energise such a customer, then Suppliers may be unwilling to supply them or will do so on 'onerous advance-payment, perhaps premium terms'. This would harm this customer class as a whole and further hinder competition within the market place.

### **The Authority's principal objective and statutory duties**

In making a decision on this proposal, we consider that we have done so in accordance with our principal objective and statutory duties in a way that protects the interests of existing and future consumers. We have considered the effect on consumers of a Supplier being unable to de-energise an indebted Non-Embedded Customer. As discussed earlier in this decision, if such a process was not in place, it could lead to Suppliers adding inflated risk premiums when contracting with Non-Embedded Customers, or not contracting with them at all. This could have damaging consequences on competition in supply. Additionally, without such a process, the Supplier would be unable to prevent further debt accruing, which could have an impact on its other customers if the financial impact was significant enough. As such, we believe that it is appropriate to introduce a mechanism within the CUSC, which will allow Suppliers to mandate the SO to carry out the de-energisation/disconnection of a Non-Embedded Customer on the instruction of its Supplier. We believe that this process is introduced in all WACMs proposed, as discussed above under objective (a).

A key consideration in our decision is ensuring that safeguarding processes are in place to protect downstream customers who may be affected by a Supplier issuing a de-energisation instruction. The downstream user process in WACMs 3, 4 and 5 provides this. Whilst these downstream users often pay the Non-Embedded Customer directly for their supply, and not the Supplier, they may not have knowledge of the de-energisation. We are content that the downstream user process allows some time for the downstream user(s) to be notified of the potential de-energisation and discuss possible options to maintain their supply, whilst also balancing the needs of the Supplier to be able to de-energise its customer.

We believe that allowing the SO to refuse to progress the de-energisation on 'technical grounds' or 'technical grounds or otherwise', as stated in WACMs 1, 2, 4 and 5, would restrict the Supplier's ability to exercise its right to de-energise an indebted Non-Embedded user. The Original and WACM3, on the other hand, does not include this discretion, but the SO still has the flexibility to refuse to progress the de-energisation if it believes that it is unable to 'lawfully do so', for example if it felt it was in breach of its licence obligation (under SLC C10 and specifically, C10.9) to maintain the CUSC and abide by the contractual arrangements governed by the CUSC, or any of its wider statutory obligations.

We consider that, comparing the Original proposal and the WACMs, WACM3 introduces a process by which the Supplier can efficiently discharge its statutory rights under the Electricity Act 1989, in a way which includes a process that strikes a balance between safeguarding the downstream user from de-energisation while protecting the interests of consumers by limiting the financial risk the Supplier will be exposed to if it were not able to exercise its statutory right to de-energise a defaulting customer.

As such, overall, we consider that WACM3 is the solution that is most in line with our principal objective and statutory duties.

### **Decision notice**

We have considered all six options against the applicable CUSC objectives and our statutory duties. On balance, and as explained above, our view is that WACM3 best

facilitates the CUSC objectives and is in line with the Authority's principal objective and statutory duties.

In accordance with Standard Condition C10 of NGET's Transmission Licence, the Authority, hereby directs that modification proposal CMP254: '*Addressing discrepancies in disconnection/de-energisation remedies*' WACM3, be made.

**Frances Warburton**  
**Partner – Wholesale Markets**

Signed on behalf of the Authority and authorised for that purpose