



Making a positive difference
for energy consumers

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Dear Trisha,

Authority decision to 'send back' Connection and Use of System Code (CUSC) Modification Proposal CMP414: 'CMP330/374 Consequential Modification' (CMP414)

On 10 August 2023, the Final Modification Report (FMR)¹ for CUSC Modification Proposal CMP414 ('the Proposal') was submitted to the Authority² for decision.

It is our decision that we are unable to properly form an opinion on CMP414 based on the FMR as submitted to us. We are therefore sending the proposal back to the CUSC Panel for further consideration.

1. Background

The status quo allows for Contestability³ in the provision or construction of Connection Assets, the financing of Connection Assets and the ongoing maintenance of those assets. Connection Assets are defined as, among other criteria, single user assets which are

¹ CMP414: "CMP330/CMP374 Consequential Modification" | ESO (nationalgrideso.com)

² 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 Electricity Markets (Ofgem) supports GEMA in its day-to-day work. This decision is made by or on behalf of GEMA

³ CUSC Section 14.7.1 "Some connection activities may be undertaken by the User. The activities are the provision, or construction, of connection assets, the financing of connection assets and the ongoing maintenance of those assets. While some Users have been keen to see contestability wherever possible, contestability should not prejudice system integrity, security and safety. These concerns have shaped the terms that are offered for contestability in construction and maintenance"

equal to or less than 2km in length.⁴ Therefore, it is possible for Users, subject to agreement from the relevant Transmission Owner (TO), to provide their own Connection Assets which are limited to 2km, or less, in length.

The original proposal, CMP330: 'allowing new Transmission Connected parties to build Connection Assets greater than 2km in length' (CMP330), was raised by EnergieKontor in December 2019.⁵ CMP330 sought to amend the definition of 'Connection Assets' in Section 14 of the CUSC, to allow cables and overhead lines of lengths greater than 2km to be contestable where agreed between the TO and the User.

The CMP330/374 workgroup considered that Contestability provisions should be separated from charging provisions and therefore proposed that a new Part IV within Section 2 of the CUSC be created, with the Contestability provisions relocated from Section 14 to this section. As CMP330/CMP374 was raised as a Section 14 charging modification, it could not make changes to Section 2. As a result, it was proposed that CMP330/CMP374 be used to delete the existing Contestability provisions in Section 14, while a new modification proposal was raised to make the desired changes in Section 2. This led to the Energy System Operator (ESO ('the Proposer')) raising CMP414: 'CMP330/CMP374 consequential modification' (CMP414) on 13 April 2023.

The key aspects of CMP414 are as follows:

- A consequential modification of CMP330/374 which seeks to enact the changes envisioned by CMP374.
- It proposes to do this by updating Exhibit B, Section 2 and Section 11 of the CUSC, to expand the scope of Contestability from the status quo.
- It proposes to create a new term 'Contestable Asset'⁶ to include Transmission Connection Assets and infrastructure assets, to replace the existing Contestability provisions for 'Connection Assets'.
- It proposes that Contestable Assets (as newly defined) can be procured and/or constructed by a User. It seeks to codify the definition and details of an 'Adoption Agreement'⁷, which is a contract between the TO and the User that provides for the TO to take ownership of the asset. It also proposes specifics about what may

⁴ CUSC 14.2.6 ([download \(nationalgrideso.com\)](https://nationalgrideso.com))

⁵ CMP330&CMP374: Allowing new Transmission Connected parties to build Connection Assets greater than 2km in length & CMP374: Extending contestability for Transmission Connections | ESO (nationalgrideso.com)

⁶ Proposed CUSC change to Section 11 "Plant and Apparatus, which may include Transmission Connection Assets or infrastructure assets that are intended for sole use at the time of application that will be procured and/or constructed by a User where the ownership of said Plant and Apparatus will be transferred to a Relevant Transmission Licensee via an Adoption Agreement"

⁷ Proposed CUSC change to Section 11 "An agreement between a User and Relevant Transmission Licensee for the provision and/or construction of Contestable Assets by the User for adoption of ownership by the Relevant Transmission Licensee"

be covered in this contract⁸ and what principles the contract is envisaged to adhere to.

- It also seeks to codify 'Intervention Criteria' which set out under what circumstances the TO can reject or halt the User from utilising Contestability.
- Under the proposal the User would be liable for the asset until transferred to the TO as per the Adoption Agreement, at which point the TO would pay the User a pre-determined fixed price for the asset.
- The overarching intent of the Proposal is to allow new connectees to construct transmission assets to facilitate their connection to the wider transmission network.

We are sending the Proposal back for the reasons set out below. We do not consider it necessary to send back CMP330/374 given its limited scope in proposing to delete the existing Section 14 provisions. We do however consider that a decision on CMP330/374 must be taken at the same time as CMP414. We are therefore deferring decision on CMP330/374 until we have clarity on the outcome of the Proposal.

There is also a consequential System Operator Transmission Owner Code (STC) modification CM079: 'consideration of STC/STCP changes in relation to CMP330/374' (CM079) with us for decision. We are also sending the CM079 proposal back via a separate letter.

In summary we have decided to send back both FMRs due to a lack of clarity of the analysis and impacts of both the proposals. Our reasons are set out in more detail below.

2. Reasons for our decision

We have identified the following deficiencies in the FMR which prevent us from being able to come to a decision:

- Lack of clarity on potential and proposed benefits, in particular as to:
 - Financial benefits; and
 - Time saving benefits.
- Lack of clarity of potential risks, in particular as to:
 - Sub-standard assets;
 - Lack of Charging considerations;

⁸ Proposed CUSC change to 2.24.1 "[...] The Adoption Agreement may cover key details such as the specification of the assets built, warranties, asset transfer processes and the ability of the Relevant Transmission Licensee to deliver Contestable Assets as per the requirements documented in paragraph 2.23.3"

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- Lack of analysis around anticipatory investment;
 - Misalignment of the STC and CUSC;
 - Lack of FMR cohesiveness; and
 - Lack of analysis around incentives.

Lack of clarity on potential and proposed benefits

The Proposal states that the modification 'should provide increased potential for some infrastructure assets to be delivered more economically or efficiently than the baseline'.⁹

While we agree in principle that increased competition can improve outcomes, there is insufficient evidence of the scale and likelihood of time and cost saving benefits that this modification would facilitate.

Lack of clarity on potential risks

We do not consider that the risks of the Proposal have been sufficiently considered, nor, if indeed there are any, the mitigations made clear.

Sub-Standard Assets

We do not consider that the FMR appropriately considers the risks associated with the provision of sub-standard assets, particularly in circumstances where Contestable Assets become shared. Similarly, we do not consider that the costs and risks associated with the necessary monitoring and potential intervention of assets by TOs have been adequately considered. Further, we do not consider that the risk of sub-standard assets being stranded in the event that the TO decides to not adopt them have been adequately considered. If such risks were material we would expect to see suitable mitigations in place.

We would like to see some further elaboration around the reimbursement clauses in the proposed legal text. Finally, to the extent the Workgroup consider that the feasibility of this aspect of the Proposal is dependent on changes to other parts of the regulatory regime, eg the Price Control or licences, we would expect the Workgroup to make clear what those interactions are.

⁹ CMP330/374 FMR, p.4, download (nationalgrideso.com)

Charging

We are not confident that the workgroup has appropriately considered how the Proposal would interact with the existing charging regime and whether changes would be desirable or necessary (although we do recognise that this would need to be achieved via a separate modification proposal). Despite the Proposer's efforts to 'separate the principle of contestability from charging'¹⁰ the FMR does not, for example, clarify if a TO would have to pay to rectify assets or reimburse the User when an intervention is required. We consider that the scale of these costs and their treatment under the status quo (ie that they are most likely to be passed onto consumers) has not been sufficiently considered as a risk/cost with the Proposal, nor whether any mitigations or alternative approaches may be appropriate.

Anticipatory Investment

We consider there to be missing analysis of the risks the Proposal poses to anticipatory investment. While we recognise the Proposal provides the ability for TOs to be able to intervene if the contestable delivery of the asset may 'have a negative impact on the planning and delivery of wider network investment'¹¹, it is unclear if Users' ability to build just what is needed for their own connection will pose a risk to the TO's ability to invest in anticipation of future use of the asset.

Misalignment of STC and CUSC

It is difficult to understand the true intent of the Proposal given various instances of misalignment between CM079's desired STC and the Proposal's desired CUSC changes. For example, regarding an intervention, the Proposal's proposed CUSC legal text states that the Users are not to be financially disadvantaged and then implies that this is limited to reimbursements of reasonable costs incurred. This does not fully align with the language in CM079's proposed STC legal text which just sets out that the User is not to be unreasonably financially disadvantaged. Due to this discrepancy, it is unclear how material the risk of increased costs incurred by the TOs is, which also has charging implications. It is also unclear whether this misalignment presents a risk of increasing incidences of disputes and challenges to the dispute resolution process.

¹⁰ CMP330/374 Final Modification Report, p. 3 ([download \(nationalgrideso.com\)](https://nationalgrideso.com))

¹¹ CM079 proposed legal text STC changes, 19.3, (c). Similar to that that of the Proposal's proposed legal text CUSC changes

FMR Cohesiveness

The FMR is difficult to follow and would benefit from greater detail and clear explanation on the process that is being proposed. For instance, the Proposal reiterates at numerous points that only sole use assets are to be eligible for Contestability, yet the proposed legal text does not require TOs to intervene if assets do become shared. Another example would be the lack of clarity around whether the issues raised at Workgroup regarding the disputes process have been considered.

Incentives

We require clear analysis of the difference between TO and contractor/User incentives in terms of the quality of build. For example, TOs are currently incentivised through the Price Control framework to build quality assets on time or risk financial penalty. It must be explored whether Users face a similar incentive, or whether the Proposal, if approved, could impact upon asset build quality and timeliness.

For these reasons we cannot properly assess the Proposal against the relevant objectives and ascertain if it represents a net benefit or cost. We are therefore unable to properly form an opinion.

3. Direction

We therefore direct that additional steps are undertaken to address these deficiencies. A revised FMR should provide a fully quantitative and qualitative analysis on the above issues, as well as robust consideration of the risks identified and the inclusion of mitigations where appropriate, ideally in the form of an Impact Assessment. It is possible that in this analysis further risks and benefits are uncovered, and we would expect these to be accounted for.

Deficiencies should be addressed as soon as appropriate taking into account the complexity, importance and urgency of the Modification Proposal. After addressing these issues, and revising the FMR in the manner outlined above, the CUSC Panel should, if appropriate, re-submit the Proposal to us for decision as soon as practicable.

Finally, we do not consider that this send-back in anyway impacts our ability to take any future decision in relation to this modification and we reserve the right to take whatever decision we feel is correct at that time.

Yours sincerely,

Alasdair MacMillan

Connections Lead

Signed on behalf of the Authority and authorised for that purpose