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Draft
Framework Guidelines on rules regarding harmonised transmission tariff structures for gas

4 September 2012

Agency for the Cooperation of Energy Regulators
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This Document contains the draft Framework Guidelines on rules regarding Harmonised Transmission Tariff Structures in European Gas Transmission Networks, which the Agency for the Cooperation of Energy Regulators (ACER) is preparing pursuant to Article 6 of Regulation (EC) No 715/2009 and on the basis of a request from the European Commission dated 29 June 2012.

The draft Framework Guidelines contained in this document are issued for consultation of the ENTSO for Gas and other relevant stakeholders, who are invited to submit their comments by:

5 November 2012

Answers to the consultation issues must be sent to the functional mail box consultation2012G14@acer.europa.eu using the consultation questionnaire. For practical reasons, we kindly ask you to submit the questionnaire both in PDF and Word format.

Related Documents

- Scope and main policy options for Framework Guidelines on Harmonised transmission tariff structures (Public Consultation Document), DFGT-2012-G-004, 08 February 2012
- EUI, THINK report on EU involvement in electricity and natural gas transmission grid tariffication, January 2012
- European Commission, DG Energy, Study on Methodologies for Gas Transmission Network Tariffs and Gas Balancing Fees in Europe, December 2009

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1. General Provisions

1.1. Introduction

Directive 2009/73/EC[1] (hereafter the 'Gas Directive') confers upon the National Regulatory Authorities (NRAs) the power to fix or approve, sufficiently in advance of their entry into force, at least the methodologies used to calculate or establish the terms and conditions for connection and access to national networks, including transmission tariffs. Although no specific tariff structure is foreseen or implied by its provisions, the Gas Directive and Regulation (EC) No 715/2009[2] (hereafter the 'Gas Regulation') provide for certain requirements which need to be complied with in the final tariff or tariff methodology.

The Framework Guidelines on rules regarding harmonised transmission tariff structures for gas (hereafter the 'Framework Guidelines on Tariffs') aim at providing guidance on the structure and the methodologies for setting gas transmission tariffs to be paid by network users for the transmission services offered at each entry and exit point within the scope of the Framework Guidelines on Tariffs (see section 1.2). The Framework Guidelines on Tariffs aim at setting clear and objective principles for the development of a Network Code on harmonised transmission tariff structures for gas (hereafter the 'Network Code on Tariffs'), pursuant to Articles 6(2) and 8(6)(k) of the Gas Regulation.

The overall final aim of the Network Code on Tariffs is to lead to gas transmission tariff structures in Europe without discrimination between any type of network users and without any detrimental effects on cross-border trade[3].

Furthermore the Agency shall provide an opinion pursuant to Article 7(4) of the Regulation (EC) 713/2009[4] (hereafter the 'Agency Regulation'), at the request of a NRA or of the Commission, on whether a decision taken by a NRA complies with the relevant provisions of the Gas Directive and Gas Regulation.

1.2. Scope and objectives

These Framework Guidelines apply to the transmission services offered at all entry and exit points of gas Transmission System Operators (TSOs), irrespective of whether they are physical or virtual.

However, certain aspects of these Framework Guidelines only apply to entry and exit points at interconnection points under the scope of the Network Code on capacity allocation

[1]Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211, 14.8.2009, p.94.

[2]Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, OJ L211, 14.8.2009, p. 36.

3 In line with Article 13 of Regulation 715/2009.

[4]Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, OJ L211, 14.8.2009, p. 1.

mechanisms (hereafter the 'Network Code on CAM')[5]. This will be further specified in the relevant sections.

The transmission services may either be determined by the Network Code on CAM or by NRAs for points not covered by the Network Code on CAM.

The overarching objective of these Framework Guidelines on Tariffs and of the Network Code on Tariffs is to lay down clear and objective requirements for harmonising the gas transmission tariff structures across the EU, contributing to non-discrimination and effective competition and the efficient functioning of the market. Through the harmonisation of national tariff structures, they aim to contribute to the internal natural gas market.

In particular, tariffs for access to transmission systems, or the methodologies used to calculate them, shall:

- be transparent;
- take into account the need for system integrity and its improvement;
- be cost-reflective;
- be non-discriminatory;
- facilitate efficient gas trade and competition;
- be set separately for every entry point into, and exit point out of, the transmission system, ensuring that network charges shall not be calculated on the basis of contract paths;
- neither restrict market liquidity, nor distort trade across transmission system borders;
- avoid cross-subsidies amongst network users;
- provide incentives for efficient new investment;
- maintain or create interoperability of transmission networks.

Furthermore, the price of interruptible capacity shall reflect the probability of interruption. Also, transport contracts signed with non-standard dates or with durations shorter than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service.

Finally, the pricing of transmission capacity needs to strike a balance between facilitating short-term gas trading, on the one hand, and promoting cost recovery and providing long-term signals for efficient investment, on the other.

The Network Code on Tariffs will be evaluated by the Agency. In doing so, the Agency shall consider the degree of compliance with these Framework Guidelines, as well as the fulfilment of the overall objectives of the internal energy market, including maintaining security of supply, supporting the completion and functioning of the internal market in gas and cross-border trade, and delivering benefits to consumers.

[5] See documentation under http://www.entsog.eu/publications/camnetworkcode.html

1.3. Definitions

The definitions in the Gas Directive, the Gas Regulation, including Annexes, apply to these Framework Guidelines. Moreover, the following definitions also apply:

Allowed revenue	The maximum level of revenues set or approved by the NRA that a TSO is allowed to obtain within a defined period of time for providing the regulated service.
Bundled reserve price	The reserve price applicable to a bundled capacity product offered at an auction.
Cost allocation methodology	The methodology that determines the share of the TSO's allowed revenues which is to be collected from the expected sale of transmission services at entry and exit points.
Entry point	A point into an entry-exit system, either from an adjacent entry-exit system or from an LNG facility, production facility, storage facility, distribution network, or from a third country, that is subject to network tariffs.
Exit point	A point out of an entry-exit system either into another entry-exit system or into a distribution network, storage facility, transmission-connected consumer, or to a third country, that is subject to network tariffs.
Equalisation approach	Setting entry (or exit) tariffs by means of equal reference prices or regulated prices.
Fixed costs	All costs that are not affected, in the short run, by the amount of transmitted natural gas.
Non-physical backhaul flows	At unidirectional entry or exit points, the volume of gas nominated to be flowed in the opposite direction to the physical flow.
Payable price	The price to be paid for capacity by the network user to the TSO.
Price cap regime	A tarification regime under which the NRA sets an upper limit to the price, or to the weighted average of the prices of services provided by the TSO.
Rate of return regime	A tarification regime under which the TSO is permitted to earn not more than a given rate of return on capital and to recover operational costs, provided that they are reasonably incurred.
Reconciliation of regulatory accounts	The allocation of the amounts recorded in regulatory accounts to entry/exit points.
Reference price	A value used as reference to set the reserve price for the firm annual standard capacity product at an entry or exit point whereby auctions take place. It is also used as the basis for setting other reserve prices such as for products of shorter duration, non-physical backhaul, and/or interruptible capacity. It is also the regulated price for the firm annual capacity product.

Regulated price	The price of capacity products at points where the capacity allocation procedure is not an auction.
Regulatory account	An account aggregating over and under-recovery of the allowed revenues on an annual basis over a predefined period.
Regulatory period	The period during which a tariff structure or allowed revenue is valid. At the end of a regulatory period, the tariff structure or allowed revenue is re-assessed and may be adjusted.
Revenue cap regime	A tarification regime under which the NRA sets the allowed revenues for the services provided by the TSO, which in some Member States is based on a regulatory formula set out in the regulations. The tariffs are defined by the NRA or the TSO in compliance with the allowed revenues. In the case where the tariffs are defined by the TSO, in the majority of cases, they are approved by the NRA.
Revenue recovery	The ex-post recovery of the allowed revenues by TSOs.
Seasonal factor	The factor, which is calculated for each month, that is applied to reserve prices in order to ensure that set reserve prices rise and fall in line with the utilisation rate of the infrastructure.

1.4. Implementation

The Network Code on Tariffs shall be implemented within 12 months from its entry into force and shall apply to both new and existing contracts.

The Network Code on Tariffs shall require TSOs to inform all concerned counterparties, in a timely manner, on the possible consequences the implementation of the Network Code on Tariffs may have on their activities, to allow enough time for them to adapt their practices.

2. Cost allocation and determination of the reference price

The Network Code on Tariffs shall ensure that, irrespective of the regulatory regime applied (price cap, revenue cap or rate of return), the methodologies for determining the reference prices for interconnection points between entry-exit zones and the regulated prices for other points which are not subject to auctioning, as well as the cost allocation methodology, shall be discussed, before adoption, with all stakeholders in public consultations and shall be published and made transparent to all network users by the TSO's or relevant national authorities[6]. The Network Code on Tariffs shall specify that these methodologies be cost-reflective and non-discriminatory, and that transparency be provided in particular on the following points:

[6] Article 18(2) of Regulation 715/2009 states that: "In order to ensure transparent […] tariffs […], transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure".

- Assumptions on capacity utilisation and subscriptions;
- Evolution of tariffs (methodology to calculate tariffs and relevant input data);
- Assumptions on costs;
- Use of flow simulations;
- Locational signals; and
- Cost-efficiency targets.

The Network Code on Tariffs shall determine that the reference prices for the interconnection points between entry-exit zones and the regulated prices for other points which are not subject to auctioning cover at least fixed costs. The recovery of costs that are driven mainly by the volume of flows (such as compressor fuel costs) might, upon approval or determination by the NRA, be ensured either via the sale of capacity services or via a specific charge related to the volume actually flowed by shippers. Where applied, the chosen charge for the recovery of costs that are driven mainly by the volume of flows shall be levied at a TSO level and shall not be applied to specific entry or exit points. Before adopting their decision regarding the recovery of costs that are driven mainly by the volume of flows, NRAs shall consult with NRAs of adjacent Member States and relevant stakeholders. In adopting their decision, NRAs shall take account of the opinion of adjacent NRAs. Article 7(4) of the Agency Regulation applies to the decisions of NRAs regarding the recovery of costs that are driven mainly by the volume of flows.

The Network Code on Tariffs shall specify that:

- The reference and regulated prices for all entry capacity services, and the reference and regulated prices for all exit capacity services be established using forecast allowed revenues and forecast subscriptions, and using the same methodology for all entry and exit points[7];

while at the same time setting out that:

- The reference and regulated prices for entry capacity services shall mainly take into account the major cost drivers such as (inter alia) distance. However, an equalisation approach may be used provided that NRAs duly justify where and why all entry points may have equal reference or regulated prices. When justifying an equalisation approach, NRAs need to demonstrate that the approach does not lead to discrimination between domestic and cross-border network users and has no detrimental effect on cross-border trade.

[7] The application of the same methodology does not rule out the possibility of different, but still consistent, tariff structures for entry and exit points, as long as these are based on the same or consistent modelling assumptions (i.e. on the requirement for a single calculation methodology, including the same underlying assumptions in terms of cost, demand projections, capital expenditure etc.).

- The expected revenues from the sale of transmission services at all entry points shall equal 50% of the overall revenues expected to be generated at all entry and exit points of the entry-exit zone (i.e. the total allowed revenues in revenue cap regulatory regimes). NRAs may deviate from the 50% rule when such an allocation rule would significantly and detrimentally affect the cost reflectiveness of resulting network tariffs. When justifying such a deviation, NRAs will need to demonstrate that any alternative approach does not lead to discrimination between domestic and cross-border network users and has no detrimental effect on cross-border trade. Before adopting their decision regarding such a deviation, NRAs shall consult with NRAs of adjacent Member States and the relevant stakeholders. In adopting their decision, NRAs shall take account of the opinion of adjacent NRAs. Article 7(4) of the Agency Regulation applies to the decisions of NRAs regarding such deviation.

- The reference and regulated prices for exit capacity services shall mainly take into account the major cost drivers such as (inter alia) distance. However, an equalisation approach may be used for domestic exit points provided that NRAs duly justify where and why all domestic exit points may have equal reference or regulated prices. When justifying any equalisation approach, NRAs need to demonstrate that the approach does not lead to discrimination between domestic and cross-border network users and has no detrimental effect on cross-border trade.

Before adopting their decision regarding the equalisation approach, NRAs shall consult with NRAs of adjacent Member States and the relevant stakeholders. In adopting their decision, NRAs shall take account of the adjacent NRAs' opinion. Article 7(4) of the Agency Regulation applies to the decisions of NRAs regarding the equalisation approach.

The above shall not preclude the harmonisation of methodologies for setting reference prices on both sides of an interconnection point, where agreed between NRAs.

The Network Code on Tariffs shall determine that entry and exit points to and from gas storage facilities with third party access may be priced at an adequate discount[8].

3. Revenue recovery

3.1 Regulatory account

The Network Code on Tariffs shall set out that, irrespective of the regulatory regime applied (price cap/tariff basket, revenue cap or rate of return), the following rules shall be complied with.

The Network Code on Tariffs shall specify that the determination of the reference prices for the interconnection points between entry-exit zones and of the regulated prices for the other

[8] Please note that the NC is to provide the reasoning behind this discount, and the methodology to apply in order to calculate it transparently.

points seek to minimise any gaps between the revenues which the TSO is entitled to obtain on the basis of the applied regulatory regime and the revenues actually obtained by the TSO.

A regulatory account shall record the difference between the revenues which the TSO is entitled to obtain on the basis of the applied regulatory regime and the revenues actually obtained by the TSO.

The Network Code on Tariffs shall specify that NRAs:

- determine or approve how often and how fast the regulatory account has to be reconciled, with a view to allowing for timely cost recovery and avoiding sharp adjustments of network tariffs; and
- determine or approve, and justify ex-ante at a national level, which fraction of the under- or over-recovery will be logged on to the regulatory account (and therefore paid by, or returned to, consumers), and which part should be met by the TSO(s).

The Network Code on Tariffs shall specify that NRAs may decide to use any over-recovery resulting from auction premia to reduce congestion.

3.2 Reconciliation of regulatory accounts

The Network Code on Tariffs shall specify that regulatory accounts be reconciled on an ex-post basis via one of the two mechanisms defined below. Before adopting their decision regarding the mechanism to be used for the reconciliation of the regulatory account in respect of interconnection points, NRAs shall consult with NRAs of adjacent Member States and relevant stakeholders. In adopting their decision, NRAs shall take account of the adjacent NRAs' opinion. Article 7(4) of the Agency Regulation applies to the decisions of NRAs regarding the choice of the mechanism(s) to be used for the reconciliation of the regulatory account.

Option 1: Capacity approach

Any revenue to be recovered by the TSO or redistributed back to network users are allocated ex-post, in the subsequent period(s), in accordance with the chosen cost allocation methodology, to every entry or exit point. At interconnection points, where capacity is allocated through auctions, revenue shall be recovered or redistributed back through an adjustment of the reserve prices set in the auctions. The reserve price applicable to capacity allocated in a previous auction, but not yet used, may also be adjusted accordingly[9]. At other entry or exit points where capacity is not allocated through auctions, revenue shall be recovered or redistributed back through an adjustment of the regulated price. In this way, all entry and exit points will contribute to the reconciliation through an adjustment of either the reserve price or the regulated price (in order to avoid a situation whereby the adjustment of the reserve price or the regulated price at only one or a few entry or exit points where under- or over-recovery occurred exacerbates the problem). For the avoidance of doubt, under this option each TSO shall have only one regulatory account.

[9]See Section 7 below. In deciding on such adjustment, NRAs shall take into account any adverse effects that such a decision might have on future capacity auctions.

Option 2: Separate charge based on capacity and commodity

The amount of revenue to be recovered is allocated ex post, primarily to the entry and exit points as part of either the reserve or regulated price, and secondarily through a separate charge. This charge can be based either on gas flows (commodity) or on capacity bookings (capacity).

The share of the regulatory account to be covered by the capacity (or commodity) charge must be equal to the share of the total allowed revenue to be covered by the capacity (or commodity) charge.

The separate charge is levied at a TSO level and applies to all entry and exit points.

For the avoidance of doubt, under this option each TSO shall have only one regulatory account.

4. Reserve price

This section applies to all entry and exit points under the scope of the Network Code on CAM.

4.1 Reserve prices for firm standard capacity products

The Network Code on Tariffs shall set out that the reserve prices for all standard capacity products with a duration of less than one year be on average lower than, or equal to, the price set proportionately to the yearly reference price ("multipliers" for short-term capacity are on average lower than, or equal to, one). This implies that, on average over the gas year, the daily, monthly and quarterly reserve prices are lower than, or equal to, the product of the annual reserve price and the ratio of their duration (in days) divided by 365[10].

Seasonal factors may apply where necessary to improve gas transmission system efficiency and cost reflectiveness. When seasonal factors are applied, in some seasons the reserve price for all standard capacity products with a duration of less than one year may be higher than the price set proportionately to the yearly reference price, but on average over the year the general condition, as defined in the previous paragraph, would still apply.

The Network Code on Tariffs shall set out that NRAs may decide to allow for multipliers higher than one, but not higher than 1.5[11], if significant under-recovery is to be expected.

[10] For leap years, it may be considered to divide by 366.

[11] For the avoidance of doubt we clarify that seasonal factors can be higher than 1.5. From a terminology point-of-view we distinguish between "multipliers" which apply to different categories of standard capacity products (day, month, quarter,...) and "seasonal factors" which apply within a certain category of standard capacity

Before adopting their decision, NRAs shall consult with NRAs of adjacent Member States and relevant stakeholders. In adopting their decision, NRAs shall take account of the adjacent NRAs' opinions. Article 7(4) of the Agency Regulation applies to the decisions of NRAs regarding the level of the multiplier.

The Network Code on Tariffs shall develop:

- a methodology for determining seasonal factors and the conditions under which seasonal factors are applied; and
- a concept for determining multipliers for short-term capacity for cases in which NRAs have decided that multipliers higher than one may be applied. This concept has to represent a well-balanced approach that must take into account the risk of significant under-recovery, as well as facilitating improvements in cross-border competition.

4.2 Reserve prices for interruptible and non-physical backhaul standard capacity products

The Network Code on Tariffs shall set out that reserve prices for interruptible and non-physical backhaul standard capacity products be set at a discount to the firm standard capacity product with equivalent duration.

The Network Code on Tariffs shall, in case of interruptible standard capacity products, set the discount(s) in such a way to adequately reflect the risk of interruption, so that if the risk is low, the discount will also be low. TSOs shall need to publish their assessment of the risks of interruption. The discount is to be recalculated once a year.

The Network Code on Tariffs shall, in case of non-physical backhaul standard capacity products, set the discount so that the reserve price reflects the level of actual (marginal) costs that the TSO incurs to provide this service, i.e. the IT and administrative costs of providing non-physical backhaul standard capacity products.

5. Virtual interconnection points

This section of these Framework Guidelines applies to all entry and exit points under the scope of the Network Code on CAM.

According to the Network Code on CAM (Article 5.1(10)), where two or more entry or exit points connect the same two adjacent entry-exit systems, the TSOs shall offer the available capacity at one virtual interconnection point. The reserve price for virtual interconnection points shall be established based on the combination of the reserve prices set for the individual entry or exit points. The combination mechanism shall be elaborated in the

product (e.g. 365 days). The « 1.5' » applies to multipliers only, and is based on an average as explained in first paragraph of chapter 4.1.

Network Code on Tariffs consistently with the fulfilment of the overall objectives of these Framework Guidelines, and especially avoiding that the establishment of a virtual interconnection point creates any barriers to cross-border trade.

6. Bundled capacity products

This section of these Framework Guidelines applies to all entry and exit points under the scope of the Network Code on CAM.

The Network Code on Tariffs shall specify that, for bundled capacity products at entry or exit points, the sum of the reserve prices for entry and exit points (i.e. on both sides of the bundled entry-exit point) be used as the bundled reserve price for the purpose of capacity auctioning.

When firm capacity is offered on only one side of the border (entry or exit point), i.e. unbundled capacity is offered, [before the corresponding capacity contracts on the other side expire], the reserve price of the unbundled capacity shall equal the reserve price of either the entry or exit capacity from which the unbundled capacity originates.

The Network Code on Tariffs shall specify that the revenues from the reserve price of bundled capacity products be distributed among the TSOs in proportion to the reserve prices of their capacities in the total bundled capacity. The revenue stemming from the auction premium for bundled capacity, i.e. the revenue that exceeds what would have been obtained based on the bundled reserve price, shall be split between the relevant TSOs by a mutual agreement between NRAs. NRAs immediately inform ACER of the outcome of such an agreement. If no such agreement is concluded ahead of the auction, the Network Code on Tariffs shall specify that any revenues from the auction premium be split equally between the TSOs.

7. Payable price

This section of these Framework Guidelines applies to all entry and exit points under the scope of the Network Code on CAM.

The Network Code on Tariffs shall set out that the difference between the reserve price at an auction and the clearing price be considered a premium to be paid on top of the reserve price at the time of use of the capacity. Therefore, the payable price shall be the sum of the reserve price at the time of use of the capacity and the premium as determined in the auction[12]. The payable price to be paid might differ from the sum of the reserve price and the

[12] For the avoidance of doubt, it is worth noting that the reserve price is not fixed. Instead, the auction premium is fixed. For the avoidance of doubt, we also clarify that the reserve price for capacity products more than 3-4 years ahead (depending on the capacity allocation regime) will not be set at the time of the auction. Therefore, the reserve price for some products might only become known later.

premium (clearing price) when the capacity was auctioned, in case the reserve price for the capacity already auctioned, but not yet used, is adjusted. This occurrence might take place because of a number of reasons, for instance the purpose of reconciling the regulatory account (Option 1 in Section 3.2) or when allowed TSO revenue has changed.

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