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Agency Report

Analysis of the Consultation Document on the Gas Transmission Tariff Structure for France

NRA: Commission de Régulation de
l'Énergie

TSOs: GRTgaz S.A. and Teréga S.A.

4 December 2019

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1. ACER conclusion

- (1) The Commission de Régulation de l'Énergie (CRE) proposes to apply a capacity weighted distance ('CWD') reference price methodology ('RPM') with flow scenarios. This methodology is applied to allocate the revenue associated with the main transmission network, while a second CWD methodology is used to allocate the revenue associated with the regional transmission network. The revenue associated with these networks is recovered using non-transmission charges. CRE proposed to apply a 10% reduction to entry points from LNG (based on the shorter distances travelled by the gas entering the system at these points) and 80% discounts to entry points from and exit points to storage facilities (based on Article 9 of the NC TAR). An entry-exit split of 34%-66% is applied as an input to the methodology. No commodity-based tariffs are proposed.
- (2) CRE proposes to apply a number of flow scenarios to define the value of the distance cost driver that is an input to the RPM. These values are applied to cross-system flows to Spain (1072 km), Switzerland (762 km) and to domestic exit points (237 km). The Agency considers that CRE referred to the chosen flow scenarios in the consultation document in a transparent manner, but did not provide sufficient justifications for their choice and derivation. In the consultation document CRE justifies their use based on the criteria of '*economic relevance*', but does not explain in detail how this criterion is applied. The information provided in the consultation document does not allow to assess whether the proposed flow scenarios reflect the '*use of the transmission network according to likely supply and demand patterns*' as required by the definition of a flow scenario laid out in Article 3(20) of the NC TAR. CRE provided clarifications to the Agency on a conceptual level, but without numerical data. Following these exchanges, the Agency understands that the proposed flow scenarios are intended to reflect the investments in the network, which in turn are linked to the way in which the network is used. The Agency remarks that the application of these flow scenarios impacts the proposed tariffs, particularly to cross-system and intra-system flows.
- (3) The consultation document includes a comparison with the CWD methodology and the calculation of the cost allocation assessment¹ ('CAA'). The comparison with the CWD methodology provided by CRE is compliant with the NC TAR. However, the Agency remarks that it does not allow assessing the impact of the proposed flow scenarios as they are used in the calculation of both the proposed RPM and the CWD methodology. Regarding the CAA, CRE proposes to use this calculation as a condition for the RPM to set the unit costs for intra-system and cross-system users at the same level. As a result of this particular approach, the CAA indicates no cross-subsidies between tariffs for these two groups of users.
- (4) Finally, CRE proposes, as provided in the French law, a storage compensation fee that is charged as a non-transmission charge. The fee intends to incentivise the use of storage by decreasing the tariffs applicable for this service. This fee is related to the costs of storage facilities that is partially recovered using TSO tariffs².

¹ Throughout this document, 'CAA' is used to refer to the capacity cost allocation comparison index described in Article 5(3)(c) of the NC TAR.

² For 2018 and 2019 the revenue collected by transmission tariffs and to be transferred to storage operators amounted to approximately 500m€ out of the approximately 700m€ of total revenue related to the storage operators.

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- (5) The Agency, after having completed the analysis of the consultation document pursuant to Article 27(2) of the NC TAR, concludes that:
- The consultation document contains all the required elements listed under Article 26(1), although the information should be improved in some cases. At the same time the information provided on the proposed flow scenarios is not sufficient to assess the proposed RPM.
 - For the same reason, the Agency cannot conclude its analysis on the requirements of cost reflectivity, prevention of undue cross-subsidisation and non-distortion of cross-border trade listed under Article 7 of the NC TAR.
 - The Agency concludes that the RPM is compliant with the principle of transparency. Regarding the requirement of ensuring non-discrimination, the Agency has not identified any form of discrimination related to the proposed RPM³. The Agency concludes that the RPM is compliant with the requirement of avoiding volume risk.
 - The criteria for setting the commodity charge are not applicable.
- (6) CRE proposes various flow scenarios that are based on combinations of entry and exit points. The Agency understands that this approach is intended allocate investment costs to the cross-system and intra-system beneficiaries. The Agency remarks that, pursuant to Article 3(20) of the NC TAR, flow scenarios can be used to allocate investments to specific points of the network only in as much as this allocation reflects the use of the transmission system.
- (7) Following this consideration, the Agency recommends that CRE demonstrate, in the motivated decision pursuant to Article 27(4) of the NC TAR, that the proposed combinations of entry and exit points and the distance assumptions applied by CRE to cross-system and intra-system users are clearly linked to the utilisation of the system. Such justification for the application of flow scenarios should include:
- An explanation of how the concepts of '*use of the transmission system*' and of '*relevant flow scenario*' have been applied, clarifying whether these concepts are related to contracted capacity, to flows or both.
 - In relation to cross-system flows, i) a quantitative assessment supporting the conclusion that the entries from LNG, the entry from Belgium, and the entry from Germany are not relevant for flowing gas to the exits to Spain and Switzerland, and ii) a quantitative assessment of how and to what extent cross-system flows rely on the firm capacity associated to the Dunkirk IP.
 - In relation to intra-system flows, an assessment of the distance applied for these flows. The Agency additionally recommends that CRE assess and mitigate the potential risk of underestimating the distance calculated for intra-system users.
 - In relation to the consistency applied between cross-system and intra-system flows, an assessment illustrating why the distance associated to domestic exits and IP exits that are in the vicinity of each other are significantly different.
 - The rationale for excluding storage from the calculation of cross-system flows.
 - The methodology and the assumptions used by CRE for the calculation of the capacity ratios used to set the unit costs of both cross-system and intra-system flows at the same level.

³ For this analysis, the Agency defines 'discrimination' as 'charging different prices to different network users for the identical gas transmission service'.

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- (8) The Agency also suggests to add a comparison between the proposed methodology and the CWD methodology in a way that allows assessing the impact of the proposed flow scenarios, to complement the one provided in the consultation document as referred in paragraph (3) above.
- (9) In addition, the Agency recommends CRE to include the following elements as part of its motivated decision:
- A simplified tariff model allowing to change all the parameters that are involved in the calculation of tariffs, in particular the parameters that are grouped under the 'k' factor. This should allow network users to forecast tariffs accurately as required by Article 30(2)(b) of the NC TAR.
 - The component and the details of the components of the CAA calculation.
 - A clarification on how the revenue shortfall associated with the discounts to storage is allocated to points of the network. This allocation is typically carried out using a rescaling adjustment.
 - A justification for the reduction applied to entries from LNG that is consistent with the broader justification to be provided for the application of the proposed flow scenarios.
 - A motivation for the choice of the entry-exit split based on quantitative data.
 - A calculation of the backhaul tariffs to IP entries that is consistent with the application of the RPM to all points of the network as required by Article 6(3) of the NC TAR. The interruptible discount for these tariffs should be calculated according to Article 16 of the NC TAR.
- (10) Regarding the proposed storage compensation, the Agency cannot fully assess whether the charges are cost-reflective, non-discriminatory, objective and transparent and charged to the beneficiaries of the non-transmission service as required by Article 4(4)(a) of the NC TAR. These costs are not related to the activities of the TSOs.
- (11) Regarding the use of regional transmission networks, the Agency concludes that this should be either considered as a transmission service or reclassified as a distribution service if the RPM cannot properly allocate the costs of the regional branches to the relevant network users.
- (12) CRE proposes not to apply the RPM to the Alveringem IP exit to Belgium. The methodology for setting tariffs at this point follows a similar logic to the scheme described in Article 25 of the NC TAR for incremental capacity pricing. The process was carried out before the entry into force of the NC TAR on 6 April 2017. The Agency remarks that it is a requirement of the NC TAR to apply the same RPM to all points of the network according to its Article 6(3).
- (13) Finally the Agency notes that the NRA has not carried out a parallel consultation on the inter-TSO compensation (ITC) mechanism at the same time as the final consultation, as required by Article 10(5) of the NC TAR. CRE has clarified to the Agency that a consultation on the ITC mechanism was carried out in July 2016, as part of the tariffs for the ATRT6 period. The Agency recommends that CRE include in the motivated decision an assessment of whether there are any conditions that have changed since 2016 that would require a repetition of the consultation. Should any relevant changes have occurred, the Agency recommends that CRE repeat the consultation on the ITC mechanism.

2. Introduction

- (14) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas (NC TAR).
- (15) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodologies for all entry-exit systems⁴. This Report presents the analysis of the Agency for the transmission system of France.
- (16) On 31 July 2019, CRE forwarded the consultation documents to the Agency. The consultation was launched on 23 July 2019 and remained open until 4 October 2019. On 30 October 2019, the consultation responses and their summary were sent to the Agency. The Agency has taken these into consideration for this analysis. Within five months following the end of the final consultation, and pursuant to Article 27(4) of the NC TAR, CRE shall take and publish a motivated decision on all the items set out in Article 26(1).
- (17) A number of bilateral exchanges to collect additional information took place between the Agency, and CRE. A more extensive version of the tariff model was also provided by CRE to the Agency. The Agency appreciates the openness of the NRA during this process, as it supported the analysis.

Reading guide

- (18) In Chapter 3, this Report first presents an analysis on the completeness of the consultation document, namely if all the information in Article 26(1) of the NC TAR has been published. Chapter 4 focusses on compliance, namely if the RPM complies with the requirements set out in Article 7 of the NC TAR, if the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) of the NC TAR are met and if the criteria for setting non-transmission tariffs as set out in Article 4(4) of the NC TAR are met. Chapter 5 includes other comments. This Report contains two annexes, respectively the legal framework and a list of abbreviations.

3. Completeness

3.1 Has all the information referred to in Article 26(1) been published?

- (19) Article 27(2)(a) of the NC TAR requires the Agency to analyse whether all the information referred to in Article 26(1) of the NC TAR has been published.
- (20) Article 26(1) of the NC TAR requires that the consultation document be published in the English language, to the extent possible. The Agency remarks that the consultation document has been published in English.
- (21) The consultation document contains all the required elements listed under Article 26(1). At the same, CRE should improve the information to be provided as part of the motivated decision on the following aspects which are also summarised in Table 1 below:

⁴ With the exception of Article 10(2)(b), when different RPMs may be applied by the TSOs within an entry-exit zone.

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- The justification for the flow scenarios used in the methodology, including the parameters and the assumptions used for this purpose. While the flow scenarios are referred to in the consultation document, the level of detail provided is insufficient fully to understand their impact over the proposed tariffs. This is a requirement pursuant to Articles 26(1)(a)(i) and 30(1)(a) of the NC TAR.
- The forecasted contracted capacity that is an input to the RPM. This is a requirement pursuant to Articles 26(1)(a)(i) and 30(1)(a)(ii) of the NC TAR. CRE refers to the TSOs websites where the contracted capacity is available. The Agency nevertheless remarks that the forecasted contracted capacity, and not only the contracted capacity, should be made available.
- The component and the details of the components of the CAA calculation. While CRE provides the result of the CAA, these elements are not included in the consultation document. This is a requirement pursuant to Article 26(1)(a)(iv) of the NC TAR.
- The simplified tariff model allowing to change all the input parameters that are involved in the calculation of tariffs, in particular of the parameters that are grouped under the 'k' factor referred to in the excel file.

(22) The Agency recommends to improve the transparency when publishing the motivated decision, as it is a crucial step for reaching the objectives of the internal market and the implementation of the NC TAR.

Table 1 Checklist information Article 26(1)

Article	Information	Published: Y/N/NA
26(1)(a)	the description of the proposed reference price methodology	Partially
26(1)(a)(i) 26(1)(a)(i)(1) 26(1)(a)(i)(2)	the indicative information set out in Article 30(1)(a), including: <ul style="list-style-type: none"> • the justification of the parameters used that are related to the technical characteristics of the system • the corresponding information on the respective values of such parameters and the assumptions applied 	Partially
26(1)(a)(ii)	the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9	Yes
26(1)(a)(iii)	the indicative reference prices subject to consultation	Yes
26(1)(a)(iv)	the results, the components and the details of these components for the cost allocation assessments set out in Article 5	Yes, CRE should provide the details the components and the details of the components.
26(1)(a)(v)	the assessment of the proposed reference price methodology in accordance with Article 7	Partially
26(1)(a)(vi)	where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii)	Yes
26(1)(b)	the indicative information set out in Article 30(1)(b)(i), (iv), (v)	Yes
26(1)(c)(i) 26(1)(c)(i)(1) 26(1)(c)(i)(2)	where commodity-based transmission tariffs referred to in Article 4(3) are proposed <ul style="list-style-type: none"> • the manner in which they are set 	Not applicable

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26(1)(c)(i)(3)	<ul style="list-style-type: none"> • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the indicative commodity-based transmission tariffs 	
26(1)(c)(ii) 26(1)(c)(ii)(1) 26(1)(c)(ii)(2) 26(1)(c)(ii)(3) 26(1)(c)(ii)(4)	<p>where non-transmission services provided to network users are proposed:</p> <ul style="list-style-type: none"> • the non-transmission service tariff methodology therefor • the share of the allowed or target revenue forecasted to be recovered from such tariffs • the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3) • the indicative non-transmission tariffs for non-transmission services provided to network users 	Yes
26(1)(d)	the indicative information set out in Article 30(2);	Yes. The simplified model is not sufficiently detailed.
26(1)(e) 26(1)(e)(i) 26(1)(e)(ii) 26(1)(e)(iii) 26(1)(e)(iv)	<p>where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:</p> <ul style="list-style-type: none"> • the proposed index; • the proposed calculation and how the revenue derived from the risk premium is used • at which interconnection point(s) and for which tariff period(s) such approach is proposed • the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed 	Not applicable

4. Compliance

4.1 Does the RPM comply with the requirements set out in Article 7?

- (23) Article 27(2)(b)(1) of the NC TAR requires the Agency to analyse whether the proposed RPM complies with the requirements set out in Article 7 of the NC TAR. This article refers to Article 13 of Regulation (EC) 715/2009 and lists a number of requirements to take into account when setting the RPM. As these overlap, in the remainder of this chapter, the Agency will take a closer look at the five elements listed in Article 7 of the NC TAR.
- (24) As the concepts of transparency, cost reflectivity, non-discrimination, cross-subsidisation and cross border trade are closely related⁵, the Agency concludes with an overall assessment. Special attention is paid to the allocation of revenues between intra-system and cross-system flows.

⁵ The principle of cost-reflectivity is related to the principles of cross-subsidisation and non-distortion of cross-border trade. Tariffs that are fully cost-reflective do not result in any form of cross-subsidisation (and hence they do not distort cross-border trade), as they charge users for the exact costs they cause to the system. Following this reasoning, tariffs that are less cost-reflective may result in cross-subsidisation between users.

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- (25) In the following section, the Agency discusses the elements of the consultation document that are part of the RPM. This assessment sets the basis for assessing the compliance of the RPM with the requirements laid out in Article 7 of the NC TAR. Chapter 5 on 'Other comments' highlights additional elements of the consultation document which also impact the RPM and the resulting reference prices.

4.1.1 Description of the proposed RPM

- (26) The proposed RPM is based on a CWD methodology that includes flow scenarios and a CAA calculation that is applied as a target condition to the RPM calculation.
- (27) Regarding the flow scenarios, it is worth noting that the CWD methodology described in the NC TAR uses capacity and distance as cost drivers. The NC TAR allows the application of flow scenarios in all methodologies, and particularly in the CWD methodology that is described in Article 8. The flow scenarios proposed by CRE result in a modification of the distance cost driver compared to the standard calculation without flow scenarios. In the standard case, the distance is calculated, for each entry point, as the capacity-weighted distance between the entry point and all the exit points of the network, and, for each exit point, as the capacity-weighted distance between all the entry points of the network and the exit point. According to the flow scenarios proposed by CRE, the distances used in the proposed RPM are based on combinations of selected entry and exit points that are deemed to be economically relevant. CRE applies flow scenarios to:
- Cross-system flows to Spain;
 - Cross-system flows to Italy (via Switzerland);
 - Intra-system flows to domestic exit points. These flow scenarios are additionally based on the application of summer and winter scenarios related to the use of storage (which are excluded from the calculation of distance applicable for cross-system flows).
- (28) Regarding the CAA, CRE calculates exit tariffs in order to obtain the same unit cost for both cross-system and intra-system users. This calculation uses as inputs the distances and capacities resulting from the flow scenarios and the assumptions described above. It applies capacity factors that are used to estimate the ratio between entry and exit capacity by cross-system and intra-system users.
- (29) In addition, CRE proposes to apply a 10% reduction to entry points from LNG (based on the shorter distances travelled by the gas entering the system at these points) and a 80% discount to entry points from and exit points to storage facilities (based on Article 9 of the NC TAR). Finally, an *ex-ante* entry-exit split of 34%-66% is proposed.

4.1.1.1 Justification provided by CRE for the application and choice of flow scenarios

- (30) CRE justifies the application of flow scenarios based on economic relevance. The NRA has provided additional clarifications to the Agency compared to the information originally provided in the consultation document.
- (31) In the consultation document, CRE explains that the choice to use Dunkirk as the entry point for cross-system flows is based on the '*analysis of the costs of alternative routes [which] shows that*

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*they are less competitive and have limited interest*⁶. In addition, CRE refers to the decision of 18 March 2019 from the *Conseil d'Etat*⁷ stating that the '*methodology takes account of the actual use of the network infrastructures by each category of shippers, the Dunkirk PIR constituting in the facts, the gas entry point on the main network for the use of transit*'.

- (32) In bilateral exchanges with the Agency, CRE provided additional justifications for the proposed flow scenarios.
- (33) CRE argues that the majority of the costs (approximately 90%) of the French network are fixed and mostly related to the investments in the network, and therefore related to the investment strategy. The proposed approach for setting tariffs is intended to allocate the costs of these investments to the users benefiting from the infrastructure⁸. CRE argues that this is done with the aim of ensuring cost-reflectivity and of minimising cross-subsidisation. The following allocation is considered:
- Main network costs (approximately 900m€/year) are allocated to users of the transmission network;
 - Regional network costs (approximately 1100m€/year) are allocated to users of the regional networks;
 - Storage compensation costs (approximately 500m€/year) are allocated to domestic users.
- (34) The proposed flow scenarios are applied to the cost related to the main transmission network. CRE has provided to the Agency the following clarifications.
- (35) First, In line with the information provided in the consultation document, CRE explained that the proposed flow scenarios reflect the economically competitive routes available to cross-system users. The distance value applied in the RPM to cross-system flows is measured as the distance of the most competitive cross-system route. The routes that are deemed as not competitive and which can be bypassed are excluded from the calculation of the distance cost driver. Following this reasoning, CRE argues that LNG is not competitive to export gas to Spain and Italy and that the Obergailbach IP (exit point to Germany) is not competitive to export gas to Italy.
- (36) Second, expanding the reasoning provided in the consultation document, CRE explained that the proposed flow scenarios intend to allow the tariffs to reflect the level of fixed costs necessary to guarantee firm capacities. The proposed distance cost driver is associated with the routes where investments were required to address potential congestion. In the case of the exit points to both Spain and Switzerland, CRE argues that the relevant entry point for guaranteeing firm capacity on these cross-border routes is the Dunkirk one.

⁶ Consultation document, page 53.

⁷ Link to the 18 March 2019 decision from the *Conseil d'Etat*: <https://juricaf.org/arret/FRANCE-CONSEILDETAT-20190318-411580>

⁸ Information based on a clarification submitted to the Agency on 19 November 2019.

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4.1.1.2 Cross-system flows

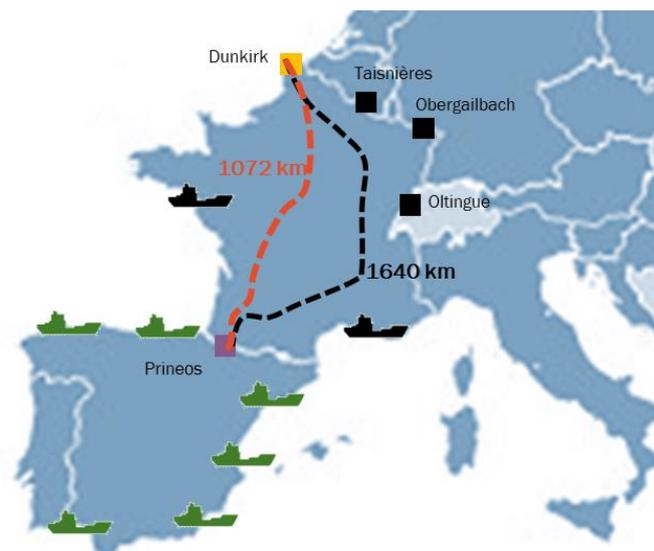
- (37) CRE proposes a series of flow scenarios that are applicable to cross-system flows. These scenarios are applied to the IP exits to Spain and Switzerland and are used to calculate the distance associated to these points that is an input in the RPM.
- (38) In the case of the exit point to Switzerland (which later connects to the Italian network), the distance used in the methodology is 762km, i.e. the distance between the Dunkirk IP (entry from Norway) and the Oltingue IP (exit to Switzerland). CRE disregards the distance associated with entries from LNG based on the argument that unloading LNG directly in Italy is more competitive. Similarly, CRE proposes to discard the Obergailbach IP on the border with Germany from the calculation of distance based on the argument that the route Germany-Switzerland-Italy is cheaper than the route Germany-France-Switzerland-Italy to supply gas to Italy. CRE also considers another argument to disregard these routes: in case of congestion, LNG or gas transported from Germany to Italy (via France) could be transported through alternative routes. As a result, it would not lead to additional investments in France. Finally, the entry points from Spain and Belgium are also excluded from the calculation although CRE has not provided an explanation for this choice. Figure 1 below presents the various entry points into the French network and the one used for the calculation of the distance input for the cross-system flows to Switzerland.
- (39) *Figure 1: Calculation of distance for the cross-system flows associated with the Oltingue IP.*



- (40) In the case of the exit point to Spain, the distance used as an input to the methodology is 1072 km, i.e. the shortest distance between the Dunkirk entry IP and the Pirineos exit IP to Spain. CRE proposes to discard LNG from the calculation of distance based on the same arguments applicable to the cross-system flows to Italy. In addition, the entry points from Belgium, Germany and Switzerland are also excluded from the calculation. Figure 2 below presents the various entry points of the French network and the one used for the calculation of the distance input for the cross-system flows to Spain.

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Figure 2: Calculation of distance for the cross-system flows associated with the Pirneos IP.



4.1.1.3 Intra-system flows and summer-winter storage scenarios

- (41) A calculation is proposed by CRE to set the distance associated to domestic exit points. As in the case of cross-system flows, CRE proposes to apply economically relevant scenarios.
- First, a distance value is associated to each domestic exit point. This distance is calculated, for each exit point, as the distance from the closest entry point with available capacity from which gas can be supplied to the domestic exit. In this calculation, separate summer and winter scenarios are used to calculate the distance associated with the use of storage. In the summer scenario the distance is calculated assuming that gas is injected into storage facilities. In the winter scenario, the distance is calculated assuming that gas is withdrawn from storage facilities⁹.
 - Second, an average distance is calculated for all domestic points based on both the summer and the winter scenarios. The resulting distance that is used in the RPM to derive tariffs for intra-system points is 237 km.
- (42) In bilateral exchanges with the Agency, CRE clarified that as '*entries are well dispatched on the territory and domestic consumptions are mainly located on the periphery of the French territory, [the assumption of the shortest distance] is likely to reflect the usage of the network*'¹⁰.

4.1.1.4 General remarks on the application of flow scenarios

- (43) The standard approach to setting tariffs is based on the allocation of costs using cost drivers as part of the RPM. Recital 3 of the NC TAR summarises this approach: '*transmission tariffs need to be based on a reference price methodology using specific cost drivers*'. According to the definition laid out in Article 3(18) of the NC TAR, cost drivers are '*a key determinant of the transmission*

⁹ Consultation document, page 53. IPs are part of the summer and the winter scenarios.

¹⁰ The Agency understands that this is because entry tariffs are equalised both for IP entries and for entries from LNG; therefore shippers have no financial incentive to prefer one entry point over another.

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system operator's activity which is correlated to the costs of that TSO'. At the same time, the NC TAR allows for the application of flow scenarios, which can serve to calculate the cost drivers.

- (44) The Agency remarks that the same requirements that apply to the RPM in general are applicable to the flow scenarios, in particular, these requirements comprise:
- An appropriate description including the justification of the parameters and the assumptions used. This is a requirement of the NC TAR according to Article 26(1)(a)(i);
 - The application of the reference price methodology to all points of the network following Article 6(3) of the NC TAR;
 - Compliance with the requirements laid out in Article 7 of the NC TAR.
- (45) According to the definition provided in Article 3(20) of the NC TAR, a flow scenario is '*a combination of an entry point and an exit point which reflects the use of the transmission system according to likely supply and demand patterns*'. The definition adds as a condition that such combination of points should be connected by '*at least one pipeline route*'. Article 8(1) of the NC TAR also explains that a combination of entry and exit points can be used as an input to the RPM in cases '*where some entry points and some exit points can be combined in a relevant flow scenario*'.
- (46) In the light of the requirements laid out in the definition of relevant flow scenarios and in Article 8(1)(c) of the NC TAR, the Agency finds that CRE has not sufficiently demonstrated the compliance and the relevance of the proposed flow scenarios in the consultation document, nor in the additional information provided to the Agency. In particular, CRE has not sufficiently explained how the proposed flow scenarios '*reflect the use of the transmission system according to likely supply and demand patterns*' and why they are deemed relevant. While CRE presents a consistent argumentation on the choice of the flow scenarios, the reasoning remains conceptual and is not backed by actual data. In addition, CRE does not specify if it interprets '*use of the network*' in terms of bookings, flows, or a different specification.
- (47) CRE proposes various flow scenarios that are based on combinations of entry and exit points, which result in various distance values applicable to cross-system and intra-system flows. The proposed flow scenarios are used to calculate the cost drivers. These cost drivers therefore differ from the standard CWD methodology calculated without flow scenarios, as laid out in Article 8 of the NC TAR. The Agency understands that this approach is intended to improve the cost reflectivity of the CWD methodology by associating use of the network and/or investment costs to the cross-system and intra-system beneficiaries. The Agency remarks that flow scenarios can be used to allocate investments to specific points of the network only in as much as this allocation reflects the use of the transmission system. The Agency therefore concludes that the approach proposed by CRE can only be compliant with the NC TAR in case the combination of points and the resulting distances applied to cross-system and intra system users as an input to the RPM reflects the use of the transmission system.
- (48) The Agency recommends that, in the motivated decision, CRE demonstrates that the combinations of entry and exit points used as the basis for the distance assumptions applied by CRE to cross-system and intra-system users are clearly linked to the utilisation of the system. For this purpose, the Agency recommends that CRE also illustrate its understanding of the concepts of '*use of the*

transmission system and *relevant flow scenario*, and clarify whether these concepts are related to contracted capacity, to flows or both.

4.1.1.5 The Agency's assessment on the flow scenarios proposed by CRE

- (49) Beyond the considerations made on the general compliance of the application of flow scenarios, the Agency has arrived to the following conclusions on the specific proposals made by CRE in the consultation document.
- (50) CRE refers to the proposed flow scenarios in the consultation document in a transparent manner and the Agency considers that this set of flow scenarios are plausible given the characteristics of the French system. However, CRE does not provide a detailed justification backed up by numerical verification. In its bilateral exchanges with the Agency, CRE provided additional reasoning, the main elements of which need to be made available to stakeholders as well. The Agency remarks that it is a requirement of the NC TAR, pursuant to its Article 26(1)(a)(i), to provide a description of the RPM, including the justification of the parameters and the assumptions used therein.
- (51) Moreover, it is not clear from the consultation document how the RPM preserves a balance when applying the proposed flow scenarios to cross-system and intra-system flows. For instance, the applied flow scenarios could potentially overestimate the distance costs driver applicable to cross-system flows if entries other than Dunkirk were relevant. On the other hand, the distance applied to intra-system flows could be underestimated, if in some instances the closest entry point were not the one better reflecting the use of the network. This could potentially result in undue cross-subsidisation between intra-system and cross-system users. The Agency recommends CRE a number of actions to mitigate this risk.
- (52) First, the flow scenarios proposed for cross-system flows are based on the distance from the Dunkirk entry point. To justify this choice, CRE excludes certain combinations of entry and exit points to calculate the distance associated to cross-system flows. The Agency recommends that CRE clarify, in its motivated decision, the extent to which these combinations of points do not reflect the use of the transmission system for cross-system purposes. In particular, CRE should clarify in more detail and based on a quantitative assessment:
- Why the entries from LNG, the entry from Belgium and the entry from Germany are not relevant for flowing gas to the exits to Spain and Switzerland. The Agency recommends that CRE provide a quantitative analysis demonstrating the lack of competitiveness of these routes when excluding them based on the potential existence of more competitive alternative routes.
 - How and to what extent firm cross-border exit capacities towards Italy and Spain rely on the flows from the Dunkirk IP. For this analysis, the Agency suggests that CRE compares historical data of flows at Dunkirk and at cross-border exits.
- (53) Second, the flow scenarios proposed for the intra-system flows are based on the distance to the closest entry point. CRE has clarified to the Agency that *'there is no clear economical reason to use one entry or another to supply domestic usage'*¹¹. At the same time CRE has also clarified that the flow scenarios applied to cross-system flows are based on the *'costs of alternative routes'*. It is not

¹¹ Information based on a clarification submitted to the Agency on 19 November 2019.

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clear to the Agency how the criterion of identifying costs of competing routes is applied systematically to all points of the network, as this criterion does not seem applicable to domestic exits. In addition, it is not clear to the Agency whether the scenarios applied to cross-system and intra-system flows are both based on contracted capacity or on physical flows. Should the latter be the case, it is not clear how domestic exits and IP exits that are in the vicinity of each other could have such different associated distance values. The Agency recommends that CRE:

- Clarify whether the proposed flow scenarios are based on booked capacity or on flows.
- Clarify the reasons justifying that domestic exit points in the vicinity of exit IPs have significantly different associated distances.
- Assess and mitigate the risk that this choice of the closest entry points leads to an underestimation of the distance for intra-system users that would not reflect the use of the transmission system.

(54) Third, CRE considers that all storage facilities are exclusively used in intra-system flow scenarios. The Agency remarks that the use of storage is available to both cross-system and intra-system users, on the basis of the same tariffs. While CRE provides a conceptual reasoning for its choice, it does not present any actual data backing up its point. The Agency recommends that CRE justify in more detail the reasons for excluding storage from the calculation of cross-system flows.

(55) The Agency considers that, while CRE presents a consistent conceptual methodology, neither the consultation carried out by CRE nor the clarifications provided bilaterally provide sufficient elements for assessing the compliance of the proposed flow scenarios with the legal requirements. As a result, the Agency is not able fully to analyse the compliance of the proposed RPM with the requirements laid out in Article 7 of the NC TAR.

4.1.1.6 Cost allocation assessment

(56) In the proposed methodology, the CAA is part of the RPM. CRE uses this calculation to set equal unit costs for both cross-system and intra-system flows. This calculation builds on capacity assumptions that further impact the capacity cost driver that is an input to the RPM.

(57) The application of equal unit costs to cross-system and intra-system flows is not prescribed by the NC TAR, which only requires that the CAA be calculated using as an input the tariffs derived using the proposed RPM. Instead, CRE proposes to use a result of 0% for the CAA as a target condition for the proposed RPM.

(58) The Agency welcomes this approach as it minimises the cross-subsidisation between cross-system and intra-system flows. At the same time, the Agency remarks that CRE does not provide the details of the components of the cost allocation assessment as required by Article 26(1)(a)(iv) of the NC TAR. In particular, the consultation document does not clarify whether the 'RatioIntraCap' and 'RatioCrossCap' are calculated following Article 5 of the NC TAR. It is not clear whether the calculation of these ratios includes the contracted capacities at the IPs with Belgium and Germany.

(59) In addition, the Agency remarks that the equal unit cost assumption applied by CRE is based on capacity assumptions related to both cross-system and intra-system flows. These assumptions define the ratios of entry and exit capacity required for transporting gas for intra- and cross- system

use¹². Given that these assumptions are used as a condition to the RPM calculation, they impact the contracted capacity input to the RPM.

- (60) The Agency recommends that CRE provide, in the motivated decision, the following information related to the CAA calculation:
- The component and the details of the components of the CAA calculation. This is a requirement of the NC TAR pursuant to Article 26(1)(a)(iv).
 - The methodology and the assumptions used by CRE for the calculation of the capacity ratios used to set the unit costs of both cross-system and intra-system flows at the same level.

4.1.1.7 Comparison with the CWD methodology

- (61) The consultation document includes a comparison with the CWD methodology. Following Paragraph 3 NC TAR Recitals: *'where the proposed RPM is other than the CWD methodology, the latter should serve as a counterfactual for comparison with the proposed RPM'*. While the comparison provided by CRE compliant with the NC TAR, it does not allow using the comparison to assess the impact of the proposed flow scenarios, which are a key aspect of the proposed RPM. This is because the two methodologies that are compared share a number of parameters, including the proposed flow scenarios¹³.
- (62) The parameters and conditions that CRE applies to both the proposed RPM and the CWD methodology are:
- Discounts at exit points to and entry points from storage of 80%;
 - Flow scenarios applicable to cross-system;
 - Flow scenarios applicable to intra-system flows;
 - Flow scenarios applicable to storage.
- (63) The parameters and conditions that differ in the calculation of the proposed RPM and in the CWD methodology are:
- The entry-exit split applied in the proposed methodology is 34-66%, while the split applied in the CWD methodology is 50/50;
 - The CWD methodology does not include a condition to set unit costs for cross-system and intra-system flows at the same level;
- (64) It is clear that the application of the proposed flow scenarios leads to differences in the resulting distances between cross-border and domestic points, compared to what would have been the results of the application of a CWD methodology without the proposed flow scenarios. While CRE

¹² CRE describes these ratios in the consultation document. CRE assumes that for supplying 1 MWh/d/year to domestic customers, the following capacities are necessary:

- 0.56 MWh/d/year of entry capacity at IPs and entries from LNG.
- 0.27 MWh/d/year of entry capacity to storage points.
- 0.57 MWh/d/year of exit capacity from storage points.

For the cross-system use of the network, CRE assumes that the capacity booked at entries and at exits is the same.

¹³ The Agency remarks that Article 8(1)(c)-(d) of the NC TAR allows performing the CWD calculation using flow scenarios.

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has performed a compliant comparison with a CWD methodology, the particular CWD methodology chosen as a comparator, which uses many of the same design elements as CRE's proposed RPM, provides limited additional insight in terms of comparison. Therefore, in the spirit of the NC TAR, and in order to provide more insight into the effects of its choices, it would be most beneficial for providing transparency that CRE also performed a comparison between the proposed methodology and the CWD methodology applied in a standard way (i.e. without the use of flow scenarios), which would allow to assess the impact of the proposed flow scenarios.

4.1.1.8 Discounts to LNG

- (65) CRE proposes to apply a 10% reduction to entry points from LNG. This modification is not applied to the reference prices resulting from the proposed methodology, but by modifying the distance cost driver that is an input to the RPM. The choice is justified on the basis of cost reflectivity. In the consultation CRE refers to the shorter distance that gas entering the system from entry points from LNG travels. This calculation is based on the assumptions used for the flow scenarios according to which gas entering the system at entries from LNG is not used for cross-system flows.
- (66) The Agency recommends that CRE assess the justification provided for this calculation based on the broader justification to be provided for the application of the proposed flow scenarios. At the same time, the Agency recalls that Article 9 of the NC TAR allows to apply discounts to entries from LNG, albeit for the purpose of increasing security of supply.

4.1.1.9 Application of the rescaling adjustment

- (67) CRE proposes to apply a 80% discount to points from and to storage. However, the consultation document does not discuss how the revenue shortfall associated with such discounts is allocated to points of the network. Article 6(4)(c) of the NC TAR foresees that the application of the rescaling adjustment to reference prices should be applied to all entry or all exit points, or both. The Agency recommends that CRE clearly indicate, in the motivated decision, how the revenue shortfall associated to the application of discounts is allocated to points of the system. In particular, the Agency recommends that CRE clarify whether a rescaling is applied and to assess the compliance of such rescaling with the NC TAR. Article 6(4) of the TAR NC foresees that the rescaling adjustment can be applied to all entry point or all exit points or both.

4.1.1.10 Entry-exit split

- (68) The methodology proposes an entry-exit split of 34-66%. In the consultation document, CRE justifies this choice based on the storage capacities booked. '*Due to the presence of large storage capacities in France ensuring that the winter peak is covered, the capacities booked by the shippers at entry points in the French transmission networks are significantly lower than the capacities booked at exit points*'. The Agency notes that this explanation is not accompanied by the quantitative calculation.
- (69) The application of the entry-exit split has an impact on cross-border trade as the tariffs at exit points vary with this parameter. Following Article 27(4) of the NC TAR, all elements of the motivated decision shall be subject to justification. The Agency recommends CRE to provide a quantitative assessment supporting the choice of entry-exit split in its final decision.

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4.1.1.11 Application of the RPM: backhaul tariffs at Taisnières B and Obergailbach

- (70) The simplified tariff model provided as part of the consultation, together with the files shared bilaterally with the Agency, show that the RPM is not used to derive tariffs for the virtual backhaul capacities at the cross-border IPs Taisnières B and Obergailbach. This point has been confirmed to the Agency bilaterally by CRE.
- (71) The exit points of Taisnières B and Obergailbach can only be used virtually. For this reason, the tariffs applied are offered for a virtual reverse flow service.
- (72) The Agency recommends that CRE derive the tariffs applicable to these exits using the proposed RPM. Article 6(3) of the NC TAR requires that the same RPM is applied to all entry and exit points in a given entry-exit system. The tariffs applicable for virtual reverse flow should be no exception and shall be set according to Article 16 of the NC TAR, which lays out the rules applicable for interruptible capacity.

4.1.2 Transparency

- (73) **Article 7(a)** of the NC TAR requires that the RPM aim at ensuring that network users can reproduce the calculation of reference prices and their accurate forecast. The Agency finds the simplified tariff model, as required by Article 30(2)(b) of the NC TAR, sufficient to allow reproducing and forecasting tariffs accurately.
- (74) The model provided by CRE allows changing the values of the inflation rate, the annual exchange rate and a 'k' factor encompassing various parameters (regulatory account, changes in contracted capacity, energy costs, etc.). The Agency notes that the 'k' factor can only be changed as a single value. This does not allow assessing the relative impact of the parameters it encompasses. The Agency notes that this factor is applied to all points to the system at the same time and that the contracted capacity does not impact tariffs at individual points.
- (75) The Agency recommends that CRE provide, in its motivated decision, a tariff model allowing the possibility separately to change all the input parameters that are involved in the calculation of tariffs, in particular the parameters that are grouped under the 'k' factor.

4.1.3 Cost-reflectivity

- (76) **Article 7(b)** of the NC TAR requires the RPM to take into account the actual costs incurred for the provision of transmission services, considering the level of complexity of the transmission network. The transmission system network in France can be considered a meshed network.
- (77) Following the conclusion in paragraph (55), the Agency cannot conclude that the proposed RPM is compliant with the requirement of cost-reflectivity. The flow scenarios proposed by CRE are central to the assessment of the methodology as they impact the allocation of revenue to points associated with cross-system and intra-system users flows. In the consultation document, CRE does not provide sufficient information to assess the compliance of the proposed flow scenarios with the cost-reflectivity requirements in the NC TAR.

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4.1.4 Cross-subsidisation and discrimination

- (78) **Article 7(c)** of the NC TAR requires the RPM to ensure non-discrimination and prevent undue cross-subsidisation.
- (79) The Agency considers that the approach adopted by CRE of setting unit costs for cross-system and intra-system flows at the same level helps minimising the potential cross-subsidisation between these two groups of users. At the same time, the Agency remarks that the effectiveness of this approach for reducing cross-subsidisation is subject to the compliance of the proposed flow scenarios with the requirements in the NC TAR. Should the proposed flow scenarios lead to cross-subsidisation, the proposed CAA calculation would not capture this effect as the result would continue to be zero. This is because the CAA share the same distance assumptions applied in the flow scenarios.
- (80) Regarding the requirement of ensuring non-discrimination, the Agency has not identified any form of discrimination related to the proposed RPM. For this analysis, the Agency defines 'discrimination' as 'charging different prices to different network users for the identical gas transmission service'.

4.1.5 Volume risk

- (81) **Article 7(d)** of the NC TAR requires that the RPM ensure that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system. In France it is not the case that significantly more gas is transported than used for consumption. There is therefore no significant volume risk in France and the proposed RPM can therefore be deemed as compliant with the requirement on volume risk.

4.1.6 Cross-border trade

- (82) **Article 7(e)** of the NC TAR requires that the RPM ensures that the resulting reference prices do not distort cross-border trade.
- (83) Following the conclusion on cost reflectivity and on cross-subsidisation, the Agency cannot conclude that the proposed RPM is compliant with the requirement of not-distorting cross-border trade. At the same time, the Agency remarks that the concerns expressed regarding the existence of potentially undue cross-subsidisation between cross-system and intra-system users would lead to a distortion of cross-border trade. The Agency understands that tariffs set at IPs above cost-reflective levels distort cross-system trade.

4.2 Are the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) met?

- (84) Article 27(2)(b)(2) of the NC TAR requires the Agency to analyse whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met.
- (85) The use of commodity-based transmission tariffs is an exception. Only part of the transmission services revenue may be recovered by commodity-based transmission tariffs. CRE proposes not to apply commodity-based transmission tariffs.

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4.3 Are the criteria for setting non-transmission tariffs as set out in Article 4(4) met?

- (86) Article 27(2)(b)(3) of the NC TAR requires the Agency to analyse whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.
- (87) In the consultation document it is proposed to make use of two non-transmission tariffs applicable for regional networks and for storage compensation.

4.3.1 Regional networks

- (88) In the consultation document, CRE distinguishes between two types of transmission assets: the main network and the regional network. CRE considers that the regional network is not an entry-exit system, and justifies the allocation of the revenue associated to the regional network based on the aim of avoiding cross-subsidisation between the two networks.
- (89) The tariff applicable for the regional network is charged as a non-transmission service. CRE proposes to apply three charges:
- A capacity term.
 - A unit delivery tariff which differs depending on the type of delivery point.
 - A fixed delivery charge applied to each delivery station for industrial customers or highly modulated consumers.
- (90) CRE provides information on the costs associated with each network and the revenue recovered by each network. Given that the costs of each network are not exactly recovered by tariffs applicable for each network, a cross-subsidisation effect occurs between both networks (as shown by Table 2 below). CRE discusses in the consultation a compensation timeline to balance this effect.

Table 2: Costs and revenue recovered associated with the main network and the regional network of the French system. Source: CRE tariff consultation.

	Main network		Regional network	
	% revenue	% costs	% revenue	% costs
Average 2017-2019	47,5%	48,5%	52,5%	51.5%

- (91) Overall, the Agency acknowledges that the scheme allows to limit the potential cross-subsidisation effect between intra-system and cross-system flows. The approach is consistent with the aim of allocating cost in a cost-reflective manner. At the same time, the choice to consider regional networks as non-transmission services is not compliant with the NC TAR. According to Article 4(1)(a) of the NC TAR, a service should be considered as transmission when its costs are caused by the cost drivers of capacity and distance.
- (92) The Agency notes that the definition of 'transmission' provided in Directive 2009/73/EC distinguishes high-pressure 'transmission' pipelines from the part of 'high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to

*customers, but not including supply*¹⁴. The latter falls under the definition of ‘distribution’ which refers to the ‘*transport of natural gas through local or regional pipeline networks with a view to its delivery to customers*’¹⁵. Following this regulatory framework, the regional network should either be reclassified as distribution networks, or be considered as a transmission service, if the RPM can properly allocate the costs of the regional branches to the relevant network users. If CRE chooses to reclassify the use of the local network as a transmission service, the same RPM should apply to all part of the transmission network, pursuant to Article 6(3) of the NC TAR¹⁶.

4.3.2 Storage compensation

- (93) The consultation document describes a storage compensation charge that is applied as a non-transmission tariffs at domestic exit points. This compensation relates to revenue of the storage operators that is allocated as a transmission charge. For 2018 and 2019 the revenue collected by transmission tariffs and to be transferred to storage operators amounted to approximately 500m€ out of the approximately 700m€ of total revenue related to the storage operators. The amount to be collected at transmission depends on the amount collected in the storage auctions. The choice to apply the charge only at domestic exits is consistent with the flow scenarios applied in the RPM, where the distance associated with the use of storages is only relevant for domestic exits.
- (94) The tariff structure proposed by CRE is proportional to users’ peak demand. While CRE provides information on the methodology and the principles applied for setting the tariffs, the Agency cannot fully assess whether the charges are cost-reflective, non-discriminatory, objective and transparent and are charged to the beneficiaries of the non-transmission service, as required by Article 4(4)(a) of the NC TAR.
- (95) At the same time, the Agency remarks that these costs are not eligible to be considered as non-transmission services as they are not related to TSO costs. Article 3(15) of the NC TAR defines ‘*non-transmission service*’ as the ‘*regulated services other than transmission services and other than services regulated by Regulation (EU) No 312/2014 [establishing a Network Code on Gas Balancing of Transmission Networks] that are provided by the transmission system operator*’. The costs allocated by CRE are associated with storage operators and not with TSOs. In addition, Article 41(1)(f) of Directive 2009/73/EC of the European Parliament and of the Council specifies that it is an NRA duty to ensure that ‘*that there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities*’.
- (96) The Agency notes that the presence of economic externalities of a service, such as security of supply provided by storage facilities, could be a reason partially to socialise the cost of such service. The Agency is not in a position to assess whether and to what extent the socialisation is justified in the case of France. The Agency considers a cost-benefit analysis a good method to carry out such an assessment.

¹⁴ See Article 2(3) of the Directive 2009/73/EC

¹⁵ See Article 2(5) of the Directive 2009/73/EC.

¹⁶ Article 2(1)(1) of Regulation (EC) No 715/2009 does not recognise any distinction between regional and national transmission, while only proposing a definition for ‘*transmission*’. However, Article 2(5) of Directive 2009/73/EC proposes the inclusion of regional networks in ‘*distribution*’ under the supervision of the Member State. It is not for the Agency to judge the alignment with these articles.

- (97) The Agency concludes that the proposed tariffs at domestic exit points cannot be considered as cost-reflective in the meaning of Article 4(4)(a) of the NC TAR. The Article refers this criterion to costs that are related to TSO activities, while the proposed storage compensation results in a cross-subsidy between TSO and non-TSO costs.

5. Other comments

5.1 Tariffs applicable to the Alveringem IP exit to Belgium

- (98) In the consultation, CRE refers to the tariffs set at the Alveringem IP exit to Belgium. CRE explains that this IP was created within the framework of the commissioning of the Dunkerque LNG terminal in 2016, and enables non-odourised gas to be shipped from France to Belgium. According to CRE, the decision to invest and the calculation of the tariff at Alveringem IP were done according to principles in line with the provisions of the NC TAR relating to incremental capacity tariffs. The distance travelled by the gas is short and CRE argues that a distance-based pricing principle cannot be used as it would not cover the development costs of the infrastructure connecting France and Belgium. In addition, CRE argues that, as the exit capacity at the Virtualys VIP is no longer contracted from 2020, a Capacity times Distance model can no longer be applied.
- (99) The consultation document refers to a deliberation of CRE adopted on 12 July 2011¹⁷ where the tariff is explained. The tariffs set at this point are '*based on the actual cost of the investment noted at the end of the works and the total capacity level*'. This is a similar logic to the scheme described in Article 25 of the NC TAR for pricing incremental capacity. The process was nevertheless carried out before the entry into force of the NC TAR on 6 April 2017,
- (100) The Agency has not assessed CRE's deliberation of 12 July 2011 and based on the information provided in the consultation document, it cannot conclude on the adequacy of the proposed tariffs with the conditions for pricing incremental capacity in Article 25 of the NC TAR. At the same time, the Agency remarks that it is a requirement of the NC TAR to apply the same RPM to all points of the network according to Article 6(3).

5.2 Inter-TSO compensation mechanism

- (101) Article 10 of the NC TAR refers to the application of the RPM within a Member State where more than one transmission system operator is active. In the case of France both GRTgaz and Teréga operate the French entry-exit system. Article 10(5) of the NC TAR states that '*at the same time as the final consultation in accordance with Article 26, the NRA shall conduct a consultation on the principles of an effective ITC mechanism (...) and its consequences on the tariff levels*'. Following Article 10(3) of the NC TAR, the ITC mechanism shall be established with the aim to '*prevent detrimental effects on the transmission services revenue of the TSOs involved and to avoid cross-subsidisation between intra-system and cross-system network use*'.

¹⁷ Resolution of the Energy Regulation Commission forming a ruling on the conditions for connecting the Dunkirk methane terminal to the GRTgaz network and on the development of a new interconnection with Belgium in Veurne.

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- (102) Following the clarification provided by CRE, the Agency notes that the NRA has not carried out a parallel consultation on the ITC mechanism at the same time as the final consultation, as required by the NC TAR. CRE has clarified to the Agency that a consultation on the ITC mechanism was carried out in 27 July 2016, as part of the tariffs for the ATRT6 period. However this information is not included in the final consultation on the RPM.
- (103) The Agency recommends that CRE include in the motivated decision an assessment of whether there are any relevant conditions that have changed since 2016 that would require the repetition of the consultation. Should any significant changes have occurred, the Agency recommends that CRE repeat the consultation on the ITC mechanism.

Annex 1: Legal framework

(104) Article 27 of the NC TAR reads:

1. *Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the Agency.*

2. *The Agency shall analyse the following aspects of the consultation document:*

(a) whether all the information referred to in Article 26(1) has been published;

(b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:

(1) whether the proposed reference price methodology complies with the requirements set out in Article 7;

(2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;

(3) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.

3. *Within two months following the end of the consultation referred to in paragraph 1, the Agency shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Commission the conclusion of its analysis in accordance with paragraph 2 in English.*

The Agency shall preserve the confidentiality of any commercially sensitive information.

4. *Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the Agency and the Commission its decision.*

5. *The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2019. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May 2019 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2019.*

(105) Article 26(1) of the NC TAR reads:

1. *One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:*

(a) the description of the proposed reference price methodology as well as the following items:

(i) the indicative information set out in Article 30(1)(a), including:

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- (1) *the justification of the parameters used that are related to the technical characteristics of the system;*
 - (2) *the corresponding information on the respective values of such parameters and the assumptions applied.*
- (ii) *the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;*
- (iii) *the indicative reference prices subject to consultation;*
- (iv) *the results, the components and the details of these components for the cost allocation assessments set out in Article 5;*
- (v) *the assessment of the proposed reference price methodology in accordance with Article 7;*
- (vi) *where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);*
- (b) *the indicative information set out in Article 30(1)(b)(i), (iv), (v);*
- (c) *the following information on transmission and non-transmission tariffs:*
 - (i) *where commodity-based transmission tariffs referred to in Article 4(3) are proposed:*
 - (1) *the manner in which they are set;*
 - (2) *the share of the allowed or target revenue forecasted to be recovered from such tariffs;*
 - (3) *the indicative commodity-based transmission tariffs;*
 - (ii) *where non-transmission services provided to network users are proposed:*
 - (1) *the non-transmission service tariff methodology therefor;*
 - (2) *the share of the allowed or target revenue forecasted to be recovered from such tariffs;*
 - (3) *the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);*
 - (4) *the indicative non-transmission tariffs for non-transmission services provided to network users;*
- (d) *the indicative information set out in Article 30(2);*
- (e) *where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:*
 - (i) *the proposed index;*
 - (ii) *the proposed calculation and how the revenue derived from the risk premium is used;*
 - (iii) *at which interconnection point(s) and for which tariff period(s) such approach is proposed;*
 - (iv) *the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.*

(106) Article 7 of the NC TAR reads:

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

- a) *enabling network users to reproduce the calculation of reference prices and their accurate forecast;*
- (b) *taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;*
- (c) *ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;*

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(d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;

(e) ensuring that the resulting reference prices do not distort cross-border trade.

(107) Article 13 of Regulation (EC) No 715/2009 reads:

1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments, and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a nondiscriminatory manner.

Member States may decide that tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.

Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks.

Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the national regulatory authorities. By 3 September 2011, the Member States shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures or balancing mechanisms would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, including in relation to balancing.

(108) Article 4(3) of the NC TAR reads:

3. The transmission services revenue shall be recovered by capacity-based transmission tariffs. As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:

(a) a flow-based charge, which shall comply with all of the following criteria:

- (i) levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;*
- (ii) calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points;*
- (iii) expressed in monetary terms or in kind.*

(b) a complementary revenue recovery charge, which shall comply with all of the following criteria:

- (i) levied for the purpose of managing revenue under- and over-recovery;*
- (ii) calculated on the basis of forecasted or historical capacity allocations and flows, or both;*

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(iii) applied at points other than interconnection points;

(iv) applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.

(109) Article 4(4) of the NC TAR reads:

4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given nontransmission service. Such tariffs shall be as follows:

(a) cost-reflective, non-discriminatory, objective and transparent;

(b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

Annex 2: List of abbreviations

Acronym	Definition
ACER	Agency for the Cooperation of Energy Regulators
CAA	Cost Allocation Assessment
CAPEX	Capital Expenditures
CRE	Commission de Régulation de l'Énergie
CWD	Capacity Weighted Distance
EC	European Commission
ENTSOG	European Network of Transmission System Operators for Gas
EU	European Union
IP	Interconnection Point
ITC	Inter-TSO compensation
MS	Member State
NC TAR	Network code on harmonised transmission tariff structures for gas
NRA	National Regulatory Authority
OPEX	Operational Expenditures
RAB	Regulated Asset Base
RPM	Reference Price Methodology
TSO	Transmission System Operator
VIP	Virtual Interconnection Point



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