

Decision

(B)1442/5
28 March 2019

Decision on the Charging Methodology related to the Interconnector (UK) Access Agreement and the Interconnector (UK) Access Code

Article 15/14, §2, paragraph 2, 9°bis of the Act of 12 April 1965 concerning the transmission of gaseous and other products by pipelines; article 13 of 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; and article 27(4) of Regulation (EU) 2017/460 of the European Commission of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas

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INTRODUCTION

The COMMISSION FOR ELECTRICITY AND GAS REGULATION (CREG) assesses below the Charging Methodology related to the Interconnector (UK) Access Agreement and the Interconnector (UK) Access Code.

Besides the introduction and the lexicon, this decision has five parts. The first part sets out the legal framework. The second part covers the antecedents, including the public consultation. The third part contains the analysis of the charging methodology. The fourth part comprises a general reservation. Finally, the fifth part contains the operative part of the decision.

CREG's Board of Directors approved this decision at its meeting on 28 March 2019.

LEXICON

'CREG': the Commission for Electricity and Gas Regulation, an independent federal body established under Article 23 of the Act of 29 April 1999 on the organisation of the electricity market

'Interconnector (UK)': Interconnector (UK) Limited, a company under English law, certified by CREG on 11 July 2013

'Resolution (B)1654/1': the CREG resolution of 21 December 2017 establishing the pricing methodology for the connection to and use of an interconnection

'Decision (B)1657': the CREG decision of 16 October 2017 on the implementation of certain aspects of Regulation (EU) 2017/460 of the European Commission of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas

'Decision (B)1783': the CREG decision of 28 June 2018 on the request of Interconnector (UK) for a derogation from the application of certain articles of Regulation (EU) 2017/460 of the European Commission of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas

'Gas Act': the Act of 12 April 1965 concerning the transmission of gaseous and other products by pipelines, last amended by the Act of 31 July 2017

'Directive 2009/73': the Directive 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

'Regulation 715/2009': the Regulation 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

'Regulation 2017/459': the Regulation of the European Commission of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013

'Regulation 2017/460': the Regulation of the European Commission of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas

1. LEGAL FRAMEWORK

1.1. EUROPEAN LAW

1. Article 2(4) of Directive 2009/73 defines ‘transmission system operator’ as follows:

“a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of gas.”

2. Article 39(1) of Directive 2009/73 states: “Each Member State shall designate a single national regulatory authority at national level.” In Belgium this authority is CREG and in the UK it is Ofgem.

3. Article 10(1) of Directive 2009/73 states: “Before an undertaking is approved and designated as transmission system operator, it shall be certified according to the procedures laid down in paragraphs 4, 5 and 6 of this Article and in Article 3 of Regulation (EC) No 715/2009.” In application of this article, Interconnector (UK) was certified by CREG (by the CREG decision of 11 July 2013)¹ and Ofgem².

4. Article 32(1) of Directive 2009/73 states:

“Member States shall ensure the implementation of a system of third party access to the transmission and distribution system, and LNG facilities based on published tariffs, applicable to all eligible customers, including supply undertakings, and applied objectively and without discrimination between system users. Member States shall ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 41 by a regulatory authority referred to in Article 39(1) and that those tariffs — and the methodologies, where only methodologies are approved — are published prior to their entry into force.”

5. Article 41(1)(a) of Directive 2009/73 states:

“The regulatory authority shall have the following duties: a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies.”

6. Article 41(6) of Directive 2009/73 specifies that:

“The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for:

a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. Those tariffs or methodologies shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing those investments to ensure the viability of the networks and LNG facilities.”

¹ Final decision (B)130711-CDC-1236 concerning “the application for certification of Interconnector (UK) Limited”

² Certification decision of 21 May 2013: <https://www.ofgem.gov.uk/ofgem-publications/59214/certification-decision-interconnector-uk-limited-iuk.pdf>

7. Under Articles 41(1)(c) and 42(1) of Directive 2009/73, the regulatory authorities of affected Member States should cooperate on cross-border issues.

8. Regulation 715/2009 aims to set additional non-discriminatory rules for access conditions to natural gas transmission systems. This includes the establishment of harmonised principles for network access tariffs or the methodologies underlying their calculation³.

9. In particular, Article 13 on tariffs for access to networks states:

“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 non-discriminatory 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.”

10. It follows from the above that both Ofgem and CREG must at least approve the methodologies used to calculate the tariffs of Interconnector (UK).

11. It further follows from the prohibition on cross-subsidies between network users that Interconnector (UK) can only pass on its costs (and profits) to the network users of Interconnector (UK).

12. The European Commission adopted Regulation 2017/460 on 16 March 2017. The Regulation was published in the Official Journal of the European Union the next day. In accordance with Article 38 of the Regulation, it entered into force on the twentieth day following that of its publication. It applies from its entry into force. However, Chapters VI and VIII apply from 1 October 2017 and Chapters II, III and IV apply from 31 May 2019.

³ See subject matter and scope in Article 1 of Regulation 715/2009

13. On 16 October 2017, CREG decided⁴ that the obligations laid down in Articles 5(1), 6(1), 6(4)(b), 6(4)(c), 10(2)(b), 10(7), 26(1), 26(3), 27(1), 29(a)(i), 29(a)(ii), 29(a)(iv), 29(b), 30(1), 30(2) and 30(3) of Regulation 2017/460 should be allocated to the interconnector operator for an indefinite period and from the publication of CREG's decision.

14. In late 2017, Interconnector (UK) submitted a request for a derogation from the application of certain articles of Regulation 2017/460. CREG⁵ and Ofgem examined and jointly assessed this request in close cooperation. Both regulators decided to grant Interconnector (UK) a derogation from the application of Articles 5, 7(a), 12.3, 13, 26.1(a)(iii)(vi), 26.2, 28, 29(a), 29(b)(i), 31.2(a), 30.1(a)(ii)(iii), 30.1(b)(i)(ii), 30.1(b)(iii)(1-2), 30.1(b)(iii)(3)(b), 30.1(b)(iii)(5), 30.1(b)(iv)(v), and 30.2 of Regulation 2017/460 in accordance with Article 37 of that Regulation. They have notified the European Commission and ACER of their decision to grant these derogations.

15. In accordance with Article 27(4) of Regulation 2017/460, CREG and Ofgem must take a motivated decision on all items set out in Article 26(1) of that Regulation within five months following the end of the final consultation by Interconnector (UK).

1.2. BELGIAN LAW

16. Article 1 of the Gas Act includes the following definitions:

- 9° 'transmission company': any natural or legal person who carries out gas transmission;
- 28° 'Commission': the Commission for Electricity and Gas Regulation, referred to in Article 15/14;
- 60° 'interconnector': a transmission pipeline that crosses or spans the border between two Member States for the sole purpose of linking the networks of these two Member States;
- 60° bis: 'interconnector operator': a natural or legal person who operates an interconnector and has been appointed in accordance with Article 8/1bis."

17. Article 15/14, § 2, paragraph 2, 9°bis of the Gas Act stipulates that CREG:

"shall exercise the tariff powers set down in Articles 15/5 to 15/5quinquies and shall monitor the application of tariffs by transmission companies with regard to their respective networks."

18. Given the definition of "transmission company", this means that based of Article 15/14, § 2, paragraph 2, 9°bis of the Gas Act, CREG can exercise the same tariff powers in respect of Interconnector (UK) as in respect of the operators referred to in Article 8, § 1 of the Gas Act, since both entities are considered transmission companies.

⁴ Decision (B)1657

⁵ Decision (B)1783

19. Article 15/14quater, § 1 of the Gas Act states that CREG cooperates on cross-border issues with the regulatory authority or authorities of the affected European Union Member States and ACER.

20. Article 15/5bis, § 15, paragraph 1 of the Gas Act provides as follows:

“From 1 October 2018, the connection to and use of an interconnector and, where applicable, the services offered by an interconnector operator in accordance with Article 15/5undecies, § 3 shall be subject to a pricing methodology determined by the Commission in accordance with the provisions of this paragraph.”

21. Article 15/5bis, § 15, paragraph 2 of the Gas Act states the following with regard to the procedure:

“The Commission shall determine the pricing methodology that forms the basis of the tariffs following consultation with the interconnector operators and the regulatory authorities of the other European Union Member States whose territory is crossed by the interconnections, and following structured, documented and transparent consultation of the market.”

22. With regard to the content, Article 15/5bis, §15, paragraph 3 of the Gas Act states:

“The pricing methodology shall at least contain rules on:

- a. the principles determining the tariffs;*
- b. the submission and approval procedure for tariff reports, including a statement of the actual costs and revenues for the past tariff period.”*

23. With regard to the first part of the pricing methodology, i.e. the principles determining the tariffs, on 30 June 2015 CREG approved Interconnector (UK)'s Charging Methodology for transportation services for use from gas day 1 October 2018 that were sold before 1 November 2015 under the terms of the Interconnector (UK) Access Agreement and the Interconnector (UK) Access Code⁶. The validity of this Charging Methodology was extended twice, with the decisions of 28 January 2016⁷ and 22 December 2016⁸; the last time, it was extended until 31 December 2017. On 21 December 2017, CREG approved the Charging Methodology that Interconnector (UK) had submitted to it earlier that month⁹.

24. The second part of the pricing methodology, namely “the submission and approval procedure for tariff reports” is specific to CREG¹⁰ and is not subject to Ofgem approval. Consequently, the second part is not altered by this decision.

25. Together, both parts form the resolution establishing the pricing methodology for the connection to and use of an interconnection.

⁶ Decision (B)150730-CDC-1442/1

⁷ Decision (B)160128-CDC-1442/2

⁸ Decision (B)1442/3

⁹ Decision (B)1442/4

¹⁰ Resolution (B)1654/1

2. ANTECEDENTS

2.1. GENERAL

26. On 12 December 2018, Interconnector (UK) submitted its Charging Methodology (in English and Dutch) to CREG and Ofgem for approval.

27. Interconnector (UK) organised a public consultation in this regard on its website from 4 October to 3 November 2018¹¹, in accordance with Article 26 of Regulation 2017/460 and the CREG and Ofgem decisions implementing this Regulation (see above).

28. Four stakeholders responded to the public consultation, and Interconnector (UK) published their (non-confidential) responses on its website.

2.2. CONSULTATION

29. As part of this decision, based on Article 23, §1 of its Rules of Procedure, CREG's Board of Directors has decided, in application of Article 40, 2° of its Rules of Procedure, not to organise a consultation for the following reasons:

- Interconnector (UK) has already organised an effective public consultation on its Charging Methodology¹²;
- This decision is an approval decision.

3. ANALYSIS OF THE CHARGING METHODOLOGY

3.1. SCOPE OF THE CHARGING METHODOLOGY

30. The Charging Methodology submitted by Interconnector (UK) relates to the Interconnector (UK) Access Agreement ("IAA") and the Interconnector (UK) Access Code ("IAC"). Both documents were (conditionally) approved by CREG¹³ and Ofgem.

31. CREG will exercise its power of approval with regard to the transportation services sold through auctions on the PRISMA platform, and any other allocation mechanism, under the terms of the IAA and the IAC and chapter 2.2 of the submitted Charging Methodology.

¹¹ <http://www.interconnector.com/about-us/our-consultations/latest-consultation/>

¹² See paragraph 27 of this decision

¹³ Decision (B)1908 of 28 February 2019 on the proposed amendments to the IUK Access Agreement, the IUK Access Code and the Access Programme, submitted by Interconnector (UK) Limited

3.2. CONTENT OF THE CHARGING METHODOLOGY

32. In the Charging Methodology it submitted¹⁴, Interconnector (UK) describes a number of general principles regarding the price for capacity sales for Entry and Exit Capacity. This price will be set by IUK to ensure objective, non-discriminatory treatment of all shippers taking part in capacity sales.

33. The price will be fixed at the time of allocation, thus providing IAA Shippers with price certainty. For products to be used in a future year, this fixed price will be subject to annual indexation. In that connection, Interconnector (UK) states¹⁵:

“Entry or Exit Capacity prices to apply in a future year for all capacity that is sold under any Allocation Mechanism will be subject to annual indexation as provided for in the IAC and outlined in the Charging Statement.”

34. According to IUK, the key factors determining the prices are:

- *“Competitive forces and the prices of competing and complementary services;*
- *Operating costs for operating and maintaining the company and its assets;*
- *Capital expenditures required to maintain the service;*
- *Projected customer demand for IUK capacity and the forecast volume of both long term and short term sales under a range of market scenarios; and*
- *A risk premium applied to the yearly standard capacity product reflecting the benefits of certainty regarding the level of the price. The level of the premium will be published in the IUK Charging Statement.”*

35. Interconnector (UK) specifies that the main principles for the price structure of any Allocation Mechanism include, but are not limited to, the following¹⁶:

- *A booking incentive may be offered. The booking incentive would be applied to any eligible booking to determine the total payable capacity charge including the incentive. Booking incentives may, for example, be offered to encourage bookings that are longer in duration to support the financial stability of the interconnector, or combination bookings. Any booking incentive will be published in the Charging Statement in advance of the relevant Allocation Mechanism.*
- *A Capacity Transaction for a Firm Annual Capacity Product for five or more successive Gas Years benefits from a “lowest price guarantee” in that the Capacity Charge is the lower of: (i) the sum of the price and the premium; and (ii) the lowest price for which such Firm Annual Capacity Product is allocated in a CAM auction via PRISMA auction for that Gas Year or if there is no allocation for that Gas Year, the lowest IUK price for that Firm Annual Capacity Product for that Gas Year.”*

¹⁴ See chapter 2.2.1. of the Charging Methodology

¹⁵ See chapter 2.3. of the submitted Charging Methodology

¹⁶ See chapter 2.2.4. of the Charging Methodology

36. It is important to bear in mind that: “[w]hilst ensuring no undue discrimination, the price can differ for different Entry and Exit points, types of capacity, durations of time and capacity periods to reflect the different underlying market and cost conditions.”

37. In that regard, CREG notes that the price multipliers for each Entry and Exit Capacity product less than a year in duration relative to the annual price for firm capacity will not exceed the following caps¹⁷. These binding caps will also apply to equivalent-duration Implicit Allocation products for capacity sales transacted in the same gas year.

Quarterly	1.5
Monthly	3
Daily	6
Within-Day	6

38. CREG also notes that Interconnector (UK) will publish the pricing information for CAM Standard Capacity Products 30 days in advance of the Annual CAM auction, as shown below¹⁸.

PUBLICATION	YEARLY	QUARTERLY	MONTHLY	DAILY	WITHIN-DAY
At least 30 days before the Annual CAM auction	Actual	Actual	Binding multiplier cap for the subsequent gas year	Binding multiplier cap for the subsequent gas year	Binding multiplier cap for the subsequent gas year

39. CREG further notes that the actual price for Monthly, Daily and Within-Day CAM Standard Capacity products will be published as follows¹⁹:

PUBLICATION	MONTHLY	DAILY	WITHIN-DAY
Prices published in advance of the relevant CAM auction	2 weeks	6 hours	1 hour

¹⁷ See Table T1 of the submitted Charging Methodology

¹⁸ See Table T2 of the submitted Charging Methodology

¹⁹ See Table T3 of the submitted Charging Methodology

40. The prices for non-standard Implicit Allocation products will fit within the binding caps of the CAM Standard Capacity Products, using a composite approach based on shorter duration products where possible. The price of Implicit Allocation products longer than one month in duration will be published at least a week in advance of the relevant sales offering. The price of Implicit Allocation products one month in duration or less will be published at least a day in advance of the relevant sales offering.

41. Following analysis of the Charging Methodology submitted by Interconnector (UK) on 11 December 2018, the main features of which are summarised above, CREG believes that it passes the test of principles of European and national law (see chapter 2 of this decision).

42. As regards the implementation of Regulation 2017/460, CREG, like ACER²⁰, believes that the initial registration fee²¹ and the monthly administration fee²² should be treated as non-transmission services.

4. GENERAL RESERVATION

In accordance with the final line of Article 41(2) of Directive 2009/73, this decision is without prejudice to future use of CREG's tariff power. CREG has the power to permanently modify the tariffs or the methodology. This power is based on Articles 41(6) and 41(10) of Directive 2009/73 and its transposition into Belgian law.

²⁰ Agency Report - Analysis of the Consultation Document on the Gas Transmission Tariff Structure for the Interconnector UK http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Agency%20Report%20-%20analysis%20of%20the%20consultation%20document%20for%20Interconnector%20UK.pdf

²¹ See chapter 4 of the submitted Charging Methodology

²² See chapter 5 of the submitted Charging Methodology

5. OPERATIVE PART

In application of Article 15/14, § 2, paragraph 2, 9°bis of the Gas Act, Article 13 of Regulation 715/2009 and Article 27(4) of Regulation 2017/460, CREG decides to approve the Charging Methodology for Interconnector (UK) transportation services related to the Interconnector (UK) Access Agreement and the Interconnector (UK) Access Code, submitted to CREG on 11 December 2018, on the understanding that Interconnector (UK) will take account of the remark made in paragraph 42 of this decision in a subsequent revision of its Charging Methodology.

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For the Commission for Electricity and Gas Regulation:

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Director

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