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Agency Report

Additional analysis of the Consultation Document on the Gas Transmission Tariff Structure for Spain

NRA: Comisión Nacional de los Mercados
y la Competencia (CNMC)

Main TSO: Enagás

8 May 2020

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1. ACER conclusion

- (1) The Agency issues the present Report as a follow-up of the first Agency Report providing the *Analysis of the consultation document on the gas transmission tariffs structure for Spain*¹ (“first Agency Report”) in order to analyse the new consultation document published by the Comisión Nacional de los Mercados y la Competencia (‘CNMC’). CNMC has launched a new consultation in order to address Spanish national administrative procedures².
- (2) CNMC proposes a Capacity Weighted Distance (‘CWD’) methodology with a 50/50 entry-exit split. Transmission tariffs to and from storage facilities are 100% discounted. With the new final consultation, CNMC proposes a 13.9% discount to entry transmission tariffs from liquefied natural gas (‘LNG’) facilities, which translates into a net 5% discount after rescaling. Furthermore, as in the previous final consultation, CNMC proposes to apply a commodity-based transmission tariff and no non-transmission tariffs.
- (3) The Agency, after having completed the analysis of the consultation document pursuant to Article 27(2) of Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a Network Code on Harmonised Transmission Tariff Structures for Gas (‘NC TAR’), concludes that:
 - CNMC has taken into account most of the remarks and recommendations contained in the first Agency Report. As a result:
 - .i. The new consultation document contains all the required information listed in Article 26(1) of the NC TAR: the comparison with the tariff of the prevailing year, the only piece of information missing in the previous consultation, has been added;
 - .ii. The whole consultation document has been translated to English, making the Agency’s and non-Spanish speaking stakeholders’ assessment easier;
 - .iii. The simplified tariff model, already compliant with the requirements of Article 30(2)(b) of the NC TAR, has been completed with the values of the fixed charges per customer;
 - The newly proposed discount to entry transmission tariffs from LNG facilities is compliant with the NC TAR requirements;
 - The proposed discount to entry tariffs from LNG facilities and the previously proposed adjustments, all compliant with the NC TAR requirements, create cross-subsidisation among intra-system users. The resulting cross-subsidisation is an effect of the compliant application of the NC TAR, therefore the Agency considers it not undue, as requested by Article 7(c) on the NC TAR.
 - Revenue reconciliation and inter-TSO compensation (‘ITC’) are going to be set by the Government rather than by CNMC: this is not compliant with the NC TAR;
 - All other Agency’s conclusions on the RPM compliance with NC TAR reported in paragraph (2) of the first Agency Report are confirmed.

¹ https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Agency%20Report%20-%20analysis%20of%20the%20consultation%20document%20for%20Spain.pdf

² More details are provided in section 2.2 of this Report.

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- (4) The Agency suggests that, in its final decision, CNMC set the discount to entry tariffs from LNG terminals to reflect the targeted need of security of supply ('SoS'). This implies setting, before rescaling, a higher discount so that, after rescaling, the discount reaches the desired 13.9%.
- (5) Finally, the Agency notes that, as clarified in the consultation document, CNMC will not set the ITC and revenue reconciliation. On this regard, the Agency notes that CNMC shall exercise the powers conferred upon by Articles 10(5) and 20 of the NC TAR and set the revenue reconciliation and ITC. In this context, CNMC should perform the revenue reconciliation and ITC separately for each regulated activity in the natural gas sector, thus ending cross-subsidies between them by respecting the principle stated in Article 41(1)(f) of the Gas Directive.

2. Introduction

- (6) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas (NC TAR).
- (7) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodologies for all entry-exit systems³. This Report presents the Agency's analysis for the transmission system of Spain.

2.1 How to read this Report

- (8) The Agency publishes the present additional Report on the CNMC consultation of the RPM to carry out its task according to Article 27 of NC TAR.
- (9) Given the short time-lag passed from the first Agency Report, published on 22 November 2019, and the limited changes applied to the new CNMC's consultation document compared to the previous one, the Agency publishes its analysis in the form of a short addendum to its first Agency Report.
- (10) As a result, the present addendum only assesses:
 - The NC TAR compliance of the changes CNMC has proposed to the previous consultation document;
 - If and how CNMC has taken into account the Agency's remarks and recommendations presented in the first Agency Report.

2.2 Why a new consultation?

- (11) CNMC, in line with the Spanish national law⁴, after completing the consultation process, sent its draft tariffs decision to the Ministry for the Ecological Transition. On 5 September 2019, the report issued by the Ministry for Ecological Transition highlighted that the draft decision is only partially adapted to the energy policy guidelines that CNMC has to follow⁵.
- (12) The Agency highlights the following elements from the Ministry's report which are relevant for the scope of the present Agency's Report:
 - The methodology does not foresee the SoS needs of domestic consumers, which instead should be taken into consideration when setting the RPM;

³ With the exception of Article 10(2)(b), when different RPMs may be applied by the TSOs within an entry-exit zone.

⁴ According to the Article (1)(4) of the Royal Decree-Law 1/2019 amending Law 3/2013 on the establishment of the CNMC, CNMC shall send the proposal of the tariff decision and its impact assessment to the Ministry two months in advance of the scheduled approval.

⁵ The guidelines are included in the Order TEC/406/2019, of 5 April. CNMC has no obligation to obey the guidelines. In case the Ministry considers that CNMC's proposed tariff decision does not follow such guidelines, a Cooperation Commission between the Ministry and CNMC may be arranged. After debating in such Cooperation Commission, if a common position is not reached, CNMC can approve the tariff decision with the statement "heard the Ministry"; if instead an agreement is reached, the tariff decision will report the statement "in accordance with the energy policy guidelines provided by the Ministry".

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- The definition of the services provided by transmission facilities, local networks, and LNG plants and the regulatory development of the settlement procedure is in the Ministry's competence and not in CNMC's, as the NRA would have wanted to be⁶.
- (13) As a result of the Ministry's observations, CNMC modified the initial draft tariffs decision.
- (14) Following CNMC's modifications to the initial draft tariffs decision, the Council of State⁷ on 7 February 2020⁸ recommended CNMC to re-launch the consultation because the modified text of the tariffs decision had, in its view, evolved significantly compared to the one initially consulted with stakeholders. In the Council of State's view, the consultation should be updated with the justification on the discount provided to entry points from LNG facilities, based on SoS considerations. Re-launching the consultation would allow stakeholders and the Agency to express their views on the changes applied to the RPM.
- (15) Therefore CNMC has decided to publish a new consultation and related draft tariffs decision in order to address the recommendation of the Council of State.

2.3 Consultation timeline

- (16) CNMC launched the new public consultation on 12 February 2020. CNMC sent a full English version of the new tariff consultation to the Agency on 21 February. The Agency appreciates that CNMC took into account the recommendation to translate the full text of the consultation to English, in order to allow a more informed participation of stakeholders and a clearer information exchange with the Agency. The consultation closed on 13 April 2020. On 15 April 2020, CNMC sent all received responses to the public consultation to the Agency. On 20 April 2020, CNMC sent to the Agency the English summary of the responses to the public consultation.

3. Changes compared to the previous final consultation

3.1 Simplified tariff model

- (17) As requested in the first Agency Report, CNMC provides a simplified tariff model in the new consultation document which includes the values of the fixed charges per customer.
- (18) With this upgrade, the Agency considers that network users have access to tariff information more easily and transparently, therefore the compliance with the requirements of Article 30(2)(b) of the NC TAR is completed.

3.2 Discount to entry points from LNG terminals

- (19) CNMC has introduced a proposed discount on entry tariffs from LNG terminals to meet the energy policy guidelines set by the national Government and to take into account the stakeholders' feedback obtained in the previous final consultation. According to the guidelines, the RPM shall

⁶ See section 3.5 for more details.

⁷ Consejo de Estado, which acts in this process as the highest advisory body to the Government.

⁸ With Opinion 30/2020 of February 6, 2020.

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promote the use of national LNG regasification terminals compared to interconnection points ('IPs'), while respecting compliance with the EU guidelines on state aid. The guidelines further clarify that LNG terminals contribute to SoS and part of the investment in these facilities can be recovered from the users of the whole gas system⁹, so that users of the LNG terminals are not penalised compared to users of IPs.

- (20) According to Article 9(2) of NC TAR and CNMC's reasoning, a discount should apply to entry points from LNG. The discount is set at 13.9%, corresponding to the average entry capacity from the Barcelona LNG facility during the regulatory period over the overall entry capacity of the gas transmission system. CNMC selects the entry capacity into the transmission network of the Barcelona LNG facility since, as it is the largest import source into the Spanish gas transmission system, this facility is designated to calculate the compliance with the "N-1" criterion on SoS¹⁰. The logic underlying the "N-1" criterion is that SoS shall be evaluated by excluding the largest import facility from the overall import capacity, as if it was unavailable. By mimicking the unavailability of the transmission entry capacity from the Barcelona LNG terminal and charging the respective transmission entry tariffs on all entry points, CNMC gets a proxy of the value the Barcelona LNG terminal offers in terms of SoS to the whole system.
- (21) The Agency considers that the discount is compliant with the NC TAR, since it is allowed by Article 9(2) of NC TAR. The Agency welcomes that CNMC quantitatively links the amount of the discount to the SoS needs provided in the SoS Regulation and that the analysis is presented in a transparent way.
- (22) The Agency notes that the rescaling after the application of the discount has been applied to all points, including the entry from LNG facilities, as required by the Article 6(4) of NC TAR. As a result, the net discount offered to LNG facilities equals 5%. The Agency finds the application of the rescaling compliant with the NC TAR.
- (23) The Agency suggests CNMC to set the discount to entry tariffs from LNG terminals before rescaling at a higher value than the desired outcome of 13.9%, so that the net resulting discount is indeed 13.9% and satisfies the claimed SoS needs.
- (24) The Agency has verified that the capacity Cost Allocation assessment ('CAA') index remains very low (0.07%) also after the application of all adjustments, including the discount to entry from LNG terminals. The Agency takes this as an indication that the proposed RPM and adjustments do not create undue cross-subsidisation between intra-system and cross-system users.

3.3 Input parameters to the RPM

- (25) The Agency takes note that the new consultation includes updated data on the allowed revenue of the TSOs approved for 2020, on the gas demand, and consequently on the capacity forecast.
- (26) The Agency welcomes these updates and considers them an improvement as they contribute to providing more accurate tariffs.

⁹ The Agency notes that CNMC follows the principles of the Government guidelines in two ways: on the one hand, by setting a discount on transmission tariffs from LNG facilities; on the other hand, by recovering part of the LNG allowed revenue directly from end consumer, instead of from the users of the LNG terminals. This Report focuses on the former aspects, since the latter is out of the Report's scope.

¹⁰ According to Regulation (EU) No. 2017/1938 of the European Parliament and of the Council of 25 October 2017.

3.4 Comparison with tariffs in the prevailing year

- (27) In the first Agency Report, the Agency recommended¹¹ CNMC to publish a comparison with the prevailing tariffs, clearly stating the assumptions adopted.
- (28) With the new tariff consultation, CNMC provides such comparison.
- (29) The Agency considers that the methodology and assumption adopted to compare the proposed tariffs with the prevailing ones is compliant with the NC TAR¹².
- (30) The comparison shows that the highest tariff increase occurs at the entry to the virtual interconnection point ('VIP') Ibérico (+190%) and interconnection point Tarifa (+141%). All entry points face tariff increases, because of the proposed higher entry exit split (50/50) compared to the prevailing tariffs system (28/72).
- (31) The Agency also considers that the price variation compared to the prevailing tariffs are the result of the compliant application of the RPM, therefore they are cost-reflective and do not distort cross-border trade¹³.

3.5 NRA's competence on the reconciliation of revenue and on the ITC

- (32) CNMC states in its consultation document that it has no competences on revenue reconciliation and on the ITC methodology and its values. The Government retained these competences based on national law¹⁴. Therefore, unlike recommended by the Agency in the first Agency Report, the issues related to the revenue reconciliation could not be solved¹⁵.
- (33) The Agency considers that, based on Articles 10(5) and 20 of the NC TAR, the ITC and reconciliation are in the competence of the NRA.
- (34) Therefore, CNMC should exercise its competences, according to the NC TAR and EU legislation.
- (35) On top of that, the Agency notices that the current revenue reconciliation and ITC systems, managed by the Government, creates cross-subsidisation between all the regulated¹⁶ activities in the gas sector, contradicting the principle of Article 41(1)(f) of the Gas Directive¹⁷. In fact, the current revenue reconciliation and ITC address all these regulated activities together.

¹¹ Paragraph (3) at: https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/Agency%20Report%20-%20analysis%20of%20the%20consultation%20document%20for%20Spain.pdf

¹² Since the Government had set the prevailing tariffs with a methodology not comparable to the proposed RPM, CNMC has develop some assumption to make a comparison possible. See Section 4.8 of the consultation document for details.

¹³ As shown in section 4.9, on pages 74-78, of the consultation document, the increased tariffs produced by the new RPM in the first year of the new regulatory period will gradually decline in the course of the new regulatory period, until September 2026. This is the result of a gradual reduction of the yearly share of allowed revenues to be recovered through tariffs, which overall decrease in the new regulatory period.

¹⁴ Royal Decree-Law 1/2019, which transfers tariffs setting powers from the Government to CNMC to align with the requirements of the EU energy acquis, does not transfer to the NRA the right to set ITC and revenue reconciliation. This results in an incomplete application of the EU energy acquis.

¹⁵ In particular, the last bullets of paragraphs (2) and (3) of the first Agency Report addressed the revenue reconciliation, where the Agency provided a specific recommendation, while paragraph (16) mentioned the ITC.

¹⁶ Transmission, regasification, distribution, and storage.

¹⁷ Duties and powers of the regulatory authority: "The regulatory authority shall have the following duties: [...] ensuring that there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities."

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- (36) The Agency recommends CNMC to terminate the cross-subsidies between the regulated activities in the gas sector by creating separate revenue reconciliation pots and by performing the ITC separately for each regulated activity in the gas sector, according to the NC TAR and EU legislation.

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Annex 2: List of abbreviations

| Acronym | Definition |
|---------------|---|
| ACER | Agency for the Cooperation of Energy Regulators |
| CAA | Cost Allocation Assessment |
| CNMC | Comisión Nacional de los Mercados y la Competencia |
| CWD | Capacity Weighted Distance |
| EC | European Commission |
| EU | European Union |
| IP | Interconnection Point |
| MS | Member State |
| NC TAR | Network code on harmonised transmission tariff structures for gas |
| NRA | National Regulatory Authority |
| RPM | Reference Price Methodology |
| TSO | Transmission System Operator |



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