



European Union Agency for the Cooperation
of Energy Regulators

Agency Report

Analysis of the consultation document for
the non-transmission tariffs applicable for
the emergency supply service provided to
non-protected consumers in Denmark

NRA: Forsyningstilsynet
TSO: Energinet

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1. ACER conclusion

- (1) The Danish transmission system operator ('TSO'), Energinet, carried out a public consultation between 29 February and 29 April 2024 on the non-transmission tariff methodology applicable for the emergency supply service provided to non-protected consumers to allocate the costs of filling the Danish storages related to situations of security of supply emergency ('SoS emergency'). The consultation was extended between 6 May to 6 June 2024.
- (2) ACER has a legal mandate under Article 27(2) of the network code on harmonised transmission tariff structures for gas ('NC TAR'), to publish the present report since non-transmission tariffs are one aspect of the overall reference price methodology. Yearly non-transmission costs represent about 8% of the allowed revenue in the Danish system.
- (3) The non-transmission tariff for non-protected consumers is designed as a two-step mechanism:
 - an ex-ante postage stamp tariff to allocate the cost of the emergency tools;
 - an ex-post compensation to ensure that the costs are allocated in proportion to the benefits of the individual consumers, from the relative allocation of gas, in case of a Security of Supply event ('SoS event').
- (4) Non-protected customers are ensured 72 hours of gas supply in case the emergency tools are activated after an SoS emergency is declared. Different probabilities of interruption arise only if there are still volumes of gas available to non-protected consumers after this time.¹
- (5) The Agency notes that the proposed postage stamp tariff does not reflect the risk of interruption associated to the different user categories², the priority list established within the socially critical consumption, and the inclusion in a biomethane pocket. The Agency notes that the proposed methodology could potentially result in cross-subsidisation as all non-protected consumers would contribute in the same way to cost-recovery, while they are subject to different probabilities of interruption.
- (6) The Agency acknowledges the cost-reflectivity of the proposed methodology stems from the inherent uncertainty derived from the SoS event, and the national choice, made by the government, to maintain the confidentiality on the priority order in which non-protected consumers would be served in case of an SoS event. In this context, the TSO lacks sufficient information to calculate fully cost-reflective tariffs. Consequently and based on the information provided in the consultation document, the Agency cannot assess the magnitude of the cross-subsidy created by the proposed methodology.
- (7) Energinet proposes to set up an ex-post compensation mechanism to improve the cost-reflectivity and decrease the cross-subsidy of the proposed ex-ante tariffs. The Agency notes that the consultation document provides limited information about the functioning of the ex-post

¹ In bilateral calls with the Agency, the TSO emphasized that the emergency tools are sized to fulfil the consumption of non-protected consumers for 72 hours, therefore the quantities subject to the ex-post compensation shall be marginal.

² Categorized between socially critical consumption and non-socially critical consumption.

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compensation mechanism. The Agency concludes that it is not possible to assess how much the compensation mechanism improves the cost reflectivity and decreases the cross-subsidy introduced by the ex-ante tariff.

- (8) The Agency concludes that the proposed non-transmission tariffs are compliant with the principle of non-discrimination, objectivity, and with the requirement to be charged to the beneficiaries. The Agency concludes that compliance with the requirement on cost-reflectivity is achieved to the extent possible.
- (9) The Agency recommends that the National Regulatory Authority ('NRA'), Forsyningstilsynet, in the final decision according to Article 27 of the NC TAR provides a more detailed description of the functioning of the ex-post compensation mechanism to increase the level of transparency.

2. Introduction

- (10) Commission Regulation (EU) 2017/460 of 16 March 2017 establishes a network code on harmonised transmission tariff structures for gas.
- (11) Article 27 of the NC TAR requires the Agency to analyse the consultation documents on the reference price methodologies for all entry-exit systems.³ This Report presents the analysis of the Agency of the consultation document where the Danish TSO proposes to apply a non-transmission tariff applicable to non-protected consumers to allocate the cost of the Danish emergency supply service.
- (12) The proposed methodology is consulted as an addendum of the existing methodology to include the treatment of non-protected consumers also in biomethane pocket areas⁴.
- (13) On 29 February 2024, the TSO, forwarded the consultation documents to the Agency. The consultation was launched on 29 February 2024 and remained open until 29 April 2024. After the consultation deadline, Energinet, following a request of the NRA, provided additional clarifications on the methodology in the consultation documents. The consultation has therefore been extended from 6 May to 6 June 2024. The shorter period for the consultation, compared to the requirement of Article 26(2) of the NC TAR, has been discussed and agreed with the NRA due to the necessity of completing the process by 1 October 2024 in order to ensure the continuation of the emergency supply service mechanism.

Reading guide

- (14) Chapter 3 describes the emergency supply service and the proposed non-transmission tariffs. Chapter 4 focuses on the compliance of the proposed non-transmission tariffs. This document contains two annexes, respectively the legal framework and a list of abbreviations.

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

⁴ Non-protected consumers could be located in areas of the transmission network to which biomethane production is connected and with limited possibility to transporting the biomethane to other parts of the network.

3. Description of emergency supply service

- (15) The TSO has two different emergency tools to procure gas in case of an SoS emergency:
- it can directly acquire and store gas (this is referred to as 'emergency gas' in this report);
 - it can acquire the option to use the gas stored by shippers⁵ (this is referred to as 'filling requirement' in this report).
- (16) In the consultation analysed in this report, Energinet assessed the impact that biomethane pockets would have on this security of supply scheme. Technical limitations might not allow the transportation of gas injected by biomethane production to other parts of the network forming a pocket. As a result, in the event of an SoS emergency, non-protected consumers in these pockets could be supplied by more gas than other non-protected consumers with no or limited access to it.
- (17) While the inclusion of a non-protected consumer in a biomethane pocket could initially be estimated by the TSO, this status could change over time. Biomethane pockets are not static, since production and consumption as well as the building of reverse flow plants is under development. Existing pockets may grow or shrink over time. As a result, the possibility of a non-protected consumer being supplied more than other non-protected consumers could change over time.

3.1 Ex-ante tariff methodology

- (18) The proposed ex-ante non-transmission tariff methodology is a postage-stamp methodology applied to all non-protected consumers at domestic exit points. It aims to allocate the cost⁶ incurred by the TSO for the emergency gas, the related storage capacity, and the filling requirements⁷.
- (19) The Agency notes that a postage stamp tariff does not reflect the risk of interruption⁸ associated to:
- the different user categories⁹;
 - the priority list established within the socially critical consumption category;
 - the inclusion in a biomethane pocket.
- (20) During an SoS event, different consumption scenarios will be possible depending on the gas availability and multiple factors¹⁰ that determine the probability of interruption. Consumers in biomethane pockets or included in the priority list for the socially critical consumption could be

⁵ With this mechanism the TSO remunerates the shippers to inject gas in the gas storages and keeping it available from November to March of the following year to be used in case of an SoS emergency.

⁶ The total cost of the emergency tools is borne 15% by non-protected consumers and the remaining 85% by protected consumers. This ratio, approved in 2014 by NRA decision, does not represent the current gas volumes distribution of the emergency tools between protected and non-protected consumers.

⁷ The TSO remarks that additional costs related to the possibility to withdraw gas from storages in an emergency situation are included.

⁸ Non-protected consumers would receive the same level of protection during the first 72 hours after the activation of the emergency tools. Different probabilities of interruption arise only if there are still volumes of gas available to non-protected consumers after this time.

⁹ Categorised between socially critical consumption and non-socially critical consumption.

¹⁰ Including the location of a customer in the network and the flow dynamics that apply during an SoS event.

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supplied better than the other non-protected consumers, resulting in an uneven distribution of gas volumes.

- (21) The Agency acknowledges that these elements render the supply conditions during an emergency event uncertain, making the calculation of tariffs reflective of the probability of interruption (and thus reflecting the cost) challenging.
- (22) The Agency notes that a uniform price provided by the postage stamp methodology could potentially result in cross-subsidisation as users contribute evenly to recovering the costs of the emergency tools while being subject to different probabilities of interruption.
- (23) Based on the information provided in the consultation document, the Agency cannot assess the magnitude of this cross-subsidy and acknowledges the uncertainty and lack of sufficient information to establish fully cost-reflective tariffs.

3.2 Ex-post compensation mechanism

- (24) To mitigate the uncertainty described in paragraphs (18) to (22), Energinet proposes an ex-post compensation mechanism for non-protected consumers that will apply only in the case of an SoS event.
- (25) In case of an SoS event occurs, a compensation charge is established for non-protected consumers that are supplied above the pro-rata¹¹ allocation to compensate other non-protected consumers. This charge aims at reflecting being prioritized compared to the other non-protected consumers.
- (26) The Agency acknowledges that this ex-post compensation is intended to correct the ex-ante tariff to reflect the probability of interruption of each non-protected customer. This correction is applicable to the ex-ante tariff paid by non-protected consumers during a period of one year before the SoS event. The Agency acknowledges that the correction of the ex-ante tariff can only be performed after an SoS emergency, given that the order of interruption¹² of non-protected customers before the occurrence of an SoS event is not known.
- (27) From the information provided in the consultation document, it is not possible to assess the extent to which the compensation mechanism allows correcting the possible lack of cost-reflectivity of the ex-ante tariff. In addition, the consultation document does not justify the choice of the average price¹³ used to set the value of gas allocated above pro-rata. At the same time, the Agency acknowledges that the uncertainty resulting from a possible SoS event and factors affecting the

¹¹ In the event that volumes of gas will be available after 72 hours from the activation of the emergency tools, and after the priority groups have been supplied, the remaining gas volumes will be allocated pro-rata among the other non-protected consumers.

¹² Please refer to paragraphs (19) and (20) of this report.

¹³ The average price is computed as the average between tariff paid by protected consumers and the tariff paid by non-protected consumers, with the objective (explained by the TSO) to find a reasonable price to price the increased supplied granted to non-protected consumers above pro-rata.

probability of interruption, unknown to and not controlled by the TSO, render the estimation of the compensation effect difficult.

- (28) The Agency notes that the consultation document provides limited information on the functioning of the compensation mechanism. The Agency had to rely on bilateral interaction with the TSO to understand the details of the mechanism, therefore recommends that the NRA in the final decision, according to Article 27 of the NC TAR, provides a more detailed description of the functioning of the ex-post compensation mechanism to increase the level of transparency.

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

- (29) 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, namely '*The non-transmission tariffs shall be cost reflective, non-discriminatory, objective and transparent and shall be charged to the beneficiaries of the non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.*'
- (30) Considering that the main elements of the methodology have not changed since the analysis completed by the Agency in its 2022 Report¹⁴ and that the newly included element, regarding the consumption in biomethane pockets in case of an SoS emergency, does not change the overall compliance assessment of the method, the Agency repeats his previous considerations.
- (31) On the requirement of cost-reflectivity, the Agency notes that non-protected consumers pay the same ex-ante tariff regardless of their probability of interruption during an SoS event. Tariffs cannot ex-ante be calculated to take into account the probability of interruption which is available only after the SoS emergency is declared. While the ex-post compensation mechanism allows for a correction of the ex-ante tariff in case an SoS emergency occurs, it is not possible to assess the extent of the correction. Nonetheless, the Agency concludes that the cost-reflectivity requirement is fulfilled to the extent possible, considering the information available ex-ante to calculate tariffs.
- (32) The Agency concludes that the proposed non-transmission tariffs are compliant with the requirement on non-discrimination as the same tariff principles apply to all non-protected consumers.
- (33) The Agency considers the need for this service as objective and justified, since it responds to a clear security of supply need, as it is laid out in Regulation (EU) 2022/1032 based on Article 6(a) and (b).

¹⁴ [Analysis of the consultation document for the non-transmission tariffs applicable for the emergency supply service provided to non-protected consumers in Denmark](#)

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- (34) Regarding the requirement to '*charge the proposed non-transmission tariffs to the beneficiaries of the non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both*', the Agency divides the analysis into two parts:
- The consideration of possible cross-subsidisation between network users within a Member State follows the reasoning on cost reflectivity. A uniform price could potentially result in a cross-subsidisation effect as discussed in paragraph (22), however, the ex-ante information available does not allow to establish fully cost-reflective tariffs. In the case of an SoS event, the ex-post compensation mechanism described is aimed at correcting this distortion.
 - On the requirement of minimising cross-subsidisation between network users within and outside a Member State, the Agency notes that the proposed non-transmission tariffs are only set at domestic exits and are charged to the beneficiaries, namely to the users of the network who could be supplied in an SoS emergency, therefore there is no cross-border effect.
- (35) Overall, the Agency concludes that the proposed non-transmission tariffs achieve a reasonable degree of cost-reflectivity, are non-discriminatory, are objective, and are charged to the beneficiaries.

Annex 1: Legal framework

(36) 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.*

(37) 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.*

(38) 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.

(39) 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.

(40) 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.

(41) 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
ENTSOG	European Network of Transmission System Operators for Gas
NRA	National Regulatory Authority
TSO	Transmission System Operator
EC	European Commission
EU	European Union
MS	Member State
NC TAR	Network code on harmonised transmission tariff structures for gas
IP	Interconnection Point
VIP	Virtual Interconnection Point
RPM	Reference Price Methodology
CWD	Capacity Weighted Distance
CAA	Cost Allocation Assessment
RAB	Regulated Asset Base
OPEX	Operational Expenditures
CAPEX	Capital Expenditures
SoS event	Security of Supply event
SoS emergency	Security of Supply emergency