Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonised transmission tariff structures for gas (Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular Article 6(11) thereof,

Whereas:

(1) In line with Regulation (EC) No 715/2009, it is necessary to establish a network code on harmonised transmission tariff structures for gas, and set out the Union-wide rules which have the objectives of contributing to market integration, enhancing security of supply and promoting the interconnection between gas networks.

(2) A crucial step in reaching these objectives is to increase the transparency of transmission tariff structures and procedures towards setting them. Therefore, it is necessary to set out the requirements for publishing the information related to the determination of the revenues of transmission system operators and to the derivation of different transmission and non-transmission tariffs. These requirements should enable network users to understand better the tariffs set for both transmission services and non-transmission services, as well as how such tariffs have changed, are set and may change. Additionally, network users should be able to understand the costs underlying transmission tariffs and to forecast transmission tariffs to a reasonable extent. The transparency requirements set out in this Regulation further harmonise the rule laid down in point 3.1.2(a) of Annex I to Regulation (EC) No 715/2009.

(3) After the introduction of the concept of the entry-exit system by Regulation (EC) No 715/2009, transmission costs are no longer directly associated to one specific route as entry and exit capacity can be contracted separately, and network users can have gas transported from any entry to any exit point. Under this framework, the transmission system operator decides the most efficient way of flowing gas through the system. Hence, in order to achieve and ensure a reasonable level of cost reflectivity and predictability in such a system, transmission tariffs need to be based on a reference price methodology using specific cost drivers. The guiding principles in order to apply a consistent and transparent reference price methodology should be set out. The obligation to consult on the proposed reference price methodology should be laid down. Where the proposed reference price methodology is other than the capacity weighted

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distance reference price methodology, the latter should serve as a counterfactual for comparison with the proposed reference price methodology.

(4) In order to avoid double charging for transmission to and from storage facilities, this Regulation should set a minimum discount acknowledging the general contribution to system flexibility and security of supply of such infrastructure. Storage facilities with direct access to the transmission systems of two or more transmission system operators in directly connected entry-exit systems, or simultaneously to a transmission system and a distribution system allow for transporting gas between directly connected systems. Applying a discount at entry points from or exit points to storage facilities in cases where storage facilities are used to transport gas between directly connected systems would benefit these network users compared to other network users booking capacity products without a discount at interconnection points or using storage facilities to transport gas within the same system. This Regulation should introduce mechanisms to avoid such discrimination.

(5) In order to promote security of supply, the granting of discounts should be considered for entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems.

(6) Transmission system operators in certain entry-exit systems transport significantly more gas into other systems than for consumption into their own entry-exit system. Consequently, reference price methodologies should include safeguards required to shelter such captive customers from risks related to large transit flows.

(7) In order to promote stability of transmission tariffs for network users, to foster financial stability and to avoid detrimental effects on the revenue and cash flow positions of transmission system operators, principles for revenue reconciliation should be set out.

(8) In addition, rules should be set out on tariff principles for incremental capacity realised in a market-based manner according to the process set out in Articles 26 to 30 of Commission Regulation (EU) 2017/459[(2)]. In case realisation of incremental capacity leads to a level of cross-subsidisation that cannot be justified, as captive costumers would be exposed to a large share of the volume risk, this Regulation should introduce mechanisms to alleviate such risks.

(9) This Regulation should be applicable to the non-exempted part of major new infrastructures which have received an exemption pursuant to Article 36 of Directive 2009/73/EC of the European Parliament and of the Council[(3)] from Article 41(6), (8) and (10) of that Directive. In cases where the specific nature of interconnectors has been acknowledged at European level by an exemption in accordance with Article 36 of Directive 2009/73/EC or by other means, national regulatory authorities should have the power to grant a derogation from requirements of this Regulation which would jeopardise the efficient operation of such interconnectors.

(10) This Regulation should be without prejudice to application of Union and national competition rules, in particular the prohibitions of restrictive agreements (Article 101 of the Treaty on the Functioning of the European Union) and of abuse of a dominant

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position (Article 102 of the Treaty on the Functioning of the European Union). The harmonised transmission tariff structures put in place should be designed in such a way as to avoid foreclosure of downstream supply markets.

(11) National regulatory authorities and transmission system operators should have regard to best practices and endeavours to harmonise processes for the implementation of this Regulation. Acting in accordance with Article 7 of Regulation (EC) No 713/2009 of the European Parliament and of the Council[(4)], the Agency for the Cooperation of Energy Regulators and the national regulatory authorities should ensure that rules on harmonised transmission tariff structures for gas are implemented across the Union in the most effective way.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Committee established in accordance with Article 51 of Directive 2009/73/EC,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a network code setting out the rules on harmonised transmission tariff structures for gas, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard capacity products.

Article 2

Scope

1 This Regulation shall apply to all entry points and all exit points of gas transmission networks with the exception of Chapters III, V, VI, Article 28, Article 31(2) and (3) and Chapter IX which shall apply only to interconnection points. Chapters III, V, VI, Article 28 and Chapter IX shall apply to entry points from third countries or exit points to third countries, or both, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459 at those points.

2 This Regulation shall not apply in Member States which have been granted a derogation under Article 49 of Directive 2009/73/EC, for the duration of that derogation.

Article 3

Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 of Regulation (EU) 2017/459, Article 3 of Commission Regulation

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(EU) No 312/2014[(5)], Article 2 of Commission Regulation (EU) 2015/703[(6)] as well as Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

(1) 'reference price' means the price for a capacity product for firm capacity with a duration of one year, which is applicable at entry and exit points and which is used to set capacity-based transmission tariffs;

(2) 'reference price methodology' means the methodology applied to the part of the transmission services revenue to be recovered from capacity-based transmission tariffs with the aim of deriving reference prices;

(3) 'non-price cap regime' means a regulatory regime, such as the revenue cap, rate of return and cost plus regime, under which the allowed revenue for the transmission system operator is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

(4) 'non-transmission services revenue' means the part of the allowed or target revenue which is recovered by non-transmission tariffs;

(5) 'regulatory period' means the time period for which the general rules for the allowed or target revenue are set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

(6) 'transmission services revenue' means the part of the allowed or target revenue which is recovered by transmission tariffs;

(7) 'transmission tariffs' means the charges payable by network users for transmission services provided to them;

(8) 'intra-system network use' means transporting gas within an entry-exit system to customers connected to that same entry-exit system;

(9) 'cross-system network use' means transporting gas within an entry-exit system to customers connected to another entry-exit system;

(10) 'homogeneous group of points' means a group of one of the following types of points: entry interconnection points, exit interconnection points, domestic entry points, domestic exit points, entry points from storage facilities, exit points to storage facilities, entry points from liquefied natural gas facilities (hereinafter, referred to as 'LNG facilities'), exit points to LNG facilities and entry points from production facilities;

(11) 'allowed revenue' means the sum of transmission services revenue and non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period which such transmission system operator is entitled to obtain under a non-price cap regime and which is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

(12) 'transmission services' means the regulated services that are provided by the transmission system operator within the entry-exit system for the purpose of transmission;

(13) 'non-transmission tariffs' means the charges payable by network users for non-transmission services provided to them;

(14) 'target revenue' means the sum of expected transmission services revenue calculated in accordance with the principles set out in Article 13(1) of Regulation (EC) No 715/2009 and expected non-transmission services revenue for the provision of services

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by the transmission system operator for a specific time period within a given regulatory period under a price cap regime;

(15) 'non-transmission services' means the regulated services other than transmission services and other than services regulated by Regulation (EU) No 312/2014 that are provided by the transmission system operator;

(16) 'multiplier' means the factor applied to the respective proportion of the reference price in order to calculate the reserve price for a non-yearly standard capacity product;

(17) 'price cap regime' means a regulatory regime under which a maximum transmission tariff based on the target revenue is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

(18) 'cost driver' means a key determinant of the transmission system operator's activity which is correlated to the costs of that transmission system operator, such as distance or technical capacity;

(19) 'cluster of entry or exit points' means a homogeneous group of points or group of entry points or of exit points located within the vicinity of each other and which are considered as, respectively, one entry point or one exit point for the application of the reference price methodology;

(20) 'flow scenario' means 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 and for which there is at least one pipeline route allowing to flow gas into the transmission network at that entry point and out of the transmission network at that exit point, irrespective of whether the capacity is contracted at that entry point and that exit point;

(21) 'seasonal factor' means the factor reflecting the variation of demand within the year which may be applied in combination with the relevant multiplier;

(22) 'fixed payable price' means a price calculated in accordance with Article 24(b) where the reserve price is not subject to any adjustments;

(23) 'tariff period' means the time period during which a particular level of reference price is applicable, which minimum duration is one year and maximum duration is the duration of the regulatory period;

(24) 'regulatory account' means the account aggregating at least under- and over-recovery of the transmission services revenue under a non-price cap regime;

(25) 'auction premium' means the difference between the clearing price and the reserve price in an auction;

(26) 'floating payable price' means a price calculated in accordance with Article 24(a) where the reserve price is subject to adjustments such as revenue reconciliation, adjustment of the allowed revenue or adjustment of the forecasted contracted capacity.

Article 4

Transmission and non-transmission services and tariffs

1 A given service shall be considered a transmission services where both of the following criteria are met: