

Public consultation by the French energy regulatory Commission, Commission de Régulation de l'Énergie of May 3rd, 2010, on the enforcement of Article 7 of Regulation (EC) n° 1228/2003 of June 26th, 2003 and on conditions for access to the French electricity transmission grid for new exempt interconnectors

1. Introduction

1.1. Context

Article 14 of law n° 2000-108 of February 10th, 2000, amended, relating to the modernisation and development of the electricity public service (hereafter referred to as the « *law of February 10th, 2000* »), entrusts the electricity transmission system operator with the mission to develop the public transmission grid in order to, among other things, enable interconnection with other networks.

Article 7 of Regulation (EC) n° 1228/2003 of the European Parliament and Council of June 26th, 2003 on conditions for access to the network for cross-border exchanges in electricity (hereafter referred to as « *Regulation 1228/2003* ») sets the terms under which a new interconnector may be granted an exemption, by the national regulatory authorities, from all or part of the regulation in force in terms of third party access, approval of tariff-setting mechanisms, and use of revenues from the allocation of interconnection capacity.¹

Pursuant to article 7 of Regulation 1228/2003 and in the absence of conflicting provisions of the State, the national regulatory authority is, in principle, competent to process applications and grant exemptions to new interconnectors.

An exemption decision is an individual decision that creates a right, which is then notified to the applicant and published on the French energy regulatory Commission (CRE)'s website (see section 2.1.7 hereafter).

An exemption decision, which might have consequences in terms of processing requests for connection to the public electricity transmission network as well as in terms of accessing and using the network, would lead CRE to implement the provisions of article 37 of the law of February 10th, 2000.

In virtue of Article 2 of Regulation 1228/2003, an interconnector is a « *transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States* ». A new interconnector is defined as an interconnector that was not completed by July 15th, 2003.

Thus, the notion of '*new exempt interconnector*' results from European Community law and has not been defined in French law. As a result, it is necessary to state the regulation under which such a project would fall and possibly establish measures that take account of their specificities, in order to allow new exempt interconnectors to be integrated to the French regulated system.

During the public consultation carried out by CRE from April 2nd to May 2nd, 2009, the electricity market players expressed their views on the requirements for exemption and terms of grid access applicable to new exempt interconnectors. CRE took these contributions into account when drawing up the present document.

¹ CRE would like to remind readers that an exemption does not give the right to construct an interconnection, and that all projects must comply with legislation in force, in particular in terms of urbanism and environment but also concerning the technical requirements for connection to the electricity transmission grid, the procedures for requesting connection and the financial terms for accessing the electricity transmission grid.

1.2. Main principles

It is CRE's mission to ensure that the electricity market runs smoothly, to the end consumers' benefit. It must also ensure that conditions for access to the electricity transmission grids do not hinder the development of competition.²

Three main principles guided CRE when drawing up the present document. These principles also reflect the contributors' concerns on the public consultation of April 2nd, 2009.

1.2.1. Protecting the interests of end users and other network users

End users and other network users finance all regulated investment through the tariffs for use of the public electricity grids (TURPE), regardless of the *ex post* return on investment. As users bear the risk that benefits generated by the investment be lower than expected, it is essential that investment programmes proposed by the TSO be estimated profitable *ex ante*.

This principle also applies in the event of an application for exemption in view of an exempt interconnector. Indeed, a new exempt interconnector generates both positive (price convergence, improvement of security of supply, market liquidity) and negative (necessity to reinforce the network, impact on profit of existing interconnectors) externalities. It is therefore necessary to estimate the net economic profits for the community, in order to ensure a positive impact for end users.

1.2.2. Creating a stable, transparent and non-discriminatory regulatory framework

The exemption procedure and conditions for access to the electricity transmission grid that are applied to new exempt interconnectors must:

- Allow grid users to understand the direct and indirect consequences that being granted an exemption can have for them and to express their views on applications submitted to CRE ;
- Provide a stable and transparent regulatory framework for the investor, in order to guarantee maximum visibility ;
- Ensure that exempt and regulated lines at operation stage are dealt with in a non-discriminatory way.

1.2.3. Encouraging the integration of European electricity markets

CRE is working, in close cooperation with the other European regulators, towards creating favourable conditions to the integration of European electricity markets. A necessary condition for this integration is sufficient availability of interconnection capacity.

Adding to regulated interconnectors, some new exempt interconnectors can play a role in constructing the European market. However, it is essential that the regulatory framework encourage users of these new exempt interconnectors to positively contribute to market integration.

1.3. Organisation of the document

In the present consultation, CRE will outline what it considers to be the appropriate framework for efficiently inserting new exempt interconnectors into the French electrical regulated system. CRE:

- Establishes what could be included in the applications for exemption to be provided by the user of a new exempt interconnector; these documents should allow CRE to establish whether the conditions for exemption are met ;
- Proposes conditions for access and connection of new exempt interconnection lines to the transmission grid.

The proposals in this document are submitted to public consultation and do not prejudice in any way what CRE's final decision might be.

² Article 28 of the law of February 10th, 2000

The consultation terms, as well as the next steps to be taken, are presented at the end of the document.

2. Enforcement of Article 7 of Regulation 1228/2003

Article 7 of Regulation 1228/2003 (hereafter referred to as « *Article 7* ») offers the possibility of granting an exemption from Article 6(6) of the same Regulation (on the use of revenues from the allocation of interconnection) and/or Articles 20 (on third party access), 23(2), 23(3), 23(4) (on power to approve and modify rules for allocation and management of interconnection capacity) of Directive 2003/54/EC of June 26th, 2003.

As specified by the European Commission³, these exemptions can only be granted in exceptional cases: as a general rule, new interconnection lines are developed under the responsibility of the electricity transmission system operators in a regulated context.

In this section of the consultation, CRE proposes an application procedure, as well as a list of documents to be provided by anyone applying for exemption. This list of documents could remain for information only and be completed according to the specificities of each request. All requests received will be assessed individually, in accordance with (a) of Article 7(4)⁴.

2.1. Applying for exemption: assessment criteria

According to Article 7, to be granted an exemption, a project has to meet six conditions (numbered a to f). An application for exemption must include detailed information demonstrating that the project meets all of these conditions.

In the remainder of this section, CRE describes how an application for exemption could meet each of these conditions. It then indicates the basic principles that should be integrated in rules and methods for managing and allocating capacity on the new interconnector, as well as the essential documents to be included in an exemption application. This information is not exhaustive and can evolve according to the specificities of each request.

All applications for exemption submitted to CRE should be written in French. CRE can make documents in the application file available to public consultation, as long as the information provided does not involve professional secrecy or commercially sensitive information.

2.1.1. Increasing competition (condition a)

Condition *a* concerns increasing competition via the investment:

« *a) the investment must enhance competition in electricity supply* ».

More details on this condition are provided in the explanatory note on condition *f* (see section 2.1.3).

2.1.2. Risks (condition b)

Condition *b* concerns risks related to the project:

« *b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted* ».

³ Commission of the European Communities states in the document « *Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity* » of May 6th, 2009, that « *The Gas and Electricity Directives oblige transmission system operators (TSOs) to invest to meet reasonable market demand for transmission [...]. The necessary investment should therefore be realised by the TSOs provided that the ensuing costs are adequately compensated for by regulated tariffs* ».

⁴ « *The regulatory authority may, on a case by case basis, decide on the exemption referred to [...]* ».

French legislation entrusts the transmission system operator with the development, construction and operation of regulated interconnectors. Private investors can thus only construct and operate an interconnector within the context laid out in regulation 1228/2003.

In theory, it seems condition *b* is met as long as there is no similar project for a regulated interconnector⁵. In particular, the condition could be met if a project for a regulated interconnector exists, but the exemption requestor's acceptance of a higher risk enables him to propose a project which is more beneficial for the community, for example in terms of interconnection capacity or in terms of time needed to carry out the project.

In the case where, given the risk borne by the investor, a complete exemption is not judged necessary to carry out the project, a partial exemption can be granted. For example, CRE could grant a partial exemption from Article 6(6)⁶ by imposing a distribution of revenues or profits on the project manager. All or part of the revenues above a certain ceiling would then be used to increase interconnection capacity or would lessen charges to be covered by the tariff for use of the regulated network.

2.1.3. Impact of the exemption (condition *f*)

Condition *f* concerns the impact of the exemption:

« f) the exemption is not to the detriment of competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is linked ».

The analysis of the impact of the new interconnector on competition and on the effective functioning of the internal electricity market should take into account the exempt nature of the system under which the new interconnector will be operated. This implies the investor's identity, as well as his shareholders will be taken into account; as will be the proposed rules for allocation (see paragraph 2.1.5) and the management of interconnection capacity. The investor will have to show that, with the proposed allocation and management rules, offering interconnection capacity will not hinder competition or the effective functioning of the internal market. **CRE will pay particular attention to the impact of an allocation of very long term products (pluriannual) on the functioning of the markets and on competition (if the investor wishes to propose this type of product), as well as the impact of priority access granted to a dominant player (shareholder or not).** If an exemption is granted, any significant change in the shareholdings during the period for which the exemption is valid should be notified to CRE.

CRE will also pay attention to the impact of the new interconnector on the functioning of the regulated network. The analysis of this impact should take into account forecast constraints on the public transmission grid, but also the consequences on the revenues and expenses of the transmission system operator during the exemption period, which could potentially result in costs attributed to network users.

CRE could refuse an exemption if it considers that the new interconnector makes network users bear a financial risk or cost that is not proportionate to the expected benefits of market integration.

In cases where distributing the investor's profits, by implicitly paying for the risk borne by the users, could make the risk acceptable taking positive externalities into account, CRE could grant a partial exemption from Article 6(6).

The application for exemption must include the technical and financial proposal, presenting the results of the connection study, carried out by the transmission system operator, and the technical solution proposed for connection. When assessing the application, CRE can request that the transmission system operator provide additional information, such as details on the studies carried out by the system operator in the framework of the technical and financial proposal. In order to benefit from up-to-date studies, the technical and financial proposal enclosed in the application file cannot be over a month old.

2.1.4. Other conditions (conditions *c*, *d* and *e*)

Conditions *c*, *d* and *e* concern the ownership and financing of the new interconnector:

⁵ Similar particularly in terms of delays needed to carry out the project, of capacity constructed and of net economic profit for the user.

⁶ Article 6(6) of Regulation 1228/2003 concerns the use of revenues from the allocation of interconnection.

« c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built».

An entity which is indirectly controlled by one of the transmission system operators concerned can thus, in principle, be granted an exemption. CRE does however consider that all relation between the applicant and system operator should be duly documented.

« d) charges are levied on users of that interconnector » ;

« e) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector ».

For most exemption applications, these conditions will simply have to be verified, and will not require further in-depth analysis. If, after study of the first documents provided, CRE deems it necessary, it can send the investor a list of additional documents to be provided.

2.1.5. Methods for managing and allocating capacity

Article 7(4) (b) (ii) states that « consideration shall be given, on a case by case basis, to the need to impose conditions regarding [...] non discriminatory access to the interconnector ».

In cases where an exemption from Article 20 of Directive 2003/54/EC⁷ is not granted, the rules for allocating and managing capacity on a new exempt interconnector must comply with the guidelines on the management and allocation of available transfer capacity of interconnections between national systems, appended to Regulation 1228/2003.

CRE wants these rules to be as harmonised as possible with the rules in force on French regulated interconnectors, in particular those connecting the same markets as the new interconnector. They must, where possible, comply with the following principles:

- **transparency**: the operator of the new exempt interconnector should publish the same information on its activity as that published by the operator of a regulated interconnector connecting the same markets. Moreover, the use of an existing platform for allocating capacity should be favoured where possible ;
- **maximisation of capacity made available to market players** : measures against players withholding capacity must be implemented. Such measures include, at least, introducing a stage at which nomination must be firm, early enough to allow products that have not been used to be re-allocated and netting of long-term capacity nominated in the opposite direction ;
- **optimisation of the use of interconnection capacity** : the target models defined through work at European level⁸ for different timeframes will have to be implemented. In order to allow cross-border balancing, the operator of the new exempt interconnector should make all interconnection capacity that is still available after the intra-day timeframe available to the operators of the interconnected networks. The cost of making this capacity available could be invoiced to the system operators.
- **third-party non discriminatory access** : the criteria for accessing interconnection capacity should be defined in a clear and transparent way. The allocation of capacity should be based on non discriminatory, transparent and market-based criteria ;
- **organisation of a secondary market** : the operator of a new exempt interconnector should implement capacity resale and transfer mechanisms.

⁷ Third party access

⁸ http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_WORKSHOP/Stakeholder%20Fora/Florence%20Fora/PCG

Article 7(4) (c) states that:

« when granting an exemption, the relevant authority may approve or fix the rules and/or mechanisms on the management and allocation of capacity ».

The rules for management and allocation of capacity on a new exempt interconnector will be submitted to CRE's approval before being implemented and this at every revision⁹.

Finally, the regulator must have access to data on management and transactions in order to ensure that the principles listed above are enforced, and so that it can correctly monitor transactions carried out on organised markets as well as cross-border trades. In view of this, a process enabling communication of data will be implemented. In virtue of Article 33 of the law of February 10th, 2000, CRE has the right to access all additional data deemed necessary to accomplish its missions.

2.1.6. Documents to be included in an application

An application for exemption should include the following:

Documents to be included in an application	Written by
i) Analysis of the relevant markets	Investor
ii) Measures advocated to ensure that a dominant player does not increase his market power	Investor
<p>iii) An assessment :</p> <ul style="list-style-type: none"> - of the social welfare generated by the interconnector and how it is shared out between different types of players - of the profitability of the project (as far as the investor is concerned) <p>This assessment must include a quantitative study of the different unforeseen events the project might encounter and the potential impact on social welfare, as well as a description of the <i>scenarios</i> in which the project would not be profitable, either for the community, on the one hand, or for the investor, on the other</p>	Investor
iv) An explanation of the choice of the planned interconnection capacity and the extent of the exemption requested, as well as a justified valuation of the optimal capacity between the two networks to be connected and of the costs/risks related to an increase in the planned capacity	Investor
v) A detailed business-plan with a valuation of costs and profits for the investor as well as the hypothesis on which this valuation is based	Investor
vi) A study of the impact the chosen allocation and management mechanisms could have on the concentration of the interconnected markets, compared to allocation and management mechanisms already in place on the French regulated interconnectors (see paragraph 2.1.5). Particular attention will be paid to dominant players ¹⁰	Independent agency
vii) The technical and financial proposal presenting the results of the connection study	RTE

⁹ In most cases, an exemption from Article 23(2) (a) of Directive 2003/54/EC will thus not be granted, and CRE will keep its power to approve the access rules.

¹⁰ Any player holding 40% or more of the French wholesale market can be considered as dominant.

viii) A description of how the project will be financed	Investor
ix) A description of the investor's shareholding	Investor
x) A detailed proposal on the process for communicating data to CRE	Investor
xi) A technical description of the project and the facilities making up the new interconnector, including the two connection points	Investor
xii) A detailed description of the different stages of the project as well as a schedule	Investor

2.1.7. Assessing the exemption application

CRE will study all exemption applications in cooperation with the regulator of the Member State whose electricity transmission network would be connected by the projected future interconnector. This study should firstly highlight which documents are necessary to complete the file. No applications will be processed before the file has been submitted to both regulators.

Once CRE has received the complete file, it will launch a public consultation on the non-confidential sections.

The completed application file will be studied in cooperation with the regulator of the other Member State that is concerned. Pursuant to this study, CRE will state its decision, possibly imposing additional conditions to those described by the investor in his file.

In virtue of Article 7(4) and (5), the decision concerning exemption will be duly justified and published on CRE's website. It will immediately be notified to the European Commission who will have a two-month delay to ask CRE to amend or withdraw the decision to grant an exemption. It will also be notified to the exemption applicant.

2.2. Amendment and expiry of the exemption

2.2.1. Conditions for amending the exemption

An exemption is granted for a determined period of time, but CRE should have the possibility to amend the exemption, or even withdraw it, in the event where at least one of the conditions for exemption laid out in Article 7 or one of the conditions imposed by CRE in accordance with Article 7(4) (b) is not respected. An amendment or a withdraw of the exemption could be considered if the fault for not meeting these conditions falls on the investor of the new exempt interconnector or on a change in his shareholding.

In cases of important changes in the economic or regulatory context, CRE could, exceptionally, consider amending the exemption.

2.2.2. Expiry of the exemption period

French legislation entrusts the transmission system operator with the operation of regulated interconnectors. However, unless the exemption period is extended, as described below, any further operation must take place under the regulated system.

The owner of the new exempt interconnector must, at the end of the exemption period, choose between the following options:

- stop operating the interconnector and disconnect the facility from the transmission grid ;
- ask that the exemption be amended to have it extended. If an extension is granted, the interconnector can continue to be operated as exempt ;

- hand the facility over to the system operator (RTE on the French side) in exchange for a sum taking account of the interconnector's economic value as well as its technical state. The value of the transfer of a new exempt connection, at the end of an exemption period, must be determined through a transparent and fair process. Such a transfer depends on the approval of the interconnected transmission systems' operators and under current legislation, of CRE's approval.

3. Recommendations on conditions for access, connection and operation of a new exempt interconnector to the French regulated system

3.1. Connecting a new exempt interconnector to the public electricity transmission grid

3.1.1. Technical requirements for connecting a new exempt interconnector

Article 14 of the law of February 10th, 2000 provides that a decree sets the « *general technical requirements regarding design and operation for connection to the public transmission network which generating installations, consumer facilities directly connected, public distribution grids, **interconnector circuits**, as well as direct lines must fulfil* ».

In accordance with this provision, two decrees were published. Decree n° 2003-588 of June 27th, 2003, amended, on the general technical requirements regarding design and operation which installations must fulfil for connection to the public electricity transmission network. This decree sets the technical requirements for connection, excluding generation facilities which are dealt with in decree n° 2008-386 of April 23rd, 2008.

The new exempt interconnectors, which technically are interconnector circuits, must respect what is stated in the aforementioned decree of June 27th, 2003. In such, just as for the consumer facilities and public distribution networks, a decree should state the technical requirements regarding design and operation to ensure that new exempt interconnectors fulfil the objectives this decree has set for their connection to the public transmission grid. If this decree is not published, transition rules establishing the technical requirements for connecting an interconnector circuit must, at the very least, be published by the TSO.

Representatives of the different categories of users of the public transmission grid should be consulted before the projects for transition rules on connection of an interconnector circuit are published. The electricity distribution system operators should also be consulted.

Prior to publication, the public transmission system operator notifies the transition rules on connection of an interconnector circuit to CRE, as well as the results of the consultation carried out with representatives of the different categories of users and the electricity distribution system operators, clearly stating the different opinions collected.

Any project aiming to modify the rules on connection of an interconnector circuit should follow the same process of consultation and notification prior to publication.

3.1.2. Processing the request to connect a new exempt interconnector

In accordance with point 2 of Article 37 of the law of February 10th, 2000, CRE could specify the conditions for connection to the electricity transmission grid, which concern new exempt interconnectors.

The decision, after deliberation, on the rules for establishing the procedure for processing requests to connect the new exempt interconnectors to the electricity transmission grid could be as follows:

1. Concerning the establishment of the procedure for processing requests to connect the new exempt interconnectors

To ensure all connection requests are processed in an objective, non discriminatory and transparent way, it should be possible for each investor of a new exempt interconnector to be aware of the connection procedure which will be applied to him. Consequently, the electricity transmission system operator must publish a procedure for processing requests to connect new exempt interconnectors, which come under Article 7 of Regulation 1223/2003.

Representatives of the different categories of users of these networks must be consulted on any projects concerning the procedure for processing requests to connect new exempt interconnectors, before these are published. Electricity distribution system operators must also be consulted.

Prior to publication, the transmission system operator notifies the procedure for processing requests to connect new exempt interconnectors to CRE, as well as the results of the consultation carried out with the representatives of the different categories of users and the electricity distribution system operators, clearly stating the different opinions collected.

All projects to change the procedure for processing requests to connect the new exempt interconnectors must be agreed through a similar consultation process and must be notified to CRE before being published.

For each new procedure, the transmission system operator must state the conditions of its entry into force, particularly as regards connection requests that are under consideration. Transitory measures can be implemented if the regulation evolves.

The transmission system operator must immediately begin to draw up the procedure for processing requests to connect new exempt interconnectors. The procedure must be published and enter into force at the latest six months after the publication of the present decision.

2. Concerning the minimal content of the procedure for processing requests to connect the new exempt interconnectors

The procedure for processing requests to connect the new exempt interconnectors, drawn up by the transmission system operator, defines and describes the different steps for assessing a request to connect a new exempt interconnector, from the possible pre-study of the interconnector project's connection to the operation of the connection.

The procedure for processing requests to connect the new exempt interconnectors states the nature of the studies necessary to draw up the connection proposal and, if need be, the conventions on connection and operation. It also states the transmission system operator's commitments in terms of time limits for processing connection requests, and of costs and deadlines by which the transmission network's facilities, listed in this document, are made available.

3. Concerning the investor's information on the procedure for processing requests to connect new exempt interconnectors

The procedure for processing requests to connect new exempt interconnectors, established in accordance with the present decision, is included in the reference technical documentation.

Any person requesting information on the procedure for processing requests to connect new exempt interconnectors must be informed of the existence of the procedure and of how to acquire more detailed information.

The procedure for processing connection requests could draw its inspiration from that which is applied by the TSO to requests to connect a new generation facility.

The new exempt interconnectors could be filed on a waiting list just as a generation facility would be.

3.1.3. In the event of a dispute

Any possible dispute on conditions for connection of new exempt interconnectors can be settled by the authority concerned. The CRE's Standing Committee for Disputes and Sanctions (CoRDIS) could also be competent.

3.2. Financial terms of access to the transmission network

3.2.1. Specificities of new exempt interconnectors seem to justify them not being applied the tariff for use of the electricity transmission network

Applying the tariff for use of the electricity transmission network (TURPE) to new exempt interconnectors would be contrary to several important principles:

- non discrimination between exempt and regulated lines : indeed, it seems appropriate that at the operation stage, the exempt and regulated interconnectors be operated in the same conditions. As regulated interconnectors do not pay the TURPE, applying this tariff to exempt interconnectors would give a considerable competitive advantage to regulated interconnectors.
- market integration : the interconnector would only be used if the market price differential is higher than the portion of the TURPE allotted to energy. Despite the fact that the price differential is above zero, applying the TURPE would prevent some cross-border trades from taking place, even if interconnection capacity were available. The economic interest in the interconnector would thus pointlessly be lessened for the investor as for the community, possibly to the point where the project would no longer be profitable.
- possible incompatibility with Article 4(4)¹¹ of Regulation 1228/2003 : if applying the TURPE to cross-border flows is not in direct contradiction with this Article, it is clearly in contradiction with the spirit of the Regulation, as it would involve paying multiple fees¹².

Consequently, it does not seem appropriate for the investor of a new exempt interconnector to pay the tariff for use of the electricity transmission network.

In some cases, he could nonetheless distribute part of his profits to the community (see sections 2.1.2 and 2.1.3).

3.2.2. Connection costs

Connecting a facility to the electricity grid generates network costs related to extension and reinforcement work. In the case where a standard user is being connected, the costs related to extension work are invoiced to the user, and those related to reinforcement work are collectivised via the TURPE.

Paragraph II of Article 4 of the law of February 10th, 2000 states that the « *tariffs for use of the networks take account of part of the costs of connection to these networks [...]. Moreover, the share of costs relating to connection and extension of the networks that are not covered by the tariffs for use of the networks are eligible for a contribution* ».

The contribution paid by the connection applicant cannot, thus, cover more than the costs of connection and extension, which excludes reinforcement costs.

¹¹ Art. 4(4) of Regulation 1228/2003: « *Providing that appropriate and efficient localisation signals are in place, in accordance with paragraph 2, charges for access to networks applied to producers and consumers shall be applied regardless of the countries of destination and, origin, respectively, of the electricity, as specified in the underlying commercial arrangement. [...]* »

¹² For example, energy generated in France and sold to a client in a neighbouring country, passing through a new exempt interconnector, would be invoiced both the charge for injection and withdrawal in France, plus; at the very least, the tariff for withdrawal in the neighbouring country. This phenomenon is also referred to as 'pancaking' ;

Thus, in the short term, this is the invoicing method that should be applied to a new exempt interconnector. CRE proposes to maintain this solution for the future, as it allows:

- a stable framework, hence long-term visibility for the investor : proposing another invoicing method would considerably decrease the investor's visibility, as a potentially important component of his development plan would depend on an uncertain change in legislation.
- visibility on connection costs invoiced to the investor : it is relatively easy for the investor to predict the scale of extension costs. A calculation of all reinforcement costs, performed by the network operator, would allow for very little visibility, but would also be very opaque. Indeed, the system operator should include commercially sensitive information that cannot be revealed in his calculations, for example concerning new generation projects requesting connection.
- a favourable context for market integration : if the reinforcement costs were invoiced to the project carrier, the project would have little chance of being profitable. Indeed, in this situation the project carrier would internalise all costs generated by his project without being able to benefit from a large part of the positive externalities (price convergence, reinforcement of market liquidity, improvement in security of supply) as these do not generate any revenues for the project carrier. In such a case, the grid users would indeed be guaranteed to bear no costs relating to the project, but would also be deprived of a large part of the positive externalities generated by the project

With a view to protecting the interests of the users of the transmission grid, CRE will pay particular attention to the potential impact a new interconnector can have on prior reinforcement costs borne by the users. In accordance with Article 7(1) (f) (see section 2.1.3), CRE could refuse an exemption if it considers the costs borne by the community to be disproportionate in view of the expected profits.

3.3. Terms of operation of a new exempt interconnector

3.3.1. Firmness of injection and withdrawal capacity proposed to the operator of the new exempt interconnector

According to point 1.7 of the guidelines appended to Regulation 1228, « [...] TSOs may not limit interconnection capacity in order to solve congestion inside their own control area, except for [...] reasons of operational security. [...] ». If need be, for network security, the transmission system operator could curtail capacity offered to the operator of a new exempt interconnector beyond the context laid out in the technical and financial proposal. In this case, the operator would be compensated by one of the following mechanisms:

- the cost of compensation of capacity holders. This cost depends on which compensation mechanism is applied by the investor. It should be the same whatever the origin of the curtailment (decision of the system operator or of the new interconnector's operator) ;
- in the event where the new exempt interconnector's operator can hold and nominate capacity, capacity curtailment should be compensated based on the price differential between the two interconnected markets.

Any capacity curtailment, whether in the context of a technical and financial proposal or for the security of the transmission network, must be notified to the operator of the new exempt interconnector early enough for him to be able to propose the same conditions as on the French regulated interconnectors interlinking the same markets, particularly in terms of firmness.

3.3.2. Responsibility for network balance

The operator of a new exempt interconnector must sign a balancing responsible entity contract with the transmission system operator, or be attached to a balancing responsible entity.

The operator must indicate to the transmission system operator the net flows nominated by the capacity holders, grouped together by balancing responsible entities. The operator is responsible for ensuring that the net nominations communicated to the transmission system operator conform to the nominations carried out by its clients. An *ad hoc* communication process must therefore be implemented by the electricity transmission system operator.

3.3.3. Schedule

The operator of a new exempt interconnector should make its schedule for injection and withdrawal on the French electricity transmission network known to the TSO, in the same way and respecting the same deadlines and conditions as a generator connected to this network.

In order to allow the operator of a new exempt interconnector to plan his withdrawals and injections, a scheduling procedure adapted to new exempt interconnectors taking into account, in particular, the schedule for withdrawals, should be established and implemented by the electricity TSO.

4. Consultation

CRE invites all interested parties to submit their contributions on June 3rd, 2010 at the latest:

- by e-mail to: webmestre@cre.fr ;
- by post to:

Commission de régulation de l'énergie
15, rue Pasquier
75379 Paris Cedex 08
France

- by meeting with CRE staff, by referring to the *Direction de l'Accès aux Réseaux Electriques* (telephone : +33 (0)1 44 50 41 02).

All answers to this consultation and a summary will be published on CRE's Internet site in July. Contributors should state in their contribution whether it can be published as it is, or if they would like to stay anonymous and/or if they request confidentiality for all or part of their contribution.

The interested parties are invited to answer the following questions:

On the principles:

Q1: *Do you agree with the three principles that guided CRE when drawing up this proposal (section 1.2)? Which other principles would seem relevant to you and should be taken into account?*

On the application of Article 7 of European Regulation 1228:

Q2: *Do you agree with the estimation method proposed for the condition concerning the risk of the project (condition b, section 2.1.2)?*

Q3: *Do you agree with the estimation method proposed for the condition on detriment to competition and the effective functioning of the internal electricity market (condition f, section 2.1.3)?*

Q4: *Do you agree with the estimation method proposed for the condition against detriment to the regulated system (condition f, section 2.1.3)?*

Q5: *Do you think it is relevant for CRE to maintain its power to approve rules for allocation and management of interconnection capacity (section 2.1.5)?*

Q6: Do you think it is relevant that rules for allocating and managing capacity should be based on the same principles as for a regulated interconnector, except in the case where an exemption to Article 20 of Directive 2003/54/EC is granted? If yes, do you agree with the principles stated (section 2.1.5)?

Q7: Do you think the list of documents to be provided in an exemption application is relevant (section 2.1.6)?

Q8: What do you think of the conditions under which an exemption can be amended? Do you see any other cases where amending would be necessary (section 2.2.1)?

Q9: According to you, are the conditions at the end of an exemption acceptable? If not, what changes would you propose (section 2.2.2)?

On terms of network access:

Q10: Do you agree with the procedure proposed for implementing technical requirements (section 3.1.1)?

Q11: What do you think of the procedure proposed for processing a request to connect a new exempt interconnector (section 3.1.2)? In particular, should such an interconnector be on the waiting list for injections in the same way a generator is?

Q12: What do you think of the proposed financial conditions for connection and access (section 3.2)? Do these conditions, combined with the proposed valuation of the conditions for risk (condition b, section 2.1.2) and for non-detriment to the regulated system (condition f, section 2.1.3) and after consultation of interested parties, give sufficient protection to the interests of network users?

Q13: Do you agree with the level of firmness proposed (section 3.3.1)? In particular, must there be compensation for capacity curtailments that were not forecasted in the technical and financial proposal for connection? If yes, what do you think of the compensation mechanisms proposed?

General:

Q14: Do you have any additional comments on CRE's proposal?

5. Next steps to be taken

Pursuant to this consultation, CRE is considering publishing, as well as a summary of the contributions, its final guidelines for the implementation of Article 7 and the terms for access of new exempt interconnectors to the public electricity transmission network. The following should also be published:

- a description of the mechanism to be applied to calculate the distribution of revenues imposed to new exempt interconnectors in certain cases, as described above ;
- a decision, after deliberation, on the rules for establishing the procedure for processing requests to connect new exempt interconnectors to the electricity transmission grid.

In February 2009, CRE received a request to exempt a new interconnector interlinking France and the United Kingdom. After receiving this request, and carrying out a public consultation on the entry into force of Article 7 of April 2nd, 2009, CRE sent the exemption applicant a list of documents needed to complete his request, drawn up in cooperation with the British regulator (Ofgem). As soon as these additional documents are received, the non confidential documents in the request will be available to public consultation. Depending on the outcome of this consultation and on CRE's final decisions, the requestor could be asked to complete the file.