

Terms of transactions monitoring on the French wholesale electricity and gas markets

Public consultation

Synthesis of contributions

In its communication dated 16 April 2008, CRE published its practical methods used to monitor transactions concluded on the French electricity and gas markets. CRE invited any companies to comment on the practical arrangements of such monitoring activities.

The monitoring system described by CRE is divided into two steps. In the first step, CRE wants to be able to request any information concerning transactions for physical delivery concluded after 1 January 2007. CRE will make an initial request that will focus on:

- for electricity: transactions concluded in 2007 on yearly products for delivery in 2008 and 2009, baseload and peakload (products “Y+1” or “Cal08”);
- for gas: transactions concluded in 2007 on seasonal and yearly products for delivery in 2008 and 2009, baseload and peakload (calendar year and gas year).

The second step, based on feedback received, will see CRE liaise with market players and consider the possibility of setting up systematic procedures to gather transactions data. A final decision will be made by the end of 2008.

17 contributors responded to the public consultation.

Historical suppliers	Alternative suppliers		Professional associations
EDF Gaz de France Total	Altergaz CNR Direct Energie Electrabel Suez Endesa France	Eni Gas Natural Iberdrola Poweo RWE	Uprigaz ¹ FOA ² BDEW ³ EFET ⁴

The remarks made on the practical methods used to gather data can be summarized along the following themes:

Preamble: the monitoring principle

Theme 1: scope of transactions monitoring

Theme 2: content and format of requested data

Theme 3: procedures, transmission deadlines and confidentiality issues

Theme 4: stage II of systematic data gathering

¹ Union Professionnelle des Industries Privées du Gaz – Association of private industrial gas companies

² Futures and Options Association – Association of companies active on financial markets

³ Bundesverband der Energie und Wasserwirtschaft – German association of companies active in energy and water sectors

⁴ European Federation of Energy Traders – Association of energy traders

Preamble: the monitoring principle

- **Ten of the fifteen contributors who gave their opinion on the subject are in favour of the monitoring principle, or are not opposed to it.**

Seven contributors strongly approve the monitoring principle by CRE for transactions concluded on wholesale markets. In their opinion, because such monitoring provides the right conditions for fair competition and reduces risks of market abuses, it will strengthen the confidence of market players in wholesale markets. More specifically, one contributor considers that such monitoring would be conducive to the activity of small new entrants.

However, three contributors indicate that - in order to be relevant - monitoring activities conducted by CRE will need to:

- take account of the individual features of non-standard products,
- focus on the behaviour of the electricity producer EDF .

Two contributors want CRE to seize the opportunity to improve market transparency thanks to this collection procedure. Publishing aggregate figures would help market players to assess the development of French energy wholesale markets.

CRE confirms that specific transactions, such as complex delivery profiles or complex options, will be subjected to distinct analysis and collection arrangements in comparison to standard products.

Moreover, CRE indicates that in addition to transactions monitoring, it has already implemented specific behaviour monitoring for players with physical assets, in particular for electricity producers.

- **Five contributors voiced reservations about implementing a national transactions monitoring system**

These contributors underline that:

- providing CRE with the data requested will induce costs and an excessive workload;
- the international nature of energy markets reduces the relevance of any transactions monitoring in the French territory alone;
- no procedure should be implemented on a national scale before rules have been established at a European level.

Three of these contributors suggest CRE should base its monitoring activity on other sources of information such as system operators, brokers, exchanges or the media.

Finally, one contributor voiced reservations on the legal legitimacy of CRE defining practical conditions for monitoring transactions concluded on electricity and gas wholesale markets.

CRE points out that it actively contributes to the ongoing work of financial and energy market regulators (CESR and ERGEG) mandated by the European Commission in the context of the draft directive of the “3rd package”, establishing a new energy policy for Europe.

Even if French price formation is part of highly interdependent international markets , CRE considers that the mechanism of price formation in France can be usefully monitored by analyzing concluded transactions , and delivered in France.

In addition, CRE underlines that public information and exchanged data are already collected from system operators and exchanges to monitor markets.

CRE took account of suggestions from the contributors in order to improve collection arrangements. Therefore, it considers that data transmission in the context of the ad hoc requests to be implemented in phase I should not induce costs or excessive workloads for players.

Finally, CRE considers that the legal reservations formulated by a contributor on its legitimacy to define the practical conditions for transactions monitoring of electricity and gas wholesale markets are unfounded. Elements of the legal analysis conducted by CRE were communicated to the contributor.

Theme 1: scope of transactions monitoring

11 of the 17 contributors expressed their opinion on this theme.

- **Six contributors are in favour of restricting the scope to physical delivery transactions.**

They acknowledge the fact that the scope adopted for data collection does not apply to cash-settled transactions.

CRE confirms that the scope of transactions collected in the context of the first request does not include financial or cash-settled transactions for settlement without physical delivery.

- **Two contributors would like the scope to be expanded**

One contributor considers that:

- data collection on yearly products exclusively is not sufficient, because it would not clarify the link between prices and market fundamentals;
- Surveillance of the *day ahead* market is more important than the *future* market, where prices are linked to *day ahead* market;
- the geographical scope subjected to monitoring is too small and collection should be extended to transactions on border markets..

Similarly, another contributor wants CRE to expand data collection conducted in phase I to all products on the French markets in order to simplify the procedure for companies concerned.

CRE confirmed that the scope of the first data request will concern, in electricity, only yearly products for delivery in 2008 and 2009 and in gas, seasonal and yearly products (calendar or gas years) for delivery in 2008 and 2009..

Nevertheless CRE invites companies concerned to transmit all their transactions should they find this process easier to implement.

- **Several contributors propose excluding specific types of contracts from the scope of transactions monitoring**

Two contributors want long-term contracts to be excluded from the scope of data gathering because of:

- their commercially sensitive nature;
- the absence of a direct link between their price and the wholesale market;
- the possibility that they may be subjected to foreign laws;
- the confidentiality clauses included in these contracts.

In addition:

- a contributor wants CRE to confirm that supply contracts to final customers will be excluded from the collection, even if deliveries are made in the form of exchange notifications of blocks (NEB);
- one contributor does not plan to transmit contracts between specific subsidiaries of its group, regarded as internal;
- one contributor considers that contracts for gas delivery at specific border points, at which only exports are completed, do not impact the French market and, as a consequence, should be excluded.

Finally, a contributor indicates that data gathered by CRE should not be redundant in relation to the one conducted by the DIDEME.

CRE confirmed that the following elements are excluded from this first request:

- sales contracts to final clients regardless of the delivery terms,
- contracts for delivery at a point outside French public networks.

However, contracts signed between subsidiaries from the same group, for delivery in France, are included within the scope of this first request.

Theme 2: content and format of requested data

- **Four contributors suggest simplifying the requested data to reduce the workload of the players concerned**

Four contributors consider that the proposed system represents a workload that could be massively reduced by simplifying the requested data.

On the other hand, it should be noted that one contributor considers the transmission system does not constitute a significant workload for players subscribing to it. Similarly, another contributor indicates that the requested data and its format do not raise any noteworthy problems.

CRE confirms it has taken account of all comments regarding format, with a view to simplifying the procedure used to gather data - thus avoiding any redundancy.

- **Four contributors warned CRE that some requested information might not be available.**

Three contributors indicated that it would not be possible to provide CRE with the hour of transaction, since this information is not recorded in their negotiation systems.

Furthermore, a further contributor mentioned that, subject to checks at a later date, other information may prove to be unavailable, namely with regards to the oldest transactions.

CRE confirms that the hour of transaction is required as part of this first request. CRE reiterates that, with regards to transactions completed through a broker, the latter generally records the time they are concluded. Any player that is not in a position to provide this information must provide CRE with a reasoned exemption request.

- **Processing system for swaps must be detailed**

One contributor mentioned that it would not be possible to identify geographical swaps, since the two parties in the transaction (purchasing and sale) are not linked in its negotiation systems. However, this same contributor indicates that the two parties in the swap may be analysed in an independent way, particularly with regards to existing prices at the time each contract is signed.

On the other hand, another contributor considers that it will not be possible to analyse the two parts of the swap contract since it is not useful to observe separately the price recorded for a one of the two parts of the transactions.

CRE indicates that, as part of this initial request, swaps that will have an impact on the French market should be presented in the form of two simple separate contracts (one for purchase and one for sale). If they so desire, and if they feel that it would aid understanding of information (particularly pricing), companies will have the option of identifying the related purchasing and sales transactions within the framework of a swap contract.

- **One contributor suggests using a different data format**

One contributor mentions that during the implementation of an automatic transaction confirmation platform, set up at the initiative of members of the EFET, a standardized reporting format has already been defined and could be used by CRE. Although use of this process is currently rather limited, this does not detract from its potential usefulness with regards to the case in hand.

One contributor suggests using an Excel type file format rather than the format specified by CRE (text formatted according to CSV standards).

CRE would like to set up any appropriate measures that would reduce the players' workload. As a result, it will provide an option whereby responses to its information requests can be transmitted using the protocol developed by EFET members to promote the automatic confirmation of transactions.

Furthermore, for players that do not wish to use this format, CRE reiterates its preferred file format remains the standard CSV (comma separated values) format. If however, it proves complex for a player to use this standard, CRE confirms that, within the framework of this initial request, it would accept the Excel format.

Theme 3: procedures, transmission deadlines and confidentiality issues

- **The option of mandating brokers is broadly welcomed; one contributor would like to strengthen to the responsibility of these intermediaries.**

The option of sending the requested information to CRE via intermediaries is not called into question. Five contributors even went as far as to expressly indicate that they are in favour of this option.

However, one contributor would like brokers to undertake responsibility with regards to the quality of the transmitted data. Furthermore, the same contributor would like to mandate intermediaries other than those suggested by CRE for data transmission. Finally, it questions CRE with regards to the funding of services thus proposed by the brokers.

CRE reiterates its invitation, aimed at market players, to mandate brokers for the transmission of data transactions concluded via their intermediary. CRE reiterates that it is the principal's responsibility to define the legal framework fixing the mandate to brokers with regards to confidentiality and responsibility.

Furthermore, it invites market players to submit the intermediation of brokerage companies other than the five companies it suggested.

- **Some contributors request longer timeframes to transmit information.**

Some contributors indicate that the timeframe required to meet each data request will be greater than the three weeks anticipated by CRE:

- four of them feel it should be at least five weeks,
- one other feels that it should be from six to eight weeks.

CRE indicates that the timeframe for data transmission will be increased to five weeks.

- **Three contributors require strong guarantees with regards to data confidentiality**

The strict confidentiality of the information transmitted is a major concern for three contributors.

In particular, one contributor requests that the transmission and storage processes for information transmitted as part of monitoring are guaranteed as secure, auditable and subject to certification.

Furthermore, one contributor requests that this confidentiality be extended to relations between CRE services. This contributor would like the data transmitted to be used exclusively for transactions monitoring purposes, and confidentiality to be guaranteed in the event of movement of personnel.

CRE reiterates that it is bound to adhere to provisions in article 35 of the law of 10 February 2000, which states that “members and agents of the French Energy Regulatory Commission are bound by professional secrecy with regards to facts, activities and information that they may have acquired through their jobs (...).” CRE has already implemented an empowerment and confidentiality policy that it uses to obtain personnel trained to complete monitoring missions.

CRE therefore guarantees the strictest confidentiality to any data it receives.

To this end, in addition to raising awareness among its agents, CRE has already undertaken actions aimed at guaranteeing the transmission of any confidential information gathered is strictly controlled. Special attention is paid to the activity of agents responsible for monitoring markets.

Furthermore, CRE undertakes to conduct audits of its information systems and agent authorization procedures and to implement any resulting recommendations.

Theme 5: phase II of systematic data gathering

- **The majority of players would like information requests from CRE to remain on an ad hoc basis**

Seven contributors express reservations with regards to the systematic character of information transmission planned for phase II. To avoid lengthy administrative processes, they therefore advocate maintaining a principle of ad hoc requests for bilateral transactions concluded without an intermediary.

On the other hand, four contributors who attach a particular importance to monitoring French markets state that they are in favour of periodic collections. For these contributors, the schedule for data transmission in phase II should be:

- monthly (one contributor)
- quarterly (one contributor)
- or half-yearly (two contributors).

- **Two contributors would like a public consultation to be organised before phase 2 is implemented**

Two contributors would like CRE to organise a public consultation at the end of phase I to decide whether or not a systematic transmission system for data transactions is beneficial.

CRE confirms that, as indicated in its report on 16 April 2008, it will conduct a study, based on feedback and through consultation with market players, into the option of implementing a systematic data collection system.