

Final deliberation of the French Energy Regulatory Commission of 28 August 2014 on ElecLink Ltd's exemption request under article 17 of Regulation EC No. 714/2009 of 13 July 2009 for an electricity interconnector between France and Great Britain

Attending the meeting: Philippe de LADOUCETTE, president, Catherine EDWIGE, and Michel THIOILLIÈRE, commissioners.

Having regard to Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity, in particular Article 17 thereof;

Having regard to Directive No. 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC;

Having regard to the Deliberation of the French Energy Regulatory Commission dated 30 September 2010 on the application of article 7 of Regulation (EC) No. 1228/2003 dated 26 June 2003 and on conditions for access to the French electricity transmission grid for new exempt interconnectors;

Having regard to the Communication of the French Energy Regulatory Commission of 29 March 2012 on the application of article 17 of Regulation (EC) No. 714/2009 of 13 July 2009;

Having regard to the Deliberation of the French Energy Regulatory Commission of 26 July 2011 on rules for developing the processing procedure for connection requests of new interconnectors to the public electricity transmission grid;

Having regard to the Deliberation of the French Energy Regulatory Commission of 9 May 2012 on the conditions of connection and access to the public transmission grid of new interconnectors, mentioned in Article 17 of Regulation (EC) No 714/2009;

Having regard to the exemption request by ElecLink Limited, dated 11 September 2013 with the French Energy Regulatory Commission and dated 18 September 2013 with the *Gas and Electricity Markets Authority*, under Article 17 of Regulation (EC) No. 714/2009 of 13 July 2009;

Having regard to the joint consultation by French Energy Regulatory Commission / Office of gas and electricity markets held between 28 November 2013 and 3 January 2014.

Having regard to the deliberation of the French Energy Regulatory Commission of 6 March 2014 on ElecLink Ltd's exemption request under article 17 of Regulation EC No. 714/2009 of 13 July 2009 for an electricity interconnector between France and Great Britain and the Joint Opinion of the Commission de régulation de l'énergie (France) and the *Gas and Electricity Markets Authority* (Great Britain) on ElecLink's exemption request under article 17 of Regulation EC no 714/2009 for an electricity interconnector between France and Great Britain that is an integral part of thereof.

Having regard to the European Commission Decision of 28 July 2014 on the exemption of ElecLink Limited under Article 17 of Regulation (EC) No. 714/2009 for an electricity interconnector between France and Great Britain.

1. Context and legal framework

Articles L.111-40, L.321-1 and L.321-6 of the French Energy Code entrust RTE with the operation of the electricity transmission system and, as such, the development, construction and operation of regulated interconnectors.

The European Commission estimates, in its « *Staff Working Paper* » of 6 May 2009¹, that these exemptions must be granted on an exceptional basis. In principle, new interconnectors should be developed by the electricity transmission system operators in a regulated framework.

Pursuant to Article 17 of the Regulation, new direct-current interconnectors may, upon request to the concerned regulators, be exempted, for a limited period of time, from the legal provisions on third party access, use of revenues resulting from the allocation of interconnection capacity and ownership unbundling.

Article 17 of the Regulation sets out the conditions that must be met by a new interconnector to be granted an exemption from all or part of the above rules. Thus, the following conditions must be met for an exemption to be granted:

- a) the investment must enhance competition in electricity supply;
- b) the level of risk attached to the investment is such that the investment would not take place unless the exemption is granted;
- 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;
- d) charges are levied on users of the 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 the transmission or distribution systems linked by the interconnector; and
- f) the exemption must not be 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.

In compliance with paragraph 4 of Article 17 of the Regulation and in the absence of contrary national provisions, the exemption decision is made on a case by case basis by the regulatory authorities of the concerned Member States.

In deciding whether to grant an exemption or not, it is necessary to consider the possible need to impose conditions regarding the duration of this exemption and non-discriminatory access to the interconnector.

In addition, an exemption may be partial, meaning that it can cover only a part of the overall capacity of the new interconnector and / or only a part of the obligations from which the exemption is requested.

When assessing conditions a), b) and f), the regulatory authorities take into account the results of the market test conducted by the exemption applicant. Finally, before granting an exemption, the regulatory

¹ Paragraph (9) of the working document by the European Commission of 6 May 2009 entitled: « *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* ». This paragraph provides that "the Gas and Electricity Directives oblige transmission system operators (TSOs) to invest to meet reasonable market demand for transmission in order to ensure the long term ability of the system and to meet demand".

authorities of the concerned Member States decide upon the rules and mechanisms for capacity management and allocation.

The Communication of the French Energy Regulatory Commission of 29 March 2012 on the application of article 17 of Regulation (EC) No. 714/2009 of 13 July 2009 clarifies the procedure before the French Energy Regulatory Commission for granting an exemption, in particular the information to be included in the exemption request and the way the French Energy Regulatory Commission will appreciate the conditions for granting the exemption.

2. ElecLink's exemption request

ElecLink Limited ("ElecLink"), owned by Star Capital Partners Limited ("Star Capital") and Groupe Eurotunnel, plans to build and operate a new interconnector between the British and French transmission grid ("the ElecLink Interconnector").

On 11 and 18 September, ElecLink submitted an exemption request respectively to the Energy Regulatory Commission in France and to the Office of Gas and Electricity Markets, which carries out the administrative functions of the Gas and Electricity Markets Authority ("the British Authority") in Great-Britain (hereinafter "the National regulatory authorities – the NRAs").

The request submitted by ElecLink is described in the joint opinion attached to the present deliberation.

3. Joint Opinion by CRE and Gas and Electricity Markets Authority

Based on the information provided by ElecLink in its exemption request folder, on the responses of the participants to the joint consultation and on the analysis of ElecLink's exemption request conducted by the NRAs in regard of the conditions of Article 17 of the Regulation, the latter have drafted a joint opinion (hereinafter "the Joint Opinion") to which is attached the NRAs' exemption decision concluding that an exemption is granted and specifying the conditions under which it is granted.

This Joint Opinion is structured in two parts and includes three schedules:

Chapter 1 – General Context of ElecLink's exemption application;
Chapter 2 – NRAs analysis on whether the conditions of Article 17 of the Regulation are fulfilled or not;
Schedule A – NRAs' exemption decision;
Schedule B – Operating the profit sharing mechanism;
Schedule C – Operating the limit to total capacity allocated through multi-year products.

4. European Commission Decision

As defined by paragraph 7 of article 17 of the Regulation, CRE and Ofgem have notified their decisions as well as the Joint Opinion to the European Commission, on 20 March 2014.

On 28 July 2018, the European Commission has adopted a decision on the exemption that was granted to ElecLink under Article 17 of the Regulation. In this decision, it requests the NRAs to amend, as defined by Paragraph 8 of Article 17 of the Regulation, their Joint Opinion and their exemption decisions in order for the exemption, as defined by the NRAs, from Article 9 of Directive 2009/72/EC to be granted only if:

- ElecLink first applies for certification pursuant to the ownership unbundling model in Article 9 of Directive 2009/72/EC ; and
- CRE and Ofgem conclude that ElecLink does not meet the requirements of ownership unbundling in Article 9 of Directive 2009/72/EC.

In case such an exemption is granted, ElecLink must comply with the provisions of Articles 13 and 14 or of Chapter V of Directive 2009/72/EC as a condition for the exemption from ownership unbundling, as specified in the final Joint Opinion and its Schedule A.

5. Decision by CRE

CRE adopts the Joint Opinion on ElecLink's exemption request written by CRE and Gas and Electricity Markets Authority, including the exemption decision adopted by the NRAs, as amended pursuant to the abovementioned European Commission decision of 28 July 2014. This final Joint Opinion is attached to the present deliberation (**Schedule 1**).

The present deliberation will be transmitted to Ofgem along with the European Commission and ElecLink.

Paris, 28 August 2014

For the French Energy Regulatory Commission,
The President,

Philippe de LADOUCETTE