Commission de Régulation de l'Energie
15, rue Pasquier
75379 Paris Cedex 08
France

3 June 2010

Enforcement of Article 7 of Regulation EC 1228/2003 and conditions for access to the French electricity transmission grid for new exempt interconnectors.

EDF Energy welcomes the opportunity to comment on Enforcement of Article 7 of Regulation EC 1228/2003 and conditions for access to the French electricity transmission grid for new exempt interconnectors. We have given careful consideration to CRE's proposals. This letter sets out our high level comments and answers to the specific consultation questions are attached below.

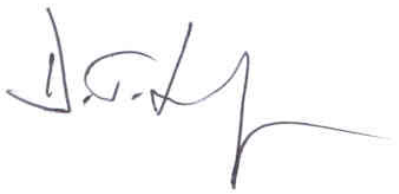
EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, renewables, coal and gas-fired electricity generation, combined heat and power plants, electricity networks and energy supply and services to end users. We have over 5 million electricity and gas customer accounts in the UK, including both residential and business consumers.

EDF Energy firmly believes that there should be competition in the delivery of new interconnectors. Where appropriate, merchant providers (i.e. other than TSOs) should have the opportunity, on a fair and non-discriminatory basis, to construct, operate and use new interconnectors.

EDF Energy believes that the overall proposals, as set out in the consultation document, constitute a very positive, logical and pragmatic set of rules and procedures, which not only will deliver a fair access regime for new exempt interconnectors, but will also bring together both European and French legislation in respect of new interconnectors to France.

If you have any queries on this response or would like to meet to discuss it further, please do not hesitate to contact my colleague Nigel Edwards, Cable Project Director, on +44 (0)203 126 2506, or myself.

Yours sincerely,



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Attachment

Enforcement of Article 7 of Regulation EC 1228/2003 and conditions for access to the French electricity transmission grid for new exempt interconnectors.

EDF Energy response to your 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?

We agree with the three principles of the CRE, which are:
1. Protecting the interests of end users and other network users
2. Creating a stable, transparent and non-discriminatory regulatory framework, and
3. Encouraging the integration of European electricity markets

All proposals need to ensure that the principles are upheld.

In addition, another principle should be included, that of encouraging competition where appropriate in the provision of facilities. Allowing merchant interconnectors the opportunity to connect and access the transmission system provides an element of competition in the provision of these vital and strategic facilities, which should benefit interconnector end-users in terms of price and capacity options.

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)?

Unlike a non-exempt TSO developed interconnector, a merchant interconnector has to bear the risks of under-recovery of costs throughout the lifetime of the project. Consequently, it appears to EDF Energy appropriate to grant full exemption, without any conditions being placed on any profit level or use of revenues. Imposing conditions would create unnecessary uncertainty, thereby acting as a disincentive for investment and increasing the cost of financing.

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)?

Interconnectors will, by their very nature, enhance competition, both in the generation and in the supply markets of each interconnected system, as well as enhance the functioning of the markets through more choice and operational options for managing

the systems. As long as the maximum capacity is available for use within the market and there are market rules which enable transfers to be arranged (based on the price) as close to real time as practical, then the market and its users will benefit. Long-term contracts for capacity will be a prerequisite for attracting sufficient funds for a merchant project at reasonable rates and therefore should not be discouraged; in fact, without such contracts, it would be extremely unlikely that an investor could take the risk of building an interconnector. This is another important aspect that is different from a TSO led project; the latter can be underwritten by the company or cross-subsidized if permitted by price regulation. The important feature to be maintained is that the full capability available in real time is fully used.

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

If it can be robustly demonstrated that the new exempt interconnector would be detrimental overall to the system(s), its users and the European Internal Energy Markets, then it would be justified to refuse exemption. However, the mere inclusion of very long-term products or access granted in open competition to a dominant player would not in themselves be detrimental and so their presence should not rule against granting exemption.

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)?

EDF Energy believes it is correct for the CRE to approve the introduction of, and any subsequent amendment to, the interconnector access rules.

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)?

EDF Energy believes that, wherever possible, the rules should be based generally on the same principles as for other interconnectors on the same system, while recognising that, because of differences between the two markets being interconnected in each case, there may need to be specific differences in the rules for each interconnector.

The five principles listed in Section 2.1.5 of transparency, capacity maximisation, capacity optimisation, non-discriminatory access and a secondary market are fundamental requirements to ensure maximum energy transfers, efficient trading and transparency. EDF Energy fully supports these principles.

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

EDF Energy agrees that all the documents listed in Section 2.1.6 are of relevance to determine whether exemption should be granted or not. However, we foresee that the depth of analysis, required to determine in a meaningful way any wider social (see section 2.1.6 Document (iii)) and system benefits, may be very difficult to achieve, especially if the investor is also asked to quantify the impact on other interconnectors. Therefore, EDF Energy believes that some caution should be exercised when considering this part of the evidence, if it is to be kept as a requirement. While of interest, it may not be possible to be precise enough to form a proper judgement on it alone.

We note the proposed stipulation that Document (vii) Technical and Financial Proposal of connection Study, written by RTE, must not be over 1 month old. In the context of such an inter-related set of complex documents, we feel this timescale is perhaps too short and may create unintended barriers to applications. Three months would be a workable period, with a clear definition of how the time is to be calculated.

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)?

The future income stream and costs faced by the interconnector could well change, because of either market or regulatory changes. Therefore it seems sensible that the ability to amend an exemption because of economic or regulatory change is available to CRE. However, the simple occurrence of a shareholder change should not instigate a full review, rather it should need evidence that any of the six conditions for exemption have been or likely to be compromised.

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)?

EDF Energy considers the three options proposed are reasonable and represent the options available to both the owner and to the CRE. The first option should be regarded as a last resort and then only if the equipment is not in a fit state for operation. It would be a sad indictment if neither of the other two options resulted in a satisfactory agreement to continue the facility, resulting in its loss to the user community. Assuming the infrastructure is in a state fit for use, a preferable third alternative would be formal independent arbitration to agree a way forward.

On terms of network access

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

Any new interconnector project must satisfy the technical requirements of the transmission systems to which it is to be connected. As to whether there needs to be a public consultation is debatable. If this is necessary for other projects proposed to be connected then it would not seem unreasonable. However, if it was only for interconnectors or exempt interconnectors, then this would surely be discriminatory.

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?

The proposed procedure appears reasonable as long as it is the same for or very similar to that experienced for other projects, for the reasons given above in our answer to Q.10.

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?

The proposed financial conditions appear fair and non-discriminatory with respect to other users. They are a considerable improvement on what might have been imposed at present, with the exception of the last sentence of Section 3.2.1. This sentence does give some cause for concern and EDF Energy would prefer to not see a subjective distribution of profits as implied, as this already happens to some extent within the regimes for normal planning consents. However, EDF Energy does agree that exemption should be refused if the reinforcement costs far outweigh any foreseen overall benefits arising from the development of the new interconnector.

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?

The level of firmness seems entirely consistent with the rest of the market, as does the level of compensation. Furthermore, it should be noted that the TSOs in their role of balancing the system still can, after the interconnector gate closure, buy or sell energy to deliver the transfer level that may be desired for wider system reasons. This would be a conventional constraint cost and should be recovered from users of the whole system as normal.

General

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

No, other than the proposals comprise a robust and fair initiative to address the problems that face potential merchant interconnector investors wishing to connect to France. Furthermore, EDF Energy would support these proposals forming the basis for harmonisation of interconnection with other European electricity markets.

EDF Energy
June 2010