



IASB
30 Cannon Street
London EC4M 6XH
UK
Brussels, June 3rd, 2013

Re: Request for Information Rate regulation

Dear Sirs,

The International Energy Accounting Forum (IEAF) consists of the major European companies in the energy business (see the list of our members in appendix 2).

The goal of the IEAF is to discuss and formulate best practices, to reduce areas of difference in accounting in the sector, to advocate the energy industry's point of view, and to make specialist energy industry knowledge available to the International Accounting Standards Board and other standard setters.

We are writing to you with respect to the request for information issued by the IASB in March 2013.

Our detailed answers and legal "umbrella " references in Europe are set out in the appendix 1. This answer should be read in conjunction with "stand alone "IEAF member answers dealing with local regulations.

If you require any further information or explanation, please do not hesitate to contact us.

Yours faithfully

A handwritten signature in blue ink, which appears to be 'Philippe Vergote', is written over a blue horizontal line that serves as a separator between the signature and the typed name below.

On behalf of the International Energy Accounting Forum,

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APPENDIX 1: Rate Regulation

1. The regulated industry and why it should be considered

Rate regulation is widespread and affects industries across many jurisdictions. It would be helpful if respondents indicate whether they think that recognising, in IFRS financial statements, the effects of the rate-regulatory scheme being described would provide relevant information about the consequences of rate regulation to users of financial statements. It is easier for us to understand the information that you give us if we know what industry the rate regulation relates to.

Question 1

For the types of rate regulation that you think would be useful for us to consider in the Discussion Paper (or would not be useful to consider, if applicable), what types of goods or services are subject to the rate regulation being described?

In providing this information, please also tell us:

whether you are a rate-regulator, a financial statements preparer, auditor, user or other (please specify);

Answer: IEAF is a Forum of Preparers involved in Energy sector mainly in Europe but also overseas (see the detailed list of our members in appendix 2).

(a) what jurisdiction the rate regulation that you are describing is in;

Answer: we are describing the EU framework regulation as it is the common framework used by most of our members. It is set up in Energy sector by the following directives and regulations:

- *Directive 2009/72/EC concerning the common rules for the internal market in electricity*
- *Directive 2009/73/EC concerning the common rules for the internal market in natural gas*
- *Regulation 713/2009 establishing an Agency for the Cooperation of Energy Regulators*
- *Regulation 714/2009 on conditions for access to the network for cross border exchanges in electricity*
- *Regulation 715/2009 on conditions for access to the natural gas transmission network*

(b) whether that jurisdiction is a recent adopter of IFRS; and:

Answer:

Our Members are EU listed companies applying IFRS since 2005.

(c) whether the main suppliers of the rate-regulated goods or services (i.e. the rate-regulated entities), including your company if applicable, are predominantly private-sector entities, government entities or closely related to the rate regulator.

Answer:

Member of our forum are predominantly private-sector entities.

If the jurisdiction has not adopted IFRS, your views are still useful to us. It would be helpful if you could include information about what local GAAP is applied and how the effects of the rate-regulatory scheme are reported in accordance with that local GAAP.



2. The objectives of the rate regulation

The objectives of rate regulation are influenced by many factors, such as the nature of the goods or services that are being provided, the economic climate, environmental factors, etc. It is useful to know the high-level objectives of the rate regulation under review because those objectives will influence the nature of the rate-setting mechanism employed by the rate regulator.

The objectives of rate regulation may change over time. We are most interested in your current situation but it would be helpful if you could indicate whether there has been a recent change or a trend towards alternative objectives.

Question 2

What are the objectives of the rate regulation and how do they influence the interaction between the rate regulator, the rate-regulated entity and customers?

In providing this information, please tell us:

- (a) **what are the high-level objectives of the rate regulation (for example, to restrict prices or to influence the levels of supply and demand or to restrict or encourage competition); and**

Answer:

EU intends to develop internal markets in Electricity and natural Gas in order to achieve real choice for all consumers, competitive prices and higher standard of services and efficiency gains.

In that context the high level objective of the EU rate regulation is to enable suppliers to get transparent and non discriminatory tariffs for the use of the infrastructures in order to guaranty a sound and effective competition between them. (Directive 2009/72 and Directive 2009/73 preambles 1 and followings).

- (b) **how these objectives are reflected in the nature of the rate-setting mechanism? For example, to what extent:**

- **is the rate-setting mechanism designed to give the rate-regulated entity a 'fair rate of return' (for example, a cost-plus mechanism) or is the focus more on reducing the cost to customers (for example, a price-cap or other incentive-based mechanism);**

Answer:

Electricity: "Charges applied by network operator for access to networks shall be transparent, take into account the need for network security and reflect actual costs insofar as those costs correspond to those of an efficient and structurally comparable network operator and are applied in a non discriminatory manner. Those charges shall be applied not be distance related". (Cf. regulation 714/2009 article 14).

Gas: Tariffs or methodologies used to calculate tariff must be designed to reflect the actual cost incurred insofar as those costs correspond to those of an efficient and structurally comparable network operator while including an appropriate return on investments. (Cf regulation 715/2009 article 13).

- **are there incentives to meet targets that are not directly related to the cost-rate relationship (for example, efficiency, service levels, infrastructure investment, increased supply capacity or reliability, use of alternative resources or reduction in customer demand or usage);**

Answer:

Electricity and gas: Yes each National Regulatory Authority shall ensure that the transmission and distribution system operator are granted appropriate incentives over both the short and the long term to increase efficiency; foster market integration and security of supply and support the related research activities (Directive 2009/72 article 37.8 and Directive 2009/73 article 41.8).

- **does the rate regulation fix the price per unit or does it provide some flexibility for the entity to set prices (for example, through price ranges or caps, based on either unit prices or total revenue or total profitability); and**

Answer:

Electricity and gas: At the EU level common rules allow some flexibility for the entity to set prices provided that they follow the above described principles as there is no detailed rules in that area. However methodologies used to calculate tariff or tariffs prices must be approved by each National Regulatory Authority and the flexibility can vary depending on the country, and the activity. (Cf Electricity: Directive 2009/72 article 37.8 and regulation 714/2009 article 14; Gas: Directive 2009/73 article 41.8 and regulation 715/2009 article 13).

- **are there other aspects of the rate-setting mechanism that reflect any specific objectives not envisaged above?**

Answer:

See answer above.

The rights and obligations established by the rate regulation

Information about the nature and amounts of a reporting entity's economic resources and claims can help users to identify the reporting entity's financial strengths and weaknesses². It is important for us to understand what rights and obligations are commonly established by rate regulation so that we can identify more clearly the types of economic resources and claims that might arise. At this stage, we are looking for a factual summary of the rights and obligations created by the rate regulation. We are not asking respondents to analyse.

Question 3

What sort of rights or obligations does the regulation create? In providing this information, please consider:

- (a) **whether the rate-regulated entity has an exclusive right to operate in the market;**

Answer:

Not necessarily. The rate regulated activities in the EU are rate regulated activities because they are run through infrastructures that are necessarily to be used for Electricity or gas supply (typically networks). Rights upon these infrastructures are not necessarily exclusive.

In the EU for electricity sector transmission and distribution are necessarily rate regulated activities (Directive 2009/72 article 32.1).

In the EU for gas sector transport, distribution, GNL terminals are necessarily rate regulated activities. Gas storage can be a non regulated activity In that the case of a negotiated access the regulatory authority must take the necessary measure for natural gas undertakings to be able to negotiate access to storage facilities (Directive 2009/73 article 33.3).

² Paragraph OB13 of the *Conceptual Framework*.

(b) if the entity's right to operate in the market is established by licence:

- (i) is there a cost to acquire the licence; and can the licence be revoked, renewed or transferred;

Answer:

Electricity and gas: According to the directive the regulated operating activities on infrastructures are not necessarily granted by license. However, when a country decides to grant a license it must comply with the objective and non discriminatory criteria (Cf. Directive 2009/73 article 4.2 and 4.3)

Moreover the operators of transport networks must obtain from their national regulators a certification establishing that they are independent from production and supply activities. (Cf. Directive 2009/72 article 10 and Directive 2009/73 article 10).

(c) how competition is excluded or encouraged;

Answer:

Electricity and gas: Competition is encouraged by the promotion of effective unbundling between the activities of generation/production and supply, non discriminatory access to transport capacity transparency of cost and tariffs for access to networks.

(d) how the rights and obligations are expressed, for example, as a cap on the rate of return, as the right to recover entity-specific costs, as a right to recover an allowed level of costs (whether or not incurred by the entity), or as a right to recover specific types of costs without limit if and when incurred; and

Answer:

Electricity and gas: There are no detailed rules in that area. However each National Regulatory Authority must fix or approve tariffs on the proposal of the operators that are cost reflective. (Cf Electricity: Directive 2009/72 article 37.8 and regulation 714/2009 article 14; Gas: Directive 2009/73 article 41.8 and regulation 715/2009 article 13).

(e) whether the entity can choose to stop providing the goods or services that are subject to rate regulation and, if so:

- (i) how is this achieved; and
(ii) what are the consequences for the entity?

Answer:

In essence, a rate regulated activity cannot be by stopped by the entity on its own as the final purpose is to deliver public services. However the termination of this service must be done under the conditions of national regulation. We are not aware of any such cases.

3. The enforcement of rights and obligations

To help us to identify what features of the rate regulation might create economic resources for or claims against the rate-regulated entity, it is important for us to understand how the rights and obligations established by the rate regulation are enforced or settled respectively.

Question 4

For the rights and obligations identified in response to Question 3, how does the rate-regulated entity enforce its rights, or how does the rate regulator enforce the settlement of the rate-regulated entity's obligations?

In providing this information, please tell us:

- (a) does the rate regulation provide for retrospective recovery or reversal of under-or over-recoveries of allowable costs? If so, how is this achieved, for example through cash payments or other asset transfers to or from parties outside the rate-regulated entity (such as



individual customers or groups of customers, the rate regulator or the government);

Answer:

Electricity and gas No specific mechanism to ensure retrospective recovery at EU level. However the recovery cost principle does exist even if we are not aware of any EU court decision in that field.

(b) are the rights and obligations separable from the business; and

Answer:

We are not sure to understand the question.

(c) what happens to the rights or obligations when the entity ceases to provide the rate-regulated goods or services?

Answer:

Electricity and gas: We are not aware of any such cases until now.

4. The recovery or reversal of cost and income variances

We understand that, in many rate-regulatory schemes, the rate-setting mechanism uses estimates of future costs and income as well as actual costs incurred. In such circumstances, the rate regulator usually requires that the rate-regulated entity must keep records of variances between the estimated and actual amounts. These variance amounts are then recovered or reversed over an agreed period of time through inclusion in the calculation of future rates, either automatically or with the approval of the rate regulator.

Irrespective of whether these variance amounts are recognised in general purpose financial statements, we want to learn more about the effectiveness of the rate regulation in ensuring their recovery or reversal, particularly when there have been shifts in demand for the regulated goods or services.

Question 5

How does the rate regulation ensure the recovery or reversal of under-or over-recoveries of allowable costs (i.e. variance amounts) (if applicable)? Are these mechanisms effective in recovering or reversing those amounts within the targeted time frame?

In providing this information, please tell us:

(a) what is the mechanism for tracking the recovery or reversal of such variance amounts;

Answer:

Electricity and gas: No specific mechanism at European level. However each as National Regulatory Authority must fix or approve tariffs or methodologies to calculate tariffs on the proposal of the operators the mechanisms vary among EU countries.

(b) how does the rate-setting mechanism adjust for unexpected changes in demand for the rate-regulated goods or services;

Answer:

Electricity and gas: No specific mechanism at European level. However each as National Regulatory Authority must fix or approve tariffs or methodologies to calculate tariffs, if it be so, on the proposal of the operators the mechanisms vary among EU countries.

(c) has there been a recent trend whereby the balances of the variance amounts have been increasing?

Answer:

Electricity and gas: No general trend in Europe



(d) **If so:**

- (i) **is this caused by an increase or a decrease in the demand of the rate-regulated goods or services;**
- (ii) **has the trend resulted in a net debit position (i.e. under-recovery of costs) or a net credit position (i.e. over-recovery of costs); and**
- (iii) **what are the main components of the variance amounts (i.e. what are the main categories of cost or income variances)?**

Answer:

Not applicable.



APPENDIX 2: List of IEAF Members

Alpiq	www.Alpiq.de
Axpo	www.axpo.ch
BG Group	www.bg-group.com
EDF	www.edf.com
EnBW	www.enbw.com
EWE	www.ewe.de
Fortum	www.fortum.com
Gas Natural	www.gasnatural.com
Gazprom Marketing & Trading	www.gazprom-mt.com
GDF SUEZ	www.gdfsuez.com
Iberdrola	www.iberdrola.es
OMV	www.omv.com
RWE	www.rwe.com
Scottish Power	www.scottishpower.com
Unesa	www.unesa.es
Vattenfall	www.vattenfall.com
Verbund	www.verbund.com
Veolia	www.veolia.com