



Decision

Decision of the Netherlands Authority for Consumers and Markets of 20-04-2023 with reference ACM/UIT/596446 on the amendment of the terms and conditions as referred to in Section 12b of the Dutch Gas Act regarding the interruptible-capacity discount.

Case number: ACM/22/180141

The Netherlands Authority for Consumers and Markets,

Considering Section 12f, paragraph 1 of the Dutch Gas Act;

decides

Article I

The Tariff Code for natural gas will be amended as follows:

A

In Article 3.9, paragraph 1, part b, '0.43%' will be replaced with '95.41%'.

Article II

This decision will come into force on the day after the publication date of the Dutch Government Gazette in which it is published.

This decision will be published in the Dutch Government Gazette with its explanatory notes.

The Hague,

Date: 20-04-2023

The Netherlands Authority for Consumers and Markets,

On its behalf:

M.R. Leijten

Member of the Board

Interested parties have the opportunity to file an appeal with the Dutch Trade and Industry Appeals Tribunal (CBb) in The Hague within six weeks after the date this decision has been announced. Its postal address is: College van Beroep voor het bedrijfsleven, P.O. Box 20021, 2500 EA, The Hague, the Netherlands. Appeals must be signed, and must at least contain the name and the address of the applicant, the date of the appeal, and a description of the decision against which the appeal is filed. Furthermore, appeals must contain reasons for the appeal, and must contain a copy of the disputed decision.

Explanatory notes

1. Summary

1. With this decision, the Netherlands Authority for Consumers and Markets (ACM) amends the level of the discount for interruptible capacity in the Tariff Code for natural gas. The amended discount percentage follows from the fact that, in its calculations thereof, ACM takes into consideration recent interruptions.

2. Background and procedure

2. Under Section 12f of the Dutch Gas Act, ACM sets rules and regulations for the energy market. On the basis of this power, ACM implements Regulation (EU) 2017/460, establishing a network code on harmonized transmission tariff structures for gas (hereafter: NC-TAR). For example, it has amended, among other regulations, the Tariff Code for natural gas of 10 December 2018 (hereafter: the NC-TAR decision).¹
3. In the NC-TAR decision ACM has set, among other things, the level of the multipliers, the level of the seasonal factors, the level of the discount for entry points of LNG-facilities, and the level of the interruptible-capacity discount. Under Article 28, paragraph 2 of NC-TAR, ACM is required to consult these parameters annually, and to take a decision supported by reasons.
4. With this decision, ACM amends the level of the discount for interruptible capacity. ACM does not amend the level of the multipliers, the level of the seasonal factors, or the level of the discount for entry points of LNG-facilities. When the NC-TAR decision was taken, no interruptions had taken place, and ACM set the discount on the basis of assumptions.² In the run-up to the 2021 tariff year, interruptions had been established for the first time ever. That is why, for the first time, ACM amended the discount for interruptible capacity for the 2021 tariff year compared with the discount as set in the NC-TAR decision.³ For the 2024 tariff year, ACM has made the same calculation as for the 2021, 2022 and 2023 tariff years, which is described below. This results in a different outcome than in the 2023 tariff year.
5. ACM carries out its duty of consultation by undergoing the code amendment procedure, in which, pursuant to Section 12c, paragraph 2 in conjunction with Section 12e, paragraph 3 of the Dutch Gas Act, it gave interested parties and the representative organizations of network users on the gas market the opportunity to submit their opinions about the draft decision within a period of 12 weeks. In addition, ACM has sent the draft decision to its counterparts in Germany (BNetzA) and Belgium (CREG).
6. ACM is of the opinion that the decision does not contain any technical regulations within the meaning of the EU Notification Directive. That is why the conditions in this decision were not submitted for notification.

3. Decision

7. In the NC-TAR decision, ACM has, for the first time, set the multipliers, seasonal factors, the level of the discount for LNG-facilities, and the level of the discount for interruptible capacity in accordance with the rules in the NC-TAR. One of the reasons ACM has come to this decision is by signing the agreement on NC-TAR decision (hereafter: the agreement) on 10 December 2018 with a significant

¹ Decision of the Netherlands Authority for Consumers and Markets of 10 December 2018, reference ACM/UIT/503577, amending the tariff structures and conditions as referred to in Sections 12a and 12b of the Dutch Gas Act regarding the implementation of Commission Regulation (EU) 2017/460 of 16 March 2017 establishing a network code on harmonized transmission tariff structures for gas.

² See recital 11 of this decision for a further explanation.

³ See code amendment decision of February 27, 2020, with reference ACM/UIT/527373.

number of market participants, including representative organizations.⁴ One element of this agreement is that ACM will make an effort not to amend the level of the abovementioned parameters, except for the discount for interruptible capacity.⁵ ACM currently does not see any reason to amend the multipliers, seasonal factors, and the level of the discount for entry points to LNG-facilities. However, ACM has reasons to amend the discount for interruptible capacity.

8. The interruptible-capacity discount is calculated using the formula in Article 16, paragraph 2 of NC-TAR. The discount is based on the probability of interruption (Pro) and the adjustment factor (A factor), which reflects the economic value of the interruptible product.
9. Article 16, paragraph 3 of the NC-TAR contains a formula with which the probability of interruption (Pro) is calculated. This formula is:

$$PRO = \frac{N \times D_{int}}{D} \times \frac{CAP_{av,int}}{CAP}$$

Where:

- N is the expectation of the number of interruptions over D ;
- D_{int} is the average duration of the expected interruptions expressed in hours;
- D is the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours;
- $CAP_{av,int}$ is the expected average amount of interrupted capacity for each interruption, where such amount is related to the respective type of standard capacity product for interruptible capacity; and
- CAP is the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

10. For the calculation of the probability of interruption, ACM looks at interruptions that occurred over the past three gas years (1 October 2019 through 30 September 2022). According to ACM, a measurement period of three years is representative and sufficiently robust. An interruption in any one year can be an exception, and that is why ACM believes that a multi-year measurement period is more appropriate.⁶ ACM considers the data of the previous three years to be representative. In this context, ACM uses gas years in order to be able to use the most recent data. ACM plans to launch the consultation every year in October, under Article 28 of NC-TAR. A new gas year begins on 1 October. ACM is thus able to incorporate the data of the previous gas year, as one of the three gas years, in its consultation. ACM does not amend the adjustment factor (A), and sets this at 1.
11. When the NC TAR decision of December 10, 2018, was set, no interruptions had been known to ACM at that point. If no interruptions are known, the above-described calculation will not lead to any result. In that case, ACM uses an assumption in order to calculate the probability of interruption. The assumption is that one interruption takes place each year for not more than 1 hour.
12. During the measurement period of October 1, 2019 through September 30, 2022, interruptions did take place, and, therefore, the calculation does lead to a discount percentage. Over the summer of 2022, demand for natural gas transports from west to east rose substantially. This was due to the fact that gas flows from Russia had virtually come to a halt. As a result, a large spread emerged between, on the one hand, the trading platforms in Belgium and the UK, and, on the other hand, the trading platforms in the Netherlands (TTF) and Germany. During the summer of 2022, this meant that it became attractive for natural gas traders to book a considerable amount of interruptible entry capacity on the virtual interconnection point BENE. As a consequence, both the booked interruptible capacity as well as the number of interruptions went up considerably during the 2022 gas year.

⁴ Agreement on NC-TAR decision of 10 December 2018, see <https://www.acm.nl/sites/default/files/documents/2018-12/overeenkomst-nc-tar-besluit.pdf>

⁵ See Article 3, paragraph 2 of the agreement.

⁶ See code amendment decision of February 27, 2020, with reference ACM/UIT//527373

Application of the formula in Article 16, paragraph 2 of the NC-TAR will thus lead to a substantial increase in the discount percentage for interruptible capacity.

13. Based on the above, ACM has arrived at a discount for interruptible capacity of 95,41%.

4. Responses to opinions received

14. ACM received an opinion from Belgian regulator CREG. In its opinion, CREG indicated that Gasunie Transport Services B.V. (GTS) makes unlimited interruptible entry capacity available on the virtual interconnection point BENE. Furthermore, CREG indicated that this capacity is not bundled with the interruptible exit capacity of the adjacent system operator Fluxys Belgium. This could disrupt the cross-border trade between Belgium and the Netherlands.
15. ACM discussed this with GTS. Starting on April 1, 2023, GTS will reduce its supply of interruptible capacity to 20% of the technical capacity. If demand exceeds supply, GTS will allocate this capacity using auction premiums. ACM is also in touch with GTS about offering bundled interruptible capacity on the virtual interconnection point BENE.
16. Please note that the above does not take anything away from the fact that the discount on the interruptible capacity in this decision has been set properly.

The Hague,
Date: 20-04-2023

The Netherlands Authority for Consumers and Markets,
On its behalf:

Manon Leijten
Member of the Board