

JOINT DECISION OF THE CRE AND THE CNMC ON THE 2017 CROSS-BORDER COST-SHARING AGREEMENT FOR THE BAY OF BISCAY PROJECT

This joint decision between the Spanish and French regulatory authorities, the Comisión Nacional de los Mercados y la Competencia (CNMC) and the Commission de Régulation de l'Énergie (CRE), relates to the cross-border cost allocation of the Bay of Biscay electricity interconnection project between France and Spain. This joint decision amends the joint decision on cross-border cost allocation adopted in September 2017 in order to take into account the evolution of the total cost estimate of the project-due to changes in the project's consistency and the progress of the tender procedure for the supply contracts.

Pursuant to the provisions of Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure, the Spanish and French regulatory authorities adopted in September 2017 a joint decision on cross-border cost allocation for the Bay of Biscay electricity interconnection project. This joint decision was based on an assessment of investment costs of €1,750 million, plus or minus €200 million.

By a common statement dated 1 February 2023, the project promoters RTE and REE, transmission system operators (TSOs) respectively in France and Spain, informed their respective regulatory authorities of a significant increase in the estimated costs of the project following the preliminary results of the calls for tenders conducted for the purchase of supplies needed to build the interconnection. They asked them to confirm the costs would be recovered acknowledging the new assessment of the project's costs of €2,850 million, to which is added a provision for risks of €250 million. These changes in cost are mainly due to a particularly tense context on the markets for the supply of HVDC cables and converter stations. In addition, the commissioning of the project is now scheduled for 2028.

The Bay of Biscay interconnector is essential for improving the European electricity market. It will make a significant contribution to the security of supply and to the achievement of the European Union's climate and energy objectives. The project has been awarded financial support from the European Union. In view of the expected benefits of the project, the CRE and the CNMC confirm the opportunity of carrying it out.

Nevertheless, due to the significant increase in project costs, the CRE and the CNMC have agreed, only for the purpose of the distribution of the new assessment of the project's costs, to modify the project cost reference of the joint decision on cross-border cost allocation in order to adapt it to the current inflation context. The cost estimate made in 2017 is thus updated taking into account the inflation levels observed since 2017 and the projections over the estimated date of commissioning of the interconnector. The updated cost amount is therefore set at €2,390 million. This level replaces the amount of €1,750 million initially planned and is therefore split, before receiving any subsidy, up to € 1,195 million for each TSO.

The CNMC and the CRE agree that over-costs above the project cost reference, now set at €2,390 million, are borne at 62,5 % by REE and 37,5 % by RTE. However, considering the important change in the budget, the CNMC and the CRE agree that over-costs above €2,700 million will be borne at 50 % for each TSO. In addition, the CNMC and the CRE agree to remove the specific provision relating to the first additional costs borne entirely by REE.

The CNMC and the CRE agree that, should the European Union grant directly additional financial support to the project, received from the Connecting Europe Facility (CEF) for Energy or from any other instrument, after the adoption of this decision amending the joint decision on cross-border cost allocation adopted in September 2017, and as long as a minimum of €350 million of the total funding is allocated to RTE, including the grant already awarded by the CEF, the additional grant would be allocated in such a way that the total share of grants allocated to REE, including the grant already awarded by the CEF, would reach €350 million. Any further additional grant awarded directly by the European Union would be split equally between RTE and REE.

Finally, the CNMC and the CRE agree that the specific mechanism providing for a redistribution of the additional benefits of the project in the event of an actual utilization rate higher than the forecast utilization rate is abolished.

Considering this new agreement, the chapter 6. CROSS BORDER COST ALLOCATION DECISION, of the joint decision of September 2017, is replaced as follows:

"6. CROSS BORDER COST ALLOCATION DECISION

The estimated reference cost of the project, now set at €2,390 million, will be shared between TSOs before any subsidy at 50 % for REE and 50 % for RTE.

The distribution of the EU's financial assistance should be allocated so that a minimum of €350 million from the grant is allocated to RTE regardless of the total amount which is attributed.

If the EU were to award directly additional funding to the Bay of Biscay project after the adoption of the joint decision amending the joint decision on cross-border cost allocation adopted on 21 September 2017, the additional EU financial assistance is allocated so that REE total share of the grant, including the grant

obtained anteriorly, reaches €350 million, as long as the condition of the previous paragraph is fulfilled. Any additional funding awarded directly by the EU above this threshold is allocated equally between TSOs.

- operational costs sharing

Regarding the allocation of the operation and maintenance costs of the project, RTE will bear 60 % while REE will bear the remaining 40 %. Thus the costs related to damage on the submarine cable will be shared according to this cost sharing key regardless of the location of the incident.

- treatment of potential costs overruns

All additional costs overrun between €2.390 million and €2.700 million will be borne at 62.5 % by REE, and 37.5% by RTE.

All additional costs overrun above €2.700 million will be borne at 50 % by REE, and 50 % by RTE.

As stated by article 12.5 of Regulation (EU) No 347/2013 and article 16.6 of Regulation (EU) No 2022/869, NRAs will pay particular attention to the efficiency of the costs incurred by the TSOs.

National incentive regulations – e.g. as described in CRE’s decision on the TURPE 5¹ or CNMC remuneration transmission methodology (Circular 5/2019²)– will make sure TSOs have incentives to minimize the magnitude of such costs overruns. In particular, this mechanism will consider potential overruns on a before-subsidy basis.

- treatment of congestion rents

The congestion rents of the project will be shared 50/50 between RTE and REE.”

The terms and conditions of the joint decision of September 2017 not mentioned above remain unchanged.

¹ <http://www.cre.fr/documents/deliberations/decision/turpe-htb3>

² <https://www.boe.es/buscar/act.php?id=B0E-A-2019-18260>