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CEER/ERGEG
Brussels

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Dear Fay

Recommendations for Guidelines to be Adopted via a Comitology Procedure

Action is needed to improve access to unused gas pipeline capacity across Europe.

Congestion management and capacity allocation¹ requires that:

1. Capacity is calculated efficiently;
2. Capacity is sold efficiently to market participants;
3. Market participants use their capacity rights efficiently;
4. There is the necessary level of coordination between TSOs and between regulatory authorities;
5. Market participants have the potential to align (or split) their bookings across multiple transmission networks; and
6. All market participants have the information they need for the efficient operation of these processes.

EFET therefore welcomes the opportunity to respond to ERGEG's proposals for Congestion Management (CMP) guidelines to be adopted via comitology. Congestion management and capacity allocation mechanisms (CAM) are linked; they both relate to capacity rights and are crucial topics for the development of the European Gas market. While EFET has recently written to ERGEG on the issue of CAM, some of our statements in this letter will, therefore, reiterate previously made comments.

EFET values ERGEG's commitment to cooperating with a wide range of stakeholders and market participants both when formulating policy and interpreting the practical application of legislation. In that vein, the opportunity to comment on this document is very much appreciated, as was the meeting with ERGEG on 17th March 2010.

Whilst measures are urgently needed in the short-term to improve access and use of international pipeline capacity, the separately proposed CAM Framework Guideline leading to an EU Network Code requiring market based allocation of a range of long-term and short-term capacity products should minimise the future need for regulatory intervention. These CMP guidelines therefore need to be adopted and applied without delay, but should not involve a level of intervention that would cause undue regulatory uncertainty or be detrimental to the development of the longer-term operation of the market.

¹ EFET Response (18 March 2009) to the questions posed in 'ERGEG Principles: Capacity Allocation Mechanisms and Congestion Management Procedures'

In summary

1. There are congestion management remedies that can and should be implemented quickly to improve the efficient use of capacity. In the longer-term, fundamental changes should result from market-based primary capacity allocation.
2. Care is needed to ensure that short-term remedies do not lead to long-term regulatory intervention or a sub-optimal market design.
3. Dynamic capacity recalculation, optimal selling and buy-back, remarketing booked capacity and proper facilitation of secondary capacity trading are measures that should be implemented on an EU level by March 2011.
4. The primary focus should be on the rapid and effective implementation of these agreed measures.
5. In parallel with these guidelines, competition remedies involving long-term firm capacity rights remain appropriate for targeted action while for short-term capacity experience could be gained from the localised trial of other measures.

The rest of this letter provides further explanation.

Scope

Consistency with the CAM framework guidelines is important and we support ERGEG's focus on cross-border interconnection points (IPs). The Guidelines should apply at all listed IPs between Member States and markets in these Member States, not just those deemed to be congested. In the absence of any ex ante guidance, it is not clear on what basis any IP would be deemed to be uncongested, thus creating uncertainty as to whether or not all capacity had indeed been brought to market. As you will be aware, EFET's broader capacity position per se is that all capacity should be brought to market.

Consultation

We believe that EU gas transmission guidelines and EU network codes should include a general clause setting out the obligations on transmission system operators to consult. This requirement is not specific to CMP, but we would like to reiterate our view that during the development, implementation and operation of an EU network code the proper consultation by ENTSOG or an individual transmission system operator should at least include:

- The transmission system operator's description of the problem
- Proposals by the transmission system operator for resolution of the problem
- A timeline of at least 4-6 weeks for market participants to respond
- An explanation by the transmission system operator of how they have taken market participants' views in to account
- ACER or individual NRAs to monitor the consultation process

Existing Contracts

Transmission system operators are already obliged not to discriminate in the provision of regulated services, and thus their application of congestion management will need to be non-discriminatory. This must apply to any contracts that continue to exist as well as any new agreements. As in our

response on CAM, we anticipate that if the guidelines were to conflict with a part of an existing contract then the applicable legal framework would automatically dictate the requirements for adjustments.

A level playing field on congestion management rules needs to be created to ensure non-discriminatory, transparent and efficient utilisation of capacity with unutilised capacity being offered to the market.

As we have noted previously, if there are specific serious concerns relating to a dominant capacity position at a certain location, it is possible for the contract and behaviours involved at that one location to be investigated and remedied using competition law procedures.

Border Specific Adjustments

The aim should be full harmonisation and we note that the TSOs will have obligations in this regard under the Codes. However, to the extent that full harmonisation is not possible at present, border specific adjustments would be an interim step EFET would support where it can help facilitate cross-border flows. To ensure that the non-harmonised manner in which congestion is treated is not a permanent situation, EFET proposes to indicate this possibility is only allowed during a pre-defined transition phase, which should preferably not last longer than two years.

Incentivisation

ERGEG should consider the way in which the operation of any incentives schemes could be monitored. In addition to this, we wish to emphasise the need to ensure adequate consultation with system users on the way in which incentives are set up. The need for and agreement on a capacity floor level is an essential element in the incentive structure and its importance should be indicated on a European level.

Capacity Calculation and Network Security

The EFET view on this proposal is the same as that detailed in our response to the CAM Framework Guideline. To increase a harmonised and stable calculation of capacity throughout Europe, we propose that ERGEG instructs ENTSOG to include in their Capacity Allocation Network Code a basic time schedule. TSOs should jointly and regularly calculate the available firm exit and entry capacity for each point, based on the technical maximum and shared information of the respective downstream system. This level of firm capacity should always be marketed by the TSO, according to a pre-set fragmentation in short and long-term products. Additional firm capacity should then be calculated by the TSO on a regular, shorter term basis (matching the capacity products of the primary market, i.e. quarterly, monthly and daily), for the marketing of additional short-term products. The calculation and re-calculation methodologies, as well as the timelines for performing these calculations should be set after consultation on the product needs of the market. The calculations should be applied consistently and must be monitored by the regulator.

Regarding Network Securities and Emergencies, we suggest that an issue to be addressed is the lack of consultation and the subsequent freedom enjoyed by the TSO. From a market participant point of view there are three main 'extraordinary' situations which have to be well distinguished:

Emergencies within the TSO's control

We understand emergencies in the control of the TSO as instances in which capacity is curtailed due to technical constraints caused by the TSO. This results in the TSO having to guarantee the firmness of capacities, e.g. by market-based buy-back mechanisms (reverse auction). If in these cases a reverse

auction is not possible due to lack of time shippers have to be compensated for curtailment on a market-price spread.

Emergencies in the sense of the Security of Supply Regulation

Currently the Security of Supply Regulation is under discussion. What is clear already is the fact that the market shall function as long as possible in case of supply problems in the EU or single countries. Capacity curtailments in the scope of the Security of Supply Regulation are out of the scope of the TSO and shippers shall be compensated on the basis of the price originally paid. Curtailment of capacities by pro rata mechanisms is the ultima ratio.

Emergencies beyond the TSO's control, i.e. Force Majeure

The last instance we have in mind is Force Majeure, i.e. acts of God. In this case the TSO cannot be held responsible and the compensation is done on the basis of the original value of the capacity product. Curtailment can be proportionate and must be done on a non-discriminatory basis.

Cases of emergency of any of the above mentioned natures are very rare occasions but can yet cause severe economic damage to shippers if they occur. We encourage ERGEG and the EU Commission to make a consultation by TSOs compulsory on procedures used in case of the different types of emergency – we see ENTSOG in the position to ensure that a harmonised set of solutions is found.

Capacity Increase by Oversubscription and Buyback Arrangements

EFET strongly supports this proposal as it offers – subject to the design and TSO incentives underpinning the buyback mechanism – one method of achieving an economic and efficient use of existing capacity as well as signaling the need for investment in incremental capacity.

In particular, this proposal appears to be a useful first step that forces monopoly TSOs to make an efficient trade-off with respect to the need to undertake physical investment.

Once again we have to stress that we see an obligation on TSOs and national regulators to set up standardised rules at interconnection points in cooperation with the adjacent TSO and Regulator. There is no added value for the market if different oversubscription and buy-back mechanisms are applied on either side of a border. The buy-back mechanism must be in line with market-based CAM principles, i.e. a reverse auction.

Capacity Increase by Procurement of System Energy

EFET supports the parts of this proposal that oblige TSOs to maximise capacity and deal with congestion in an economically efficient manner. A further requirement that TSOs maximize the use of the traded market to obtain system energy would be helpful, but we do not believe that these guidelines should imply that the procurement of System Energy is the main way to reduce congestion. We therefore suggest splitting up these two issues – obligation to maximise capacity & deal with congestion and the procurement of energy – in separate articles, or clearly indicate that the procurement of system energy is only one of the ways to achieve the goal, and remove 'procurement of system energy' from the title of the article.

We are pleased to see that ERGEG itself recognises potential issues relating to discrimination and/or temporal market power need to be monitored. In that regard, EFET would suggest that ERGEG establishes an appropriate framework that ensures TSOs procure System Energy on a non-discriminatory basis via a web-based platform.

Capacity Charges

An example of detailed clarification from the preceding section is how the TSO's costs would manifest themselves with regards to capacity or commodity transportation charges? Indeed, the wider issue of capacity charges is a vital part of the whole congestion management process. If this is not set up correctly, then in the long run congestion management will not function effectively. To help make rapid progress now, however, we suggest that capacity charges should be included in the framework guideline for tariff structures and should be removed from these guidelines. EFET will strive to provide ERGEG with its views on capacity charging in due time.

Remarketing booked capacity

In general, we support the idea to offer a possibility to surrender capacities back to the TSO. Yet we do not understand why the detailed terms and conditions and the methods of reward shall be at the discretion of single national regulatory authorities. In order to speed up market integration, the market needs equal terms and conditions and methods of reward at one interconnection. The Guidelines should set the stage for further harmonisation of rules on either side of cross-border interconnection points while providing that regulatory bodies have a common approach in ensuring consistent and transparent capacity management rules that have been agreed with market participants.

The capacity surrender 'product' needs to exist in addition to the other means of remarketing booked capacity, such as secondary capacity trading. The guidelines should also ensure that TSOs split or bundle the surrendered capacity to meet market demand, through the usual process of allocating primary capacity and on the basis of approved charging methodology statements and monitored appropriately.

Firm UIOLI

The extent to which firm UIOLI should be integrated into market design or used as a specific remedy for extreme circumstances is still subject to much debate. We are keen to ensure that whatever proposals are put forward will contribute to the improved operation of the market.

Competition remedies involving long-term firm capacity rights certainly remain appropriate for targeted action, but there is genuine concern that empowering regulators to implement as yet undefined long-term UIOLI through these CMP guidelines would be unwise.

Conclusion

Our goal is to ensure that Europe has an increasingly robust and liquid gas market. There are several clear improvements to capacity congestion management that have full support of our members and that can and should be implemented quickly to make more capacity available to the market. Until these basic measures are fully implemented it is impossible to know whether or not additional measures are required. We therefore strongly recommend the rapid adoption via a comitology procedure of the core points in the guidelines that are essential for progress to be made. Our view of the essential content for the guidelines is summarised in the separate two-page document.

Yours sincerely



Chairman of the Gas Committee
European Federation of Energy Traders