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Mr Jean-Arnold Vinois
Acting Director
Directorate-General for Energy
Rue de la Loi 200/Wetstraat 200
1049 Bruxelles/Brussel

12th November 2012

RE: Network Code on Capacity Allocation Mechanisms

Dear Mr Vinois,

The European Federation of Energy Traders (EFET)[1] welcomes the progress on the Capacity Allocation Mechanisms Network Code (CAM NC) made as a result of the collaboration between ENTSOG and ACER, including the stakeholder engagement process, following the publication of the ACER reasoned opinion. In your final deliberations before the Comitology process, we would like to encourage you to take into consideration our views on the latest draft published by ENTSOG on 17th September and on the changes foreseen by the Commission[2] and presented at the 22nd Gas Regulatory Forum (Madrid).

First, with respect to Article 2(4) (Standard contracts), although we recognise that differences in some national legal frameworks can present an additional challenge when standardising transmission contracts, this should not be used as an excuse to avoid the necessary further harmonisation of contractual terms and procedures. Efficient combination of capacity between adjacent TSOs requires that there is **full consistency of contractual arrangements**, particularly with respect to the amount and definition of firm capacity.

In relation to Article 3 (Principles of co-operation), we strongly support the provisions on **coordination and exchange of data between TSOs**, and the **timely publication of information** on both planned and unplanned maintenance. Furthermore, with respect to Article 3(3) (Capacity calculation and maximisation) and the amendments to the section proposed by the Commission, we support the **publication of capacity calculation methodologies** foreseen by the current draft, as well as the importance of **exchange of information among TSOs** highlighted by ACER. In our view, it is essential that the **methodologies are approved by National Regulatory Authorities (NRAs) in consultation with stakeholders**, and that TSOs are given incentives to maximise the available technical capacity. Regulators should also monitor and audit the way in which TSOs calculate their available capacity.

In addition, as we have pointed out in the past in relation to the respective subsections of Article 4 dealing with capacity breakdown, long-term capacity available for allocation only as flat annual strips, combined with an obligation to offer 90% of the capacity on this basis is not conducive to the development of a competitive market. Greater flexibility must be offered to shippers, not least to new entrants, to profile capacity. In our view, **not more than 80% of the capacity should be allocated on a long-term basis.** In addition, together with flat annual capacity products, **quarterly products** (currently available for

[1] The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.
[2] Informal proposals of DG ENER from 24th September on amending section 3.3 and section 5.2 of the draft CAM Network Code.

booking only up to a year ahead) **should also be available for longer-term allocation (up to 15 years ahead).**

We note that ENTSOG rejected the ACER proposal that capacity quotas (reserving capacity for short-term auctions) should also apply to all new capacity. Whilst we agree that for centrally planned capacity it may be logical to have the same capacity quotas as in CAM for existing capacity, we do not support capacity quotas in cases where the size of the capacity enhancement has been determined by commitments from market participants. If a well-designed economic test is used, then **TSOs should make available the capacity demanded by all market participants**; building less would not fulfill market needs, whilst building more would risk stranded assets and additional costs for consumers.

If TSOs are obligated to sell new capacity to the market whenever bids for capacity in the long-term auctions exceed available capacity, subject to an economic test, then market participants have an opportunity to bid and obtain incremental capacity every year. To reiterate, it is our belief that for incremental capacity **market-based mechanisms are a superior tool on which to base investment decisions**, as they reveal the true level of market demand rather than relying solely on forecasts by central planners. Therefore, we welcome the discussions which CEER has initiated on this subject[3].

We strongly support the objective of joint sale of fully consistent capacity products from one TSO system to the next, but are concerned that inconsistent capacity products might be 'bundled' together leaving in place the underlying contractual problems and restrictions on trade. The amendments to Article 5.2 on the sunset clause proposed by the Commission are well-received by EFET member companies, as they are in line with our position that **network users should not be forced to accept only bundled capacity.** In our view, the most prudent approach to bundled products would be to **strengthen the obligations on TSOs to provide consistent capacity products** before they are bundled together.

Last but not least, we feel strongly that **any mention of tariffs in the CAM Network Code should only refer to the forthcoming Network Code on Tariffs**. The simplest approach to avoid prejudicing or compromising ACER's work on the draft Framework Guidelines on Tariff Structures for the EU Gas Tariff Network Code would be to delete the paragraphs dealing with tariffication from the CAM Network Code, in particular the whole of Article 7 (Tariffs).

We hope that these comments will contribute to an informed discussion during the Comitology process and we remain at your disposal should you have any questions on our contribution.

Yours sincerely

Dr Colin Lyle
Chairman of the EFET Gas Committee

CC:
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Vittorio Musazzi, *General Manager, ENTSOG*

[3] For more information on our proposal, please see EFET response to CEER consultation on Market-based Investment Procedures for Gas Infrastructure: Issues and Approaches from 14th September; EFET letter to ACER on the draft CAM NC from 24th September; and Incremental Capacity: Regulated Pipeline Investment in Response to Market Needs from 19th January.