



Amstelveenseweg 998

1081 JS Amsterdam

Phone: + 31 20 520 7970

Fax: + 31 346 283 258

Email: secretariat@efet.org

Website: www.efet.org

Agency for the Cooperation of Energy Regulators

Trg. Republike 3,
1000 Ljubljana – Slovenia

EFET Gas Committee

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Reaction to ACER on the development of EU rules for capacity trading

Introduction

Europe has already established various rules for trading, but the main issue here is whether a Network Code is required in relation to the services that TSOs provide to enable trading of capacity. In this respect the European Federation of Energy Traders (EFET)¹ welcomes the decision of the European Commission to pursue the issue of rules for trading related to the technical and operational provision of network access services and system balancing, and the subsequent discussion on scoping initiated by the Agency for the Cooperation of Energy Regulators (ACER). We support the proposal of ACER that, if rules on trading are to be developed into a Network Code, they should focus on the commercial and operational responsibilities of TSOs, in particular the further harmonisation of capacity products.

A pre-requisite for trading bundled capacity

The *consistency of capacity products* is a pre-requisite for the effective bundling of cross-border capacity and efficient secondary trading. At the 23rd Madrid Forum the Regulators acknowledged that full transparency of the differences in contractual terms and procedures at Interconnection Points (IPs) would be needed where bundled capacity products are proposed. This would help to identify specific differences that may need to be addressed. Some of the

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information, visit our website at www.efet.org.

areas that could significantly increase risk or decrease the value of bundled products include contractual differences in the following areas:

- Definition of firm capacity and access from or to VTPs;
- Definition of FM and emergency provisions, if they affect firm capacity rights;
- Right to nominate/re-nominate use of capacity, timing & procedural issues – including renomination restrictions;
- Capacity Transfer rights and processes;
- Capacity Assignment rights and processes;
- Tradability and assignment of interruptible capacity;
- TSO consent and approval requirements;
- Credit arrangements;
- Impact of planned and unplanned maintenance on capacity rights;
- Dispute resolution procedures;
- Notifications, billing and payment;
- Treatment of secondary traded capacity when primary capacity holder (or intermediate capacity holder in a trading chain) becomes insolvent;
- National legal and regulatory limitations on prices at which secondary capacity may be traded;
- Any other rights or obligations between the capacity holder and the TSO that have a material impact on the value of capacity at Interconnection points (IP)s.²

It is of concern that a wide range of differences are potentially being locked into inconsistent bundled products. EFET is working with PRISMA (a Platform for European gas capacity booking) to identify and resolve those differences in the contractual terms and conditions at IPs that are a barrier to the process of secondary trading; *inter alia* agreed definitions of what is meant by “transfer” and “assignment” and the different treatment of insolvency of the primary capacity holder (or intermediate capacity holder in a trading chain), have been a focus of a dedicated EFET legal task force. In this context it is important that TSOs participating in PRISMA work towards more harmonious trading products as the current diversity of capacity products effectively blocks further standardization.

In cooperation with PRISMA, the EFET legal task force has been analysing the functionalities of the PRISMA platform for secondary capacity trading, to be implemented from January 2014. Once the understanding of the platform’s general terms and conditions is aligned, EFET and PRISMA jointly aim at developing a standard documentation for the secondary gas capacity

² Please also refer to [the EFET paper on secondary capacity trading \(29 March 2007\)](#) which, *inter alia*, sets out our understanding of what the terms assignment, transfer etc. mean.

trading on PRISMA's platform, taking the form of an Annex to the EFET General Agreement concerning the Delivery and Acceptance of Natural Gas.

Facilitating secondary trading when the underlying primary contracts have material inconsistencies would create potentially serious systemic risk. Therefore, prior to creating a standard contract that is widely used for trading bundled capacity products, it is essential that the National Regulators and TSOs assist the task force by removing the existing material differences between the contractual terms of primary gas capacity products traded at different IPs.

Other capacity trading issues

Users of transmission systems need the right quality of services to be provided by TSOs. Bundling must not occur at the 'lowest common denominator' but at a standard that uses best practices both for contractual terms and operational processes. For example, not only must primary capacity contracts allow secondary capacity trading, but the processes of transferring and assigning the capacity must be completed quickly by the TSOs. Regulators will have an important role both to ensure the right quality of standards is included in TSO contracts but also to monitor the performance of TSOs in delivering the quality of operational services needed by system users.

As identified in the ACER presentation on scoping on rules for trading prepared for the 24th Madrid Forum, further consideration should be given to the design of entry/exit systems and capacity products, the role of TSOs in secondary capacity trading, and the use of third party platforms.

Guidance would also be helpful in the application of REMIT, as *wholesale energy products* is specifically defined to include *contracts relating to the transportation of electricity and natural gas in the Union* and *derivatives relating to the transportation of electricity or natural gas in the Union*³.

Operational responsibilities of TSOs

Real-time publication of capacity is a concern from an operations perspective. There is a need for the comprehensive updating of all capacity holdings and trades in near real time (currently many of the German TSOs, for example, fall short in this area). We also see the need to view aggregated capacity holdings by network point and by day/month/year; including both entry/exit capacity into the system, as well as storage and end user capacities.

It would also be helpful for all TSOs to align how they:

- notify breaches (include storages, cross border, cross market etc.);

³ Regulation No 1227/2011 on wholesale energy market integrity and transparency, Article 2(4)(b) and (c)

- schedule gas, or not schedule gas if you breach capacity;
- penalise for breach;
- publish current flows/nominations vs. capacity held at that each point.

Recommended way forward

To bring these issues forward, we recommend a thorough step-by-step analysis of the differences in relevant national legislation and in contractual terms and TSO processes at each IP. Furthermore, there should be an obligation on TSOs to set out a timeline - agreed with the regulators and market participants - for the elimination of those legal, contractual or procedural differences that create inefficiencies or increase risks associated with gas trading or network access. If these differences are addressed quickly and efficiently, then a Network Code that defines the terms and conditions of standard capacity contracts at IPs would be unnecessary.

In parallel, consideration should be given to the possibility of developing Guidelines of Good Practice for Credit Arrangements in relation to TSO Transportation and Balancing Services. This could be developed initially by CEER as a useful tool for improving consistency.

Guidelines of Good Practice for the Operation of Gas Hubs would also be beneficial to provide a clear direction for the role of TSOs in establishing direct firm access to and from a Virtual Trading Point with a title transfer facility, and the additional services and governance procedures that would be required if the TSO were also to take on the wider role of Hub Operator. Some initial thoughts on the scope of these guidelines are presented in Appendix 2 of the recently published [EFET Guide on the features of a successful Virtual Trading Point](#).

By CC: *Markus Backes*
Referent, Assistant Head of Section
Section 609 "Gas Transmission Network Access, International Gas Trading"
Federal Network Agency