ACER
Agency for the Cooperation of Energy Regulators

RECOMMENDATION No 02/2012 OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS

of 4 October 2012

ON THE NETWORK CODE ON CAPACITY ALLOCATION MECHANISMS FOR THE EUROPEAN GAS TRANSMISSION NETWORK

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators[1] (hereinafter referred to as the 'Agency'), and, in particular, Articles 5 and 17(3) thereof;

HAVING REGARD to the favourable opinion of the Board of Regulators of 1 October 2012, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

1) Capacity Allocation Mechanisms (CAM) were identified in 2008 as a priority topic by the European Regulators' Group for Electricity and Gas (ERGEG), which adopted at the request of the European Commission pilot Framework Guidelines on CAM on 7 December 2010[2]. On the basis of the pilot Framework Guidelines, the European Commission invited, in a letter dated 27 January 2011, the European Network of Transmission System Operators for Gas (ENTSOG) to establish a Network Code on CAM within 12 months.

2) On 3 March 2011, the Agency became operational and started immediately the formal process for developing the Framework Guidelines on CAM. The Framework Guidelines on Capacity Allocation Mechanisms for the European Gas Transmission Network[3] (the 'Framework Guidelines') were adopted by the Agency on 3 August 2011.

3) On 17 August 2011, the European Commission, in consideration of the Framework Guidelines' contribution to non-discrimination, effective competition and the efficient functioning of the market, reiterated its invitation to ENTSOG to submit a Network Code on CAM and extended the deadline for this submission to 9 March 2012.

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[1] OJ L 211, 14.8.2009, p.1
[2] Revised Pilot Framework Guidelines on Capacity Allocation Mechanisms adopted by the European Regulators' Group for Electricity and Gas (ERGEG) on 7 December 2010, E10-GWG-71-03,
[3] FG-2011-G-001

4) In drafting the Network Code, ENTSOG endeavoured to extensively involve stakeholders in a transparent process by organising several "Stakeholders Joint Working Sessions" (SJWS), workshops, and public consultations.

5) ENTSOG officially submitted the Network Code on CAM (the 'Network Code') to the Agency on 6 March 2012.

6) In its Reasoned Opinion of 5 June 2012[4] addressed to ENTSOG (the 'Reasoned Opinion'), the Agency evaluated the Network Code regarding the degree of its conformity with the Framework Guidelines and the attainment of the objectives of maintaining security of supply, supporting completion and functioning of the internal market in gas and cross-border trade, including delivering benefits to customers.

7) The Reasoned Opinion, while acknowledging a generally high level of conformity of the Network Code with the Framework Guidelines, considered that some parts of the Network Code were not in line with the Framework Guidelines. Eleven parts were identified, relating to definitions, application of the Network Code to new technical capacity, standard contracts, TSO cooperation, capacity breakdown, sale of unbundled firm capacity, amendment of existing capacity contracts, interruptible capacity, tariffs, incentive regimes, and interim period. The Reasoned Opinion contained specific proposals on how to bring the Network Code in line with the Framework Guidelines.

8) A public consultation ("stakeholder engagement process") on the scope and the nature of the amendments which needed to be introduced in the Network Code in order to achieve conformity with the Framework Guidelines was conducted by ENTSOG from 27 July to 10 August 2012.

9) ENTSOG officially submitted an amended Network Code on CAM (the 'amended Network Code') to the Agency on 17 September 2012, which reflects seven out of the eleven proposed amendments from the Reasoned Opinion, as well as three technical revisions related to the day-ahead and within-day auction timings and the interruption lead time in response to stakeholder requests and recent developments in other Network Code areas.

10) During the proceedings of a final public workshop held on 19 September 2012 by the Agency, the amendments and the four remaining open issues were presented and debated.

11) The amended Network Code shows a higher conformity with the Framework Guidelines than the (previous version of the) Network Code. It sufficiently addresses the concerns raised in its Reasoned Opinion in as many as seven out of eleven areas, but is still not fully in line with the Framework Guidelines in the remaining four areas.

[4] Reasoned Opinion on the Network Code on Capacity Allocation Mechanisms for the European Gas Transmission Network, ACER Opinion No. 04-2012

12) The first of these areas concerns the application of the capacity breakdown (quotas) to new and existing technical capacity, which is currently not reflected in the amended Network Code, although required by the Framework Guidelines. The capacity breakdown (quotas) should apply to the overall technical capacity at each point in time. Keeping aside some capacity for shorter-term allocations aims at mitigating the risk of congestion and providing some flexibility, beneficial to the achievement of the single gas market. Exclusion of new capacity from the scope of the quotas would undermine their effectiveness, insofar the amount of capacity set aside would not increase alongside capacity development. In addition, the capacity reservations only apply to a minor part of capacity, which strongly limits the risk of overinvestment and socialisation of costs.

13) The second area also concerns capacity breakdown. In the Reasoned Opinion, the Agency required to set some capacity aside for allocation up to 4-5 years ahead ("mid-term quota"). Consistently with the objectives of the Framework Guidelines, the introduction of this quota aims at preventing risks of contractual congestion, if 90% of the capacity were offered for 15 years. The Agency does not share the view expressed by several stakeholders that this requirement will create artificial scarcity. Capacity set aside will be made available in the future and market participants will be able to take this into account in their bidding strategies.

14) The third area concerns the sale of unbundled firm capacity. In order to facilitate the progressive bundling of capacity in case of technical capacity mismatches between both sides of an interconnection point at the earliest possible instance, the offer of unbundled capacity should be only allowed up to the rolling monthly auctions as technical capacity convergence may also - at least partially - be achieved by aligned (e.g. monthly) re-calculation and/or optimisation of technical capacities of entry-exist systems and is consistent with the measures set out in Annex I of Regulation (EC) 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005[5], thereby not necessarily requiring investments (with lead times of e.g. 5 years).

15) The fourth area where the amended network code is not in compliance with the Framework Guidelines concerns tariffs. The provisions on tariffs contained in the CAM network code should be restricted to those that are required for the implementation of this code. The revenue equivalence principle set out in section 7.3 (page 28) of the amended Network Code should be removed, as it is not the only way to determine reserve prices and ensure revenue recovery. The appropriate place for the tariff provisions is either at a national level or in the network code on harmonised transmission tariff structures.

16) Finally, the implementation period for the Network Code should not be unnecessarily long, as preparatory work has already started (for example in Gas Regional Initiatives). The wording in the amended Network Code is, however, ambiguous on

[5] OJ L 211, 14.8.2009, p.36.

this point, as it may be interpreted as granting 27 months rather than a more appropriate 18 months. A clarification on this point is therefore desirable.

17) Due to the fact that deviations from the Framework Guidelines remain in the four areas as described in recitals 12 to 15, the Agency cannot be satisfied that the amended Network Code is in line with the Framework Guidelines. The Agency is thus currently prevented from submitting the amended Network Code to the European Commission on the basis of Article 6(9) of Regulation (EC) No 715/2009. The current recommendation is therefore made on its own initiative on the basis of Article 5 of Regulation (EC) No 713/2009,

HEREBY RECOMMENDS:

the adoption of the amended Network Code by the European Commission on its own initiative, subject to the following amendments being introduced in the amended Network Code:

1. Section 2. (3) should be modified to reflect the application of capacity reservations (quotas) to all technical capacity, including new capacity, as required by the Framework Guidelines.

   In the beginning of the section, "Articles 4.1" should be replaced by *"Articles 4.1 (1) to 4.1 (6)"*.

2. In order to set some capacity aside for allocation only up to 5 years ahead ("mid-term quota"), section 4.1. (7) and 4.1. (8) should be replaced by the following text and a new section 4.1. (9) should be added:

   "7) An amount at least equal to 20% of the Technical Capacity at each Interconnection Point will be set aside and offered in accordance with article 4.1 (8), provided that the available capacity, at the time this Network Code comes into force, is equal to or greater than the proportion of Technical Capacity to be set aside. If the available capacity, at the time this Network Code comes into force, is less than the proportion of Technical Capacity to be set aside, the whole of any available capacity will be set aside. To the extent possible this capacity will be offered in accordance with article 4.1 (8) (b), while any remaining set aside capacity will be offered in accordance with article 4.1 (8) (a).

   8) Any capacity set aside pursuant to article 4.1 (7) will first be offered, subject to the following provisions:

   a. An amount at least equal to 10% of the Technical Capacity at each Interconnection Point will be offered no earlier than the annual yearly capacity auction as described in article 4.4, held in accordance with the Auction Calendar during the fifth gas year preceding the start of the relevant gas year; and

   b. A further amount at least equal to 10% of the Technical Capacity at each Interconnection Point will first be offered no earlier than the annual quarterly *capacity auction as described in article 4.5, held in accordance with the Auction Calendar during the gas year preceding the start of the relevant gas year.*

9) The exact proportions of capacity to be set aside in relation to articles 4.1 7) and 4.1 8) shall be subject to a stakeholder consultation, alignment between transmission system operators and approval by national regulatory authorities at each Interconnection Point in accordance with article 9."

Consequently, the definition of the letter B in the formula in section 4.4. 6) needs to be modified in order to read:

"B For annual yearly auctions offering capacity for the next five years, is the proportion of Technical Capacity (A) set aside according to article 4.1 8) b); and For annual yearly auctions for capacity beyond the first five years, is the proportion of Technical Capacity (A) set aside according to article 4.1 8);"

Moreover, section 9.2 a) should, for consistency with the above modifications, be amended as follows:

"(a) the exact level of capacity set aside for release less than 15 years ahead, beyond the minimum requirements set out in article 4.1 (8). In the case that no agreement is concluded, the capacity set aside shall be equal to the amount specified in articles 4.1 (7) and 4.1 (8);"

3. In order to facilitate the progressive bundling of capacity in case of technical capacity mismatches between both sides of an interconnection point at the earliest possible instance, section 5.1. 5) b) should be replaced by the following text:

   "b) Where such extra capacity would not fall under (a), it may be offered for a maximum period of one month on a rolling basis. Any such capacity will therefore first be offered in the rolling monthly auctions as described in article 4.6."

4. As regards the tariffs section, the revenue equivalence principle set out in section 7.3 (page 28) of the amended Network Code should be removed and replaced by the following text:

   "The appropriate tariff arrangements for the implementation of the Network Code shall be set forth on a European and/or national level in due time."

5. The recitals of the final decision of the European Commission should not contradict the main text; in particular the last recital on tariffs (page 4 of the amended Network Code) should be adjusted so as to reflect the same wording as proposed above for section 7.3 (page 28) of the amended Network Code.

6. In order to not have an unnecessary long implementation period, section 10.2 should be removed and replaced by the following text:

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"Within 18 months of this Network Code entering into force, the systems stemming from the provisions set out in this Network Code, including but not limited to technical aspects, shall be implemented."

This Recommendation is addressed to the European Commission.

The amended Network Code as well as the supporting documents received from ENTSOG are attached to this Recommendation for information purposes.

Done at Ljubljana on 4 October 2012.

For the Agency:

Alberto Pototschnig
Director