

RESPONSE TO PUBLIC CONSULTATION

on

ERGEG's Report on the Transmission Pricing (for Transit) and how it interacts with Entry-Exit Systems (hereinafter Report)

14 August 2006

Preface

This document presents comments of RWE Transgas Net, s.r.o., the holder of the transmission licence in the Czech Republic, on the Report on the Transmission Pricing (for Transit) and how it interacts with Entry-Exit Systems, a consultation document prepared by ERGEG.

General Comments

We welcome, as we see it, the renewed recognition of the fact that transit needs special attention and possibly also particular treatment in comparison with the national transport. Even if Directive 2003/55/EC (hereinafter Directive) has erased the difference between transit and national transport as activity, it could not have abolished differences that may be discerned in a competition analysis aiming at the definition of relevant market. A network user in need of transporting contracted supplies from a producer, in particular a non-EU producer, to its customers is likely to seek a different product than a network user requesting gas transport to end-customers within a national system. Investment decisions are also likely to follow different logic with regards to transit and national transport pipelines, respectively.

We would also like to point out that there is a difference between transit and cross-border exchanges (trade). This difference is based on the goal and time-horizon of such activities. The primary goal of transit is to transport contracted supplies from a producer to a (wholesale) supplier's customers. Network users will request, in advance, long-term transit contracts covering all or most of the time of the gas supply agreements. The primary goal of cross-border exchanges on the other hand is to exploit market opportunities offered by the liberalised energy markets. Network users will mostly seek short-term transmission contracts with very short lead times. Hence, investments in any purely cross-border infrastructure should be made distinct from investments into large transit infrastructure projects.

Particular Comments

Definition (Re: Recital 9)

The use of the term “boundary“ in the definition of transit may lead to confusion. Any definition of transit should be clear and reflect the inherent features of transit. To that end, the definition of transit as stipulated in the now repealed Council Directive 91/296/EEC on the transit of natural gas through grids may, with minor modifications reflecting the liberalisation process, well serve this purpose. According to it, transit means, within the single energy market, the transport of natural gas carried out by the transmission system operators established in accordance with the Directive where the grid of origin or final destination is situated in the Community and the transport involves the crossing of at least one intra-Community frontier.

Legal requirements for Transit (Re: Recitals 14-17)

Regulation (EC) 1775/2005 (hereinafter Regulation) applies to all transmission, incl. transit. The ERGEG report states that the “*objective of Regulation [...] includes the setting of harmonised principles for tariffs (Art. 1.1).*“ In this respect it is also necessary to recall the wording of the first subparagraph of the given Article 1(1) which stipulates that when “*setting non-discriminatory rules for access conditions to natural gas transmission systems, specificities of national and regional markets [are to be taken into account].*“ Harmonised principles as such are dealt with in Article 3 of the Regulation and, in fact admit the applicability of both non-market-based/semimarket-based¹ (first subparagraph of Article 3(1)) and market-based principles (second subparagraph of Article 3(1)).

Transit Protocol (Re: Recital 18)

Transit Protocol, as a document that is currently a draft only and, moreover, a matter of dispute with regards to certain issues (non-compliant with the *acquis*), should not be mentioned in the report, in particularly in respect of those concepts that are not in line with the *acquis*.

Market requirements (Re: Recital 19)

We do welcome strategic visions of contracting transmission capacities across the whole EU. Considering the great difficulties encountered in Germany with regards to the German *Zweivertragsmodell* where a similar approach is indeed an obligation stipulated in the German

¹ Semimarket-based principle covers the possibility to take benchmarking of tariffs into consideration.

energy law and, applicable only in one Member State, we however think that many other issues need to be solved before such a model may be implemented and therefore this provision should be withdrawn from the text for the moment.

A single TSO across the EU is by no means a prerequisite for efficient TPA rules. Also, an efficient inter-TSO co-operation is a must and does not necessarily lead to one single TSO.

Pancaking (Re: Recital 20)

In principle, network users must pay the costs associated with their contracted transmission capacity. Network users that have their gas transported through more than one transmission system unavoidably incur costs in several systems that add up. This is no undue pancaking and may not be regarded as distortion to trade. Moreover, any possible future mergers of systems for the purpose of capacity booking will necessarily lead to cross-subsidies between network users. Differences between the transport of electricity and gas must also be taken into account in this respect.

Natural Monopoly (Re: Recital 23)

There is nothing in the Directive that suggests that operation of transmission network is always a natural monopoly. Indeed, the Regulation admits in Recital 7 that there may be pipeline-to-pipeline competition. The rules on the definition of relevant market will be applicable in any such analysis.

Investment Incentives (Re: Recital 26)

We would like to point out that the Regulation in Article 3(1) provides for the incentives for investment, as well as incentives for maintaining or creating interoperability for transmission networks, to be part of the applicable tariffs and not designed separately and specially for exempted infrastructures only. Such an approach would, in our view, lead to discrimination between infrastructures and hence market distortion.

Parameters to Be Considered in Tariff Setting and/or Calculation (Re: Recital 29)

When setting and/or calculating tariffs, any such parameters should be considered that avoid cross-subsidisation of network users. Where applicable this must include distance as well. With regards to (mostly) unidirectional pipelines such principles must apply to the whole network regardless of the fact whether there is connection to the national supply system or not. Indeed, Recital 12 states that such kind (that is non-interconnected) of transit system is rare in practice.

Also the Commission in the draft explanatory notes on Article 3 of the regulation takes this approach.

System Meshness (Re: Recital 31)

It is true that meshness of a system may be considered from different perspectives. The perspective used must however serve the purpose of any particular consideration. In the case of cost allocation, it is necessary that meshness is considered at the level of the transmission system operator, that is to say, where costs and subsequently tariffs are calculated. In the case of a competition analysis, for the definition of alternative routes, it is necessary, on the other hand, to take EU-wide perspective.

P2P vs. E-E reservations (Re: Recital 32)

We would like to point out that a parameter of distance may be used in both point-to-point and entry-exit reservation systems. In the latter, such an approach is dependent on the appropriate direction and character of the flows.

Innovative commercial instruments: (Re: Recitals 34-35)

We welcome new ideas that contribute to the increase of available capacity by commercial operations/mechanisms. We would nevertheless expect a wide and separately held discussion on this issue with all stakeholders. Any such instruments will place certain obligations on the network users as well and it is not at all clear that there is readiness to accept such obligations on the part of the users.

Capacity Planning (Re: Recitals 36-39)

We think that for the TSO to have a comprehensive overview of the system needs in the future, it is first of all necessary to hold regular consultations with network users and suppliers of end-customers on their expectations and projections of supply and demand balance. On the basis of these consultations, the TSO may decide to hold an open season.

With regards to Recital 39, it is not clear what would happen if regulators were to find out that the future supply and demand in a country does not correspond to the transport demand and the capacity offered.

Cross Subsidies between Network Users (Re: Recital 40)

It should be clearly defined what is meant by “where calculated entry and exit tariffs are geographically uniform across the transmission system.”

Trading of Unused Capacity (Re: Recitals 43-45)

In accordance with Article 5(3)(a) of the regulation TSOs “*shall offer unused capacity on the primary market at least **on a day-ahead** [not month-ahead] and interruptible basis*”.

It is not possible to oblige network users to use the bulletin board organised by the TSO to offer their unused capacity. We understand the concerns of ERGEG with regards to possible discrimination in offering capacities on the secondary market, on the other hand, the secondary market is there for the users and they have to have the freedom to offer their (unused) capacity through whatever means they choose. Service of this kind, involving more than one transmission system, may well be developed by independent entities. In case of any irregularities, it is up to the competition authorities to investigate the case.

New pipeline infrastructure -setting tariffs (Re: Recitals 46-48)

“*The significant part*” of new infrastructure capacity that should be reserved for short-term contracting must be clearly set (quantified). It is not clear from the text who would take the risk of the dedicated short-term capacity remaining non-contracted. Would it be the TSO or the network users committed for a long term? Neither possibility is satisfactory. If it were to be the TSO, the extra costs not covered would eventually get reflected in tariffs for all users defying the efficiency efforts the TSO is bound to make; if it were to be the long-term network users, these would be discriminated as they would pay for more than they requested and is provided to them.

Interaction of Transit Flows with Entry-Exit Areas (RE. Recital 50)

We would like to point out that even with point-to-point capacity bookings network users may be allowed to combine their portfolio for balancing purposes avoiding thus any unnecessary balancing charges.