

Comment of bne concerning the draft ERGEG principles on capacity allocation and congestion management in natural gas transmission networks

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Public Consultation: ERGEG principles for CAM & CMP

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The Bundesverband Neuer Energieanbieter (bne – Federal association of new energy suppliers) welcomes the opportunity to comment on the ERGEG principles on capacity allocation and congestion management (draft version from 15th January 2009).

Founded in 2002, the bne is Germany's unique representative for interests of new energy suppliers. bne stands for an industry specific representation of interests and bundles the concerns of energy suppliers, traders and producers. The main aims of the bne are efficient and undistorted competition by fair conditions especially concerning the access and use of the network in the German electricity and gas market as well as ensuring consumer protection.

In the following we want to give our view to some of your questions for stakeholders.

<p>1. Do you agree with the problems that ERGEG has identified with capacity allocation and congestion management? Are there other aspects that should be taken into account?</p>

We totally agree with the problems that ERGEG has identified with capacity allocation and congestion management:

- Existing capacity rules are not sufficient to achieve the maximum use of physical/technical capacity and often contractual congestions alone hinder its maximum use. This at least is our experience with using interruptible capacity and with the frequency of interruptions in gas transmission. Unfortunately getting hard evidence is almost impossible, as there is no transparency on the gap between physical and contractual capacity offer at all.
- Moreover new entrants are systematically disadvantaged within the effective capacity allocation rules, especially FCFS. We describe this problem more detailed in our answer to question number 3.

Yet, there are still other topics which have to be considered in the principles:

- Different market conditions and frameworks require different approaches: The capacity utilisation and the types of congestions for example vary in gas transports between market areas and those on cross-border interconnection points.

- There is no justification for the existence of market areas in Germany: They had been created along the property lines of transmission system operators, cooperation between network operators to create common market areas is still an exception.
- The liquidity of gas trading hubs or virtual trading points is varying strongly and has to be stressed further in the principles: Hence a capacity buy back mechanism is better suited to provide the market with firm capacity than by means of a restriction of re-nomination rights within short-term UIOLI.

We give a more detailed rationale for these statements following the answers to the next questions.

2. The scope of ERGEG's principles and of the derived proposals covers bringing capacity to the market where there is currently contractual congestion. Do you agree with this approach?

We support the purpose of ERGEG's principles on CAM and CMP to excavate previously unused capacity and to provide it to the market. We consider this as an important and essential step towards further development of competition. But there should be attracted more attention to two basic parameters:

- Which type of congestion should be resolved? Are all occurring congestions physical congestions? For the conclusion see our answer to question 1.
- Which type of capacity is demanded by shippers who are especially disadvantaged by today's capacity allocation and therefore should be made better available?

Maximization of capacity supply should be the prior purpose and therefore we suggest a stronger accentuation of the principle "Increase of available capacity by commercial means", especially by a capacity buy-back mechanism.

3. In principle, European regulators consider FCFS allocation potentially discriminatory. Do you share this view? What do you think about the proposed mechanisms (OSP with subsequent pro-rata allocation or auctioning)?

We can confirm this absolutely: "First come-first served" (FCFS) is not a fair allocation methodology for entry- and exit-capacities – this is an experience which new entrants made in the German gas market with the so called market areas and at many cross-border points. FCFS favours only interests of the incumbents, which basically always booked earlier than others.

Allocation by means of auction would offer network access not at the same non-discriminating conditions, because with that allocation mechanism only shippers with the highest willingness to pay get the capacities. If an auction process is inevitable, at least

transmission system operators shall select an auction mechanism that prevents an anticompetitive overheating of prices resulting from the auction because of a possible abuse of market power. The transmission system operators shall reinvest the additional receipts from the auction in the removal of existing congestions.

Some of ERGEG's proposals require a liquid secondary market for capacities and / or liquid commercial markets. These are essential basics, which had to be created or improved to some extent by the proposals on CAM and CMP. But what happens if the level of liquidity is not high enough? In that case and in the case of implementation of pro-rata allocation, how can the shipper cover the remaining need for capacity?

4. In your view, what is the future importance of the proposed capacity products (firm, interruptible, and bundled) and of the proposed contract duration (intra-day up to multi-annual)?

In our view, a reasonable and demand-oriented design of capacity products will and has to play a more important role in the future. For example, in the German gas market even already existing European requirements are not implemented:

- The conditions of interruptible capacity do not reflect risk and likelihood of interruption and have a bad price-performance ratio: the price of interruptible capacity in comparison to firm capacity is too high.
- Sales discounts or lower prices for longer term capacity bookings in contrast to shorter time horizon as seasonal, monthly, weekly or day ahead products encourage the inefficiency of usage.

Hence the actual pricing of capacity products in the German gas market leads to an inefficient usage of the products and even favours capacity hoarding. Thus as a first step transmission system operators should implement the rules of the existing European Regulation (EC) No 1775/2005 of the European Parliament and of the council of 28 September 2005 on conditions for access to the natural gas transmission networks. Suitable incentives for transmission system operators to develop innovative procedures that are enforced by the relevant national regulatory authority could lead to a rise in efficiency. That is one way to encourage structured capacity bookings by a reasonable and structure-oriented design of capacity products as a probate instrument to increase the available capacity offer.

Minimum standards and the framework of capacity product design must be subject to the national regulatory authority's approval, in detail by consultation and commitment. Especially in Germany with several market areas and transmission system operators for these market

areas only the regulatory authority can carry out such a consultation in a non-discriminatory way. The provision of point G2.2 should be altered into the national regulatory authority, at least the national regulatory authority shall assume the function of coordination and settlement.

Certainly, a separation of capacity supply on fixed shares (G.2.2.1) of short-term and long-term capacity might avoid a possible hardening of the market situation. In order to develop a capacity supply according to the requirements of market participants, the transmission system operators should consider the demand of shippers for the respective capacity products – otherwise (valuable) long-term capacity could be withdrawn from the market.

Prior a limitation of existing re-nomination rights (G4.1 Firm day-ahead UIOLI procedure) a liquid and functional secondary marketing platform has to be created, in order to offer shippers an appropriate and sufficient opportunity to buy and sell intra-day capacity.

Bundled products

We agree with the draft in the guidelines: Bundling of exit and entry capacity at interconnection points is necessary and the only adequate type to offer capacities. But we would go even further in our statement: In the long-run capacity bundling should result in turning away from point-oriented capacity bookings. Shippers are – same prices for the same capacity product assumed – only interested in gas transport from one transmission system to the adjacent transmission system in the sense of crossing a border between market areas or countries. Hence the consequence must be the introduction of virtual cross border points for capacity bookings. Such a bundling of capacity at virtual cross-border interconnection-points could create more flexibility for transmission system operators in congestion management and therefore also in maximization of the firm capacity offer – without restrictions in free assignability.

5. What is the role of secondary capacity trading?

See our answer to question number 9.

6. How do you assess the proposed measures to enhance the availability of firm capacity and to improve short-term and long-term congestion management?

Cooperation of transmission system operators

In our view effective capacity utilisation and enhancement of available capacity offer can only be achieved by a close cooperation between transmission system operators. Thus we

consider this principle as constitutive to achieve the aim of significant improvements. Just on the national level with the same regulation framework and practice the cooperation between transmission system operators has to be realized with regard to overall economic performance in supply without reservation, for example by a common load flow simulation or combined entry- and exit capacity in a bundle of interconnection capacity offer. As a basic principle the cooperation of transmission system operators should not end with the offer of bundled capacity, rather transmission system operators shall consider an advanced bundling of the capacity: The Introduction of virtual cross border points for capacity bookings (See also the answer to question 4).

The alignment of transmission system operators' transportation contracts, network codes, communication and other booking-related proceedings is reasonable and important. As long as there is more than one market area, the different responsible transmission system operators shall implement standardized conditions on these parameters.

Capacity calculation and offer

See also question 9. All facts and parameters have to – instead of shall – be taken into account by transmission system operators' forecasting systems in order to maximize the amount of available firm capacity. Transmission system operators should also make a net calculation, i.e. take into account the demand in the opposite direction that could lead to a load relieving on the main flow. Whether this parameter has been taken into account in the past could not be deduced from the proposed ERGEG principles (G2.1). We believe, that the consideration of opposite direction flows in capacity allocation is reasonable and adequate. Prohibition of capacity allocation beside standard allocation mechanisms is correct and consistent. The ERGEG document misses a clear statement whether this is also valid for Open Season procedures and so excludes a capacity allocation in this way for the future.

Emergencies and unpredictable occasions

This rule must be limited strongly on cases of "force majeure". Under these circumstances a proportional reduction of usable capacity rights is the appropriate solution, because proportional reduction does not discriminate shippers and allows fast action of the network operator. If the congestion situation lasts over a longer period of time, transmission system operators shall consider other, non-discriminating solutions in coordination with shippers. In any case transmission system operators shall inform the shippers timely and sufficiently.

Incentivisation

Well designed incentives are appropriate to generate a more efficient result than the implementation of fixed requirements. For example, national regulatory authorities should provide incentives for transmission system operators to offer as much capacity on a firm basis as possible.

Capacity products

It is not possible to discuss capacity products without discussion the pricing for these products. See more below question 4.

Firm day-ahead UIOLI procedure

We object to a general withdrawal of existing re-nomination rights. There are consumers of gas which need imperatively short-term flexibility in gas supply, for example flexible used gas-fired power plants. In order to meet the need for short-term flexibility and freeing up short-term capacity at the same time, we propose a suitably capacity product differentiation with different prices for capacity with and without the right of short-term re-nomination. In this way each shipper can decide for himself, whether and to what extent he uses the flexibility of the short-term re-nomination right. Our proposal would rather meet different needs of shippers for flexibility in gas transport. For example in Germany there is at heart no longer a need for intra-day adjustments in the supply of standard load profile customers after implementation of "GABi Gas". That concerns a substantial part of customers – around 50 % of gas delivering to end consumers today in Germany. Suppliers of this customer group could use the lower-priced capacity product without the option of intra-day re-nomination. Further advantages of product differentiation would be also an easier implementation and enforcement of this instrument.

Basically the procedure and the schedule still have to be defined: How shall provide transmission system operators the capacity from those capacity rights without re-nomination option that is not initially nominated as firm day-ahead capacity on the secondary market? The defined times have to consider also nomination procedures which proceed during normal business hours and in coordination with balancing procedures and -deadlines, trading hours and usual contract terms of nomination.

Moreover alternative nomination processes with time delay like "online flow control" have to be considered. These are essential instruments to supply very large customers in industry or generation (power plants). The use of these alternative nomination processes must be possible also in the future with new CAM and CMP rules.

7. What are your views on the proposals? Do they address the problems? Will they lead to more effective capacity allocation methods being developed?

See below question number 6 and 8.

8. Are the needs of shippers performing supply activities properly taken into account?

There is no single type of shippers and thus there are different needs with regard to the capacity offer and its conditions of access. Competing gas suppliers and new entrants have to adjust to the existing framework and market conditions and consider these in the calculation of their gas delivering offer. The possibilities for increased long-term predictability as well as flexibility in short-term reactions can be decisive for the success of a competitor. For this reason we believe, though the proposals could improve today's situation, the needs of shippers -respective new entrants- have not been taken into account adequately.

9. Are the proposed measures suitable to facilitate development of liquid gas markets?

The present ERGEG principles on CAM and CMP are certainly an important step to improve the network access in the interest of competitors and new entrants in the gas market. But in order to achieve the aim to raise the level of available firm capacity in the long run, the principle of freeing up short-term capacity and offer it on the secondary market will not contribute to this aim. In our view the key element for a further development is the availability of more long-term capacities. Especially a new entrant needs the certainty to obtain firm capacity on the base of clear rules and calculable conditions.

Furthermore an effective and extensive trade with unused capacity in the secondary market is only possible between liquid markets or market areas. Therefore changes with the single focus on the conditions of promotion of the secondary capacity trade are not appropriate to achieve the designated effect. Hence we suggest to give more attention on the enhancement of primary capacities: The development of a capacity buy-back mechanism and the implementation of capacity products for the usage of structured capacity bookings. These would show the highest potentials with regard to improvements.

Capacity buy-back mechanism

The draft of ERGEG principles contains the obligation of transmission system operators to develop capacity buy-back mechanisms as commercial means in a row of other instruments to enhance available capacity. We consider this as a central and very important instrument

which picks up the simultaneity factor – the stochastic character of capacity utilisation. Transmission system operators would have an incentive to implement such a mechanism because of the increase of revenues. But national regulatory authorities should also encourage or honour better than so far the development and implementation of these mechanisms. In well-functioning markets innovations like these result from the competitive situation of players. In regulated monopolies like energy networks the regulatory framework has to give those impulses. The Capacity buy-back mechanism is not a new invention and its potential can be shown in other industries, especially air transportation.

Thereby the ERGEG guidelines on “increasing available capacity by commercial means” has to be completed with the following items:

- Capacity calculation shall consider further parameters like network utilisation over the last years as well as oil price-oriented gas purchase contracts and use of capacity at some interconnection points in this context.
- Capacity buy back may be offered only, if there are several shippers with bookings at the relevant interconnection points between adjacent transmission systems, i.e. cross-border as well as within Member States.

10. In your view, how important are compatible booking and operational procedures between adjacent systems?

See also Cooperation of transmission system operators and bundled products.

Especially on the national level compatible booking and operational procedures between adjacent systems are adequate requirements, and provisions like the establishment of a joint platform for capacity bookings should be realized immediately.

11. Do the proposed measures increase the efficient use of the system? What aspects would you support and like to see further developed?

Only if the package of measures is tailored to the aim and the market conditions, the existing framework can contribute a more efficient utilisation of the network system. For this we suggest to consider our proposals in the present ERGEG Guidelines. Beside already mentioned aspects a further development should involve also the determination of fees.