

# Guidelines for Good TPA Practice for Storage System Operators (GGPSSO) – Summary of responses<sup>1</sup>

1 December 2004

## Introduction

At the Madrid Forum held on 8-9 July 2004, ERGEG presented a first draft of the GGPSSO for discussion. The GGPSSO have been developed since then and were published for consultation on 7 October 2004.

This document provides a summary of responses that were received to the draft version of the GGPSSO that was published by ERGEG for consultation.<sup>2</sup> The closing date was 12 November and 12 responses were received – a list of respondents is in annex 1.<sup>3</sup>

This document also provides a response from ERGEG to the main points raised by respondents in each section of the GGPSSO – and explains the main changes that have been made to the GGPSSO as reflected in the final version which has already been forwarded to Madrid Forum participants ahead of the meeting on 3 December.

## **1. Scope and objectives**

### National law

GTE suggested that there should be drafting inserted that clarified the legal position of the GGPSSO in relation to national law. The following drafting was suggested “...implementation of a specific requirement of the GGPSSO may in exceptional circumstances not be required if that specific requirement contravenes the respective national legislation”. Shell E & P requested that it should be made clear that the GGPSSO are voluntary.

### ERGEG view

It is important that the legal position of the GGPSSO is clear and although this should be clear to all parties, ERGEG has added the following drafting as a new paragraph to provide additional clarification... *“All parties recognize that the GGPSSO are not legally binding, and that consequently non requirement can be made under the GGPSSO that contravenes national legislation. In the event that any party believes that there is a conflict between the requirements of the GGPSSO and national legislation, it will immediately notify the national regulatory authority, specifying in detail the exact nature and extent of the conflict. This notification will be made public, unless the national regulatory authority is satisfied, on the basis of objective justification provided to it, that to do so would unacceptably infringe on commercial confidentiality”.*

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<sup>1</sup> The summary of responses has been approved by the ERGEG

<sup>2</sup> In addition to the formal consultation on the GGPSSO there has also been ongoing discussions with key players throughout the process of developing the guidelines.

<sup>3</sup> Responses (where marked non-confidential) have been placed on the ERGEG website.

### “Economic feasibility”

Some respondents (GTE, NGT and Shell E&P) argued that it was important that the GGPSSO did not require storage operators to offer services at a loss and argued that the “economic feasibility” of providing services needs to be explicitly recognised in the GGPSSO.

Eurogas suggested that access to storage on the primary market should be offered within the technical constraints and the efficient use of the storage system.

### ERGEG view

It is not the intention that requirements under the GGPSSO should involve storage operators incurring a loss on specific services that are being offered to the market. However, no definition of “economic feasibility” has been provided by respondents to the GGPSSO and ERGEG is concerned that including reference to a term that has not been adequately defined could be used inappropriately by storage operators to bypass requirements under the GGPSSO.

ERGEG has inserted a reference to the “efficient use of the storage infrastructures”. In ERGEG’s view this means the economically efficient use which is consistent with not providing short term services at less than short term variable cost and long term services at less than long term variable cost (including in the latter an appropriate return on capital).<sup>4</sup>

ERGEG considers that reference to the efficient use of the storage infrastructures therefore meets the concerns of respondents.

### Scope of the guidelines

A respondent (EFET) suggested that some “marginal” storage facilities might not be required to provide mandatory Third Party Access (TPA) and that this should be reflected in the GGPSSO. Another respondent (ExxonMobil) suggested that investments under Article 22 of the Gas Directive should be excluded from the scope of the GGPSSOs.

### ERGEG view

ERGEG has clarified the scope of the GGPSSO as covering all storage system operators that are covered by the scope of the Gas Directive.

## **2. Roles and responsibilities of Storage System Operators/roles and responsibilities of storage users**

Some respondents (EFET and GTE, Eurogas) commented that it is important that storage system operators (SSOs) have proper consultation with storage users. It was also stressed that one of the main responsibilities of the SSOs should be to maximise the available capacity.

One respondent (Geode) insisted that the SSO should not discriminate between their own (affiliated) supply companies and other suppliers.

EFET stressed that the SSO should be a legally separate company with separate management buildings accounts and an effective compliance programme. It also argued that non-contractual legacy arrangements should terminate if they disadvantage new entrants and that all long term contracts should be brought on to a consistent basis.

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<sup>4</sup> On the basis that in the long term capital can also be considered as a variable cost.

Eurogas argued that the SSO should be sufficiently separate from affiliate supply and/or transportation companies to help ensure that there is no discrimination. It also suggested that the SSO should establish a compliance programme to grant effective implementation of separation measures for non discrimination.

#### EREG view

It is important that SSOs do not discriminate between their own supply companies and other suppliers in the provision of services. ERGEG has added following drafting to be inserted at 1.3 to provide reassurance on this issue. *“In the case of a SSO being part of a vertically integrated company, the SSO should draw up a document setting out all the terms and conditions relating to storage use with the affiliate company to be made available to the national regulatory authority in charge of ensuring non discriminatory access”.*

The issue of ‘separation’ of activities is discussed below.

### **3. Necessary TPA services**

#### Bundled and unbundled services

Three respondents (GTE, CSL and NGT) suggested that unbundled services should be offered as a complement of storage bundled services (SBUs).

GTE argued that providing unbundled services on the primary market could lead to a lowering of technical storage capacity.

Eurogas suggested any deviation from SBUs should be negotiated bearing in mind the technical and economical constraints faced by the SSO.

EFET suggested that the widest range of services be offered subject to technical constraints.

Eurelectric suggested that after 3.6 the following drafted should be inserted “...with the same constraints injection and withdrawal of gas should in principle be possible at any time” an additional sentence “...without any unjustified additional costs, in compliance with article 7”.

GTE suggested that in § 3.3.d that it should be recognised that in principle, the price of interruptible storage services should be linked to the probability to be interrupted, so as not to discourage additional firm sales if firm capacity remains unsold.

#### ERGEG view

ERGEG considers that unbundled services can play a crucial role in helping to ensure that storage services meet the requirements of storage users by providing a wide range of flexible services. In addition, a significant number of storage operators in Europe are already offering unbundled services.

ERGEG recognises that SSOs may refuse the offer of unbundled services on the grounds of technical constraints and non efficient use of the facility. However, it is important that the reasons are explained by SSOs and made public to ensure transparency for all parties.

ERGEG has added the following drafting at 3.7 to help clarify and meet the other concerns raised by respondents:

- *“injection and withdrawal of gas should in principle be possible at any time without any unjustified additional costs”;*
- *the price of interruptible storage services may reflect the probability to be interrupted.*

### Range of long and short term services

Exxon argued that the balance between the provision of long term and short term services does not meet the needs of the market or investors as it limits access to storage and reduces the effectiveness and attractiveness of investment opportunities.

EFET requested to add in § 1.2 that SSOs shall aim at accommodating market demand taking into account § 3.4 and 4.2, that is, in case of congestion they should also appropriately balance the proportion of long term and short term services.

### ERGEG view

ERGEG considers that although it is important that both short and long term services are offered by SSOs, the market should decide the appropriate balance between them.

ERGEG also considers that the purpose of the GGPSSO is to ensure that SSOs provide the services needed by storage users on a fair and non-discriminatory basis – including that systems and processes should facilitate the development of competition in gas supply. This includes the situation where there is congestion – although in such a situation there would be a need to assess the range of short and long term services.

### Implementation

Four respondents (CSL, Eurogas, Wingas and Marathon) argued that the proposed timetable was not realistic. Eurogas suggested that a timetable could be fixed after consultation with the users but argued that problems in implementing one requirement of the GGPSSO should not unduly delay implementation of other requirements.

Other respondents (EFET, Eurelectric) supported the proposed timetable in the GGPSSO.

Two respondents (GTE, NGT) propose implementation dates from 1<sup>st</sup> April 2005 to 1<sup>st</sup> April 2007 – depending on the service being offered. In particular, GTE suggests that unbundled services, monthly services and interruptible services should be offered from 1 April 2006 and daily services from 1 April 2007. They argue that the development of IT tools for the on line booking of capacity will take time and involve significant investments.

### ERGEG view

It is important that there are no undue delays in the implementation of the GGPSSO. However, ERGEG recognizes that for some services it may not be possible to meet a deadline of 1 April 2005. On this basis, ERGEG proposes the following timetable:

- 3.1, 3.2, 3.3a, 3.3c (long term), 3.4, 3.5, 3.6 and 3.7: 1 April 2005;
- 3.3.b, 3.3.c (monthly and daily) and 3.3.d): 1 April 2006.

ERGEG considers that this provides an appropriate balance between ensuring that the GGPSSO are introduced as soon as practicable and the need for investment in certain circumstances.

## **4. Storage capacity allocation management and congestion management**

Geode argued that storage capacity allocation mechanisms and congestion management procedures should not prevent customers from changing suppliers at any time of the year. Eurelectric suggested that storage capacity should in general be transferred in the case of customer switching.

Eurogas suggested deleting the paragraph on anti-hoarding measures as it argued that this should be dealt with by competition law.

GTE suggested that in § 4.2 it should be up to the relevant national authority, according to the national legal framework, to appropriately balance the portion of storage capacity contracted under long term or short term contract, or to introduce mechanisms to free up unused capacity under existing contracts. As a general rule, it also argued that existing long term contracts should remain in force until terminated so as not to create uncertainty with respect to existing investments.

Shell argued that priority treatment for capacity reserved for public service obligations does not appear to be reflected in the GGPSSO.

#### ERGEG view

ERGEG considers that storage capacity allocation mechanisms and congestion management procedures should not prevent customers from changing suppliers at any time of the year and has included reference to this in the GGPSSO at 4.2.

The GGPSSO does not preclude any action under competition law with respect to anti-hoarding but is recognised that SSOs are in a position to impact on the behaviour of market participants in this respect and they should endeavour to take steps to discourage hoarding particularly through market incentives.

## **5. Confidentiality requirements**

Centrica Storage Limited suggested that any obligation to publish information on flows or inventories may be waived if 85% of the operational space capacity in a facility is held by two or less customers.

GTE suggested deleting the requirement to set up a compliance officer.

Eurogas commented that it is important that the GGPSSO provide adequate detail on the issue of compliance and confidentiality and supported the existing requirements set out by ERGEG in the GGPSSO. Eurelectric and Geode also fully support the proposed text of the GGPSSO on this issue.

#### ERGEG view

ERGEG considers that confidentiality and compliance requirements are vital aspect of the GGPSSO and are consistent with Article 10 of the Gas Directive – both to protect the interests of SSOs and storage users and to help ensure that there is no discrimination between suppliers.

The creation of a code of conduct and a compliance officer are important in fostering transparency and robustness in the arrangements put in place by SSOs. ERGEG does recognise that cost effective solutions should be put in place in this respect – particularly in relation to the location of a SSO and an affiliate supply business in separate buildings where this is not disproportionate – and this is fully reflected in the GGPSSO.

The GGPSSO do not require the legal unbundling of the supply branch and the SSO of an integrated company. Neither do they require the SSO to be located in a separate building from a TSO.

## 6. Transparency requirements

### Exceptions to transparency requirements

GTE suggested that this issue should be separated into 2 parts - the protection of storage users with regard to the publication of their nominations and the protection of the commercial interests of the SSOs. In this last case GTE argued that the following drafting should be included. "Where a SSO considers that its commercial interests are harmed by publication of available capacities it is entitled to provide indicative figures without publishing information expected to contravene its commercial interest. Whenever appropriate the concerned storage users are allowed to call the relevant national authority for arbitration."

GTE also argued that marginal storage facility should be exempted by the national regulatory authorities from certain transparency requirements if this creates an undue burden not proportionate to the size or importance of the facility in question.

### ERGEG view

ERGEG has made some changes to reflect the concerns raised by respondents and considers that the GGPSSO provides an appropriate balance between the interests of both storage users and SSOs in respect of exemptions from transparency requirements – particularly given the ability of SSOs to submit to the national regulatory authority any request not to publish specific data – which would then be considered on a case by case basis by the national regulatory authority.

### Scope of transparency requirements

Several respondents (including GTE, NGT and Centrica Storage Limited) suggested deleting the requirement to provide data on a real time basis, online information system, data on storage level and working gas. It was argued that the costs of providing information on a real time basis are prohibitively high and in some cases could distort the market by revealing the commercial position of market participants.

GTE suggested that the GGPSSO should not request the publication of the prices of standard services in negotiated TPA. It argued that only indicative prices should be published as in some countries the price for storage services cannot be standardised due to the complex nature of storage and related services. GTE also suggested that only technical capacity and indicative figures on available capacity should be published and not information on aggregated inflows and outflows.

Other respondents (NGT, CSL) suggest that the GGPSSO do not require the publication of the method of determining available storage capacity as they are not strictly commercial terms. It was suggested that these can be made available to the regulator upon request.

EFET suggested increasing the scope of information to be provided by SSOs, e.g. any defined storage reserved any defined storage reserved by TSOs/SSOs for security of supply or operational reasons or excluded for production, PSOs or any other reason, information on any reduction in storage capacity, whether the storage service is currently in net withdrawal or injection. EFET stressed the importance of available capacity and aggregated inflow and outflows being made available.

### ERGEG view

It is vital that information that is published by SSOs is consistent and facilitates the provision of non-discriminatory and fair access to storage facilities – and that there is an appropriate level of transparency for market players to make appropriate decisions and for national regulatory authorities to monitor the situation.

EREG recognises that the publication of real time information may expose the commercial position of market players in some instances. EREG considers that a balance must be maintained between the availability of information and the protection of commercial positions – and as such the requirement has been removed.

### Role of regulator

Wingas suggested that in nTPA relevant national law should be applied and that accordingly, the provision requiring the SSO to submit for approval to the national regulatory authorities any request not to publish specific data should be deleted.

Eurelectric supports the principles that authorization for non publication must be sought from the regulatory authority.

### ERGEG view

ERGEG considers that the role of the national regulatory authorities in granting or refusing authorization of non publication needs to be maintained as this provides an appropriate balance between the interests of SSOs and storage users.

### Deadlines for implementation

GTE proposed that the transparency requirements are implemented as soon it is feasible and that where IT systems investments are necessary, implementation should be made no later than 1 April 2007. Eurogas suggested that SSOs comply with these provisions by 1 April 2006. Centrica Storage Limited argued that a number of SSOs would have difficulties in implementing suitable information by 1 April 2005 and suggests that SSOs and National authorities should agree timescales for implementation.

NGT proposes a transitional implementation of these requirements between 1 April 2005 and 1 April 2007.

Wingas suggested that where IT investments are needed implementation should be made not later than 1 April 2007.

### EREG view

ERGEG considers that the implementation of transparency requirements is vital to ensuring non-discriminatory and fair access to storage facilities and that there should be no undue delay in this respect. It does recognise that if investment in IT is required to provide services then meeting a deadline of 1 April 2005 may not be possible and where substantial IT investment is required implementation is required by no later than 1 April 2006.

No evidence was provided by any party in support of the claim that implantation by 1 April 2006 was not feasible.

## **7. Tariff structure and derivation**

GTE proposed that in regulated access, regulators may grant on a case by case basis higher revenues to ensure new investments. It was also suggested that reference to the request to SSOs to maintain records to enable the regulator to determine costs of provision and prices already levied on other users of that facility for the similar services should be deleted.

Geode suggested that as nTPA may only be implemented if the results are equal in terms of non discrimination, transparency and competition, the same basic principles adopted for rTPA should apply in relation to charges.

### ERGEG view

ERGEG considers that the current version of the GGPSSO is consistent with comments received as it addresses all the relevant issues on tariff structures and their derivation.

## **8. Storage penalties**

GEODE suggests that § 8.2 should clearly state under which circumstances penalties may be charged.

Eurogas requested that there should not be cost neutrality for storage penalties in nTPA.

### ERGEG view

ERGEG considers that as there is no absolute requirement in the GGPSSO in relation to storage penalties it would not be appropriate to set out in detail the form and nature that these should take. However, 8.2 indicates that, amongst things, any penalties need to be non-discriminatory and transparent and not hamper entry to the market.

## **9. Secondary markets**

Geode argued that the operation of secondary markets would be simplified by introducing standardized storage contracts and suggests that the first step is the establishment of a bulletin board functioning as a platform for the exchange of information. The second step would then be the assignments of rights offered by SSOs.

EFET suggested that the way secondary market operates should be simplified by the standardisation of all unbundled services.

GTE suggested the following timetable for the implementation of secondary market services and systems:

- 1 April 2005: facilitate market based mechanisms bulletin board without title transfer;
- 1 April 2005 facilitate trading of unused capacity between users;
- 1 April 2007 full implementation of secondary markets.

### ERGEG view

ERGEG considers that secondary markets are essential as they allow for more flexibility in the offer of storage services – in this respect there should be standard services under nTPA provided by an individual SSO – but that they should not be harmonised across all SSOs and Member States.

There should also be no undue delay in the provision of services on the secondary markets. Therefore they should be put in place as soon as possible taking into account the constraints of implementing IT systems.

The following timetable is therefore proposed:

- 1 April 2005: facilitate market based mechanisms, bulletin board without title transfer
- 1 April 2006: full implementation of the other provisions.

*ANNEX 1 – List of respondents*

Centrica Storage Limited  
GTE  
EFET  
Eurelectric  
Eurogas  
ExxonMobil Gas and Power Marketing  
Geode  
Marathon Oil Ireland Limited  
National Grid Transco  
Shell International E&P  
Star Energy Group plc (late response)  
Wingas