



## **GEODE Position**

### **Guidelines on Good TPA Practice for Storage System Operators**

#### **- Comments on ERGEG Proposal of 2004-10-06 -**

The European Regulatory Group for Electricity and Gas (ERGEG) has presented a revised draft of "Guidelines for Good TPA Practice for Storage System Operators" (GGPSSO) on October 6<sup>th</sup>, 2004. **GEODE** welcomes this revision as far as it includes some important steps to facilitate effective and non-discriminatory storage access. Unfortunately, some changes will not contribute to an effective non-discriminatory storage access. **GEODE** would therefore like to comment on a number of such issues.

#### **I. Negotiated or Regulated Storage Access**

**GEODE** welcomes the provision, whereby "regulatory authorities should check that results in both regimes (rTPA and nTPA) are equal in terms of non-discrimination, transparency and competition".

However the revised draft GGPSSO does not provide any standard to be met before a negotiated regime might be chosen. The corresponding Position Paper of ERGEG of October 6<sup>th</sup>, 2004 does state, that nTPA should prevail only in fully competitive environment. **GEODE** shares this position. Given the major importance of the chosen regime for effective and non-discriminatory storage access, the GGPSSO itself should include a clear set of criteria, under which circumstances nTPA may be implemented. The Guidelines are not only directed at market participants but are of equal importance for the regulatory authorities, when these are monitoring the conditions for storage access.

As nTPA should only be implemented in a fully competitive environment, the assessment of such competition has to be the core criteria for the regime to be implemented. **GEODE** suggests assessing the existence of a sufficiently competitive market by taking recourse to the standards of review used in competition law. Thereafter the storage markets are still regional in scope and the markets are dominated by monopolists; this does also and especially apply to the German gas market. True competition would require virtual storage systems irrespective of the distances involved with one or only a few network related market zones. Should then sufficient capacity be available **GEODE** would consider this a fully competitive environment. If effectively monitored by the regulatory authorities the results of nTPA- and rTPA-regimes would be equal in respect to non-discrimination, transparency and competition.

## **II. Long-term storage contracts**

**GEODE** considers it necessary to clarify that already existing long-term (“deemed”) contracts will be covered by the GGPSO. Otherwise the Guidelines would only be applicable to newcomers, which would contradict the goal of creating a European level playing field for all storage users.

The issue of long-term contracts is of particular importance in relation to integrated companies and the concept of “deemed contracts”. Integrated companies provide for a legal and factual framework for the whole range of parties involved in gas supply, notably SSOs and storage users. As two branches of the same company were involved, formal contracts for the use of storage facilities have usually not been agreed. The concept of “deemed contracts” would now treat this practice as if real contracts were and are still in force. **GEODE** would prefer to see all contracts (including “deemed” contracts) meeting the requirements of the GGPSO, as the reason for adopting such Guidelines was to deal with the intransparent procedures in relation to storage access. A complete review of all storage “contracts” already in force is absolutely necessary.

## **III. Scope and Objective of the GGPSO**

The GGPSO should clearly define who is entitled to non-discriminatory storage access. This should include every interested party as long as not made impossible by PSOs of SSOs. Thereby further liquidity is added to the market. Another argument is the parallel regulation of access to the gas transmission network. The two access-issues are closely linked and must not be treated differently.

Any restrictions to storage access by SSOs must not be justified by reference to historical patterns. The actual discriminatory practice of offering storage access created the need for regulation. To subrogate from regulatory provisions because of this practice would contradict the adoption of such Guidelines.

## **IV. Role of SSOs and Storage Users, §§ 1 and 2**

**GEODE** welcomes the changes in relation to the role and responsibilities of SSOs. The treatment of confidential information, transparency requirements and the co-operation with TSOs are highlighted in the revised draft GGPSO.

Storage users will not have to provide appropriate guarantees with respect to their creditworthiness (former § 2.1.c), which could have constituted undue market barriers. The added provision on storage users having to use relevant IT for communication with SSOs, could make communication less complicated. This should however not result in the SSOs generating unnecessary extra-costs. The principle of proportionality should apply.



## V. Necessary TPA Services, § 3

**GEODE** supports the requirement for parties responsible for PSOs to demonstrate upon request to the national regulatory authority that a capacity reservation is no more than what is required to satisfy the relevant PSO, § 3.2. **GEODE** also welcomes the principles laid down in §§ 3.4 and 3.5. dealing with interconnected gas transport systems. An obligation to allocate the nominated gas and the requirement to offer services consistent with the use of interconnected gas transport systems serves this aim. Nevertheless **GEODE** regrets that the limitation of long-term contracts where these hamper competition and market development (former § 3.3.b.) and the explicit reference to “use-it-or-loose-it” arrangements (former § 3.3.c.) are not part of the revised draft GGPSSO. Both principles facilitate a competitive environment and should therefore be included.

## VI. Capacity Allocation and Congestion Management, § 4

**GEODE** would like to point out that the revised provision on congestion management still does not set clear measures to facilitate market liquidity in §§ 4.2. and 4.3. GGPSSO. A role model for such a procedure can be found in Art. 5 of the Commission’s draft for a regulation on access to gas transmission networks (COM(2003) 741; December 10<sup>th</sup>, 2003). The draft regulation goes back to the Guidelines for Good TPA Practice (GGP) adopted and revised at former Madrid Forums. It therefore reflects a set of provisions, already accepted by the different market participants.

§ 4 GGPSSO should explicitly define “unused storage capacities”, i.e. from which point onwards capacities will be considered as being unused. The provision would also include the following principles:

- Unused capacities could either be offered on an interruptible basis or it can be offered as firm capacity to third parties on the primary market. Due to the superior position of the party with firm capacity rights the offer on an interruptible basis would reduce the attractiveness of such capacity rights. Therefore a party, that does not use its capacity systematically, should lose this right according to the principle “use it or lose it”. This principle is widely accepted as being of major importance for establishing a competitive environment in the context of network access. It should also apply in the case of storage access.
- Storage users shall also be entitled to re-sell their contracted capacity on the secondary market.

**GEODE** would also like to mention two provisions unfortunately excluded in the revised draft GGPSSO:

- Capacity allocation mechanisms shall make storage capacity available in an appropriate range of bundled and unbundled units and at least on an interruptible basis day ahead, former § 4.2.b.
- In any case, provisions of § 4.2. should not prevent customers from changing suppliers at any time in the year, former § 4.4.

Both provisions would facilitate market liquidity and enhance effective competition and should therefore not be excluded from the GGPSSO.

## **VII. Confidentiality Requirements, § 5**

Provisions separating the interests of storage users and SSOs should be sufficiently precise as to what are the practical steps necessary to ensure confidentiality. This concerns e.g. management separation and different IT-systems.

**GEODE** supports that the arrangements dealing with the issue of commercially sensitive information from storage users' account shall include a code of conduct for staff/compliance program, supervised by a Compliance Officer. The former version of the GGPSSO was referring to this program only in the context of an integrated company or a missing separate database system, former § 5.1.b. The distinction was not justified given the importance of confidentiality to achieve a non-discriminatory storage access.

## **VIII. Transparency requirements, § 6**

**GEODE** would like to emphasize the importance of transparency requirements for initializing competition. Storage markets are still regional in scope and these markets are dominated by a few major players. True competition would require virtual storage systems irrespective of the distances involved with one or only a few market zones.

The duty to provide certain services in co-operation with TSOs, if the network in question is linked to storage facilities, does not contradict the demand for separating the interests of SSOs and storage users. The co-operation is a technical necessity but does also create the danger of intransparent procedures in relation to storage access. The issue of transparency is therefore, as the issue of confidentiality, of the greatest importance.

Reflecting the importance of transparency requirements, **GEODE** strongly supports that national regulatory authorities will have to grant the authorization not to publish specific data on a case by case basis and publish the substantiated reasons, § 6.3. As conflicts between the principles of confidentiality and transparency might arise, **GEODE** would like to stress



that SSOs must not use the confidentiality of certain data as a general excuse for not meeting the transparency requirements. Regulatory authorities will therefore have to play a key role in reacting to such arguments, § 6.2. The provisions in §§ 6.2. and 6.3 GGPSSO should remain unchanged and be part of the final version to be adopted at the Madrid Forum.

**GEODE** welcomes that information shall be made available and updated whenever changed as relevant on a real time, daily, monthly, quarterly or annual basis, § 6.6. However this should also apply to the operational information listed in § 6.5.

**GEODE** welcomes the two operational information added in §§ 6.5.d and 6.5.e. Maps indicating the location of storage facilities and rules of transfer of storage capacity and injection and withdrawal capacity in case of customer switch are an important information for storage users.

The duty to publish all planned maintenance periods that might effect storage users' rights from storage contracts is dealt with in § 6.7. SSOs should however also have to publish regularly updated information on the details and expected duration and its effects during the maintenance periods (former § 6.5).

## **IX. Tariff Structure and Derivation, § 7**

**GEODE** strongly supports that the revised version of the draft GGPSSO also contains specific requirements for charges under nTPA regimes. It is however unclear why a difference is made between charges in nTPA and rTPA-regimes. As nTPA may only be implemented if its results are equal in terms of non-discrimination, transparency and competition, the same basic principles should apply in relation to charges. There is e.g. no reason not to avoid cross subsidies between storage users under a nTPA-regime.

The tariff structure should also secure investment into storage facilities. Therefore **GEODE** would like to see the regulatory framework remaining unchanged for a considerable period of time. Charges should be cost-oriented or competition-related and take into account that they provide incentives for investment without violating the basic principles of calculating appropriate charges.

## **X. Storage penalties, § 8**

**GEODE** welcomes the definition of when SSOs may charge storage penalties. Providing effective incentives to ensure that storage users nominate and use storage capacity

consistently with their capacity rights (§ 8.2.b) is however a rather imprecise formula. Instead § 8.2 should clearly state under which circumstances penalties may be charged.

## **XI. Market based Mechanisms such as Secondary Markets, § 9.**

**GEODE** emphasizes the importance of secondary markets. The operation of secondary markets would be simplified by introducing standardized storage contracts or a storage code supervised by the relevant regulatory authorities. The draft GGPSSO presented at the Madrid Forum did therefore include such a provision in § 9.2. **GEODE** would like to see this important provision included in the final draft GGPSSO to be adopted at the next Madrid Forum.

The GGPSSO should also further regulate the design of secondary markets.

- Step 1: Establishment of a bulletin-board functioning as a platform for the exchange of information between storage users.
- Step 2: Assignment of rights offered by SSOs.

Should it prove impossible to implement the following steps at once, a clear schedule must provide for planning reliability.

## **XII. Implementation**

**GEODE** shares the position of ERGEG, that SSOs should comply with the provisions of the GGPSSO by 1<sup>st</sup> April 2005.

November 2004