

E.ON Response on the European Energy Regulators' 2010 Work Programme (5 Nov 2009)

E.ON welcomes ERGEG's 2010 Work Programme (Ref.: C09-WPDC-18-03), and the attempt to signal early to stakeholders what issues are expected to be dealt with in the year ahead is very helpful.

Consultations with market participants and other stakeholders are a fundamental part of the regulatory process, and can help deliver the most appropriate solutions for customers and for the market. We therefore welcome ERGEG's intention to consult on the initiatives planned for 2010, and will of course participate in those which are relevant to our business. We would also like to see a commitment to regulatory impact assessments, as no changes to the market framework should be made without a proper understanding of the likely impact on businesses and customers.

We would also ask that the consultation process be as open and transparent as possible, with non-confidential responses published on ERGEG's website, and the publication of conclusions documents explaining final regulatory decisions.

1. Implementation of the 3rd Package

The E.ON group generally supports the goal of an integrated and competitive European energy market, particularly ERGEG's provision of assistance to the European Commission to ensure that the timing of the establishment of the 3rd Package is not delayed. However, by increasing the competencies of NRAs through the 3rd Package, the roles and competencies of NRAs and ACER as well as competition authorities and Member States must be clearly defined. For example, it must be ensured that the clear division of competencies between NRAs and competition authorities will not be weakened on the retail and wholesale market in the future and parallel information inquiries on the same issue must be avoided. In fields like energy efficiency it should primarily be a political decision to define the goals and then choose the appropriate instruments. Regulators' focus should be then on the surveillance of defined goals and procedures rather than on implementation.

Furthermore, the setting up and work of ACER should include the possibility of a formal role for users and market parties in the new governance structure. Arrangements developed by ACER and the TSOs alone are unlikely to provide efficient market based solutions without active user involvement, especially at the formative stage. Thus, there should be further and more intensive stakeholder involvement at the formative stage.

2. Security of Supply

E.ON shares the view of the European Regulators that in order to increase security of supply, a predictable regulatory framework is a key for investors' confidence. In this vein, special attention needs to be given to the fact that security of supply should be achieved through market based solutions by energy companies. Against this background, regulatory work on topics such as congestion management, capacity allocation, generation adequacy, open seasons and the 10-years network development plan must respect the need for reasonable investment conditions. Furthermore, attention should be paid to the interdependence of security of supply concerns with other key issues. For instance, the call for and preferential treatment of renewables production might cause lower load factors for conventional power plants as well as changes in the merit order curve and create the necessity to have an increased amount of reserve capacities

in conventional power plants available. This development has to be taken in consideration when designing framework conditions e.g. design of reserve/balancing markets to ensure appropriate investment conditions and returns for this type of power plants.

3. Affordability and Consumer Issues

We would also like to highlight the need to find an appropriate balance between regulatory intervention and self-regulation of a competitive market. Regulatory intervention needs to demonstrably facilitate and improve market mechanisms. If competitive market processes are already in place, regulatory intervention should be out of place.

In regard to ‘Affordability and Consumer Issues’, the 2010 Work Programme foresees a number of regulatory aspects targeted at customer affairs. E.ON respects the need to protect customers and their rights, however, there needs to be a critical assessment as to whether a measure increases customers’ benefits above its costs. As in competitive markets, the costs of additional services will finally be paid by consumers; as a result, there is a limiting value for effective measures. It will be important to carefully assess this limit and to balance regulatory obligations and consumer benefits.

We believe that ‘energy poverty’, as for poverty in general, is a matter that is best managed by national governments due to different conditions and differences in social policy and welfare systems. Any discussion on energy poverty needs to take into consideration expenditure against other essentials, since this does not merely highlight changes in energy prices, rather the affordability of essentials which is a complex matter and a concern for national governments. It should also take into deliberation; the appropriateness of the home to family needs and the ability of the household to choose a home they could afford to heat; the characteristics of the occupants as well as room function - elderly and disabled tend to need more heat and healthy adults less; and acknowledge that a ‘reasonable cost’ for services is impossible to define - the only effective protection is through a competitive market.

Furthermore, it is important to notice the potentially conflicting goals of affordability and green supply. The increased share of energy needs that will come from renewable generation will unavoidably have an impact on the consumer bill. Consequently, a reasonable, sensitive and transparent approach to this dilemma will be decisive in ensuring that it is resolved.

Notwithstanding the recession, the industry faces a major and prolonged period of investment in new generation assets both to meet security of supply and climate change goals. ERGEG should promote a stable and predictable regulatory environment in which efficient investment can be rewarded by the market.

The aim of the deliverables should be to ensure the competitiveness of the retail market by providing consumers with: choice – so that consumers are aware that they can switch between a range of different products and companies, and companies can innovate in terms of new price structures and products; information – so that consumers have easy access to all the information necessary to seek a quote and make a choice (product, consumption and price); competitive prices – regulated prices stifle market development and low regulated prices harm consumers by being a barrier to entry for new companies; effective switching process – the process itself should be straight forward for customers and should not present a barrier to switching; and finally, fair commercial practices – protection from unfair commercial practices is important, as it is for all markets, in ensuring consumer confidence in making an informed choice.

4. The Climate and Energy Package

E.ON is committed to contribute to the climate goals and a low carbon portfolio. In this vein, E.ON welcomes the promotion of smart technologies, such as smart grids and smart meters as provided in the directives. It will be important to clearly define through the relevant regulatory measures responsibilities, the design of the roll-out and ensure cost recovery for investments. As stated on the first key area appropriate instruments and mechanisms on energy efficiency should be selected upon the political decision by the Member States.

We agree with the work plan to develop positions to provide support to the European Commission. All approaches should focus on transparent, non-discriminatory and market-based measures. The possibility of full cost pass-through must be secured. We support the ERGEG approach that through climate change policies competition is not distorted.

5. Financial Services

The E.ON group generally welcomes the intention to further increase the transparency of wholesale markets to enhance liquidity and competition in energy markets.

It has to be considered that the significant numbers of participants in the energy wholesale markets are not financial firms, but commercial producers hedging their price risks. Therefore, transparency legislation designed for the financial sector may not be adequately tailored to their activity and risk profile. E.ON therefore strongly supports that measures to increase trading transactions transparency would be introduced respecting trading confidentiality and delivered in a cost-effective way without adverse consequences on market liquidity. Hence, greater cooperation between Regulators should be promoted to avoid overlapping transaction reporting in different jurisdictions.

All measures to safeguard financial stability shall take into account that energy markets have unique characteristics differing from other financial markets, thus E.ON supports ERGEG in its advisory role to the EC to come up with a tailor-made framework.

6. Regional Market Integration

The E.ON group appreciates the Energy Regulators work to foster the integration to a Single European market via the Regional Electricity and Gas Initiatives and to develop a planning forward to full integration. We agree that the development and implementation of fully harmonised/ compatible systems for cross-border capacity calculation and allocation/ congestion management are taken as a main part of the working plan. Also the 10-years network development plans are key-issues and interconnection management are important measures to trigger a single European market. In all this issues E.ON stresses that the creation of a sustainable and well-functioning single European market needs to develop based on a market approach. Thus, regulatory intervention should be focussed to setting the right framework conditions.

7. External Relations

Although E.ON welcomes ERGEG's initiative to foster international cooperation of energy regulators this key area 'external relations' might have lower priority compared to the other six key areas.

E.ON would like to get the opportunity to comment on the present 2010 Work Programme:

- Calculation and allocation of cross-border network capacities/ congestion management on a regionally and European wide methodology are a key element for the functioning of the European electricity market. (#2, #4, #5). There is a broad range of issues to be tackled in this context starting from technical data of the grid up to commercial and financial issues. The development of guidelines should be driven from a clear and transparent view on today's usage of capacities and the interests of all market participants have to be taken into account.

- By developing CEER Guidelines of Good Practice on harmonised customer survey on quality of electricity supply (#10) the individual network structure (area of high population density, rural areas, the percentage of renewable in-feeding etc) should be taken into account as a key element.
- Smart grids will be the most challenging task for distribution network operators in the nearer future to fulfil the European climate objectives. Therefore, E.ON welcomes the proposed consultation #8 ERGEG Advice on intelligent energy networks (smart grids). Besides potential technical aspects, sufficient investment conditions for smart grids should not be neglected by designing the regulatory guidance. A necessary precondition for smart grids is smart meters. E.ON welcomes also the proposed consultation on regulatory aspects of smart metering for electricity and gas (# 22).
- As a European company E.ON shares the view on the importance of enhancing transparency on physical market information (#9). Nevertheless, E.ON suggests considering the outcomes of the ongoing initiatives led by the European Commission to avoid double efforts on the issue. Besides, E.ON remarks that transparency is considered a high-priority issue in all energy sectors (electricity, gas, CO₂) and the initiatives led by the EC are working in parallel in all of them.
- The four consultations on regulatory aspects of gas grid management (# 13, 14, 15, 16) have for all market participants high impacts not only on grid management but also strongly on the wholesale markets. Therefore, it is essential to have a proper understanding of the likely effects on the entire market before changing the framework.
- E.ON believes that the status review on end-user price regulation (#24) is the most important of the deliverables that relate to ‘Affordability and Consumer Issues’. End-user price regulation is preventing development of a competitive market in some Member States, which deprives the consumer of choice, prevents new entry, and therefore does not bring the positive benefits to the wholesale market of a well-functioning retail market – i.e. competitive prices.
- E.ON observes that point #27 and #28 Market supervision issues and transparency in energy trading should be considered as a single deliverable, as the goal pursued is the same considered from a different viewpoint.
- E.ON welcomes the proposed study on wholesale trading licenses (# 30). E.ON believes that the final outcome of this process should be that licenses are not needed to operate in the wholesale market. E.ON believes that licenses are barrier to entry markets that limit the extent of competition and raise administrative burdens within the EEA. Nevertheless, where trading licenses are requested, a European license is needed to facilitate new market participants to foster the European energy market integration.
- The Compliance Monitoring Report on the implementation status of DSO unbundling (# 25) should be based on the existing legal requirements as set in the 3rd package. In contrast to the previous status review on DSO Unbundling at which solely NRAs could express their views the proposed Compliance Report should also include the viewpoints of DSOs, market participants and other relevant stakeholders as a fundamental part of the review process.