

Stavanger, 24.11.2008

Response to CESR/ERGEG consultation document on record-keeping, transparency and exchange of information

Dear Madame/Sir,

StatoilHydro welcomes the opportunity to comment on your consultation document on record-keeping, transparency and exchange of information, in the context of the Third Energy Package, and appreciates CESR/ERGEG efforts to facilitate the transition to the new regulatory framework as envisaged by the European Commission.

As you will see our position is mostly in line with the position expressed by the ISDA-EFET- FOA response. Nonetheless, we appreciate the opportunity to reinforce a message that we believe is in line with the will to improve the well-functioning of the internal market and it is reflective of the actual content of the Third Package as we know it at this stage.

In this response we concentrate on four key points:

1. the peculiarities of the gas market and the need to produce a sector-tailored set of transparency and record keeping requirements;
2. a warning against an overly prescriptive approach on record keeping and against any suggestion that a record-keeping requirement should lead to a transaction reporting requirement;
3. the support for the status quo in relation trade transparency, or as an alternative for a 'key principles' approach for compliance;
4. the view that the rules about exchange of information between securities and energy regulators is a matter for regulators.

Uniqueness of the gas market

The case remains unproven for a pan-European approach to trade transparency. The stages of development of gas markets in Europe differ fundamentally from power markets. The levels of maturity of competition and liberalisation in gas markets in Europe also differ substantially from region to region.

The problems identified at many of the hubs outside N/NW Europe relate either to the lack of liquidity, or that hubs are being used for non-spot transactions in order to take advantage of other features at the hubs. The suggestion that there is a level of manipulation in these markets which could be remedied by increased trade transparency is thus not currently credible as a justification for more onerous provisions on market parties.

Outside UK, NL, Belgium, and to a lesser extent Germany and France, physical markets do not have sufficient levels of liquidity to allow indices to be relied upon that might allow derivatives to develop. Therefore there must surely be a concern that by imposing the levels of record-keeping required for mature markets on a market where there are currently zero transactions might discourage initial trade.

Record keeping

We would like to warn against an overly prescriptive approach and against any suggestion that a record-keeping requirement should lead to a transaction reporting requirement.

We view the requirements set out in your paper as requiring considerable financial and manpower investment in order to ensure compliance. We do not believe that any such requirements should be imposed without careful consideration of the financial impact of this extra burden.

Unfortunately it is not possible, within the timeframe laid down for this consultation, to get a clear idea of the costs associated with these obligations at a broad industry level, though CESR and ERGEG may wish to explore associated with costs with individual firms.

In light of the lack of certainty in this regard, we propose that CESR and ERGEG should recommend that each supply undertaking should decide on the format of the records it keeps. If an electronic format is required, the design of this format should be left to each supply undertaking.

Moreover, given that the report has still not identified whether market failures are taking place, or attempted to estimate the value of such market failures, it is difficult to say whether such costs would be justified.

Finally, as we have done in previous occasions, we would like to stress that, while a duty to maintain records is legitimate, subject to proper definition of what data should be held, it is necessary to spell circumstances under which the competent authorities may require access to it.

We appreciate that record keeping is considered to be clearly distinguished from transaction reporting or any other form of transmission of information and that it is not in the scope of the Directive as currently drafted.

Any clarification in this respect should come with a view to the specific tasks assigned to regulators and with an obligation for them to report on use.

Transparency

There has been no previous justification for publication of gas information outside the area of data related to infrastructure utilisation and balancing. We assume therefore that the only aggregated information suitable for publication would be on supply and demand, and not related to trading or derivatives.

In gas, the only member state with a sizable derivatives business is in the UK, where requirements are well-developed. We see no advantage in extending a detailed requirement to markets with very small numbers of trades or no trading at all in derivatives. This would stifle the market before it developed, or delay its development.

With regard to infrastructure data, care should also be taken to protect commercial positions of competitive storage facilities and LNG terminals, particularly where exempted from third party access. Data should be aggregated at a suitable level to protect investors in competitive assets. Without such protection, independent investment in infrastructure will be discouraged, and instead investment will be left only to regulated entities. This is likely to delay much-needed investment.

Reporting frequency could be left to individual markets. Daily reporting may make sense in highly liquid markets, but not where there are only a few trades a month.

Allowing energy regulators to define a common set of minimum aggregate information to be available to market participants, the level of aggregation of this information, and the scope to be covered, and allowing NRAs to then gauge whether a sufficient level of transparency already exists in their (national) market would allow for an approach more tailored to the needs, state of development and practices of each market, albeit based on a minimum standard of transparency.

In general, we favour the status quo in relation trade transparency, in particular as we see that market participants are generally happy with the level of trade transparency that currently prevails in the wholesale gas markets and because new compliance burdens and costs would be avoided. Where new requirements will be established, we would favour 'key principles' for compliance to intrusive regulations.

Finally, we suggest that the views of market participants are highly relevant in deciding whether pre- or post-trade transparency would be of any benefit, and we remind regulators that market participants are not convinced that any new provisions are needed in this regard.

Exchange of information

We view this as a matter for the regulators, as long as neither approach encroaches on the ability of market participants to engage in business.

Should you require any further information please contact us at this e-mail address: drub@statoilhydro.com

With Best Regards

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