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Subject	
Pilot Framework Guidelines CAM Public Consultation	

Dear Sir, Madam ,

GasTerra hereby would like to thank you for the opportunity to respond to the public consultation on the proposed pilot framework guidelines on capacity-allocation mechanisms. In our reaction we have first copied the draft texts and the relevant questions from the Instructions for responding to the public consultation (in italics). These are then followed by GasTerra's responses.

General

- *What are your main views of the proposed measures? Do you think Network codes based on these guidelines can achieve non-discriminatory and transparent capacity allocation and the fulfillment of the capacity allocation principles set out in the Third Package of Energy legislation?*
- *What are your views of the implications of each for the measures for sector in which you operate? In particular, we are interested to understand the nature of the implications in a qualitative way (and, if available, any quantitative evidence on costs and benefits would be extremely welcome).*

According to the capacity allocation principles set out in the Third Package, capacity-allocation mechanisms should:

- (a) Provide appropriate economic signals for the efficient and maximum use of technical capacity, facilitate investment in new infrastructure and facilitate cross-border exchanges in natural gas;
- (b) be compatible with the market mechanisms including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and
- (c) be compatible with the network access systems of the Member States.

GasTerra welcomes ERGEG's work on improving the capacity-allocation mechanisms throughout Europe, especially where it promotes closer cooperation of TSO's and creating conditions facilitating cross-border trade.

We however believe that the draft capacity-allocation mechanisms do not achieve an appropriate balance between the above principles set out in the Third Package.

For instance the proposed amendment of existing transportation contracts will clearly deteriorate the investment climate for new infrastructure instead of promoting it as set out in the principles cited above.

If ERGEG intends to abolish the offering of unbundled exit and entry capacity at border points (and thus abolish gas delivery at the border), this would be incompatible with sub (b) above, which clearly recognizes that promoting trading hubs should not lead to inflexibility and departure from the current market needs. We feel that such a measure will also be incompatible with the Dutch network access regime (and thus with sub (c) above), as it will require significant amendments of the applicable tariff regulation (based on unbundled entry and exit points), as well as the applicable balancing regime (based on physical flows measured at these points).

More generally, we would like to point out that capacity-allocation mechanisms should always be seen in the context of among others the different balancing regimes, the open season procedures, the congestion management rules and the tariff regulations. GasTerra feels that the interplay between all these different sets of (proposed) rules and regulations hasn't been explored sufficiently in the Impact Assessment and that this might lead to deficiencies in the final document. The role of long-term supply contracts, underpinned by respective transportation bookings, for the security of supply also deserves further consideration.

Scope of the Arrangements

(guideline F1.1)

F1 General rules

F1.1 Scope

The rules in this Guideline apply to cross-border interconnection points between two or more Member States as well as interconnections between adjacent entry-exit-systems¹ within the same Member State, insofar the points are subject to booking procedures by users. Exit points to end consumers and distribution networks, entry points to supply-only networks, entry points from LNG-terminals, and entry/exit points to or from storage facilities are not subject to this Guideline.

This framework guideline applies to capacity as calculated by transmission system operators.

¹ As provided for by recital 19 and art. 13 (1) al. 4 of Gas Regulation 715/2009

The network code adopted according to this Guideline will be applied by transmission system operators taking into account possible public service obligations and without prejudice to the regulatory regime for cross border issues pursuant to Article 42 of Directive 2009/73/EC and of the responsibilities and powers of regulatory authorities established according to Article 41 paragraph 6 of Directive 2009/73/EC.

- *Do you support the scope of the draft framework guidelines proposed?*

GasTerra supports limiting the scope of the framework guidelines to interconnection points between entry-exit systems.

We believe it is important to further clarify the limitation of the scope, excluding points that are not a link between two downstream supply markets, such as LNG terminals, end user exit points, storage points, entry points from production fields and production systems and IP's connecting a Member State with a non-Member State. We believe this clarity will be achieved by publishing a list of applicable points, in addition to the description of the points. This list should not be static and should allow changes when physical changes take place in the market. In addition, this will allow ENTSOG to include an overview of the responsible system operator for capacity allocation at each point.

In the Dutch context, small export points (used to deliver gas to local areas abroad, like Obbicht, Vliegheuis and the like) should also be excluded from the scope. The same applies to interconnectors exempted from TPA (like the BBL).

*Existing contracts
(guideline F1.2)*

F1.2 Existing contracts

Following the adoption of a legally binding network code, transmission system operators shall amend all relevant clauses in capacity contracts and/or all relevant clauses in the general terms and conditions underlying the capacity contract existing prior to the application of this code in line with the implemented provisions within 6 months after entering into force of the code. Expiring contracts shall not be subject to tacit extension.

- *What are in your views of the challenges that existing contractual arrangements create with regard to capacity allocation? What would be the possible ways to overcome those challenges?*
- *Should relevant clauses in existing contracts be amended if they contradict the new legally binding set of rules (which will be based on the framework guideline) in order to create a level playing field for all shippers?*
- *Experts have discussed if existing / legacy contracts should be questioned if certain conditions are met, in order to free up capacity, which would then be reallocated. Do you consider such a proposal appropriate?*

While we recognize that some existing contracts might not always be fully compatible with the new regime envisaged by the Commission, we are greatly concerned because of the negative implications that an unqualified obligation to amend all existing contracts will have. Despite of the fact that the consequences, including legal, financial and commercial uncertainty and creating an unstable investment environment, will be critical, in its Impact Assessment ERGEG fails to address them. The nature of the envisaged amendments is also not clear. According to GasTerra competition law authorities are the appropriate bodies which can intervene in cases where particular transportation contracts are considered anti-competitive. Depriving capacity holders of their accrued commercial rights would be inconsistent with the constitutions of many of the EU Member States.

Amendment of all contracts, especially where capacities are subject to obligatory reallocation, will in our opinion greatly disrupt the market. Some parties will face failure to deliver or accept gas under existing commodity contracts, because of lack of the necessary capacity. This will have negative consequences for the reliability of the contractual arrangements, and of natural gas as a fuel and might discourage gas producers from selling their gas to the EU markets. Retroactive application of the new regime will also create a climate of uncertainty regarding future investments and parties will be less likely to commit to long term capacity bookings in future Open Season procedures. This will not only have a negative impact on the creation of the internal energy market, but also on one of the other EU energy policy pillars: security of supply.

*TSO cooperation
(guideline F1.3)*

F1.3 Cooperation

The network code shall set out that transmission system operators cooperate with adjacent transmission system operators and shall specify the necessary procedures. The network code shall clearly assign responsibilities of transmission system operators in promoting efficient cross-border trade and efficient network access. It shall define how transmission system operators:

- exchange relevant data,*
- harmonise capacity products and capacity allocation, including their timing,*
- harmonise their maintenance in order to optimise network access,*
- cooperate in the area of capacity calculation and maximisation.*

Capacity calculation and maximisation

The network code shall set out how transmission system operators cooperate with regard to capacity calculation and maximisation in order to maximise the capacity they offer. Transmission system operators shall make their methodologies for capacity calculation transparent.

In order to maximise available capacity, the network code shall set out how transmission system operators exchange information when planning day-to-day network operation, including forecast entry and exit flows as well as the availability of network components, of capacity buy-back mechanisms, if any, and of system balancing energy.

- *Is the scope of the identified areas for TSO cooperation appropriate to ensure efficient allocation of cross-border capacity in order to foster cross-border trade and efficient network access?*

GasTerra supports the suggested scope of cooperation between adjacent TSO's.

*Contracts, codes and communication procedures
(guideline F1.4)*

F1.4 Contracts, conditions and communication

As regard capacity allocation, the network code shall define the harmonised content of transportation contracts and conditions of access to capacity.

The network code shall set out the relevant data to be published at every interconnection point. It shall standardise communication procedures that are applied by transmission system operators to exchange information between themselves and with their users. Coordinated information systems and compatible electronic on-line communications shall be utilised particularly for capacity booking and transfers of capacity rights between network users.

- *Should a European network code on capacity allocation define a harmonised content of transportation contracts and conditions of access to capacity?*
- *Should a European network code on capacity allocation standardise communication procedures that are applied by transmission system operators to exchange information between themselves and with their users?*

GasTerra supports a great degree of harmonization of the transportation contracts and the conditions of access, but also notes that in a transition period physical specifics of some points might require slight deviations from the prevailing conditions. Standard communication procedures will also be welcome. We agree with the viewpoint of ERGEG that user friendliness and low transactions costs are paramount for creating a well functioning internal market in energy.

*Capacity products
(guideline F2.1 en F2.2)*

F2 Third party access

F2.1 Capacity products

The network code shall set out that, at each interconnection point transmission system operators determine the firm and interruptible capacity² they jointly offer.

Network codes shall foresee that transmission system operators offer firm and interruptible capacity at any interconnection point in both directions; at unidirectional points, backhaul capacity shall be offered at least on an interruptible basis. The published available firm capacity shall be binding on the transmission system operator.

² As defined in art. 2 (20) of the Gas Directive 715-2009

The network code shall define a small set of standardised firm and interruptible capacity products of different durations and starting dates. The same set of products shall be offered at every interconnection point. The capacity product design shall aim at developing of competitive gas markets. It shall regularly be subject to proper consultation with network users.

The capacity offered shall be expressed in energy units per unit of time. The offer and use of separate capacity for transit purposes shall be forbidden.

F2.2 Interruptible capacity products

The network code shall set out that transmission system operators offer harmonized interruptible capacity products at every interconnection point in both directions.

Adjacent transmission system operators shall implement procedures, including the definition of interruption lead times, to ensure that interruptions take place in a coordinated manner.

The network code shall define the possible reasons of interruption, classes of interruptibility, the sequence how interruptions take place and the methodology to calculate the likelihood of interruption.

Registered network users are entitled to submit nominations on an interruptible basis at any time. This entitlement shall not restrict the allocation of firm capacity by transmission system operators.

- *What are your views of our proposals regarding capacity products?*

We support joint determination of the available firm and interruptible capacity at the interconnection points by the relevant TSOs as well as the possibility to book capacity in both directions (incl. via backhaul).

In respect of the interruptible capacities, we believe that harmonizing interruptible capacity products at every interconnection point in both directions will increase the usability of these products.

- *Do you agree with the idea of defining a small set of standardised capacity products that do not overlap?*

We agree with the idea but we believe that the products offered should be compatible with each other and with market needs and should therefore be subject to regular and comprehensive market consultation. In case the standard capacity products defined do not offer a good match to market realities, standardization will do more harm than good.

- *Should TSOs offer day-ahead and within-day capacity products?*

Yes, if market consultation shows that there is a necessity for such primary capacity products.

- Should European TSOs offer the same capacity products at every interconnection point across Europe?

Only if feasible on the basis of the results from the public consultations.

- *Should TSOs offer interruptible capacity also in cases where sufficient firm capacity is available?*

Offering interruptible capacity where sufficient firm capacity is available doesn't seem necessary or logical. It would lead to a situation where it is more difficult to calculate the probability of interruption and where this probability might be non-existent, while the price for interruptible capacity will still be lower.

*Breakdown and offer of capacity products
(guideline F2.3)*

F2.3 Breakdown and offer of capacity products

Depending on the market's needs and conditions, transmission system operators shall determine the breakdown of available capacity between the different long and short term capacity products. A reasonable percentage of the available capacity shall be set aside for firm short term capacity products. The amount of capacity for each capacity product shall be aligned between adjacent transmission system operators and approved by national regulatory authorities for each interconnection point. It shall be published and subject to regular consultations.

The network code shall set out the procedures followed by transmission system operators to offer all available capacity in a transparent and non-discriminatory manner as firm and interruptible long and short-term capacity products. The transmission system operators shall offer the firm capacity available plus

- any remaining firm capacity not previously allocated,*
- any capacity from previous allocations surrendered by capacity holders and*
- any unused capacity released through use-it-or-lose-it mechanisms.*

- *Should a reasonable percentage of the available capacity be set aside for firm short term capacity products?*

Only to the extent there is a proven need in the particular markets for reservation of such primary capacity, as reserving too much capacity will result in underutilization of the overall capacity. The amount set out for short term products should be without prejudice to capacity rights under existing transportation contracts.

*Cross-border products
(guideline F2.4.1 en F2.4.2)*

F2.4 Cross-border products

F2.4.1 Combined products

The network codes shall set out that the transmission system operators jointly offer combined capacity products at every interconnection point. The combined products include the exit capacity from one zone and the entry capacity into the adjacent zone. This requires the adjacent transmission system operators to cooperate closely. In order to achieve the aim of offering combined products transmission system operators shall at least agree that one of them allocates all available entry and exit capacity jointly offered. National regulatory authorities may decide that combined products may not be transferred separately or nominated differently.

F2.4.2 Bundled products

The network code shall foresee that in case capacity offers, products, allocation and utilisation mechanisms are harmonised transmission system operators offer bundled capacity products. The exit and entry capacity at every point connecting adjacent entry-exit systems shall be integrated in such a way that the transport of gas from one system to an adjacent system is provided on the basis of a single allocation procedure and single nomination.

Bundling capacity comprises integrating exit and entry capacity at a given interconnection point into one single product in such a way that the transport of gas from one entry-exit zone to an adjacent zone is provided through a single allocation procedure and single booking.

The network code shall also set out that capacity at two or more points connecting the two same adjacent entry-exit systems is integrated into one single capacity product representing one single contractual interconnection point. Transmission system operators shall calculate the entire technical capacity of the bundled product and shall make their methodologies for the capacity calculations transparent.

The network code shall lay down an action plan to realise bundled products and to replace combined products. This plan shall include a timetable.

- *Recital 19 of Regulation (EC) 715/2009 states that gas shall be traded independently of its location in the system. Do you think that cross-border products will facilitate the exchange of gas between virtual hubs of adjacent markets?*
- *Do you support full bundling of cross-border capacity into one single capacity product, including a limitation of the possibility to trade at the border so that gas is traded at virtual hubs only in order to boost their liquidity?*
- *Do you consider combined products to be an appropriate interim step towards bundled products?*
- *Should capacity at two or more points connecting the two same adjacent entry-exit systems be integrated into one single capacity product representing one single contractual interconnection point?*

Recital 19 of the Gas Regulation refers to the preference for (the creation of) entry-exit systems (virtual hubs) and not to hub-to-hub trading. The recital furthermore states that it is

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vital that gas *can* be traded independent of its location in the system and not that gas *shall* be traded independent of its location in the system. The Third Package encourages the creation of entry-exit systems but does not make them obligatory. The Third Package doesn't provide for measures restricting flange trading.

Taking into account the above observations, we believe that the availability of cross-border products will indeed facilitate the exchange of gas between virtual hubs, but that this should not lead to abolition of existing capacity products, for which there is still need in the market. Cross-border products should be offered in addition to unbundled exit and entry capacity. It is not clear whether ERGEG actually proposes the abolition of delivery at the border, but considering that this seems to be the preferred position in the Impact Assessment, GasTerra would like to point to a number of concerns which arise in such a scenario.

First of all, as already mentioned, the Third Package legislation does not provide grounds for such a far-reaching change of the applicable regime and introducing it through a comitology procedure will clearly exceed the implementing powers of the Commission. Even more importantly, ERGEG has not explored at all the consequences that this change of paradigm will have for the structuring of the portfolios of the great majority of European players, in particular in view of security of supply considerations. Flange trading is for instance a source of flexibility for the buyer, that in most if not all European markets at this point cannot be fully compensated for by hub trading or storage (especially in case of small parties or new entrants). ERGEG points out in the Impact Assessment that cross-border products will lead to better optimisation of the network, but this point does not seem to be supported by ENTSO-G, who to our best knowledge are of the opinion that the introduction of such products on a large scale will have the opposite effect. We are concerned that this might lead to unnecessary investments and as a shipper we feel that the bundled products in particular will lead to less transparency and hence less legal and financial certainty for shippers, which might be a barrier to entry. Further issues to which ERGEG has not yet given proper consideration are the regime that should be applicable to interconnectors, as well as to markets which still have not been organized as entry-exit systems in the first place. The impact on balancing regimes, which at this point are largely unharmonised, is also not given any consideration.

In view of these arguments we support the introduction of combined products, but strongly oppose the abolition of the existing unbundled products leading to abolition of delivery at the border. Market participants, both traditional players and new entrants, should preserve the commercial freedom to structure their own portfolios. We support the measures aimed at reducing the transactions costs for shippers who want to deliver gas from one hub to another. But we believe that CAM rules should not be used to go further than providing this choice and that liquidity of hub-to-hub trading will pick up naturally. Once both TSO's and shippers have more experience with combined products, the possibilities for bundled products could be explored.

Capacity allocation

(guideline F3; F3.1; F3.2; F3.3)

<i>F3 Primary Capacity Allocation</i>

The network code shall set out how transmission system operators offer capacity on a regular basis for all firm products. The network code shall define a number of regular points in time for the allocation of firm capacity products. Each of these points in time shall be appropriate with regard to the duration of the capacity product offered at this allocation date. The longer the capacity product duration, the longer its allocation lead time (i.e. the time between the allocation of the capacity and its use). Each allocation procedure shall contain a time window during which capacity is requested.

The network code shall set out that for the same capacity product the allocation procedures take place at every interconnection point in Europe in a coordinated way. Capacity allocation procedures shall be designed with regard to market conditions and shall be regularly reviewed and revised if necessary.

The network code shall set out that adjacent transmission system operators apply harmonised allocation mechanisms. It shall require that transmission system operators publish the detailed procedure as well as the capacity offered, its lead time and its duration sufficiently in advance.

Capacity allocations shall not take place outside the standard allocation procedures as applied according to this Guideline.

F3.1 Auctions

The network code shall set out that firm capacity products are allocated via auction. The network code shall set out the principles and possible options of anonymous and transparent online-based auction procedures. The auction design shall be subject to review by the regulatory authorities concerned and to regular market consultations. Auction revenues exceeding the regulated tariffs (or values determined by the national regulatory authority) shall be used for different aims in accordance with national provisions, such as lowering network tariffs, removing congestion by investments or providing incentives to the transmission system operators to offer maximum capacity. The network code shall not impede potential allocation by means of implicit auctions.

F3.2 Pro rata

The network code shall set out that pro rata allocations may be applied during an interim period, when conditions are not met for efficient and fair auctions. This might in particular be the case where auctions would result in distorted bidding behaviour. It will be up to the competent regulators to decide whether the conditions are met or not³.

³ According to art. 41 (6)c and 9 of the Directive 2009/73/EC, "[T]he regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used [...] establish the terms and conditions for: [...] access to cross-border infrastructures, including the procedures for the allocation of capacity

According to the pro rata mechanism every shipper is allocated a portion of capacity equal to the proportion of its capacity demand related to the total capacity demanded by shippers during the allocation procedure.

F3.3 First come first served

The network code shall set out that transmission system operators jointly offer and allocate any firm capacity becoming available after allocation of day-ahead firm capacities according to the first come first served principle or via an auction.

Transmission system operators shall agree on appropriate common mechanisms for doing so. With the possible exception of intraday capacity, transmission system operators shall not allocate any capacity according to the first come first served principle.

- *Should auctions be the standard mechanism to allocate firm capacity products?*
- *What would be the implications of using auctions for capacity allocation in the markets in which you operate? Is there any way in which auctions can be designed to overcome potential issues resulting from their introduction in those markets?*
- *Do you support pro rata allocation as an interim step? If yes, should pro rata allocation only be used in given situations or market conditions?*

GasTerra can recognize the rationale for conducting auctions and if these are conducted we agree that this should happen at regular predetermined points in time with lead times compatible with the duration of the product offered (longer lead times for longer capacity products). We however still have very important concerns regarding the predominant use of auctions. Without ensuring an auction design that overcomes these difficulties, the instrument will not be viable.

One of our main concerns has to do with the applicable tariff and investment regulations. How does the auction price relate to the tariffs determined by the national regulator in countries such as the Netherlands? ERGEG makes a few suggestions in respect of income higher than the potential income on the basis of the regulated tariffs, but the different options should be further evaluated, with the active participation of the shippers. ERGEG doesn't explore the scenario where the auction revenues are actually lower than the regulated tariffs. Our experience from auctions in the UK shows that where there is plenty of free capacity, the auction price is close to zero and cannot provide adequate investment return for the TSO. Auctions for scarce capacity could on the other hand lead to excessively high prices and to a lack of investment incentives (the TSO is interested in the scarcity, as it guarantees higher capacity prices).

Auctions may work better with a system, where the TSO's revenues, as opposed to its tariffs, are regulated, but such a system has a number of disadvantages itself and should in any case be explored further before it can be introduced in countries such as the Netherlands.

Re-Marketing Booked Capacity (guideline F3.4)

F3.4 Secondary markets

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The network code shall set out how transmission system operators facilitate trade of capacity rights on the secondary market. The network code shall define harmonised firm secondary capacity products and anonymous procedures for offer and allocation in line with those on the underlying primary capacity market. The network code shall define further methods to facilitate secondary trading of capacity. Transmission system operators shall be entitled to split and combine offered and unsold secondary capacity products into products of shorter duration for the subsequent allocation.

- *Should the network code define harmonised firm secondary capacity products and anonymous procedures for offer and allocation of secondary capacity products in line with those on the underlying primary capacity market?*

We support ERGEG's approach and believe that secondary trading should also remain possible without the intermediary role of the TSO.

*Booking platforms
(guideline F3.5)*

F3.5 Booking platforms

The network code shall set out that adjacent transmission system operators establish joint, anonymous, web-based platforms for primary capacity allocation and secondary capacity trading. All capacity connecting their systems is to be allocated via this platform, unless allocated by means of implicit auctions. Primary and secondary capacity products shall be offered and allocated jointly on these platforms. The number of platforms shall be reasonably small and the network code shall lay down an action plan to further reduce the number of platforms. This plan shall define interim steps and shall include a timetable.

- *Do you think that all capacity connecting systems of two adjacent transmission system operators should be allocated via a joint, anonymous, web-based platform?*
- *Do you agree that joint allocation of primary and secondary capacity products on these platforms would strengthen capacity markets?*

We generally support this proposal, but would like to once again point out that OTC trading of capacity should also remain possible.

Yours faithfully,



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