

Mrs. Fay Geitona  
Council of European Energy Regulators ASBL  
28 rue le Titien,  
1000 Bruxelles  
Belgium

26 February 2010

Dear Fay

### **ERGEG Pilot Framework Guideline on Capacity Allocation on European Gas Transmission Networks**

EDF Energy welcomes the opportunity to respond to ERGEG's draft Framework Guidelines on Capacity Allocation on European Gas Transmission Networks.

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, renewables, coal and gas-fired electricity generation, combined heat and power, electricity networks and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including both residential and business users.

EDF Energy supports ERGEG's work in drafting these pilot framework guidelines and broadly agrees with the principles set out in the above consultation document. We believe there is a lack of gas pipeline capacity management and under-utilisation at cross-border points and interconnectors in Continental Europe which is hindering the flow of gas, trading and competition by creating barriers to entry for all shippers.

However, while we believe these framework guidelines are a step in the right direction we have some concerns that they have not been sufficiently developed or considered. This may have adverse or undesired consequences, especially on more developed and liberalised markets where it could constitute a backward step. Given the fact that they will eventually be turned into legally binding codes, which all TSOs and gas users will have to comply with, care needs to be taken in the detailed drafting of the codes so that it is clear to whom they apply and what impact they will have on existing and future contracts. On this note we have the following points to make:

- **Capacity utilisation** – we agree there is under-utilisation at certain interconnector points but this does not mean it is congestion. Some interconnectors connect different markets and therefore their utilisation, or lack of, could relate to price differentials between adjacent/ connected markets rather than a lack of capacity or access.
- **Scope** - We agree that the scope of these Framework Guidelines are correctly targeted at cross-border points and interconnections between adjacent entry-exit systems

within the same member state. However, account needs to be taken of future changes to the overall entry/ exit capacity points so that they align.

- Also, clearer definition of what constitutes a TSO and interconnector would be useful, along with a list of all the points affected across member states.
- We understand that these Framework Guidelines do not apply to TPA exempted infrastructures however it would be useful if ERGEG could clearly stipulate this.
- **Breaking up of existing contracts** – we understand and agree with why certain long-term contracts could be prohibiting competition. However, careful distinction of which type of LT capacity contracts is needed to ensure that Long Term capacity holdings acquired through open and transparent auctions, as per the target model proposed, are not affected. There are also security of supply implications that need to be taken into account, to ensure gas does not flow elsewhere into other non-EU markets.
  - We recognise that pipeline build is a heavy Long Term investment and regulatory risk needs to be minimised to protect returns for investors. This could be done by giving TSO's or incumbents owning LT capacity allowances or incentives through a price control to ensure the risks from capacity release are minimised.
- **Harmonisation of products** - we agree with the harmonisation of capacity products and procedures at cross-border and interconnectors. However we do not believe contracts and clauses should be harmonised. This is not important and will cause more delays in implementation with undesired complexities.
- **Capacity release** – we agree with the principles that TSOs should make all capacities available LT and ST through a combination of firm, interruptible and UIOLI products.
  - We also agree that these methodologies and figures should be made public so that users may understand them, including the likelihood of an interruption by the TSO. Consideration of an independent audit of all TSOs would be desirable in order to ensure consistency and accuracy.
  - We support the Target model of auctions for the release of Long Term capacity and the pro-rata of Short Term capacity in the interim period.
  - Secondary markets should be created on a dedicated and transparent platform that all shippers can use effectively.
- **Capacity charges** – in the interest of consumers, we agree that the cost of capacity should not exceed an economically efficient level.

As a general point on governance, we believe these Framework Guidelines should be setting principles on what TSOs and Users have to comply with, rather than being detailed network codes. This is because detailed codes may impose obligations that could hinder more advanced markets and make compliance for lesser developed markets more difficult. We believe it will also take longer to implement detailed codes than framework guidelines and will cause fewer problems with compliance across member states. The codes based on the Framework Guidelines could then be improved and made more detailed as and when needed

through properly governed change procedures. It would be helpful if ERGEG could provide some views on this point and how detailed the codes will be and to what extent will Member states have to comply with them. For instance, will it be compliance to the letter of the law or a minimum compliance with the intent of the code?

We also note that the proposals under these Framework Guidelines are similar, if not the same as that being proposed under the **Congestion Management Guidelines**. However, the latter are being drafted as a priority and will come into effect as a gas regulation through the comitology procedure. We believe that these should be discussed together and extended the same level of engagement with EU gas stakeholders as the Capacity Allocation Framework Guidelines as they are intrinsically linked. We also note that the Congestion Management guidelines will only apply to congested interconnection points to be determined by the National Regulatory Authority and again we believe it would be useful if the NRAs would publish a list of these interconnection points for public use.

I hope you find these comments useful. However, if you wish to discuss this response further please contact my colleague John Costa ([John.costa@edfenergy.com](mailto:John.costa@edfenergy.com)) on +44 20 3126 2324), or myself.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Linford".

Denis Linford  
Corporate Policy and Regulation Director