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Open Season 2008 of E.ON Gastransport AG & Co. KG

Dear Mr. Schmidt,

bne welcomes E.ON Gastransport's AG & Co. KG (EGT's) efforts in extension of its grid. But the way it happens is contradictory to the present market system "Entry-Exit", because Eon's procedures tie up to the past model with exchanging natural gas at transfer-points. Furthermore, we have considerable concerns about the conditions, which EGT determines. There will be significant established barriers against capital investment in new generation and storage facilities and in consequence against competition itself. Therefore, bne asks you to impose pressure upon EGT to change its rules immediately. Otherwise the continuation of Eon's open season results in irreversible facts.

The most important items of our critique are:

Procedure

- Asymmetric contract obligations are a central problem in EGT's open season rules: Shippers have to make concessions early, unilaterally, bindingly and over a long period of time. On the other hand EGT has the ability to stop the extension plans resulting from open season at anytime without any consequences. This approach results in serious problems for projects and capital investments in new gas- and steam plants as well as storage facilities. Potential investors are forced to make binding bookings contracting an extensive debt for not existing capacity at a stage, when the plans of the project are not finished and its realization is not even decided. Normally, these payment obligations are a multiple of the development expenses of a project like this. Thus, the asymmetric contract obligations could be the end for many of generation and storage projects of our member companies.

- EGT's open season with a non-binding character in the first phase will probably cause an inflation of applications. The implication of this would call for an extensive grid expansion. But in the second phase the wheat from the chaff will be separated: it must be faced, that a lot of the applications from the first phase won't be transformed in binding demands. The basis of tariff calculation and the declared range in tariffs which are fundamental for investment decisions would change completely. Hence, EGT's findings and announcements at the end of phase one, show a huge lack of substance but represent the fundament for decisions of the remaining applicants on large investments.
- A solution for the described problem might be the introduction of an intermediate step. According to this all seriously interested applicants have to pay a reservation charge which will be credited against latter obligations in case of concluding the contract (similarly the rule of § 4 para. 1 KraftNAV). By this way the Transmission System Operator (TSO) is able to separate serious applicants from "test users". An analysis following such intermediate step would result in better findings, a more realistic scenario respecting the chance of implementation or tariffs and therefore build a significant better fundament for decisions.
- Generally, the TSO has to make all investments in the extension of the grid – caused by storage facilities or G&S-plants which are characterized by a similarly long time horizon of the investment - contemporary and beyond an open season as far as there is no insuperable reason against. Investments in the expansion of transmission lines to connect a new plant, in storage for natural gas or – in the long run – in planned industrial greenfield developments should always charge off the expenditures.

No transparency

- EGT's open season rules ignore ERGEG Guidelines for Good Practice on Open Season Procedures (GGPOS from 21st of May 2007). This can be said for absent information about the criterion for economical reasonability of grid extension, model contracts, penalties for the grid-operator in case of breaking the engagement as well as tariff calculation. There is a huge lack of transparency in EGT's procedure which inhibits the decision of potential investors in new gas-related projects.
- EGT's open season does not reveal the circumstances around tariff calculation. In contradiction to GGPOS EGT did not publish the range of fees and its economic

basis of calculation respectively. Only at the end of phase one the shippers receive information about a spectrum of fees. Under these circumstances the applicants have to make substantial and binding decisions on a really weak basis with vague information and without knowing detailed final conditions.

- It is completely obscure how and on which basis of whatever benchmark EGT will determine necessary capacities. Especially it is not clear whether EGT includes all other possibilities for further improvement on efficiency in existing capacities, e.g. with exonerative effects on the grid from storage facilities and swaps of natural gas. Moreover, there is no information whether and to what extent EGT coordinates its activities with neighbouring TSO. On the other hand bne is expecting soon a decision of the German regulator office (BNetzA) in such a way that competition between TSO is not existing and therefore the 12 TSO still claiming have to accept the regulation of expenses and later incentive regulation, where the rules of § 23 ARegV give the problem specifications for the so called investment budgets. According to consultation paper of BNetzA on investment budgets in § 23 para. 3 ARegV (BK4-008/025) TSO have to involve neighbouring grid areas and planned extension of the grid in its own consideration (consultation paper, chapter 4.5). In contrast, EGT's open season rules apparently involve capacities only in the context of its own grid. This behaviour is also contrary to the necessity of reducing the separation in so called market areas, e.g. the consolidation of EGT with those areas of BEB, ONTRAS and Wingas is incompatible. Before extension measures will be started that are intensive in costs and limited on the own "market area, the legitimacy of the existing market demarcation by means of "market areas" has to be surveyed in the first step. If there is still a lack of cooperativeness between EGT and other grid operators there is also a regulatory arrangement for a consolidation of market areas according to § 6 para. 4 clause 4 GasNZV necessary.

Discrimination

- We are astonished about EGT's statement, that tariffs payed for shippers bookings in the context of open season could be differ from those tariffs which are billed from other existing grid users (Compare § 11 para 2 open season rules). This statement is comparable to former opinions of electricity-TSO, who wanted to impose the costs caused by grid extension only on new-connection-users. In the meantime it is well established – and the electricity-TSO have accepted – that such an unequal allocation of extension costs is not compatible with the basic principles of the German energy law. Additional costs beyond those for the direct

connection therefore have to be uniformly allocated over all grid users similarly to the practice in the electricity grid. Non-discriminating treatment of established shippers or incumbents as well as new market entrants can be ensured only in this way.

- Otherwise EGT's open season 2008 and the periodically following open season procedures would create a patchwork system of grid tariffs for one and the same service on an entry- or exit point. Especially capacity reservations of the EGT Ruhrgas sales department now represent a majority of bookings and would – in comparison to "younger" grid users – substantially preferred because they can use the long-term booked capacities furthermore and hence gain unfair significant economic and competitive advantages.

We shall be glad to discuss this topic with you as well as with EGT. In any case it is high time for quick action because otherwise the continuation of EGT's open season will disrupt significantly and strongly the development of competition in the German gas market.

Yours sincerely



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