Scottish and Southern Energy Response to ERGEG guidelines on Article 22 Exemptions

Scottish and Southern Energy plc (SSE) is a vertically integrated Energy Company based in Great Britain. It has interests in gas distribution and supply, electricity generation, transmission, distribution and supply and other non-energy interests such as telecoms, contracting and water.

As an infrastructure developer, we believe that it is important for investors in major infrastructure to have reasonable certainty of the regulatory framework either as regulated investments or as merchant investments. Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas allows for exemptions from regulation for major new infrastructure in certain circumstances, and is an important mechanism in facilitating such investment. We have set out below our views on the proposals for additional clarification and guidelines for the applications of Article 22 in answering the specific questions posed by ERGEG in its consultation document of 5 March 2008.

(1) Do you consider the described general principles and guidelines appropriate to achieve a consistent and transparent framework for competent authorities when deciding on exemption procedures?

> In general, we believe that the provisions of Article 22 are adequately defined for the purposes of allowing regulatory authorities to determine whether and to what extent exemptions should be permitted. However, if the provisions of Article 22 are to be further clarified by such guidelines, the guidelines should be capable of reflecting the particular market circumstances such as the degree of competition already present. This would avoid intrusive regulation into already competitive markets.

(2) Do you consider the present scope of eligible infrastructure to be too narrow?

> We believe that interconnectors, LNG terminals and storage facilities should be capable of exemption, since national transmission infrastructure should always be subject to regulated third party access.

(3) Do you consider open season (or comparable) procedures an important tool in assessing market demand for capacity with respect to determining the size of the project applying for exemption, as well as in the subsequent capacity allocation? Should open season (or comparable) procedures be mandatory?

> Open season procedures could be helpful in assessing the demand for capacity as well as for subsequent capacity allocation, but are by no means the only method for assessing such demand. It would therefore be inappropriate to mandate open season procedures as a pre-requisite to obtaining an exemption.

(4) Should open seasons also be used to allocate equity?

> This would appear to suggest that potential investors in a project could be identified by an open season process. This would, in our view, amount to interference with the business processes by which a potential project is developed.

(5) Some stakeholders think that Art. 22 should be applied differently to LNG terminals as they may be generally better suitable for enhancing competition and security of supply than other types of eligible infrastructure. What is your point of view on this?

If you agree, how should this be reflected in the guidelines?

We do not agree that LNG terminals are sufficiently different for the guidelines to be different.

(6) Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of competition in gas supply appropriate?

In our view, the criteria appear to be excessive and could in themselves be a barrier to smaller players to invest. In particular, 3.2.1.2(c) appears to require the applicant to provide information that might not be available, for example the position of any "designated shippers in supply or production or export or import of natural gas in any jurisdiction affected by the project". The provisions regarding Company Structure seem particularly aimed at interconnectors since they refer to importing and exporting countries and are largely irrelevant for storage which is essentially national in scope. It is therefore important to ensure that the level of information on Company structure is proportionate and relevant to the particular project and its associated market.

(7) Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of security of supply appropriate?

The criteria appear to be sufficient and appropriate.

(8) Are the described criteria for the risk assessment appropriate?

The risk analysis again seems aimed at interconnectors and looking at the market structures in the destination countries. This level of scrutiny may well be appropriate for such projects but would be disproportionate for small gas storage projects.

(9) Are the described criteria for assessing whether the exemption is not detrimental to competition or the effective functioning of the internal gas market or the efficient functioning of the regulated system to which the infrastructure is connected appropriate?

We believe that the criteria should be proportionate to the type of project. As in our previous response, the requirements appear to be targeted towards interconnectors and would be disproportionate for small storage projects.

(10) To what extent should consultations with neighbouring authorities be done?

We believe that, for an interconnector, consultation should involve authorities likely to be affected by the proposed project, not just the ones at each end of the link. For LNG and storage facilities, we believe that only the national authorities are relevant.

(11) Parts 3.3.1.1 and 3.3.1.2 of the proposed guidelines deal respectively with partial and full exemptions. Do you consider the described decisions (partial/full exemption) appropriate in safeguarding the goal of Directive 2003/55/EC in making all existing infrastructure available on a non-discriminatory basis to all market participants and safeguarding the principle of proportionality?

We agree that partial exemptions should be available to regulatory authorities rather than a simply having to choose between a full exemption or non at all.

(12) Do you believe that Art 22 exemptions should also benefit incumbents or their affiliates? If yes in what way and to what extent?

Provided that the unbundling rules regarding the project are adhered to, we see no reason why incumbents and affiliates should not benefit from exemptions.

(13) Do you agree that under certain circumstances, deciding authorities should be entitled to review the exemption? How can it be assured that this does not undermine the investment?

We agree that under certain circumstances the deciding authorities should be able to review exemptions. Provided that the circumstances are set out in advance then this can be factored into the potential risks of the project and should therefore not undermine the investment.

For further information or clarification of our response, please contact:
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