



NETWORKING ENERGIES

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Dietikon, January 17, 2007

Draft Guidelines of Good Practice on Open Season Procedures(GGPOS)

Dear Sir/Madam

We write in response to the ERGEG's consultation document on Draft Guidelines of Good Practice for Open Season Procedures (GGPOS), published on December 6th, 2006 (C06-GWG-29-05). EGL welcomes any initiative aimed at reliable open Season procedures and is grateful for the opportunity to participate in the consultation process.

EGL is a Swiss-based gas and power trading company based on infrastructure investments and long term added value to the energy community.

EGL is presently involved in the preparatory stages for the construction of a cross-border gas pipeline which will supply gas through Albania and Greece to Italy, known as the Trans Adriatic Pipeline (TAP). Construction is expected to commence in 2008 once all the necessary national permits and licences are in place. In addition EGL intends to apply to the relevant national authorities for an exemption for this project under Article 22 of the Gas Directive 2003/55.

Given that EGL expects that the TAP pipeline will benefit from the Article 22 exemption procedures, we will confine our response to some general comments on the relevance and suitability of open season type procedures for pipeline projects which are partially or totally exempt from regulated TPA (rTPA). EGL notes that the present draft Guidelines do not concern the application of Article 22, but at the same time considers it useful to make a number of general comments on the aim and scope of the exemption procedures and open season procedures. EGL is of the firm opinion that the proposed Guidelines should not apply to new infrastructure projects which are eligible for exemption procedures under the Gas Directive. The reasons for this opinion are set out below.

1. Careful consideration should be give to the appropriateness of introducing Open Season procedures for new infrastructure such as cross-border pipelines where these projects extend beyond the borders of the European Union. In such cases there is not necessarily any guarantee of reciprocity in non-member countries and therefore no assurance that the outcome of an Open Season procedure could be beneficial for the European Union.

2. Furthermore, for these types of projects very different policy considerations are at issue. Long distance cross-border pipelines are undertaken by investing parties with a view to gaining access to new sources of supply upstream, and introducing considerable volumes of new gas supply to the European Union. These projects will often also stimulate infant gas industries in transit markets. In this sense they can be more readily compared to upstream production and related transportation projects. These types of projects should not therefore be confused with or compared to TSO built and operated transmission or transportation systems which should be built and operated to ensure, inter alia, more downstream competition between suppliers in the European Union markets.

3. Where a cross-border pipeline stretches across a number of jurisdictions, including territories which are not parties to the European Union or even similar 'energy communities' – such as the Energy Community Treaty (TEC) – the introduction of a compulsory open season would create exceptional burdens on the sponsors as the types of procedures would have to be found acceptable to all the various national authorities involved. Some of these may follow the proposed ERGEG guidelines, but others may not. There is therefore little assurance that open season procedures found to be acceptable by certain national authorities or regulators will be deemed acceptable to others. At present there are insufficient mechanisms in place to secure adequate co-ordination at national level even among EU member countries. There is little prospect of effective co-ordination amongst authorities of non-member states. The proposals in para 4.5 of the draft for co-ordination between adjacent system operators will not resolve these problems.

4. EGL would therefore conclude that for long distance cross-border projects, compulsory open season procedures can be of very limited benefit.

5. For investor-owned and operated projects it must also be doubted whether compulsory open seasons either to assess downstream market demand or to determine capacity allocation can lead to pro-competitive outcomes. In most cases investor-owned and operated projects will be interested in consulting and dealing with possible co-investors or sponsors who are willing to share the investment risk in the proposed project. System users – whether shippers or large customers or other parties – may not be interested in assuming such risk prior to construction. In any event, it would be highly detrimental to such projects if a requirement to treat all users (whether existing or future) equally were to be imposed. This would prevent proper account being taken of the investment risk assumed by initial investors (see however, para 28 of the Draft which would appear to require equal treatment).

6. In these circumstances it would not be acceptable to impose extensive requirements on investor-owned and operated projects to publicise their projects and to provide third parties, including possible competitors, with the type of information proposed at para. 20 of the Draft. Such requirements would not only unduly burden the project development but could also harm competition between different cross-border pipeline projects. EGL would therefore advise that the type of information proposed to be supplied to shippers would not be appropriate for cross-border investor-owned and operated projects – see in this respect para. 40, Question B.

7. While the general principle of holding an open season to test the market for possible co-sponsors for the investment (as opposed to testing the market for transmission capacity only) is acceptable, the initial sponsors of investor-owned projects should be allowed the freedom to devise and tailor their own open season requirements which are best suited to the nature and scope of the individual project concerned – including the planned financing arrangements. These types of open season procedures need not be vetted by the national regulator in advance given that they are invariably highly project specific. In any event the national authorities will take the appropriateness of open season procedures into account in the Article 22 exemption procedure.

8. Given that open seasons in the context of an investor-owned and operated project have a different purpose it is not appropriate to impose the proposed 'second step' – capacity allocation. Capacity allocation must depend, inter alia, on the level of risk that any potential co-investor is prepared to assume. The allocation of any residual capacity to the market, or of any capacity which would become available on the basis of the 'use – it – or lose-it' principle, must also be dealt with by the relevant national authorities in the context of the Article 22 exemption procedure. Hence competition goals will be adequately addressed. The procedures envisaged for capacity allocation are therefore not appropriate to these types of investor-owned and operated projects – see para. 40, Question C.

EGL hopes that these points can serve as useful clarification in the further deliberations on the draft Guidelines. We are at your disposal should you require further information or have any questions on the points raised in this letter.

Yours sincerely

Elektrizitäts-Gesellschaft Laufenburg AG

A handwritten signature in black ink, appearing to read 'Robert Klein'.

Robert Klein
Head European Logistics

A handwritten signature in black ink, appearing to read 'Thomas Hesselbarth'.

Thomas Hesselbarth
Head Gas Development