

Comments of Bundesverband Neuer Energieanbieter (bne – Federal association of new energy suppliers) in BNetzA procedure to verify the claims of TSO for an exemption from cost-orientated tariff regulation in the German gas market

- Abridged version of the common paper of VIK and bne from 14th August 2007 -

The German Regulation Office Bundesnetzagentur (BNetzA) presented a verification procedure the claims of supraregional gas network operators on the existence of competition in pipelines. The result of this verification determines the principle of tariff regulation. Cost-orientated is the approved principle of regulation for grid industries characterized by monopolies. But should evidence for the existence of competition be provided, by way of exception tariffication can be made subject to the principle of comparability with other markets.

The German legislator grant this procedure in the basic principles of tariffication in § 3 para. 2 Gas Network Fees Ordinance (GasNEV). For the discussion whether this rule is compatible with European law we refer to an article of Däuper and Scharrer. The authors demonstrate that the application of § 3 para. 2 GasNEV is not compatible with the superior law, especially order nr. 1775/2005/EC from 28 September 2005 (FerngasVO) as well as directive 2003/55/EC. Beyond article 3 FerngasVO it must be referred on consideration number 7 to FerngasVO. Under this rule firstly expenses incurred actually have to be considered in tariff calculation and secondly only real existing competition in pipelines may considered as cause for applying the method of tariff-comparision and thirdly tariff-comparision can be regarded only as an additional but not sole method of regulation.

We want now define our position on the proposed procedure for verification beyond a legal annotation. On this we analyse the possibilities for competition in pipelines and advise additional important criteria to verify the existence of a competitive market. Furthermore, an exemption would exclude supraregional grid gas operators from designated incentive regulation and so claiming from grid operators no improvements in efficiency.

Above all the expert's report of the Chair of Energy Economics and Public Sector Management of Dresden by order of EFET Germany contains a fundamental analysis on the issue of competition.

Moderate fees for grid access are crucial for wholesale competition

Moderate fees for grid access are crucial for the development of effective competition on the wholesale level in the German gas market. Currently the control area network operators bill 2.3 – 3.5 €/kW for entry-capacity and 2.2 – 3.0 €/kW for exit-capacity on transmission line level. Inside of a so called market area the access to transmission lines represents 20 % of the expenses for transportation which makes for the end customer between 10 and 20 % of the gas price. The effect by changing these costs would be only apparently low. But this conclusion abstract away from the fact, gas-to-gas-competition is taking place at the virtual trading point of the control area network operator and even there the conditions for an effective competition must be fulfilled. Premises are the access at the same conditions for all market participants and the fees have to reflect efficiently supply of capacities.

A price difference of 1 €/kW at supply of capacities for entry and exit makes an impact of 0.11 €/MWh on the energy price of a band structure product (8760 h load utilization over the period of a year) and 0.33 €/MWh for those with a typical structure of a public utility company. Such differences between suppliers in the wholesale market are decisive for demand and supply of gas and hence for the success of a supplier.

Competition in pipelines is not compatible with Two-Contract-Model

Since the implementation of network access resting upon a model which is independent from distances and transactions according to § 20 para. 1b EnWG and GasNZV the market areas have no longer distance conditioned fees. Because of the abolition of the distance dependence (explicitly allocation of an exit point to an entry point) there is existing no longer a systematic basis for competition in pipelines in terms of exchanging natural gas at transfer-points. But § 3 para. 2 clause 1 GasNEV is referring to this kind of competition in pipelines.

From there we disagree to the concept of "competing grids" (part II, article 1) of the German Regulation office BNetzA by determining the construct "competition in pipelines". In a strong legal interpretation there is since 1st February 2006 no longer a basis for claim on § 3 GasNEV. Therefore a verification procedure on this subject is in our opinion invalid and its discussion an off-system question.

Contrary to pipe-to-pipe transmission lines which had been build with the view to utilize in a substitute character the comparability of real performance in gas supply significantly is more difficulty. The approach of "Competition by competing grids" can – as much designated as in the verification procedure – only market areas can be considered as regional delimitation

because only inside of these areas the transportation of natural gas is warranted without shortage or reservation. Therefore the verification should be extended by factual availability of different alternatives of transportation and resulting fees relating to market areas. The criteria of demarcation of real alternatives in the context of a competitive market as well as interpretation of clauses like "effective existing" and "prospective competition" had been shown already in the article of Däuper and Scharrer.

On the other hand the implementation of an entry-exit-model provided rolling of costs and tariffs would be disrupted by an exemption of cost regulation. According to the definition there exists no physical connection between entry and exit capacity and the virtual trading point of a market area. If an alternative way of transportation on another transmission line exists the transport of natural gas is also possible across another market area. In this case there would have to be reported for each alternative another transportation fee reflecting the rolled costs and tariffs of each option. Moreover, the question about the allocation of the "alternative fees" on the customers without discrimination and in which way shortages playing a role in the choice of the alternative. If tariffs for all grids have to be approved ex ante except the ex post control according to the principle of comparability with other markets which transmission line operators apply for, the practice of regulation will get inflexible complex. Such a case would require in addition the opportunity of retroactive adjustment of already approved tariffs is neither consistent nor in accordance with the rules and therefore can not be realised.

For this reason the network access model fixed by law prohibits the exemption of transmission network operators from regulation.

Berlin, 2nd May 2008