

Comment of bne concerning the ERGEG public consultation on draft guidelines on Article 22 of Directive 2003/55/EC

The Bundesverband Neuer Energieanbieter (bne – Federal association of new energy suppliers) has the pleasure to submit its comment concerning the ERGEG public consultation on draft guidelines on Article 22 of Directive 2003/55/EC. In the following we want to give you our answers to some of your questions for stakeholders.

Questions for stakeholders

- Do you consider the present scope of eligible infrastructure to be too narrow?

bne: No, the present scope of eligible infrastructure should not be extended on other than the named infrastructure in Article 22 Directive 2003/55/EC. Rather, the German law for the gas market contains a broader exemption. Most of German transmission system operators claiming now on this rule (§ 3 para. 2 Gasnetzzugangsverordnung) and they withdraw from tariff regulation for more than the last two years. Please read about the problems which are caused by this rule in the attached paper ("Gemeinsames Positionspapier von VIK und bne zum Prüfverfahren beim Fernleitungswettbewerb im deutschen Gasmarkt" from 14 August 2007).

- 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?

bne: Recent negative experiences with open season procedures make it impossible to give a common answer to this question. E.ON Gastransport AG & Co. KG (EGT) has started an open season which creates new problems especially for new entrants in the energy market ("newcomers") and obscures the aims introducing such procedures by ERGEG. Eon extended the procedure on transmission facilities and started its open season against the background of the separation of the German gas market by the so called marked areas and a shortage of capacities, which was so far not repaired by an absolute cooperation between all TSO. The problems of congestion are at the expense of "newcomers" because the initial capacity allocation privileges long term contracts and therefore mostly the incumbents. Our critique on EGT's procedure includes at all: asymmetric contract obligations and a misdirecting construction of the steps in the procedure might result in wrong conclusions and therefore provide a wrong basis for investment decisions of the (potential) grid user in the next phases. Furthermore, there is a lack of transparency on conditions of using the new infrastructure as well as discrimination. For the details we refer to our letter to the German regulator from 17 April 2008.

- 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?

bne: No, the in article 22 defined exemptions have all the same eligibility.

- 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?

bne: One important question must be added: Is the new infrastructure rather essential for efficient access on the existing network?

- To what extent should consultations with neighbouring authorities be done?

bne: Consultations with neighbouring authorities should involve all states, which are affected of the project and they should decide about the application of article 22 together completely.

Berlin, 2nd May 2008