

EnBW Energie Baden-Württemberg AG · 76180 Karlsruhe · DEUTSCHLAND



Mrs. Fay Geitona  
CEER / ERGEG  
28 Rue le Titien  
1000 Brussels  
Belgium

Durlacher Allee 93  
76131 Karlsruhe  
76180 Karlsruhe  
DEUTSCHLAND  
Phone +49 721 63-06  
Fax +49 721 63-12725  
www.enbw.com

Registered Office: Karlsruhe  
Local Court Mannheim  
Number HRB 107956  
Tax number 35001/01075

Name Sylvie Courtier-Arnoux  
Department Regulation & Compliance  
Phone +49 721 63-14372  
Fax +49 721 63-13933  
E-Mail s.courtier-arnoux@enbw.com

**ERGEG public consultation on “Regulation (EC) 1228/2003 Compliance Monitoring Second Report, 2008”**

November 12, 2008

Dear Mrs. Geitona,

As ERGEG invites all stakeholders to submit proposals and suggestions on any further needs for more precise and detailed provisions and on identified non-compliance issues, EnBW is grateful for the possibility to take part in ERGEG’s consultation on the results and findings of Regulation 1228/2003/EC in the following.

**1.) Issue nr 1**

Regarding the issue, where most effective and rapid actions achieving compliance where non-compliance and deviations from the legal provisions in the Guidelines and the Regulation have been identified, we consider the establishment of secondary trading as an essential issue. Since secondary trading is a practical method to increase the benefit of cross-border capacity, we think it has to be ensured that each TSO allows secondary trading of capacity. Even though all TSOs have the same obligations, we criticize that informational requirements are not fulfilled completely and support the suggestion to improve the current situation (52% of compliance with 2.12 of the Guidelines) to ensure that all TSOs provide a secondary market or hand in required information in case of a refusal.

Being also a member of the CWE region, which was categorized as compliant with Point 2.1 of the Guidelines, we would like to put emphasis on the implementation of mechanisms for intra-day congestion management on interconnections that have to be managed in a coordinated way and under secure operational circumstances (we understand this as having the same method on both sides of the border). The Guidelines under Point 1.9 require that such mechanisms shall be established until January 1<sup>st</sup> 2008. However, until now there is no agreement on a common, secure, coordinated mechanism established, but negotiations are ongoing

Chairman of the Supervisory Board:  
Dr. Claus Dieter Hoffmann

Board of Management:  
Hans-Peter Villis (Chairman)  
Pierre Lederer (Deputy Chairman)  
Dr. Bernhard Beck  
Dr. Hans-Josef Zimmer

and efforts are made in order to achieve compliance soon. Thus, we propose to hold a consultation where all stakeholders can contribute in order to achieve common agreements.

We would also like to comment on the issue of financial consequences in case of failure to honour obligations by those who are responsible. The TSOs, which do not fulfil their obligations in cases of curtailment shall be liable to compensate the market participants for the loss of the capacity rights. Surely, in case of force majeure, TSOs cannot guarantee firmness of capacity and thus cannot be liable for any costs exceeding the initial capacity price. However, firmness in this respect should be defined in the same way at least on a regional level (in a way CASC intends to do for the CWE region). In all other cases compensation for any curtailment of capacity could be at full market spread. In this context there is still the unsolved regulatory issue how TSOs are allowed to refinance this risk. A suggestion is, that these compensation costs could be refinanced from the congestion rents while for a transitory period, we would also support an upper limit on a total compensation amount per month.

Considering coordination, we suppose that within the CWE region a significant enhancement in comparison to the first compliance report has taken place. Particularly, with the establishment of CASC, besides other improvements, the long term allocation of capacity, identical timeframes and gate closures as well as a consistent contractual framework was built up. This facilitates a simplified exchange of information and a more efficient cross-border trade of electricity. Taking into account the current ongoing Market Coupling efforts, the integration of the region will be further pushed forward. This development optimises the allocation process, assigns clear responsibilities and increases compliance, which shows that the cooperation especially between the TSOs as well as in cooperation with the PXs is fruitful.

## **2.) Issue nr 2**

Regarding transparency and the suggestion to need a precise and detailed provisions in the Regulation and the CM Guidelines, we suppose that the transparency reports, carried out by the National Regulatory Authorities in consultation with the stakeholders, are at the current time sufficient to solve the problems stated in the ERGEG Compliance Report. In order to fulfil the requirements of the current CM Guidelines it seems recommendable to ensure the compliance with this CM Guidelines first. Only if all conditions are fulfilled by all TSOs within the European Union, a new Guideline shall be introduced. This approach has the advantage that the implementation of the 2006 CM Guidelines can be fully completed first. Then, a higher compliance will be achieved in the following years and the ERI Transparency Reports can develop their full effect. Therefore we think it is not recommendable to complement the existing general provisions on transparency, but rather use the existing regional transparency reports and implement them throughout all Member States to achieve a level-playing field.

Hence it could be an opportunity to introduce a common framework regarding the acceptance of costs.

Moreover, it is stated, that 50% of the TSOs have published the corrective actions taken by TSOs for solving network and system problems and only 46% have published the effects of these actions on physical power flows. In order to ensure 100% of compliance with Point 5.5h of the CM Guidelines, we recommend to introduce a general obligation for the TSOs to report on corrective actions taken, also in cases where there was no corrective action taken. This also counts for the 46% of the TSOs that do not publish their reasons of limitations of cross border capacity. Even though we support ERGEG in the above mentioned points, we oppose the suggestion to recommend the Commission, that the TSOs shall report on all relevant descriptions, documents, etc. so that it becomes an "inherent" and "Self-explanatory" duty of the TSOs. In our point of view, this is the task of the National Regulatory Authorities, who shall monitor and report on the current developments and check the documents of all TSOs.

Additionally, we appreciate the proposal to adopt and implement ITC and Transmission Tariffication Guidelines. We see this as a great chance to implement a general framework, applicable throughout the Member States.

About restrictions on market participants, we would consider that this should remain an exceptional process. It should result from an ex-post analysis from the relevant Regulatory and/or Competition Authorities on a case to case basis. If dedicated Guidelines have to be written, we would suggest that all stakeholders have the opportunity to express themselves in a public consultation about the foreseen process about restrictions imposed to participants in the allocation process. Anyway, there should be a right of appeal for the market participants. The appeal process should also be developed in the Guidelines.

Concerning the recommendations for the TSOs, we are doing our best to implement the agreed projects. However, it should be borne in mind that the German TSOs cannot take into account all relevant costs of the implementation of ERIs. This is an important obstacle for us and hinders an even faster compliance. On the other hand, we welcome the approach to define and agree on a common set of rules to solve internal and cross-border congestion. We believe that the foundation of CASC has shown our engagement and that the CWE TSOs are acting in favour of such a common framework.

We agree that ERGEG and the national regulators shall assess economic efficiency of congestion management methods. Our opinion is that even though implementation of Market Coupling in CWE takes more time than expected, progress on implicit daily auctions can be observed.

Concerning the recommendations, ERGEG should advise the Commission

- (i) on the treatment of curtailment and firmness of the transmission capacity, which requires more detailed and exact provisions: we support this suggestion as we believe that one set of rules helps to have the same policy and procedures in all Member States and the NRAs implement harmonised regulatory methods. From our point of view, cost recovery concerning firmness has to be done in the same way throughout Europe.
- (ii) on detailed and precise provisions on how the TSOs shall maximise their capacity: generally we support this suggestion and suppose that

- it would be beneficial to have such a common position on the capacity maximisation taking into account system security.
- (iii) on provisions on when and how to use counter trading and redispatching: under consideration of the system security, we think it is a meaningful method to ensure capacity (not to increase it). As counter trading has become more important with the introduction of Market Coupling, it might be necessary to design a general framework by the NRAs, ERGEG or the Commission to harmonise the issue.
  - (iv) on effects on the market of the use of congestion income by one TSO: by now TSOs have three possibilities on what to do with the income caused by congestions. We believe that these three alternatives are sufficient enough and that the network users are the ones that benefit the most from investments into the network in the region they pay for. We are convinced it is the best option that TSOs decide decentrally about investments in their region.

Finally, we would like to put some emphasis on transparency of the report. To us it appears unclear on which criteria the National Regulatory Authorities evaluated the questionnaires. An explanation why information varies on different sides of the border would be helpful as well. It is necessary for the TSOs to know which standards were applied and which assumptions were laid down while answering the survey.

EnBW hopes that these comments prove to be helpful for ERGEG in the further development of Congestion Management Compliance Monitoring.

Yours sincerely,

EnBW Energie Baden-Württemberg AG

Sylvie Courtier-Arnoux  
Senior Manager