

European Regulators Group for  
Electricity and Gas (ERGEG)  
Rue le Titien, 28  
B 1000 Bruxelles

(via e-mail)

2 May 2008

**Comments by RWE Gas Storage regarding Draft Guidelines on Article 22,  
An ERGEG Public Consultation Paper (Ref.: E07-GFG-31- 07)**

Dear Sir/Madam:

I would like to thank you for the opportunity to comment on ERGEG's Draft Guidelines on Article 22. RWE Gas Storage believes that a harmonized and transparent framework for competent national regulatory authorities dealing with exemption requests clearly provides an incentive for investments in gas infrastructure. In general, exemptions must be available to all interested parties on a non-discriminative basis regardless of the type of infrastructure in question because investments enhance the development of a common European gas market and increase security of supply in Member States of the European Union.

You will find our answers to the questions specified in your public consultation below.

**Questions for stakeholders**

- *Question 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?*

Answer 1: We believe that the principles and procedures as described by ERGEG in the Draft Guidelines on Article 22 may offer guidance to national authorities, but offer a number of specific comments below.

- *Q2: Do you consider the present scope of eligible infrastructure to be too narrow?*

A2: All types of infrastructure should be eligible for exemption.

- *Q3: 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?*

A3: Open season procedures are a useful tool for gauging existing market demand for specific types of gas infrastructure. However, they should not be

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mandatory as underground storage projects can have extremely long lead times (up to 10 years or even more) and open seasons may not always be the best way forward, in particular when the existing market situation is adverse, thus discouraging investment in storage in the present and resulting in shortage of storage capacity in the long run.

- *Q4: Should open seasons also be used to allocate equity?*

A4: No. Equity in projects should be always determined by the initiator(s) of the given project and the initiator(s) should be able to choose his or their partners as he or they see fit for the project's success.

- *Q5: 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?*

A5: Please see the position of GLE.

- *Q6: Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of competition in gas supply appropriate?*

A6: Yes, the described criteria for assessing infrastructure investments enhancing competition seem to be appropriate.

- *Q7: Are the described criteria for assessing the effects of an investment in infrastructure on enhancement of security of supply appropriate?*

A7: We believe that the list of criteria used to determine whether infrastructure investments enhance security of supply should not attempt to be exhaustive as there are numerous ways in which security of supply can be enhanced.

- *Q8: Are the described criteria for the risk assessment appropriate?*

A8: As the criteria seem to apply only to rTPA, we believe it is necessary to clearly state that exemptions may be granted under Article 22 to infrastructure with both nTPA and rTPA. Also, it is not clear how anti-hoarding mechanisms would be applied to exempted capacity in case of a partial exemption and how it would be established that capacity hoarding is taking place.

- *Q9: 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?*

A9: The criteria seem to be appropriate. In any case, applications for an exemption require a thorough analysis on a case-by-case basis taking into account all aspects and issues.

- *Q10: To what extent should consultations with neighboring authorities be done?*

A10: Investment in storage need not be consulted with the authorities in neighboring countries.

- *Q11: 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?*

A11: We believe that the possibility to choose between full and partial exemption is beneficial as all requests for exemption are unique and should be judged on a case-by-case basis. All new capacity, even if partially exempted for a limited period of time, enhances security of supply.

- *Q12: Do you believe that Art 22 exemptions should also benefit incumbents or their affiliates? If yes in what way and to what extent?*

A12: Yes. Exemptions are assessed on a case-by-case basis and incumbents should be treated in a non-discriminative way to enjoy the same potential benefits while facing the same risks. It is always crucial to correctly define the relevant market in a specific situation and determine what the impact of granting an exemption would be on such a relevant market.

- *Q13: 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?*

A13: Generally speaking, any power to review exemptions that have already been granted will create uncertainty among investors who are carefully weighing the pros and cons of their potential infrastructure investment projects. A stable and predictable regulatory framework is crucial for any investment in the gas industry where long lead times and massive financial requirements characterize almost every investment project, exempted or not.

We hope that the above answers will help you make the Guidelines on Article 22 a better tool for enhancing investments in gas infrastructure and security of supply. If you have any questions, please do not hesitate to contact me.

With kind regards,

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