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Oslo, 22 December 2008

Nordenergi Comments on ERGEG public consultation paper “Implementing the third energy package”

Nordenergi, the joint collaboration between the Nordic associations for electricity producers, suppliers and distributors welcomes the opportunity to comment on the ERGEG initial consultation paper “Implementing the third energy package” which was published on October 21, 2008.

The work of the Agency

A: Consultation Arrangements

Nordenergi welcomes the proposal of implementing the interim arrangements into the future work of the Agency. This approach will ensure the necessary continuity and transparency of the implementation of the third energy package.

In general, we also welcome the proposed changes to the arrangements. We believe they will make future consultations more productive as the number of stakeholders involved is increased. We also welcome the suggestion that ERGEG may organise informal discussions with those affected by the legislation in question, as we believe this may make the process more efficient. However, these informal discussions must be transparent and considered only as a supplement to the overall consultation process. They must not limit other interested parties from contributing to the consultation.

B: Stakeholder panel

Nordenergi believes that it is important to involve stakeholders at an early stage and supports the establishment of a stakeholder panel in addition to the normal consultation processes. However, we would advise against enhancing the Florence or London forum for this purpose. Considering the ultimate goal of creating a level and efficient playing field, it is especially important to consult with the market participants in a more direct manner. We feel that the complexity of the Florence forum, as well as the low frequency of forum meetings, may limit the market participants’ ability to promote their views. The London forum is based on retail market issues, and we believe that well-functioning wholesale markets should be the primary focus for ACER. Furthermore, Nordenergi believes that most consultations will be dealt with regionally. It may not be ideal to base the stakeholder panel on the London/Florence forum because they do not primarily address regional matters.

Nordenergi would suggest a regional approach to establishing the stakeholder panel. The existing Regional Initiatives Stakeholder Groups may serve as a model for the panel. If a regional approach is to be selected, the division of regions should follow the same regional division as in the organisational structure of ENTSO-E. However the work of regional panels must be coordinated on European level and a European level panel is also needed.

C: Ad-hoc panels

Nordenergi supports the proposal to create focused ad-hoc panels. Small expert groups may contribute to and speed-up the consultation processes. However, we would advise against formally linking these groups to the Florence, Madrid or the London forum, as we believe this will make the establishment and organisation of the group rigid and too time-consuming, especially in matters of urgency. Also, we do not see any problems related to proliferation. ERGEG should be flexible and free to recruit the best suited representatives for the task at hand.

D: Public accountability

According to the draft regulation, article 30, the Commission shall carry out an evaluation of the activities of the Agency. This shall cover the results achieved by the Agency and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The annual report, evaluation report, periodic report and quality charter as well as the appearance of the chairman and director of the Agency before the relevant committees of the European Parliament, may very well be sufficient in order for the Commission to evaluate the activities of the Agency. However, only the Commission can determine whether this is sufficient. Nevertheless, Nordenergi would like to see that there are binding rules in order to publish the reports by the Commission on ACER, and that market participants also should be given an opportunity to comment on these reports.

E: Criteria for the successful establishment of the Agency

The successful establishment of the Agency will require a strong mandate in the regulation combined with a strong support from the Member States, stakeholders and the EU-institutions. Also, it is equally important that the national regulators have the proper mandates and obligations to support the role of the Agency, so that they may actively contribute to the work conducted within ACER. The primary objective should always be to enhance the internal electricity market as a whole, even where such considerations may have a negative impact on national interests. The Commission should also consider this issue in the evaluation of the Agency activities.

Framework Guidelines, Codes and other Cross-Border regulatory Issues

A: Proposed priorities for the codes and technical areas

There are important areas that need to be dealt with among all the proposed priorities for the codes. Therefore, ERGEG should not postpone the work on a certain priority, pending the finalisation of another. We believe that EGREG should work on the various priorities in parallel.

Nordenergi agrees that security and reliability of the system is of utmost importance. However, we believe that all member states do prioritise this issue today and that necessary steps in order to avoid

system failure are taken. When it comes to harmonisation in a European perspective, we believe that it is more urgent to address areas and codes that promote competition and transparency.

If ACER does decide to work on the priorities in sequence, we recommend that capacity allocation and congestion management should be listed among the top priorities. These issues are important for competition when integrating markets, but we also believe that they are equally important for the security of supply, especially when considering that volumes of cross-border flows will increase in the future.

B: Grouping the technical areas into codes

The difference between the priorities for the codes and the grouping of the codes seem somewhat unclear. The proposed priorities for the codes and technical areas seem to group the areas in a logical manner. However, as suggested in the above, ERGEG (later ACER) should work on these priorities in parallel.

C: Fully harmonised aspects of market design and network operation

The regulation of network companies and TSOs should be harmonised as soon as possible. Also any barriers for further market integration, such as different gate closure times, should be eliminated through harmonisation as soon as possible.

When considering the 10-year investment plans, the methodology for the calculation of socioeconomic benefits of new interconnectors should also be harmonised within regions and ultimately between all countries. Nordenergi considers the investment plans as an important tool, and the cooperation regarding them should be started within ENTSO-E as soon as possible. ACER should also give special attention to the implementation of the existing supranational plans in order to ensure continuity in network planning. There have been developed common grid investment plans within the Nordic Region (Nordel Grid Master plan 2004/2008). However, the main challenge for realising grid investments seems not to be the planning part, but rather the implementation of the plans, firm investment decisions and creating methodologies for burden sharing among the Nordic countries. Nordenergi would in this regard stress the need to be prepared for such challenges, taking into account the Nordic experiences.

When moving towards binding harmonised market design, it is important to ensure that initiatives for further regional market development and integration is not restricted. It is important to encourage further market development in well-integrated regions in order to develop best-practice methodologies that might serve as a model for other regions at a later stage.

D: The description of areas mentioned in the Commission's initial proposals

The descriptions of the content of each area mentioned in the Commission's initial proposals seem for the most part to be adequate.

The ENTSOs and European Energy Regulators

A: The interaction between the Agency and the ENTSOs

The cooperation between TSO's and regulators is important on the national, regional, as well as the European level. The cooperation must follow formalised procedures and should be documented and reported in order to secure public accountability and confidence by the market participants. The

Commission should be involved in the planning and preparation of the formal procedures. Furthermore, the Commission should also be responsible for the evaluation and control of the cooperation based on reporting from the regulators and TSO's. The involvement of the Commission is important in order to guarantee the community interest.

Regional considerations in moving to a single European market

A: The involvement of regional level stakeholders

Significant progress has been made within the Regional initiatives, and Nordenergi believes that a regional perspective should be maintained and promoted until the vision of the internal market is fulfilled. However, it is imperative that the different regions develop in the same direction by implementing harmonised guidelines and codes. And for this purpose, the proposals in paragraph 69 seem adequate.

B: The operation of Regional Initiatives after the entry into force of the 3rd package legislation

Nordenergi believes that the Regional initiatives are fundamentally important for the creation of the internal market and must continue after the entry into force of the third package. As long as there are different regions characterised by different levels of market maturity and development, there is a need for the Regional initiatives. Although network codes will be created, fully harmonised and binding solutions for market design will most likely not be adopted and implemented in the short-medium term. The Regional initiatives will on the other hand ensure continuous progress, even in well-developed regions.

December 22, 2008,
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