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Date
22 December 2008

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Our reference
LTM 08.2193

Your reference

Subject
Consultation on implementation third package by CEER/ERGEG

Dear Sir/Madam

N.V. Nederlandse Gasunie would like to use the opportunity to react to the consultation document issued by ERGEG and CEER on the implementation of the third package.

Our reaction consists of two parts:

- Part A: General remarks
- Part B: Gasunie answers to the specific questions from the consultation document

Note that where we have responded (or not responded as the case may be) to specific questions, this does not, unless explicitly stated, imply our agreement.

If you have any questions regarding our response, please do not hesitate to contact us.

Yours sincerely,



W.P. Groenendijk

Manager European Affairs
N.V. Nederlandse Gasunie

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Part A: General remarks

Introduction Gasunie

N.V. Nederlandse Gasunie is the first independent fully ownership-unbundled cross-border gas infrastructure company in Europe. Gasunie participates and invests in all gas infrastructure facilities relevant for the gas market in Europe (pipelines, interconnectors, storage facilities and LNG regasification terminals) and is active in several countries and regions.

Gasunie views on gas infrastructure and the regulatory framework

Within the framework of European energy policy, the Commission has taken a number of initiatives to address important challenges faced by the EU in the areas of energy & climate, security of supply and the internal market for gas. Gasunie agrees that a precondition to meet these challenges is a well functioning market, which is not only attractive for market players but also for external suppliers. The realisation of such a truly European competitive gas market will heavily depend on the possibilities for cross-border gas infrastructure projects. Gasunie aims at playing an important role to achieve the additional required infrastructure. Some recent examples are the integrated Open Season for the German and Dutch network, the expansion of the Dutch grid, the investment decision for expansion of the BBL interconnector and participation in Nord Stream. Gasunie also investigates the possibilities to merge the market areas covered by its TSO's into one single market area with a regional, cross-border focus.

In order to invest in national *and* cross-border infrastructure a stable and predictable investment climate should be in place, based on a sound regulatory framework. Currently, regulatory regimes are nationally oriented and are becoming increasingly detailed. National perspectives of both the regulatory framework and the investment climate should evolve into a more cross-border, international and regional focus. Cooperation between authorities and between neighbouring TSO's is of key importance. For example, Gasunie is currently active within at least three jurisdictions and has to cope with the barriers of the national perspective of all parties involved on a day-to-day basis. Projects such as the Gas Regional Initiative can help to broaden the regulatory focus and can act as a stepping stone towards a more EU-wide approach.

Similarly, Gasunie welcomes the Third Package proposals regarding the establishment of ACER. In particular for cross-border investments ACER could help facilitate a consistent regulatory treatment. Gasunie hopes that the emergence of ACER will indeed in practice lead to less bureaucracy and will not merely introduce an additional regulatory authority involved in the process. Parallel to the establishment of ACER, Gasunie encourages the development of ENTSOG to facilitate the market through the exchange of information, increased transparency, and the harmonisation of transportation conditions.

Infrastructure companies should be entitled to make the necessary investments wherever there is an identified market need, on a sound and economical basis. The TSO's are best placed to make this judgment as they are in touch with the users of the networks on a highly

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frequent basis. The legislative and regulatory framework should facilitate new investments, amongst others by assuring that applicable procedures do not unnecessarily delay the investment decision process and by, where possible, reducing uncertainty and avoiding the introduction of additional uncertainties.

ERGEG/CEER Consultation on implementation third package

Gasunie understands this public consultation to be a joint initiative by ERGEG, an independent Advisory Group of independent national regulatory authorities established in 2003, pursuant to Directive 2003/796/EC, to assist the Commission in consolidating the Internal Market for electricity and gas, and by CEER, the Council of European Energy Regulators, which is an organisation in which national regulators of electricity and gas voluntarily cooperate to promote their interests. As a result, it is not always clear in the consultation what are objective and factual statements and what are opinions or subjective statements; and what are the proposals included in the (current version of) the third package and what are recommendations by CEER or ERGEG.

The public consultation by ERGEG/CEER is launched at a time where there is still no agreement between Council and Parliament on the third package. There are some concerns that must be raised in this context. Even though Gasunie understands and is sympathetic to the wish of ERGEG/CEER to speed up the process (this is why Gasunie is actively involved in GTE+) one should be careful with respect to the proposed level of detail at this stage. For example, most TSOs are not yet unbundled as foreseen in the 3rd package (with the exception of certain companies such as Gasunie) and may therefore not be representative of the future actors. Likewise, such future actors may not be bound by the agreements reached until the legislative framework is in place.

Part B: Gasunie answers to the specific questions from the consultation document

1. Work in the Agency

A. Please comment on the Consultation Arrangements proposed in this paper (see Appendix 1 Annex 2) as a basis for the interim period and for later decision by the Agency as its own process.

Gasunie believes that the views of all relevant stakeholders need to be considered. The Consultation Arrangements that are proposed by ERGEG seem to be consistent with this view. However, Gasunie has some questions regarding the *efficiency* and the *involvement* of stakeholders. When considering the consultation process, it appears that stakeholders will need to respond several times within the same process towards one code. For example, consultations will be carried out on:

- (non)binding framework guideline, consultation to be carried out by ACER
- network code, consultation carried out by ENTSOG
- draft network code, definitive consultation will be carried out by ACER

Consultations are time and energy consuming processes and impose a significant burden upon companies wishing to participate in the process. Therefore, Gasunie wonders whether some consultations might not be combined. In addition it will be very important to show how comments that were made regarding a specific consultation are reflected in the final

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document. This includes providing reasons why suggestions that are made are not taken on board.

Gasunie would be interested to know which stakeholders will be consulted and how this is determined. Gasunie wants to stress that the involvement of other System Operators (e.g. storage, LNG) is also very important, given their interlinkage with the gas transmission infrastructure.

Finally, Gasunie believes that effective appeals procedures are needed, for example for cases in which market parties believe they should have been involved in a specific consultation or in which the outcome of a consultation procedure does not reflect the input provided by stakeholders.

B. Could the fora (i.e. Florence, Madrid, London) be further enhanced to allow stakeholders to make an effective contribution to the development of the single European energy market? How could this be done in a practical way?

Separate fora have been set up to involve the stakeholders regarding the further development of the gas market, the electricity market, and for the consumers themselves. Gasunie believes that a regular discussion in the various fora on the progress of implementation of the Third Package can facilitate progress; detailed discussions should obviously be kept outside the fora processes. There may be a role for the fora in acting as a sounding board for the Commission when considering the question of making certain codes binding.

C. Could focused 'ad hoc panels' of interested expert stakeholders assist the Agency in the development of regulatory policies? Should they be linked (though without full representation) to the Florence, Madrid, and the new London Fora to avoid the proliferation of consultation structures, ensure the effective delivery of stakeholder views and proper representation? Or should the ad hoc panels be organized independently of the Fora in close cooperation with energy consumer and network user representatives?

Gasunie would certainly encourage the Agency to use expert stakeholders in the development of regulatory policies. Almost by definition, these stakeholders would already also be involved in the Regulatory Fora. In any event, this would also help to maintain consistency between the discussions in the context of the Agency and in the regulatory Fora.

D. Are proposed measures to ensure the proper public accountability of the Agency broadly adequate?

For Gasunie, accountability of regulator partly resides in the reporting requirements. An even more important element related to accountability is that procedures need to be in place for those situations where it is considered that a regulator has not taken a right decision, or a decision has not taken into consideration all of the views/arguments. In the framework of the Third Package, powers of the NRAs will be increased and NRAs will be made more independent. This makes it even more important that appropriate and objective objection and appeal procedures are in place. The current Third Package proposals can be improved in this regard. Under the proposals, in some national judicial systems, no objections with respect to the substance of the decision can be raised as given the wide mandate based upon law, the judge will be able to perform a *marginal test only* on the process rather than with respect to the substance of the decision. In all cases, regulatory authorities should operate within the frameworks set by national and Community legislative and policy frameworks.

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E. What do you consider to be the key elements for the successful establishment of the Agency? What are the most important issues relating to the NRAs and their role within the Agency?

Currently, the NRA's have a primarily national scope and in cases of cross-border investment, their actions and involvement are insufficiently described in the existing frameworks. This may lead to situations in which nobody is competent, or situations in which the authorities disagree. To avoid such situations and reduce uncertainty, the development of ACER is potentially a big step forward. The emergence of a more international orientation is in our view thus a prerequisite for the industry to facilitate the emergence of a single gas market. Gasunie therefore welcomes the establishment of a European regulatory agency, with decisive powers in specific areas.

To be successful, ACER will need to demonstrate that it can operate effectively and without adding additional bureaucracy. The establishment of binding deadlines for internal decision making within ACER would help in this regard. Also, different NRAs will (continue to) have different interests, and ACER should establish appropriate mechanisms to swiftly resolve any issues that may arise as a result of such differences. In particular, NRAs should agree to be bound to decisions of ACER.

2. Development of codes

- A. Are the proposed priorities for the codes and technical areas the right ones? If not, what should the priorities be?***
- B. Do you agree with our proposed approach grouping the technical areas into codes (see Appendix 2)? If so, what could the groupings be?***
- C. Which aspects of market design or network operation should be fully harmonised across the Union through the first set of codes?***
- D. In Annex 1 of Appendix 2 we describe the content of each area mentioned in the Commission's initial proposals. Do you think the description is complete? If not, what aspects should be elaborated within the areas?***

For the answers to these questions, Gasunie refers to the answers provided by GTE.

3. ENTSOs and the European regulators

- A. Are the mechanisms and observations outlined above – notably in relation to the interaction between the Agency and the ENTSOs (and CEER and GTEplus/ENTSO-E) adequate? Are there changes that should be considered for their improvement?***

4. Regional considerations

- A. Are the proposals in paragraph 69 to ensure the regional level involvement of stakeholders adequate? If not, how could they be further improved?***

Please refer to our answer to question 3A.

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B. How do you envisage the Regional Initiatives operating after the entry into force of the 3rd package legislation? Will their role become less important, given the development of network codes at EU level?

Regional cooperation between TSOs, regulators and policy makers is an essential prerequisite for achieving a seamlessly operating internal market for gas. Regulatory cooperation and harmonisation in the EU is necessary in this regard, but has clear limitations as long as an EU energy policy is not yet in place and the necessary legal instruments are lacking. In the meantime, initiatives such as the Gas Regional Initiative are important for removing barriers for TSO cooperation.

Formal regional cooperation between TSOs should be taken care of within ENTSOG to guarantee that activities in the region and in Europe are efficiently streamlined and create synergy between the regional and the European level.

In parallel to these developments, the market is taking its own initiatives. To meet the demand and expectations of the market, many TSOs are exploring forms of cooperation with their neighbouring networks based on economic drivers and attractive business cases. For example, Gasunie has integrated the open seasons between its TSOs in The Netherlands and Germany and it has launched a cross-border initiative for booking capacity (e.g. the platform for selling cross-border day-ahead capacity EUCABO). As a cross-border network operator Gasunie is working hard towards creating the first integrated cross-border integrated network offering a seamless service to its customers. This should continue to be encouraged in order to prevent the ENTSO developments going forward only at the rate of the slowest participants.