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9 May 2013
Our reference
J 14.846
Subject

Direct number
+31 (0)50 364 8389
Your reference

Preliminary scoping document for public consultation on potential "FG rules for trading related to technical and operational provisions of network access services and system balancing (FG RfT)"

Dear Sir/Madam,

GasTerra B.V. (hereinafter "GasTerra") appreciates the opportunity to comment on the Preliminary scoping document on potential "FG rules for trading related to technical and operational provisions of network access services and system balancing (FG RfT)".

Although GasTerra recognizes that certain work is still required, particularly regarding capacity products, we do not consider FG RfT necessary or meaningful. The necessary changes and/or clarifications should not be treated under yet another set of rules, but under the existing codes and guidelines (either as an implementation issue or in terms of amending these existing codes and guidelines).

Among the topics identified in the consultation document, GasTerra considers the issue of capacity product harmonisation the only relevant topic in terms of removing remaining barriers to gas wholesale trading. Therefore we have chosen to only respond to the particular questions related to this topic. Please, find our answers below.

Q2: Do you agree that the key features of capacity products (besides its location, its direction and its duration) are as follows:

- *Firmness: unconditional firm / conditional firm (e.g. depending on temperatures) / interruptible*
- *Allocability: free allocability / restricted allocability to designated points / restricted to designated points but combined with interruptible free allocability to all points including VTP*
- *Tariff relations between different capacity products*

Please rank the most important aspects of capacity products for your business. If there are other aspects you find more important, please name them and explain why.

A2: Yes, we agree that these are indeed important features of capacity products. Another important feature of capacity is whether capacity is bundled or unbundled. We suggest that all bundled capacity should also be offered as separate unbundled capacity products as long as the technical capacities on both sides of the interconnection point (IP) are not in balance. If the technical capacities on two sides of the IP are not the same, offering only bundled capacity at an IP will in some cases lead to previously booked unbundled capacity losing its value, because the unbundled capacity on the other side of the IP is not available anymore due to the preferential sale of bundled capacity.

Q3: Do you think that certain user categories (e.g. power plants, household suppliers, traders, gas producers, storage users etc.) have specific requirements/needs regarding capacity products? If so, which?

A3: No opinion.

Q4: Do you have experience with different levels of product firmness and allocation restrictions (i.e. different capacity designs)? Please provide examples.

A4: Yes, we do. Since the implementation of CMP, oversubscription and buy back (OSBB) capacity is offered at interconnection points. We estimate that this increases the probability of interruption of previously booked interruptible capacity significantly and in an unpredictable way. We therefore strongly suggest that no extra firm capacity should be offered before existing interruptible capacity holders have made all their interruptible bookings firm first, as has been the practice in the Netherlands before the introduction of CMP.

Q5: Are different types of product features (in terms of firmness and freedom of allocation) barriers for cross-border trading? If yes, please provide an example of such a barrier. If yes, do you think that a set of "standard capacity products" in terms of quality (e.g. firmness rules, allocability) enshrined in a network code would provide a solution? Do you believe that the benefit of implementing such a solution outweighs the costs? Could you provide examples of such solutions?

A5: Yes, different product features create barriers for cross-border trading. Cross-border capacity products must have uniform product features, most essentially in terms of firmness. In fact we feel that this is exactly where ACER shall concentrate its efforts.

In that regard we would like to note that according to Article 8, para 3 of the Regulation establishing an Agency for the Cooperation of Energy Regulators (No 713/2009) "The Agency shall provide a framework within which national regulatory authorities can cooperate. It shall promote cooperation between the national regulatory authorities and between regulatory authorities at regional and Community level, and shall take due account of the outcome of such cooperation when formulating its opinions, recommendations and decisions. Where the Agency considers that binding rules on such cooperation are required, it shall make the appropriate recommendations to the Commission."

We would also like to respectfully refer to Commission Evaluation of 22.1.2014 of the activities of ACER under article 34 of Regulation 713/2009 where "The Commission invites ACER to be more proactive, in particular where diverging approaches and interpretations between NRAs as regards cross-border issues prevent the smooth functioning of the internal energy market. For example, ACER could play a positive role in aligning further the capacity products for gas interconnectors."

Q6: In your view, is the way capacity is allocated (primary market) or traded (secondary market) expected to create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM? (Please differentiate in your answer between IPs covered by NC CAM and those outside its scope, e.g. LNG, storage)? If not, what outstanding barriers remain after NC CAM implementation? Please provide specific cases and examples, if possible.

A6: No, we do not expect the way capacity is allocated or traded to create any problem or barrier to gas wholesale trading after the full implementation of the NC CAM, provided that by then sufficient cross-border product harmonisation has been achieved.

However, inconsistent implementation of the CMP guidelines (for example favouring UIOLI/restriction of renomination rights over OSBB) may prevent appropriate product harmonisation or otherwise create barriers to gas wholesale trading. Restriction of

renomination rights itself can be a significant barrier to cross-border trade and it is likely to constrain the back-up role of gas towards variable renewable energy sources. A current example (other than UIOLI) is the inability to renominate Day Ahead capacity anyhow (as currently in Germany). Shippers are only able to renominate capacity for the following day before 20.00 hours on the day before.

Q7: Do non-harmonised contract definitions or terms between neighbouring entry-exit zones limit cross border trade? If yes, please provide examples. Do you think that equal contractual definitions of product characteristics (in terms of firmness or freedom of allocation) can be achieved by compatible contract terms alone (product description along certain parameters) or can this only be achieved by a single standard contract established at EU level?

Q7a: Considering the variety of private law regimes across EU, do you believe a single standard contract established at EU level is feasible? If yes, do you believe that the benefit of such standard contract established at EU level outweighs the costs of its implementation?

Q8: Have you experienced inefficiencies and risks which make it necessary to harmonise certain clauses in capacity contracts and/or contractual terms and conditions of different TSOs at EU level (given the variety of private law regimes applied across Europe)? If so, what are the inefficiencies and risks experienced that require harmonisation and why?

A7-8: If the harmonisation of cross-border capacity products is adequate, then we do not see the necessity for additional harmonisation of contractual terms.

Q9: Assuming everything else being equal (e.g. tariffs), do you prefer:

- *firm products with limited allocability/locational restrictions (ex-ante information on conditions of use) or*
- *interruptible products (with ex-post information on actual occurrence of interruptions)?*

A9: GasTerra has a strong preference for interruptible products over firm products with limited allocability/locational restrictions. Firm capacity shall remain firm at all times! However, interruptible products should be predefined in terms of probability of interruption and (ex-ante) discount which should reflect this probability.

Q10: Given the Balancing NC implementation, which should foresee within-day obligations as an exception, do within-day standard capacity products ("rest-of-day capacity products") create any barrier to trade?

A10: No.

Q11: Are there any differences in the legal framework/capacity contracts that undermine the concept of a bundled capacity product (treatment after allocation)? If yes, please describe the differences as well as the risk for market participants resulting from those. Please provide specific examples.

A11: We refer to our example in the answer to Q6 (inconsistent implementation of the CMP guidelines).

Q12: Are there any other obstacles that hamper the use of capacity contracts across borders in the EU?

A12: Yes, there are other obstacles:

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- Different lead-times for nominations are another example of currently insufficient product harmonisation. In our view lead-times could and should be as short as 30 minutes, as best practices have shown.
- Late timing of auctions for the next gas day hamper the use of capacity, since it restricts network users' opportunities to search for other solutions, if their bidding has not been successful. As a consequence they then have to unwind commodity deals, which at that stage is usually at high cost. We suggest the auctions to take place earlier on the day.
- Information on the quantity of capacity to be offered in the DA auctions should be published at least one hour before the auction starts, otherwise no trading business cases can be made properly (the risk of no available capacity in the DA auction is too high).
- With the implementation of DA auctions, the booking of capacity for Sundays, and Mondays has become more complicated as many offices are closed on the weekends. It would be more convenient if auctions for capacity for Sundays and Mondays are held on Fridays.

Q13: Do you think that a) binding EU rules, b) non-binding guidance or c) no rules at all (awaiting the implementation of existing NCs) address the above issues best? If needed, you can differentiate between different topics.

A13: All these issues should be addressed under the existing codes and guidelines (CAM, CMP, balancing), either as implementation issues or in terms of amending current legislation. It is however not necessary to develop new Framework Guidelines for Rules for Trading to solve these issues. On the contrary, adding new guidelines or network codes carries a risk of regulatory fragmentation.

As already indicated above, GasTerra does not see any necessity for work on the other issues mentioned in the consultation document. This is why we have restrained ourselves to the answers to the first thirteen questions above.

GasTerra hereby thanks you for your consideration. If you have any questions, please, do not hesitate to contact Ivelina Boneva at ivelina.boneva@gasterra.nl.

Kind Regards,



Herbert van Zijll de Jong

Manager Legal and Regulatory Affairs