

Eni's Comments on ERGEG Draft Guidelines of Good Practise on Open Season Procedure (GGPOS)

Eni S.p.A. – Gas & Power Division welcomes ERGEG public consultation paper “Guidelines of Good Practice on Open Season Procedures” (hereinafter GGPOS) and deems that the proposed GGPSO will be useful in clarifying the issue.

This document contains some remarks and it is organised in two sections:

- the first section aims at commenting on general issues raised in the GGPOS;
- the second section includes the answers to the specific questions proposed in point (40) of GGPOS.

1. GENERAL COMMENTS

• Application

First of all we would like to clarify that:

a. The Directive 2003/55/CE “*require transmission system operators to comply with **minimum** requirements for the maintenance and development of the transmission system*” (art 8.3) thereby also expressly excluding an unrestricted obligation to compulsory investment;

b. Such minimum requirement, **in order not to determine an undue encroachment on market players’ proprietary rights**, must be restricted to Public Service Obligation as defined by each Member State in accordance with the criteria set in art. 3 (2) of the Directive 2003/55/CE.

c. “*The Directives do not themselves contain comprehensive measures relating to the development of interconnection infrastructure. The regulatory framework, for example, is left open for the Member States affected to determine*”: see European Commission, *Commission Staff Working Document, Report on Progress in Creating the Internal Gas and Electricity Market, Technical Annex to the Report from the Commission to the Council and the European Parliament*;

Finally, in case of a refusal to invest by a TSO, such refusal may be in fact relevant with respect to antitrust law (this shall have to be ascertained by the competent antitrust authorities) but it is totally erroneous and confusing to refer any sort of “**presumption**”.

Secondly, we share ERGEG’s opinion of considering Open Seasons (OS) as a procedure to be applied only to new infrastructures, understood in analogy to Directive 2003/55/EC and encompassing all infrastructure.

In our opinion, it has to be clear that OS should not apply to existing capacity since as stated in the Draft Explanatory Note of DG Energy & Transport on Capacity Allocation Mechanism (DENCAM) - “*the open season is not meant to jeopardise existing transportation contracts*”.

- **Role of OS procedure**

We agree that “*Open seasons are a transparent market test that allow a project sponsor ... to gauge how much infrastructure the market wants*” (see GGPOS point 10) so allowing to set infrastructures dimension correctly. Nevertheless, it is important to point out that the outcomes of the OS first step, which results from non binding indications and comments of all interested parties, should not be considered as binding for the sponsor.

In this regard, point (23) states

“...If the open season reveals that there is too much demand for its proposed project, the sponsor should still be able to amend the size of its project and conduct another open season based on this new proposal, unless it is not technically or economically viable.”

In our opinion it should be clearly stated that the sponsor is entitled to autonomously evaluate – on the basis of technical, economical and financial aspects - the opportunity of amending its original project according to the outcomes of the market test but has no obligation to do that.

2. ANSWERS TO SPECIFIC QUESTIONS

a. Questions on the application of the GGPOS

We deem that the application of OS procedure is not necessary in the case of investments that are totally exempted from TPA according to Article 22 of Directive 2003/55/EC. Indeed, in this case the project itself has been sized on the basis of the market need for infrastructure as expressed from the investor, who has pleaded for the exemption from TPA. In case of partial exemption, it is our opinion that the OS procedure should be implemented only for the part of the infrastructures not exempted from TPA.

b. Questions on the first step of the procedure, i.e. the proposal to shippers

Since the first step of OS procedure is not binding - neither for potential users nor for the project sponsor - it seems to us that the level and the detail of information required in point (20) are a bit too prescriptive with regards to a project that could be modified as a consequence of the result of the market test. In our opinion this list should be regarded as indicative.

We make reference, for example, to the request to publish detailed information regarding the capacities available upstream and downstream of the project, the estimated cost of the project, the tariffs' variation against the allocation of total short and long term capacities (function) for the entry and exit points of the system.

On the other side, we deem that this kind of information should be made available to potential system users before they are required to enter into binding undertakings, i.e. before the start of the second step.

c. Questions on the second step of the procedure, i.e. capacity allocation following the open season

It should be introduced the necessity to have harmonised rules for the long and short capacity allocation (see point (27)) to avoid huge differences in approaches applied by

different national regulators, possibly implying problems especially for cross border projects.

Furthermore, it is our opinion that the publication of the “*names of prospective shippers and percentage of total capacity gained*” requested in point (30) is not needed to fulfil the provision for transparency obligations concerning the transmission service (e.g.: tariff, capacity, entry/exit points) of the Regulation (EC) No 1775/2005. Moreover, it seems to us that the publication of those data would impair and distort the competition between system users, and it should be accessible only to regulators.

With reference to the case outlined in point a (TPA exemption) we would like to note that the outcomes arising from the second step of OS should be made public only with regards to the part of the infrastructure affected by the OS procedure.

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