

European Commission
DG Energy - ENER.B.2
'Electricity and Gas'
Rue De Mot 24-26
B-1049 Bruxelles
Belgium

8 April 2011

Dear Sir/ Madam

Establishment of the priority list for the development of network codes for 2012 and beyond

Introduction

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, renewables, coal and gas-fired electricity generation, combined heat and power, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including both residential and business users.

EDF Energy welcomes the opportunity to respond to your consultation. In commenting on the priority list, it is worth restating the purpose of this consultation exercise. The codes are to facilitate European trade, which will bring the most tangible benefits to consumers in the form of competitive energy prices. As part of this process, generators need to benefit from non-discriminatory network access, through increased cooperation between System Operators. However, during the development of the regulatory regime, there are commercial risks for contracting parties who want to or are planning to engage in cross-border trade. For example, participants may want to invest in interconnection, new generating assets or develop new contractual structures that may be materially influenced by the new regulatory codes. This is on top of the familiar regulatory risk of system change during the development of the European energy market. Therefore, we expect the process of prioritisation to provide us with enough information to inform our own planning and scoping of regulatory activities.

As a general comment, for a prioritisation document, it seems to be more a set of lists of high level objectives. We believe it would also have been appropriate to comment on the project milestones defined in Annex 2 of the document, so that the industry can better judge the progress of each work area.

Our response explores three issues raised by the programme:

1. Experience of the Codes to Date

Our experience of the codes to date has not been positive. Early drafts of the Grid connection code for example have caused compliance concerns for existing and planned generation assets, and yet it is clear that reducing emissions requires substantial

investment from generators. However, the current draft is an improvement on the earlier proposals. The key issue for the Commission revolves around disentangling the legitimate interests of networks from those of generators in the electricity market.

In gas, the key issue will be to have codes that efficiently resolve the congestion issues, while balancing the benefits of long-term gas contracts with short-term flexibility. Another priority is to address the need for TSO incentives to release extra capacity, both existing and future, through further investment to reduce congestion. This being the case, completing the existing codes seems a priority. We agree that, although the new issue areas identified in this consultation are important, “settlement” and “trading” rules should be priority areas.

We would have preferred a little more detail concerning the relative resources each work area defined by the programme would require. For example, it is difficult to determine the relative resources needed to implement the third party access compared with harmonised transmission tariff structures.

For the production of Network Codes to work more efficiently and effectively than experienced so far, we believe a fundamental priority must be robust and equitable governance. In our opinion, lack of attention to this, in terms of clear industry engagement and consultation, led to some of the issues with the problematic Pilot Network Code for Grid connection. We note that strangely the Governance flow chart attached to the consultation document is a superseded version and that the improved one, vitally now including several industry consultations and available since January, should have been used. A copy is attached for your convenience as Appendix 2.

Finally, we note there are a growing number of official stakeholders involved in the development and approval of Framework Guidelines and Network Code. Papers have been issued by CEER, ERGEG, ACER, the EC and most recently ENTSOE on closely related topics. It would streamline and improve the consultation process if either the number of parties involved were reduced or each party’s role were more clearly defined, to avoid possible confusion, duplication or omission.

2. Rationale for choice

While the tasks outlined in the document are legal requirements under the Regulation, the order and implementation of the requirements are allowed a certain amount of discretion, based on the rational allocation of Commission’s resources. It is also the case that the priorities set by networks may differ from the rest of the energy industry. For example, data exchange may be an issue for co-operation but may be of less interest than say the harmonisation of tariff structures for shippers, but both are clearly vital for a successful implementation of the third package.

3. Contingency Planning

We note that the timings in the programme document seem a little “aggressive” given the new timetable agreed by the European Council, which may well have a substantial impact on the programme. We also note that slippages may occur, due to complexity of the issue that needs to be resolved or new and unanticipated evidence that comes to light during the process of policy development. There needs to be some element of contingency built into the programme if some elements of it are delayed relative to the timing shown in the Gantt chart on page 5 and 6.

Conclusion

EDF Energy generally supports the priorities outlined in the EC document. However, it would be useful to have a little more detail, given the importance to the industry of the complex issues raised in the document. The current proposal is logical and consistent, but because of our involvement in the industry we are of course interested in the detailed outcomes of this process.

Should you wish to discuss any of the issues raised in our response or have any queries, please contact my colleague Nigel Edwards on + 44 20 3126 2506, or myself.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "D. Linford".

Denis Linford
Corporate Policy and Regulation Director

Appendix 1

Establishment of the priority list for the development of network codes for 2012 and beyond

EDF Energy response to your questions

1. Are the priorities proposed for 2012 the correct ones?

- Generally we think the first priority should be to encourage cross-border trade
- In electricity we would argue that the new priorities seem sensible but they lack essential detail. However, it may be the case that the tasks are mutually exclusive for fully liberalised market?
- For gas the goals are likely to be strategic for security of supply and therefore less tangible in terms of outcome. We suspect that developing the gas conceptual model may be more challenging than anticipated but believe the implementation of the CAP and CMP codes are the priority to remove constraints and allow the free flow of competitive gas in the EU.
- We would add that completing the priorities started in 2011 is paramount.

2. What should be the longer-term priorities for 2013 and beyond? Please also specify in your response the expectations you have for the scope of these priorities.

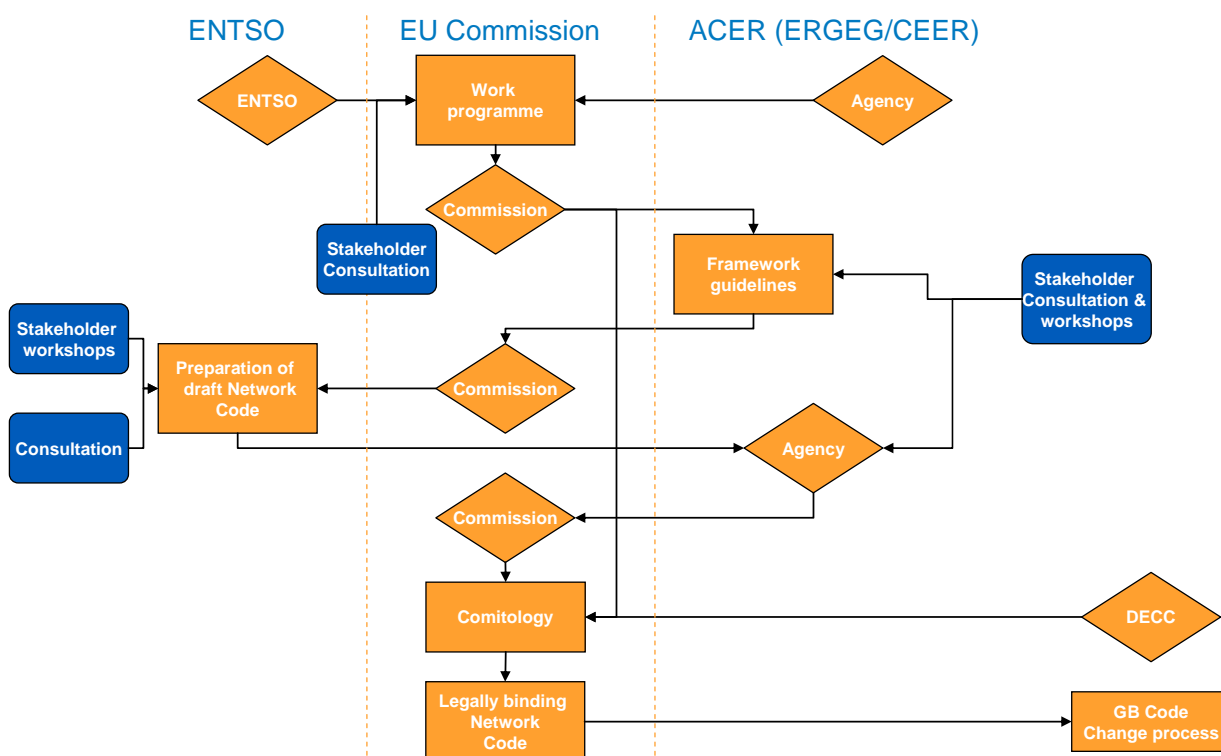
The Commission should consider exactly how they intend to police the new European market. This could be, for example, developing a doctrine of pivotality or specifying exactly what both ACER and the national regulators will do with the data they can collect as a result of their monitoring role identified in the third package. We would expect some consideration of this issue, which has so far received less attention than it deserves but will be paramount during the first day of market operation.

3. In the 3-year-plan for electricity, several network codes are proposed for a single framework guideline. In gas, only one network code per framework guideline is foreseen. The Electricity and Gas Regulations do not specify whether a framework guideline has to be mirrored by a single network code or whether the issue can be divided into several sub-issues. Do you agree that keeping both options, as used by ENTSO-E on the one hand and ENTSG on the other hand, are viable? Do you agree with the order in which the sub-issues in electricity will be tackled under the framework guidelines for capacity allocation and congestion management, network connection and system operation? Do you agree that the sub-issues marked red in the 3-year-plan for electricity in Annex 1 are the essential ones to ensure completion of the single market by 2014?

We believe that -

- It is preferable to keep regulatory structures in both gas and electricity as similar as possible.
- It is a good idea to keep flexibility in the arrangements and that they have to reflect the regulatory issues associated with a particular industry. Wide-ranging solutions will often not be appropriate.
- Overall, the Commission should reconsider over-complexity of market design, as in the UK such complexity has been perceived by some as a barrier to entry.
- As we have stated, a general prioritisation principle should be that the single market should focus on encouraging the development of cross-border trade.
- Regarding the sub issues we agree as far as we can see, the sub issues marked in red are essential to the completion of the single market

Appendix 2



EDF Energy
April 2011