



GEODE-Position towards the Gas Regulatory Forum

Madrid, 30. and 31.10.2002

The 5th meeting of the European Gas Regulatory Forum adopted Guidelines for Good Practice regarding TPA services, tariffication, balancing etc. (the Guidelines). Moreover, a document concerning discussions on long-term contracts, gas release programmes and the availability of multiple gas suppliers are currently going on.

Against this background and in view of the on-going discussions on Third Party Access (TPA) on the European Gas Regulatory Forum, GEODE would like to highlight its position on the following salient points:

1. Network access system and tariff structure

a) Simplification of the Network Access System

GEODE considers a simple network access system within all Member States is feasible and crucial for the liberalisation of the internal gas market.

Accordingly, GEODE favours the implementation an entry-exit system in all Member States. The experiences made in the UK clearly show that an entry-exit system with virtual balancing points facilitates gas trading and fosters the development o a secondary market for capacity. Furthermore, discrimination against different network users can be prevented.

Distance related point-to-point systems might reflect network costs on a long-term basis. However, point-to-point systems do not ensure absolute cost reflectivity; as such systems do not take into account the advantages of diametrical gas flows in the network. In any event, practical experiences in the Member States prove that such systems pose significant difficulties for the network users hampering gas trading.

In view of the disadvantages of a point-to-point system, GEODE therefore recommends to include into the Guidelines an obligation of the transmission system operators (TSOs) to implement either an entry-exit system in their respective operation areas.

b) Tarification System within the Network Access System

GEODE believes that a tariff structure based upon an entry-exits system reflects efficiently the actual costs of the network use. Tariffs in such entry-exist system can be calculated on the basis of an entry-exit tariff or on an exit tariff. These two options are currently discussed within the electricity sector. A tarification system for the gas sector should take the results of these ongoing discussions into account. First experiences made within the Spanish gas market show that an exit tariff system may lead to appropriate results. For the time being, it appears that a system providing for either an entry-exit tariff or an exit tariff are both suitable as a fair and non-discriminatory tarification system enhancing market liquidity.

GEODE supports the regulated system for LNG facilities and also stands for regulated tariff system for storage.

c) Ex ante Approval of Tariffs

GEODE favours the implementation of a tarification system that provides for the exante approval of tariffs. In any event, the Guidelines should oblige TSOs to assess their tarification system based upon objective non-discriminatory criteria as stipulated in the Guidelines. Namely, this should be the case where no neutral regulatory authority to approve tariffs has been established as in Germany.

Its shall be granted that all network user receive equal contractual condition and tariffs for using the same transmission system.

Against this background, GEODE recommends to amend the Guidelines accordingly.

d) Interoperability

GEODE believes that the interoperability of the different networks is vital for the development of a liquid gas market within the EU. This is the case for both cross-border interoperability as well as within the respective Member States (e.g. Germany).

The responsibility for the interoperability of networks lies with the TSOs pursuant to the European Gas Directive. Practical experiences, however, clearly show that this obligation is not complied with.

Therefore, GEODE recommends to further clarifying the obligations of TSOs in this respect as put forward in the Guidelines. Hence, a clause should be included in the Guidelines expressly specifying that denial of access to the network shall no be based upon the non-conclusion of interconnection agreements between the different TSOs, especially not in a so called "disadvantages liability clause".

e) Gas Quality Standards

GEODE recommends providing for a system removing the existing barriers to trade created by gas quality standards. Efforts must be taken to further harmonise gas quality specifications and to reduce the number of such specifications as much as possible in order to facilitate cross-border trade. Namely in Germany, the existing system discriminates against independent gas traders by stipulating for specific quality standards. GEODE is aware of the necessity for such specific quality standards. However, quality standards must not be applied in order to exclude new market players. In order to enhance market liquidity, GOEDE hence believes that a system should be implemented providing for the input of gas into the network of a different quality standard as the respective gas taken off. The responsibility for such system should lie with the TSOs.

The Guidelines call upon TSOs to offer both long-term and short-term firm services on demand (flexible duration and starting date of service) and interruptible services with flexible duration. TSOs already provide for such long-term and short-term services with flexible duration and starting date. However, the “gas year” as of the beginning of October 1st is still regarded as the usual contractual term, namely in Germany Tariffs for short-term services are therefore often priced with substantial “penalty charges”. This situation should be regarded as discriminatory and detrimental to security of supply by reducing flexibility.

Accordingly, GEODE recommends amending the Guidelines obliging TSOs to offer tariffs that reflect the costs on a monthly basis and do not discriminate against short-term network access contracts.

2. Capacity allocation and trading

a) Transparency

GEODE believes that transparency as to the availability of capacity is crucial for the development of a liquid internal gas market.

TSOs should hence publish regularly in national language(s) and English on the internet such available capacities. In the event that an application for capacity is refused, system users must have the right to appeal the decision to the regulator where it is not clear the capacity is actually used, applying the “use it or lose it” principle.

b) Establishment of Capacity Release Mechanisms

GEODE favours capacity release mechanisms allowing new network users to obtain the necessary capacity.

In general, existing capacity allocation mechanisms in the Member States favour “current network users”. In order to facilitate the entry of new market players, capacity should be offered on the basis of auctions, including (at least partly) auctions meeting the demands of small capacity user. Against this background, GEODE recommends to amend the Guidelines accordingly so to oblige the TSOs to establish such auction-based capacity allocation mechanisms.

In numerous Member States, it is not possible to trade TPA capacities in a secondary market or to sale such capacity rights OTC to another company. Namely, this holds true for Germany where network users are in general not allowed to trade their unused capacity. Therefore, the Guidelines should provide for such mechanisms obliging TSOs to facilitate trading in capacity rights on the internet or other fast, efficient system.

c) Simplification of the Contractual Framework for the Network Use

GEODE considers that the current contractual framework for the network use hampers the development of a liquid internal gas market. This is the case as the network use requires the parties to enter into various contracts leading to high transaction costs, namely due to time-consuming negotiations. In order to expedite such negotiations, the Guidelines should be amended to the effect that TSOs shall be obliged to answer requests by network users for available capacities that do not relate to the transportation of additional volumes of gas, within a maximum period of one week other than in exceptional circumstances and send (if any) a draft transportation contract within such period of time. Furthermore, in order to facilitate the network use as the basis of gas trading within the EU, TSOs should be obliged to offer master agreements for the network use. Such obligation should be expressly included in the Guidelines.

d) HARMONIZING CONDITIONS TO AVOID CONGESTIONS

The different contractual terms actually imposed by the TSOs, specially on the long distance cross-border pipelines (e.g. differences in minimum threshold of capacity booking or the duration of the transport contract) determine contractual bottlenecks far away from the physical availabilities and create cross border congestions.

GEODE suggests TSOs to harmonise the contractual terms particularly for long distance transportation.

Also GEODE suggests to oblige TSO's to develop electronic systems to facilitate gas swaps.

3. PHYSICAL Bottlenecks and Investments in new Infrastructure

GEODE believes that a well-interconnected gas network is essential for the further development of the internal gas market. This is the case as the existing distortions in price setting within the different Member States are namely due to the lack of a truly integrated gas network system.

The publication requirements as to the availability of capacity stipulated in the Guidelines are an appropriate means to identify whether and to what extent bottlenecks within the gas network throughout the EUR persist hampering cross-border trade.

Whereas large parts of European gas market are already well-integrated, certain Member States are less well connected to the European gas networks and a few remain peripheral (e.g. France), Spain and Portugal) or are not connected at all to the network of other Member States (e.g. Finland, Greece). Due to these shortcomings, cross-border competition between market players in different Member States is widely excluded.

Against this background, GEODE welcomes the publication obligations as put forward in the Guidelines. In order to identify existing bottlenecks within the network system, GEODE recommends to further amending the Guidelines in order to facilitate the assessment of the current capacity situation.

Such data may be helpful in allocating investments in new network systems in order to efficiently overcome existing shortcomings.

GEODE believes that measures both at the European and the domestic level should be taken providing for a conducive investment climate enhancing the continued development of network infrastructure within a competitive market. Such measures may be either of a financial nature or siders that legal steps may be taken as a measure of last resort for the further development of an integrated trans-European gas network.

4. Balancing and unbalancing charges

GEODE considers the existing balancing system of the different Members States one of the major reasons hampering the development of an internal gas market within the EU.

Balancing rules are often discriminatory, namely when a nodal path system is applied. It is hence necessary to establish a uniform system throughout the EU providing for balancing groups between different network users which allows balancing between different network users (pooling). Furthermore, the time period of balancing (usually on an hourly basis), the tolerance of balancing and

balancing prices have to be adjusted in order to enable structured delivery and not merely flat delivery. The current price system for imbalance charges hampers the development of an internal gas market by over-penalising any deviation from the scheduled gas shipment. Namely, new entrants are likely to have to commit themselves to purchasing import capacity in advance in order to secure contracts with final customers, and such new entrants will not know in advance the demand and load characteristics of their potential customers. Accordingly, charges for “top-up” energy for a shortfall, and “spill” prices for excess energy which are not cost-reflective entail special obstacles for new market players. Hence, a price system should be implemented abolishing any penalisation of the use of the balancing system as provided for by the TSO; charges should be rather based upon market-mechanisms.

Against this background, GEODE recommends to amend the Guidelines accordingly.

5. Long-term supply, transportation and storage contracts

GEODE encourages the adoption of gas release programmes to increase market liquidity and enable gas trading for new entrants.

Long-term supply contracts may enhance security of supply. However, it is not acceptable that at the moment virtually all customers have contractual obligations to purchase gas under long-term supply contracts. In general, such contracts violate European competition law (vide Art.81 of the Treaty). Particularly, the specific condition on long term gas contracts called “destination clause”, must be declared not valid inside the European Union. As the European Commission pointed out, such clause violate the vertical restraints regulation and is unacceptable.

Therefore, GEODE calls upon the European Commission to review such contractual regimes and to co-operate with the respective domestic antitrust authorities in order to take action against the current market situation.

Bilbao, 20 September 2002