

EC consultation - Guidelines on enhanced data transparency on electricity market fundamentals

EDF Response

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Who we are

EDF SA is a French corporation involved in generation of electricity (with an installed electricity capacity of 97.2 GW, mainly nuclear and hydro) and supply of electricity, gas and associated services to nearly 28 million customers in France. In 2010, it represented 410.9 TWh of electricity and 21.4 TWh of natural gas. With an average 40.1 g of CO₂ per kWh generated, EDF SA is the leading provider of competitive and low-carbon energy solutions in Europe.

Introduction

EDF welcomes the opportunity to answer this EC consultation on Fundamental Electricity Data Transparency and considers the challenge of harmonizing publication of fundamental market information at European level as a necessity in order to improve confidence in electricity wholesale markets.

In France, EDF and all other producers have been committed through a voluntary process, with the support of the TSO (RTE), in a stage by stage process to improve transparency since 2006. This French initiative driven by UFE (Union Française de l'Electricité – the French electricity utilities association) has involved the publication of market fundamental information on the TSO's website. Although not cited in the initial impact assessment of ERGEG, this initiative has achieved a high level of transparency on fundamental generation data, with further improvements still to come in 2011 – indeed by the end of 2011 it is anticipated that the majority of the information required to be published by the proposed transparency guidelines will already be available on the French market. The French transparency initiative is currently one of the most advanced processes in Europe, providing detailed, unit by unit data on more than 90% of the French installed generation capacity. EDF is contributor to this process and fully supports the steps that have been taken to improve transparency in the French wholesale electricity market.

EDF strongly believes that a common level of fundamental data transparency, defined and harmonized at European level and binding for all Member States, will allow for a fair and non-discriminatory level playing field for all market stakeholders. It will also help to foster integration of European electricity markets by lowering entry barriers at wholesale level, increasing liquidity

and stimulating further development of competition. The proposed guidelines provide a benchmark level of transparency related to the availability and use of electricity sector infrastructure, in accordance with the needs of market participants, which follows extensive consultation process involving all European stakeholders.

The electricity market will of course continue to host very different types of market players and it is essential that the European market design provides the correct market confidence and incentives for all players to develop their activities. Major energy operators must be able to continue to commit significant capital resources, on a long term basis, in order to deliver the necessary investment in the EU power sector, balancing industrial, market and regulatory risks against an acceptable return for the investment.

It is therefore important that the overall framework of legislation (including the proposed transparency guidelines and the forthcoming REMIT) that applies to energy markets does not undermine the asset backed trading business model.

In particular, the current challenge is to carefully design a regulatory framework which, while promoting a high level of transparency requirements, still protects utilities from undue constraints preventing legitimate hedging and optimization activities of their assets in close interaction with their trading entities.

The transparency guidelines with their associated detailed requirements (notably disaggregated disclosure obligations and timing requirements) go far beyond the information which is required for all market participants to understand the price formation process and make effective commercial decisions in electricity wholesale markets.

This high level of disclosure requirements also provide a harmonized answer on energy markets integrity requirements. In this respect, they should provide clarity to market participants in respect of the disclosure requirements under REMIT and ensure that legitimate hedging and optimization activities, that support the development of efficient, liquid and effective wholesale markets, are not undermined.

EDF is not aware of any evidence, or market developments, that suggest that additional disclosure requirements (that would then go beyond the proposed transparency guidelines) would be necessary for the continued development of EU wholesale electricity markets. In case circumstances happened to change in the future, the transparency guidelines should provide a prescribed legislative route for seeking further improvements in transparency that can be implemented at EU level.

EDF also believes that the same standards of information disclosure should apply for gas production (as required by REMIT) as those envisaged for power generation through the proposed transparency guidelines.

With respect to the competition issues raised by the Commission, EDF believes that no such concerns exist under the current proposal. Indeed, all the requirements of the ERGEG's advice are useful for reducing information asymmetry between market players making the wholesale

markets more efficient and increasing the liquidity and confidence of all the stakeholders in price formation, which induces pro-competitive effects as underlined in the Commission's horizontal guidelines (§ 57). Such improvements will also enable utilities to increase their optimization capacities which will also contribute to a better functioning electricity sector.

While the information mentioned in ERGEG's advice covers all the information necessary for market participants to anticipate, to the best possible extent, the offer and demand on the electricity wholesale markets, it does not divulge the commercial and hedging strategies of market players, which remain strictly confidential. Moreover, part of the information will remain dependent upon qualitative assessment. Therefore, from EDF perspective, collusion risks and anticipations of commercial strategies are very unlikely under the current proposal (§58 of the Commission's horizontal guidelines).

In addition, the implementation of the exhaustive fundamental data transparency and reporting requirements will enable an easier supervision through a consistent market surveillance framework under REMIT of the National Regulation Authorities (NRAs) and ACER in coordination with the national competition authorities in order to prevent potential market abuse or anti-competitive behavior.

Finally, subject to further updates, the current proposal covers the information needed to reach the objective of better functioning wholesale markets. In the light of both the proportionality principle and antitrust concerns, the addition of any new requirements should be carefully investigated (see answers to question 6).

Question 1: Do you have any major problems or policy issues related to transparency which go beyond ERGEG's advice and which you think should be addressed in the Commission's proposal?

The Commission's proposal will add a new harmonized regulatory layer to electricity wholesale markets which are already under the scrutiny of antitrust rules and will soon be under the scrutiny of financial rules (REMIT).

It is thus of crucial importance that the new regulation be coherent with the existing legal framework. EDF considers that legal certainty requires that the future regulation makes clear that the compliance with the transparency requirements shields utilities from any further information request from market participants under antitrust rules or REMIT.

In other words, the high level of transparency should go with a consistent protection of the data providers that should not be asked to provide transparency data outside the scope of information definitions of the guidelines.

This being said, EDF considers that the last ERGEG's advice version duly tackles the information needed to assess the supply and demand balance influencing the wholesale electricity markets.

EDF expects the same level of transparency requirements to be enforced in all European countries, and in Switzerland at the crossroad of the interconnected network although not a

Member State, and to be developed for the gas market due to the increasing contribution of gas in the electricity generation mix throughout Europe.

Question 2: Do you consider that definitions are complete and clear enough to avoid any potential problems when applied?

EDF believes that the current guidelines leave room to various interpretations. Therefore, all the attentions will be turned toward the detailed definition ENTSO-E will have to provide, in accordance with the guidelines and not going further, which shall be ensured by the appropriate level of governance.

Nevertheless, EDF wants to point out some comments that could improve the consistency of the generation data part of the guidelines:

1. The 100 MW threshold shall be applied only to the generation units. Therefore, the production unit term should be removed from the guidelines. Indeed, a threshold applied to two different concepts depending of the data to disclose brings confusion without added value. Giving information for all the small generation units making part of a production unit larger than 100 MW could lead to implementation overcosts.
2. The point 4.3.2.3 (ex-ante forecast of available capacity) shall be removed. In fact, it is useless regarding the point 4.3.2.4 (ex-ante information on planned unavailability) providing more relevant and dynamic information and on a consistent format.
3. The point 4.3.2.7 (filling rate of the water reservoir and hydro storage) should be disclosed in percentage rather than in MWh. Indeed, the translation of a volume of water stored in MWh depends on a lot of assumption according to each valley. Should it be finally maintained in MWh, EDF considers that a standard and simple method has to be applied by all the hydro generators at the European level.

Because transparency is crucial to the well functioning of the electricity markets as it creates price accuracy and brings confidence to the stakeholders, the process should remain under close monitoring from ACER and adjusted when necessary with the contribution of the data providers and users in a harmonized way at European level.

It is worth noting that even if the transparency data are increasingly detailed, part of the information will remain dependent upon qualitative assessment (in particular for the forecasted data such as duration of unexpected unavailability, hydro storage energy volumes calculation method...) and as such partly uncertain.

Therefore EDF wishes to highlight that data accuracy should be asked to the owners of information on a reasonable endeavor basis and should not provide any legal ground to a potential liability of the data providers unless proven information retention or voluntary inaccuracy of the information can be demonstrated by the relevant authorities. Data accuracy assessment should, in the scope of market surveillance, remain in NRAs area of competence.

Finally, any disclosure obligation should by principle be based on already existing information as otherwise the costs/benefits analysis could turn negative if information had to be specifically designed. For example, the smaller units are not directly metered, if the actual generation output (point 4.3.2.8) had to be applied for each generation unit of a production unit larger than 100 MW with small units, it could lead to undue costs of metering with no added value to the market.

Question 3: Points 4.1.3.7 and 4.1.3.8 of ERGEG's guideline require publishing ex-ante information on planned and ex-post information on the unplanned unavailability of consumption units including the name of the consumption units, location, bidding area, available capacity during the event, installed capacity, etc. Do you consider that publishing this information on a unit-by-unit base would be likely to create any competition concerns (e.g. because of the commercially sensitive nature of information on energy consumption of individual companies)? If yes, for which industries, in which Member States, etc.? How does this concern relate to the potential benefit this information yields to participants of traded electricity markets? Could this concern be remedied in a way which would nevertheless enable market participants to properly assess such an important change in a demand fundamental (e.g. by publishing data in aggregated form)?

In order not to raise any competition concerns, EDF is of the opinion that the information related to the planned and unplanned unavailability of the individual consumption units has to be disclosed by the TSO, once the information has been delivered by the consumer, on an aggregated form or at least on an anonymous manner. Any detailed information regarding a large consumer doesn't bring added value to wholesale market participants and could moreover raise transparency and competition concerns on the retail market.

Question 4: Points 4.3.2.4 and 4.3.2.5 of ERGEG's guideline require publishing ex-ante information on planned and ex-post information on the unplanned unavailability of generation units including the name of the generation units, location, bidding area, available capacity during the event, installed capacity, etc. Do you consider that publishing this information on a unit-by-unit base would be likely to create any competition concerns? If yes, how does this concern relate to the potential benefit this information yields to market participants? Could this concern be remedied in a way which would nevertheless enable market participants to properly assess such an important change in a supply fundamental (e.g. by publishing data in aggregated form, for instance per production type and balancing zone)?

During 2010, two major evolutions occurred in the French transparency initiative, with the strong support of EDF:

- Since June 2010, the French generators provide for the next 3 months the forecasted availabilities unit per unit, for the generation units larger than 100 MW;

- Since December 2010, the French generators disclose within 30 minutes the unplanned outages of the generation units larger than 100 MW.

The points 4.3.2.4 and 4.3.2.5 of the ERGEG's guideline seem to represent an important expectancy for the majority of the market players as it presumably allows them to check the suitability of the information being disclosed.

For the reasons detailed above, the publication of the data mentioned at points 4.3.2.4 and 4.3.2.5 of the ERGEG's guideline relating to technical unavailability of generation units (and not the individual generation plan) does not raise any competition concerns but will in fact contribute to increase competition and enable a better monitoring of the wholesale markets integrity by the national regulators and ACER.

Question 5: Point 4.3.2.8 of ERGEG's guideline requires publishing actual unit-by-unit generation updated every hour. Do you consider that hourly publishing this information on a unit-by-unit base would be likely to create any competition concerns (e.g. by increased possibilities to monitor the behaviour of competitors, to enter into collusive strategies)? If yes, how does this concern relate to the potential benefit this information yields to market participants? How in your view could the concern be remedied (e.g. by publishing data in aggregated form, for instance per production type and balancing zone and/or by publishing with a longer delay than one hour)?

The French transparency initiative is about to be improved by the end of 2011 by disclosing the actual unit per unit generation output within one hour, for generation units larger than 100 MW (and not production units as mentioned in the guidelines). In addition, Genscape already provides, for the parties willing to pay the fees, those data close to real time.

The *ex-post* communication of such information only enables an *ex-post* analysis of commercial strategies. However, due to the complexity of such analysis at a national (let alone European) scale, it is totally unlikely that such information would provide sufficient information creating collusion risks. EDF would obviously come to a totally different conclusion should the *ex-ante* communication of the planned production be envisaged.

EDF considers that those data do not raise any competition concerns and will, on the contrary, stir competition and enable a better monitoring by the national regulators.

Question 6: Do you see any other issues arising from ERGEG' proposal which may in your view give rise to competition concerns?

For the reasons already explained, the high level of transparency pursued by the draft Guidelines, as a whole, will foster competition and enable a better monitoring of the market by the NRAs and the competition authorities.

However, should in the future the disclosure of additional information be considered, EDF wishes to recall that the objective to avoid competition concerns requires that no information enabling the anticipation of commercial strategies be communicated.

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