ACER

Agency for the Cooperation of Energy Regulators

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ACER consultation on “European Energy Regulation: A bridge to 2025”

A EURELECTRIC response paper

May 2014

EURELECTRIC is the voice of the electricity industry in Europe.

We speak for more than 3,500 companies in power generation, distribution, and supply.

We Stand For:

***Carbon-neutral electricity** by 2050*

We have committed to making Europe's electricity cleaner. To deliver, we need to make use of **all low-carbon technologies**: more renewables, but also clean coal and gas, and nuclear. Efficient electric technologies in **transport and buildings**, combined with the development of smart grids and a major push in **energy efficiency** play a key role in reducing fossil fuel consumption and making our electricity more sustainable.

***Competitive** electricity for our customers*

We support well-functioning, distortion-free **energy and carbon markets as** the best way to produce electricity and reduce emissions cost-efficiently. Integrated EU-wide electricity and gas markets are also crucial to offer our customers the **full benefits of liberalisation**: they ensure the best use of generation resources, improve **security of supply**, allow full EU-wide competition, and increase **customer choice**.

***Continent-wide** electricity through a coherent European approach*

Europe's energy and climate challenges can only be solved by **European – or even global – policies,** not incoherent national measures. Such policies should complement, not contradict each other: coherent and integrated approaches reduce costs. This will encourage **effective investment to** ensure a sustainable and reliable electricity supply for Europe's businesses and consumers.

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ACER consultation on "European Energy Regulation: A bridge to 2025"

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KEY MESSAGES

Electricity wholesale markets:

- EURELECTRIC welcomes the identification of market trends by ACER but believes that the proposed regulatory actions should be much more concrete and should address a wider set of challenges electricity markets are facing.

- Considering the implementation of the Target Model as a no-regrets option, ACER should place greater focus on achieving more efficient electricity markets, e.g., through further development of liquid intraday and balancing markets.

- A future-proof wholesale market design should be analysed in greater depth, where energy, flexibility and capacity should be properly valued.

Gas wholesale markets:

- We welcome ACER's acknowledgement that gas market arrangements need to properly reflect changes in the electricity system and the increasing reliance on the flexible operation of gas fired power plants. EURELECTRIC has just released a report - "Flexible Gas Markets for Variable Renewable Generation" – with a number of recommendations for policymakers and NRAs to make gas markets rules more flexible and we would invite ACER to consider it.

- While market integration is a desirable outcome, this should be the result of continued implementation of the Third Package by means of completing in a coherent and consistent manner the work on the EU Network Codes rather than top-down market reorganization.

Consumers and retail markets:

- Prices have recently surged to the front of the policy debate. Our recent analysis shows that between 2008 and 2012 taxes and levies for household customers increased by 31% while the energy component decreased by 4% and the network component went moderately up by 10% - similar trends are found for industrial customers. It is therefore necessary to pay greater attention to the issue of transparency of costs borne by customers and, in particular, tackle the lack of transparency and harmonised criteria on the information provided by Member States regarding the components of end-customer bills.

- EURELECTRIC is keen to offer to ACER its support on the need for enhancing transparency through clear and trusted information. Instead of imposing questionable standardisation solutions (for example, in terms of billing or offer comparison), we urge NRAs to focus on the reliability and trustworthiness of the information in the market, namely information provided by all market agents including those that are not subject to the energy regulation (e.g. collective switching auctions, consumers associations, websites, comparison tools, etc.). To this end, we would be pleased to involve ACER (and CEER) in the dialogue we have initiated with BEUC on making offers more comparable.

DSO role:

- EURELECTRIC believes that ACER/CEER should primarily focus on developing a menu of different options for different DSOs and economic regulation for DSO cost recovery (remuneration schemes). As neutral and well regulated entities DSOs today already facilitate the market and provide a level playing field for all market parties and will continue these tasks in the future smart energy system. Ensuring the wider stability and predictability of regulatory regimes for networks is key for making the upcoming necessary distribution network investments. The stability and predictability of regulatory regimes for networks have a strong impact on investors' assessment of DSOs' investability. In addition, ACER/CEER should put a particular focus on incentives for innovation and transparency of the regulatory framework. Differences between member states and DSOs in terms of network characteristics market models, legal framework etc. should be taken into account.

- The unbundling requirements of the internal energy market directives are an important instrument to provide for a level playing field. Provided they are fully transposed, correctly implemented and strictly enforced at national level, they ensure non-discriminatory network access and market functioning on wholesale and retail level.

Markets Committee
DSO Committee
Retail Customers Committee

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EURELECTRIC welcomes the opportunity to respond public consultation paper entitled “European Energy Regulation: A bridge to 2025” launched by ACER. EURELECTRIC is pleased that ACER has taken the initiative to identify the key challenges and regulatory actions that should be undertaken moving towards 2025.

1. Electricity wholesale markets

In broad terms, EURELECTRIC can subscribe to the analysis of the state of play and agrees with most of the electricity wholesale market trends identified by ACER in the consultation paper. However, EURELECTRIC believes that the proposed regulatory actions should be much more concrete and should address a wider set of challenges electricity markets are facing.

The following proposals present in the paper should be implemented in order to achieve more efficient electricity markets:

- The implementation of the Target Model as a no-regrets option;
- Further development of liquid intraday and balancing markets;
- Continued focus on non-discriminatory market arrangements for generation and demand;
- Promotion of balancing responsibilities for all market participants (including RES);
- Optimisation and cross-regional coordination of the capacity calculation methodologies;
- Removal of regulated prices and bidding caps that limit price formation;
- Creation of common functions to coordinate capacity calculation and allocation
- All costs aimed at supporting energy policies must be clearly pointed up in the electricity prices. In particular, network tariffs must be relieved from taxes, levies and energy policies costs (RES, social, industrial policies, etc.) that artificially increase the cost of service, which pushes customers towards using isolated generation and micro-grids. As a result, they rely less on the electricity system, which leads to the increase of costs for those consumers that remain connected to the system.

EURELECTRIC welcomes the adoption of the Guidelines on State aid for environmental protection and energy 2014-2020, which foresee the gradual introduction of competitive bidding processes for allocating public support for RES and a gradual replacement of FIT by FIP, which exposes RES to market signals. While introducing FIP can be seen as a step forward, they still can cause significant market distortion, especially when applied to technologies with relevant variable costs, such as CHP and biomass. Therefore EURELECTRIC believes that the RES support should also include investment aid (payments per MW, not per MWh) to be determined through a bidding process in order to avoid market distortions and to promote more competitiveness in the market. After 2020, RES support for mature technologies should be phased out and CO2 price should become the main driver for decarbonisation. Immature technologies should be allowed to receive support and could include both investment and operational aid, with a focus on RD&D support.

EURELECTRIC appreciates that ACER is recognising more explicitly the generation adequacy concerns manifesting in many markets due to growing variable and low marginal cost renewables generation in the system and reducing utilisation of conventional units needed as back up to maintain the system stability and/or to cover the demand in certain time-limited periods. Irrespective of choice of design any regulatory measure related generation adequacy concerns need a political commitment

to what the reliability standard should be and security of supply level the power system should be able to meet.

The paper seems to accept the need to analyse the Capacity Remuneration Mechanisms (CRMs) as an evolutionary element of market design that could be needed. However, the focus of the consultation still appears to be more strongly placed on valuing flexibility. As EURELECTRIC had the opportunity to express in the pre-consultation, flexibility should not be regarded as alternative to capacity. Both aspects, although interrelated, address different problems (short-term vs. long-term adequacy) in different markets.

In fact, EURELECTRIC believes that energy, flexibility and capacity are all needed and should be properly valued in a future-proof wholesale market design, as figure 1 shows. These elements of market design should never be regarded as opposing each other, but rather as interplaying elements in a more efficient market design and security of supply.

	Energy	Flexibility	Capacity
Goal	Efficient dispatch	Short term system adequacy	Long term system adequacy
What it does	Delivers energy in the most cost-efficient way by having the market define the system's merit order	Enables the system to respond to short-term variations in the supply/demand balance	Ensures long-term system adequacy e.g., in the case of extreme load peaks or backup intermittent renewable generation
Market instruments	Forward, day-ahead and intraday markets	Day ahead, intraday and balancing markets, ancillary services	Market-based capacity remuneration mechanisms
Where we are today	Ongoing energy market integration with market coupling and cross border intra-day markets (although taking too long)	Energy market integration and cross-border balancing ongoing, grid related services to be developed	Rather separate CRM national initiatives, with an increasing discussion on cross-border participation

Figure 1

Pricing of flexibility should thus be done through improved day-ahead, intraday and balancing markets. Additional flexibility services for system operators related to smart grids have to be developed. All different sources of flexibility such as generation (including storage), demand response and cross-border participation should be considered to deliver flexibility in the most cost-efficient way. The choice of the best compatible technology should be left to the market. Of course, the design of the current balancing and intraday markets could be improved, introducing, for instance, a) possibilities to trade balancing forward and more sophisticated products, and b) timeframes that better fit the flexibility requirements (ramp-up, down rates, etc.). It is important that improving balancing markets should be based on a progressive and flexible approach. Improvements have to be implemented in a coherent a pragmatic way to ensure cost efficiency all along the process of integration.

Flexibility on the demand side could be used by market players to optimise their portfolio as well as by transmission system operators for balancing and by transmission and distribution system operators for constraints management purposes. In this context, aggregation offers the opportunity to exploit the flexibility potential of smaller customers. 3rd party service providers should compete on the level playing field with existing market participants and be integrated into the existing market in a way that ensures avoiding regulatory loopholes and freeriding.

CRMs, in complement, should have long-term system adequacy as their only goal: enough capacity should be available to achieve adequacy in a controlled risk framework. They should solely remunerate any firm capacity taking into account its contribution to security of supply. They should be fully market-based, technology neutral, open to new/existing plants and open to generation, demand response and storage. A crucial element in CRM design is that they should be taken into account the contribution of cross-border capacities (at least implicitly, with an objective to introduce explicit participation), while not distorting dispatch decisions taken in the energy market. EURELECTRIC would also like more concrete proposals for action by ACER in this consultation to ensure consistency of national approaches: ensuring transparency and fostering good practices among Member States while assessing generation adequacy needs and the related methodologies.

For the necessary evolution of market design described above, EURELECTRIC believes that seamless cooperation of Transmission System Operators (TSOs) will be a cornerstone. This concerns in particular the setup of cross-border participation in CRM.

Furthermore, flexibility concerns should not be used as a reason to weaken the unbundling provisions compulsory under the European law. In particular, TSO should not be allowed to become market participant through the acquisition of storage or generation facilities**.** System operators owning transmission assets have strong incentives to distort efficient system operation. They also have incentives to maintain and expand the network in such a way to increase the value of the services provided by their generation assets. It is because of these reasons that TSO unbundling is mandatory under European law. The economic reasons that support these unbundling provisions are also valid in the case of storage, including pumping, but also other storage devices able to act in the market.

2. Gas wholesale markets

We very much welcome ACER's paper "European Energy Regulation: A bridge to 2025" and are pleased to see that several remarks EURELECTRIC provided in the pre-consultation in December 2013 have been taken into account by ACER in this new document.

In particular, we welcome ACER's acknowledgement that gas market arrangements need to properly reflect changes in the electricity system and the increasing reliance on the flexible operation of gas fired power plants. We also agree with ACER that stronger cooperation between NRAs (both at EU and regional level), as well as between electricity and gas TSOs, is needed.

However, there are still a few points on which we tend to disagree with ACER. While we believe that market integration is a desirable outcome, we are convinced this should be the result of continued implementation of the Third Package by means of completing in a coherent and consistent manner the work on the EU Network Codes rather than top-down market reorganisation. Much remains to be done in this respect, including:

- Overcome the inconsistencies that prevent the offer and the use of bundled products
- Support the continued improvement of the functionalities of PRISMA, or other capacity booking platforms
- Support the conclusion of interoperability agreements and OBAs to ensure the optimal performance of the balancing systems
- Ensure that the application of congestion management measures is compatible across borders
- Ensure a smooth transition to the new tariff regime without putting at risk the performance of existing supply contracts
- Reduce the constraints on market development linked to the continued reliance on price regulation

We think a bottom up approach is preferable and more effective, where NRAs, TSOs and market participants take measured steps designed to enhance competition and pool liquidity across a number of market areas. ACER's role should therefore be focused on encouraging, supporting and monitoring such initiatives. Moreover, despite the fact that some market areas in themselves may be small, or lacking in liquidity, provided the pre-conditions are in place for the market to function it should still be possible for market participants to compete. Gas within such market areas could be expected to trade at a basis to a more liquid neighbouring hub, thereby enabling market participants to manage their commodity risk in the liquid market whilst booking cross-border capacity necessary to supply gas to the end user customers in the less liquid market.

EURELECTRIC has just released a report investigating how make gas markets rules can be designed to reflect changes in the electricity system. We are therefore pleased to list below a number of additional recommendations that ACER should consider:

- Gas and electricity TSOs need to consider the impact of increased variable generation on their networks: They should work closely together at national and at EU level, through ENTSOG and ENTSO-E. Investments and operating rules should be predicated on consistent

scenarios of gas-fired power station running hours and ramp rates. Similarly, TSOs should – together with Member States – consider security of gas and electricity supply in a joined up manner. Their considerations should be reflected in the preventive action plans and emergency plans drawn up by Member States in accordance with relevant national and EU legislation relating to security of supply and network resilience.

- Access to liquid gas markets will be vital for gas-fired generation with variable load: Power station operators in each Member State should have access to a liquid wholesale gas spot or intraday market to buy and sell gas either directly or indirectly in response to sudden changes in load requirements. The EU model of TSO entry/exit systems incorporating virtual trading points is a sound basis for this. Licensing and reporting requirements should not be unduly bureaucratic so as to encourage new entrants to national gas wholesale markets. Market making should also be considered to kick-start spot liquidity in nascent markets.

- Within day obligations should be minimised: Daily balancing regimes with no within day obligations offer the most flexibility to power station operators to deal with increased variability of generation. If TSOs need to introduce within day obligations then system-wide obligations should be preferred ahead of portfolio or entry/exit point obligations, and trading/balancing platforms must operate on a 24/7 basis. Any linepack flexibility services offered by TSOs should be on an ex-post basis. Tolerances could be a mechanism for TSOs to provide greater flexibility to gas-fired power station operators, but in the event that they are chargeable they should not be obligatory. Ramp rates and notice periods applied to gas-fired power stations should recognise the true conditions under which they can be expected to operate and not be set idealistically.

- Capacity allocation and nomination rules should assist cross-border trading: Bundled capacity should help to simplify the process and transaction costs for power station operators who choose to acquire cross-border capacity directly, as will standardised capacity allocation timescales. TSOs should also strive to reduce renomination lead times at cross-border points and power stations exit points as much as possible and only consider measures which restrict a network user's right to renominate against cross-border capacity as a last resort. The offer of firm capacity should be maximised through the implementation of Over Selling and Buy Back arrangements. In the absence of firm capacity, or once this is sold out, TSOs should make interruptible capacity available within day on an easily accessible platform.

- Storage will have an important role in providing physical gas flexibility: Gas-fired power station operators should be entitled to contract for storage capacity in their own right. They should not be limited to just booking flat seasonal storage products and storage operators should work closely with them to design products and storage bundles most suited to their requirements. All storage capacity within a market area should be made available to market participants on an equal non-discriminatory basis. Holding back capacity for TSOs for reasons other than what is necessary for managing the network safely, e.g. as a strategic reserve, will reduce the flexibility available to react to increasing within day demand and supply volatility.

Placing restrictions on the periods when storage can be filled or emptied or on how much gas must be kept in store at particular points during the year also prevents storage from being fully optimised by market participants. Any such strategic restrictions on storage systems have to be consistent with the storage regime and market framework applicable in each Member State. This applies equally to Liquefied Natural Gas (LNG) stored in tank at LNG facilities.

- Within day capacity products should not be subject to multipliers greater than 1: As gas will increasingly need to be able to flow quickly and efficiently between market areas within day, multipliers and seasonal factors applied to firm within day cross-border capacity products should not be set disproportionally high and should always be less than or equal to 1. TSOs should explore options for offering gas-fired power stations more flexible exit capacity products and charges.

- Market participants need timely information on balance and system status: Power station operators should receive sufficient information about their gas offtakes to efficiently manage their exposure to imbalance charges, particularly where within day obligations apply. Accurate near real time information about flows at other system relevant entry and exit points will play an essential role in understanding the drivers behind supply and demand within each market area, along with information about TSOs' balancing actions and the imbalances of their systems as a whole.

- Efficient connection arrangements are important: Network operators' connection policies and services should be efficient and should be predicated on the principle of shallow connection charging. Network operators should also work closely with power station developers to coordinate their respective investment timescales.

3. Infrastructure investment

Trends

EURELECTRIC would like to emphasise that the need for infrastructure investments is not limited to the transmission systems. Also investments in distribution grids will be needed, in particular in the electricity sector in order to maintain security of supply and quality of service for customers (for more on the major investment drivers, see our comments under 4.2).

Regulatory response and priorities

EURELECTRIC widely agrees with ACER's position that cross border investment in energy infrastructure has to be driven by market signals and needs national and supranational coordination, also among the regulatory authorities. The investments which bring the most economic benefit for the pan-European energy markets have to be focused on, regardless of whether the single project is cross-border or national. Sustainability, future-oriented and long-run predictability is essential as the power networks business has a planning horizon of decades and the challenges are changing in line with the development of the energy policy of the EC to achieve the decarbonisation of the energy market.

Regulatory action in relation to infrastructure investment should:

- Incentivise that cross border capacity is developed according to socioeconomic sustainable levels identified in the TYNDP, closing the gap between socioeconomic potential and real development
- Promote the use of new technologies facilitating public acceptance (e.g. through reduced environmental impact)
- Evaluate under which conditions merchant links effectively may complement the TSO driven development (including a proportionate and harmonised application of the merchant links exemption, which ensures that the merchant option remains open)
- Guarantee that regulated infrastructure investment in transmission and distribution facilities receives adequate compensation (rate of return), so that the wholesale market and customers potential value through the development of smart grids is not impaired. We agrees with ACER on the need for a regulatory environment supporting innovation on their way to maturity, as innovations open new chances of higher efficiencies in the future (see comments under 4.2). In addition, the long term stability of the regulatory framework is very important for investments in energy infrastructure.

Network access charges are mentioned in this section and this is one area where ACER needs to step up its work. The Agency has recently published an opinion on the range of transmission charges paid by generators in the EU. Although the opinion recognises that differing charges can be a source of market distortion, ACER's recommendation does nothing to bring about a convergence of approaches, and indeed could even be used as a basis for increasing differentials. EURELECTRIC believes that efforts should be made to harmonise transmission charging methodologies (though not

necessarily the charges themselves) and to reduce the differentials between Member States where these are not based on costs.

4. Consumers, retail markets and the role of DSOs

4.1. Consumers and retail markets

Trends

We broadly agree with the assessment made by ACER of the main trends shaping retail markets and the future role of consumers. However, we would like to point a handful of issues that in our view deserve further attention.

- Little attention is paid to **price regulation** as one of the main barriers towards customer empowerment and the foundation of well-functioning retail markets. Customers have different needs and priorities, and it is crucial to ensure that they can freely choose from a range of products, services and contract types from competing suppliers. Phasing out regulated prices at domestic level – especially if set below market prices – is a precondition for customers to benefit from competitive and innovative markets. Whilst we acknowledge that removing regulated prices overnight might not be the best thing to do in countries where prices have been maintained artificially low for many years and in countries where there is no real competition yet, we would urge ACER – and the European Commission – to come up with a clear roadmap/action plan to this end.

- One of the most common complaints by consumers is about rising energy prices – for which the cost that industry can control is very limited. Contrary to the data published by the EU, our recent price analysis shows that between 2008 and 2012 taxes and levies for household customers increased by 31% while the energy component decreased by 4% and the network component went moderately up by 10%.[1] In most Member States, the increase of energy prices is due to the strong and steady rise of taxes and the cost of funding government policies for renewable energy, social support and energy efficiency. All such costs – not directly linked to the supply of electricity – make electricity artificially expensive, hence at a disadvantage compared to other energy sources. Prices are also dependent on coal and gas world market developments. Therefore, we agree with the assessment made by ACER of **taxes and levies** as the main drivers for price increases, and we support the idea that "*policymakers will need to ensure that the impacts of their policy changes are applied as cost-effectively as possible*." However, we stress the need for policymakers – and regulators alike –to pay greater care to the issue of transparency of costs borne by customers to fund a wide array of policy measures as well as fiscal and quasi-fiscal components. The situation is made more confusing by the lack of transparency and harmonised criteria on the information provided by Member States regarding the components of end-customer bills. In a system evolving towards greater complexity and enhanced involvement of multiple stakeholders in the decision-making (regulatory) process, transparency and trust are needed. They are two sides of the same coin, and we cannot achieve the second without the first.

[1] http://www.eurelectric.org/consumers/prices/

- ACER states that the energy sector is generally not performing well towards its customers compared to other utility sectors. EURELECTRIC believes a more nuanced view is needed. Regulatory instability and surging prices due to ever increasing add-ons not related to the actual cost of electricity supply are contributing in many countries to the bad image of the sector. In addition, it is fair to observe that statistics at aggregated level fail to grasp national differences. In several countries electricity retail markets have become very dynamic and competitive and customers are now much more aware and demanding as well as increasingly accustomed to switching electricity supplier, pushing churn rates to historic highs. By the same token, utility companies are adapting their internal pre- and post-sale processes and are able to better serve their customers, pushing the number of complaints down. To name but a few recent statistics:
    - According to VREG's (Flemish regulator) 2013 Market Monitoring Report, 78 % of households and 86 % of the companies in Flanders/Belgium are convinced that the liberalisation of the energy market is beneficial for them as a consumer/business. Two years ago this was only 56 and 66%.
    - According to the 2013 barometer of complaints elaborated by DGCCRF (French administration under the supervision of Ministry of Economy and Finance) which covers 14 different sectors, the energy sector is one of the best performers with less than 1.5% complaints.
    - According to a customer survey (answered by 1,004 full-aged Finns) carried out by YouGov Finland in July 2013 for the Finnish Energy Industries, 3 out of 4 people who have switched electricity supplier felt the process was completely unproblematic/swift. Up to 9 out of 10 felt supplier switching completely unproblematic or almost unproblematic.

      Indeed, this does not mean that all markets across the board perform equally well in terms of customer engagement, complaint handling, ease of switching, satisfaction, etc.

- Before considering additional measures at EU level, it is important not to lose track of the subsidiarity principle. Energy consumers and consumption are very different across the EU – even within countries – and we should be careful not to talk about **the** consumer as the source of European regulation and obligations on utilities:
    - A "unified concept" of energy consumer at the EU level as the source of regulation and obligations to utilities is highly questionable. Although "electricity" and "natural gas" are commodities, energy consumers and energy consumption are very different from country to country. Therefore, before assuming what "the consumer needs and wants", ACER/CEER should focus on knowing exactly which consumer it is addressing.
    - Even among the consumers of the same Member State, the differences can be very relevant. CEER cannot assume a "standardization" of the consumer as the way to protect consumers. Not all consumers have the same needs and wants; this is why companies compete with each other and develop products with different features and price.
    - Finally, we need to keep in mind that the willingness, ability and potential of consumers vary. Choice cannot be imposed. A decision of not to switch supplier needs also to be

respected as a consumer choice and can be an expression of satisfaction with their current supplier.

Regulatory response

Our 3 main issues:

- In general, EURELECTRIC cautions against the need for speedier switching and believes that the proposals to reduce switching to 24 hours by 2025 require further investigation. Switching is a complex process and a variety of scenarios can occur around it (e.g. timely access to final metering data) and speeding up the switching process is an additional cost in system and process development that may not be desired by the consumer.
    - We recommend regulators to put in place a market model working towards the interest of consumers by putting high-quality standards at its core: effectiveness, reliability and hassle-free procedures for customers. To this end, we support ACER on the establishment of the supplier-centric model for most retail processes, including switching.
    - We urge ACER to consider that there are both contractual and technical considerations to be taken into account when discussing options for making switching speedier.
    - On the one hand, we are confident that the period during which data exchange among new supplier, old supplier and DSO/metering operator needs to take place could be shortened, in particular once the necessary infrastructure (smart meters, data hubs, and backhand offices) will have been upgraded.
    - On the other, contractual checks and balances such as the 2-week cooling-off period foreseen by the Consumer Rights Directive need to be respected to afford customers the protection they need from e.g. erroneous transfers or miss-selling practices. All at once, this will allow the market to thrive by stimulating competition between old and new suppliers. It is our view that the actual switching can only be initiated after the 14-day cooling-off has lapsed, unless explicitly agreed for by the customer. Also, the notification period towards the old supplier needs to be respected so as to allow a smooth closure of the client's account, clearance of outstanding consumption charges and all related settlement processes (e.g. balancing requirements, regulated/fiscal components to be passed on to network companies/governments, etc.)

- We are keen to offer to ACER our support on the need for enhancing transparency through clear and trusted information. Transparency is a fundamental value for a well-functioning market: It is in companies' best interest to present their products in a straightforward manner, keeping clients abreast of the main conditions that will apply. However, instead of imposing questionable standardisation solutions (for example, in terms of billing or offer comparison), NRAs should focus on the reliability and trustworthiness of the information in the market, namely information provided by all market agents including those that are not subject to the energy regulation (e.g. collective switching auctions, consumers associations, websites, comparison tools, etc.).

- We agree that energy offers should be comparable across suppliers to enable customers to easily choose which offer is most suitable for them. We are keen to discuss with regulators and consumer associations the best way of achieving this. For instance, it may be worth exploring the idea of displaying key product features in a simple and accessible format that is the same across suppliers, e.g. on the suppliers' websites.
- However, a clear distinction must be made between standardising the way in which offers are displayed or described and standardising the offers themselves. The latter – such as using a projected unit price – risks limiting customer choice and prevent suppliers to best meeting customers' needs through continuous innovation. It appears that the market is likely to develop towards bundled commodity offers, contracts combining supply with energy advice or demand side flexibility, contracts built around capacity rather than commodity, etc. Any standardised offer display (high level product specifications) should appropriately reflect such market developments and should be developed by market parties themselves.
- In addition, it should be noted that, despite its specific characteristics, competition in the energy markets should not be different from the competition in other markets. This is important not only in terms of principles, but also in practical terms. In fact, with the introduction of liberalisation and competition, it is expected that new players from other markets (e.g. telecommunications, retail, software, etc.) will enter the market. Therefore, to avoid unfair competition, it should be avoided to impose solutions that put energy utilities to disadvantage with other companies offering identical products or services.

- We agree with ACER that the regulatory framework should draw a clear distinction between the roles of competitive and regulated players. Both today and in the emerging smart energy system, market parties will 'package' innovative products based on customers' preferences. DSOs, in turn, will act as 'neutral market facilitators' by providing retailers with the necessary data in a timely and non-discriminatory manner. Also, they will rely on a new toolkit to become active system managers by actively managing local constraints. In order to make those new tools available, national regulation should specify that DSOs may procure flexibility in the market. EURELECTRIC is ready to engage ACER – and the European Commission – on this matter in the coming months and urges to take a holistic view on the role of DSOs going forward.

Priorities

- We would urge ACER to work jointly with the European Commission and the industry to clarify the legal basis for the termination of price regulation as well as raising customers' awareness on their rights as energy consumers. To this end, we welcome the (coming soon) release by the European Commission of the list of energy-related consumer rights

- We are keen to involve ACER (and CEER) in the dialogue we have initiated with BEUC on making offers understandable and comparable.

- Ensuring data privacy and security is a priority in building consumer trust. In this regard, consumer's data should not be used without customers' permission. Customer meter data must therefore be primarily protected by law and regulation which can be complemented by any decision of other relevant authorities (data protection authorities). We would like to point out however that DSOs and metering operators, as well as suppliers need unrestricted access to the data necessary to perform their tasks, e.g. billing and switching. For any other purposes, access to meter data by both suppliers and third parties (e.g. aggregators, ESCOs) should only be possible after explicit consent by the customer. Regulators and public authorities must precisely define the framework of data management defining clearly roles and responsibilities and setting robust rules in terms of data access and data transmissions.

4.2. The role of the DSOs

Trends

EURELECTRIC appreciates that the paper generally acknowledges the investment challenge at the DSO side (Par. 2.22). However, we would like to see more clarity with respect to the three following points:

- the main investment drivers, being replacement needs (to maintain quality of supply), integration of distributed energy resources and smart metering, should be mentioned and it should be highlighted that the required investments will thus be a mixture of traditional "copper and iron" and "smart" (use of IT-systems, electronic devices etc).
- The paper should be more elaborated with respect to smart metering (Par. 2.29, 2.30 & 2.33). The EU target of 80% customers roll-out by 2020 and according to the figures collected by the EC, a roll-out of about 190 million electricity smart meters is projected by 2020. This is not a negligible figure and it should not be put at the same level as less mature concepts such as micro-grids.
- While the paper correctly foresees a more active role for the DSO in managing the flows in their networks (2.30), it does not accurately identify the main driver for this, the integration of distributed energy resources (need to maintain security of supply and quality of service). In other words, DSOs' traditional mission will not fundamentally change; they will just need new tools in order to fulfil it, including active constraints management for maintaining security of supply and quality of service.

Regulatory response

- We agree that regulation should become more predictable and 'smart' in order to encourage investments (Par. 3.24 & 3.37). First of all, how the regulatory regimes (mostly incentive regulation and rate of return regulation) stimulate investments and innovation should be assessed. Focus on two key criteria, achievability and adequacy of the regulated rate of return and planning reliability is needed. Secondly, appropriate regulatory responses should be found. Incentive regulation will need to be adjusted in order to allow for the necessary investments to materialise and some elements of the output based regulation (also called quality regulation, the term should be clearly defined first) could be beneficial for investments within the different regulatory models at member states level. However, absolute shift towards this model should not be seen as the silver bullet solution.

- Besides cost recovery, the regulators should also focus on revenue recovery, i.e. design of network tariffs. While, the summary box also talks about the need for "transparent and cost-reflective network tariffs", this point is not further developed in the text. EURELECTRIC believes that this is an important topic and that there is a need to reform network tariffs: network tariffs for households and small businesses in most countries are almost entirely based on energy volume (kWh). About 50-70% of the allowed DSO revenue is usually

recovered using such volumetric charges[2]. However, network costs are mainly capacity driven. Network tariff structures should incentivise efficient investments and use of the network while providing a stable framework for both customers' bills and DSO revenues. Appropriate approaches may include two-part network tariffs with a capacity and an energy component, capacity tariffs or volumetric time-of-use network tariffs with different prices for peak and off-peak energy. Smart metering opens the door to a more cost-reflective tariff structure and demand response. These options should thus be discussed together with dynamic network pricing options.

- While EURELECTRIC fully supports regulatory efforts to ensure customers' rights to all of the network services within the scope of the CEER consultation, we urge caution regarding the methodology of setting such guaranteed service standards at the EU level (par. 3.26). First of all, a thorough assessment of how current standards for these services are fulfilled across Europe should be undertaken. Secondly, more stringent service requirements may well lead to higher costs. Therefore, it should be investigated whether the customer is willing to pay the higher costs associated with higher levels of guaranteed standards. Differences between member states in terms of market models or legal framework and the very limited comparability of the consultation responses received should also be taken into account.

- Unbundling (Par. 3.33 & 3.34):

    - EURELECTRIC fully agrees that proper implementation of existing EU legislation (the Second and the Third Energy Packages) is key for fostering fair competition in the retail market. EURELECTRIC views that fundamental changes to the structures of DSOs, when there is no evidence that current structures are acting to the detriment of customers, would be an unnecessary distraction and an additional cost, with little or no benefit for the customer.

    - Regulatory supervision and clear rules are already in place in countries where DSOs operate the data hub already today. Similarly, DSOs should be subject to specific operating procedures to regulate the ways in which they conduct and channel their DER acquisitions for local purposes, in a similar way as procurement of energy for losses is done today. This is possible within the existing unbundling provisions.

    - Provision of services that are currently provided by DSOs by competitive markets (par. 3.34): As regards metering and data handling, DSOs already own and manage metering infrastructure, facilitate technical aspects of supplier switching and act as an information hub by storing and providing metering data in many countries. Smart metering represents a technology update. This model enables effective verification and validation of privacy, quality and security around customer data in a regulated environment. In other cases, e.g. German legislation enables setting up an independent metering operation, in practice most meters are operated by the DSOs as the metering market is not sufficiently developed. In the Netherlands, commercial parties were first in charge of

[2] See EURELECTRIC Report 'Network tariff structure for a smart energy system', May 2013.

metering and data handling until the metering model was changed again in 2011 to empower DSOs, due to deemed negative effects on competition and prices of meters. Any change of models should be considered at the national level and be subject to a cost-benefit analysis. As regards electromobility, member states should retain the freedom to decide whether the DSO should be the provider and operator of EV charging infrastructure in the initial stages of the development of electro mobility until the market reaches the necessary level of maturity.

Priorities & other areas to focus on

- We believe that ACER/CEER should primarily focus on developing a menu of different options for different DSOs (as referred to 3.32) and economic regulation for DSO cost recovery (remuneration schemes). The stability and predictability of regulatory regimes for networks have a strong impact on investors' assessment of DSOs' investability. Investors will not be willing to provide capital or favourable financing conditions to DSOs that have an inadequate or unstable rate of return. The regulated rate of return should thus be determined in a transparent way and using long-term parameters. In addition, ACER/CEER should put a particular focus on incentives for innovation and transparency of the regulatory framework. We believe that at the moment, regulatory schemes in most countries do not provide sufficient incentives for RD&D and pilots.[3]

- Secondly, we believe that the review of network tariff structures (DSO revenue recovery) will be more and more important in the context of distributed generation and energy efficiency and should be thus added among the priorities. The need to avoid cross-subsidies should be also taken into account with respect to distributed generation schemes – all subsidies should be made explicit.

- EURELECTRIC fully agrees that in the context of participation of users connected to distribution networks in the balancing and reserves markets, appropriate tools are needed for market and system operators, including increased coordination between TSOs and DSOs (as defined in par. 2.5, 2.6, and 3.36) and with active cooperation with ACER, the NRAs and TSOs in this area. It should be taken into account as well that those users may also provide constraint management services to the DSO. We urge regulators to pay special attention to the different (already completed or still running) smart grid projects that deal with this issue in their assessment. Projects such as EcoGrid, Smart Grid Gotland and Evolve DSO are all useful examples.

- Priority access and dispatch rules should be reconsidered since they may hinder the establishment of new system services at DSO level.

[3] There are a few honourable exceptions such as the UK Low Carbon Network Fund. See EURELECTRIC report Electricity Distribution Investments: What Regulatory Framework do we need?, May 2014.

- Coordination among TSOs and DSOs is key for the necessary changes in distribution networks to occur in a secure and efficient way. In that sense more effort should be devoted to ensure that European network codes explore the synergies with Smart grids and system services for DSOs so that additional barriers are not put up to their development.

5. Implications for governance

- Since its establishment in March 2011, ACER has become a credible and respected institution playing a prominent role in the European energy policy arena. ACER shows its strong commitment to ensuring the development of the internal energy market and increasing harmonisation of rules and coordination between national NRAs.

- ACER has demonstrated its leadership in promoting the market integration process and ensuring an effective dialogue with stakeholders in the so-called AESAG. The role of AESAG as a platform for dialogue has proved its value in terms of ensuring transparency of the market integration projects, fostering stronger accountability of various stakeholders with regard to assumed commitments and facilitating better incorporation of market views in the process. A platform for a technical dialogue (system operation, grid connection, etc.) should also be ensured.

- One area in which ACER's work so far has been a disappointment has been the development of a Network Code modification process. If national experience is reflected at European level, the Network Codes will need to be regulatory modified. In this light it is extremely surprising that ACER has not consulted on this important issue. ACER (together with the Commission) should give a stronger priority to developing a global and strategic vision on all the network codes and their interrelationship during the comitology process, while ensuring that the associated development processes are ensured. ACER should also develop a formal process for amending Network Code's and Guidelines that have been agreed through comitology, in conjunction with the EU and all its stakeholders. EURELECTRIC takes the view that market players must be considerably more involved in the process once the initial Codes are established and should be able to put forward modifications (as envisaged by the Third Package).

- ACER should play a more active part in resolving disputes on cross-border issues between NRAs. The Regulation No 713/2009 should be reviewed in terms of giving ACER powers to intervene in such disputes on its own initiative.

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability

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