ACER

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Response to the ACER Public Consultation Paper

“A Bridge to 2025”

16 June 2014

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About Gasunie

Gasunie is a European gas infrastructure company. We provide the transport of natural gas and green gas in the Netherlands and the Northern part of Germany.

All our activities are geared to facilitating the market, both the industrial and the domestic gas markets. In the Netherlands, Germany and further afield. This varies from providing gas transport to constructing new infrastructure and from participating in new projects to developing new services. In all our activities we follow trends and requirements in the market closely, as our aim is to be able to offer our customers the best standard of service possible.

Gasunie has two subsidiaries that manage the gas transmission grid: Gasunie Deutschland in Germany and Gasunie Transport Services (GTS) in the Netherlands. We also provide the market with gas storage facilities (EnergyStock B.V.), the pipeline to the United Kingdom (BBL) and the LNG terminal GATE at Maasvlakte. In addition, we facilitate and stimulate the green gas market through our subsidiary Vertogas. Producers and traders in green gas can use Vertogas for certification their green gas.

www.gasunie.nl

Gasunie welcomes the opportunity to respond to the ACER 'European Energy Regulation: A Bridge to 2025' public consultation paper. This paper built on the earlier 'discussion paper' to which Gasunie responded in December 2013. Below we first make some general comments before responding to questions in the consultation paper together with some specific sections of the public consultation paper.

General

- European energy policy faces enormous challenges with considerable and corresponding uncertainties for gas infrastructure. Although we recognise that there may not be a 'silver-bullet' or single answer, it is imperative that for regulated parts of the market regulatory uncertainty is minimised.

- Therefore, Gasunie welcomes the efforts made by ACER in the context of the 'Bridge to 2025' to define a longer term regulatory view of market developments and regulatory requirements in particular.

- We also consider the approach of covering both the electricity and gas sector in an integrated paper as a good first step. Both sectors are increasingly becoming intertwined. It should however not be forgotten that both markets also have an own dynamic and specific requirements and that the functioning of one market should not be prioritized over the other.

- Gasunie notes that the Third Energy Package has brought major changes to the development of the European regulatory framework and further changes are expected shortly as a result of the development and implementation of the European network codes. In view of these developments, Gasunie believes that a comprehensive review of the Gas Target Model (which is not part of this consultation paper, but to which it refers) is currently not necessary, and would in fact only bring more uncertainty by moving the goalposts. Instead Gasunie believes that efforts should be focussed on the full implementation of the Third Package measures (such as the network codes, TYNDP etc.).

- In particular, Gasunie believes that more attention must be given to the coordination of regulatory oversight and implementation of the European network codes. For example, implementation of the new capacity allocation and congestion management procedure rules varies across Europe, depending on national regulatory preferences. Gasunie believes efforts by NRAs must be directed to a more coordinated and harmonised approach in the national implementation of European rules. Gasunie believes that this notably is where ACER, through regional cooperation among NRAs should play a role.

- Gasunie notes that the consultation document is introducing new regulatory uncertainty by proposing to develop regulatory frameworks that prevent a negative price spiral as a consequence of lower demand on grid charges. Gasunie notes that the efforts directed at the breaking up of long term contracts and the pricing of (very) short term infrastructure contracts appear to be the main driver for this negative price spiral, more so than underlying supply and demand characteristics. We note that the proposal to adapt the regulatory framework cannot be at odds with Article 13 of the Gas Regulation (715/2009) which requires TSOs to be able to recover their (efficiently incurred) costs (including a return on investment).

Chapter 2: Energy Sector trends

- Whereas future demand and supply are – almost by definition – uncertain, it is clear that natural gas will continue to be very important for the European energy market. Demand for both volume and capacity will continue to be substantial, although in future also driven by different dynamics such as the increasing demand for back-up for renewable energy. Similarly, there are sufficient resources to supply Europe, although here too, the dynamics will continue to be influenced by global developments such as shale gas and the further development of the LNG market.

- Developments with respect to supply and demand will have a varying impact in Europe: investments in certain Member States might be needed to meet expected demand growth or security of supply, while in other Member States investments are needed to accommodate new import routes to substitute declining domestic production or enhance market integration. Reliance on imports through pipelines also creates a different dynamic than where gas is also imported through LNG.

- In paragraph 2.22, the consultation document states that the core focus of regulators is to create a regulatory framework that facilitates the delivery of efficient investment to safeguard the interests of consumers. However, in practice Gasunie finds that most regulators are focused on the affordability of energy for consumers and thus on reducing costs and lowering tariffs.

Chapter 3, Actions for Europe's regulators

- An OIES study[1] published in 2013 concludes that Europe already has substantial gas price convergence amongst the major hubs. This conclusion also seems to be underwritten by the ACER Market Monitoring 2012 report[2]. The conclusions from a Booz & Co. study[3] in 2013 on behalf of the European Commission also confirm the considerable progress which has been made in enabling the internal energy market. The conclusions of ACER in this consultation paper that insufficient progress towards the internal energy market has been made so far, seems therefore not to be supported by other recent studies and reports.

- Gasunie agrees with the conclusion of paragraph 3.13 that there are many possible ways in which further market integration may take place and that this should be considered on a case by case basis.

- In this light, Gasunie notes that not every virtual trading point needs to be equally deep and liquid. It would be sufficient that some points are able to trade on a basis differential to deep and liquid markets such as TTF and NBP. In this context the price convergence among the major gas market (responsible for almost 80% of gas consumption) should not be ignored. Achieving price convergence in Europe does not therefore require full integration. Rather than forcing market merger, regulators should facilitate projects by the market to enhance integration. Gasunie notes that the consultation document is lacking in proposing concrete measures by NRAs or ACER in order to facilitate the

[1] European gas hubs: how strong is price correlation?, Beatrice Petrovich, October 2013
[2] Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2012, ACER/CEER, November 2013
[3] Benefits of an integrated European Energy Market, Booz & Co., July 2013

development of integration projects. Concrete measures that ACER or NRAs bilaterally may take are for example harmonised implementation of the capacity allocation network code and the congestion management procedure rules as well as the possibility to adapt tariff systems to allow for cross border trading areas.

- Gasunie has strong concerns over the way in which the consultation documents emphasizes the risk of stranded assets in combination with the proposed adaptation of the regulatory framework to avoid a negative price spiral in infrastructure access charges. Gasunie notes that where this price spiral has occurred it has been driven mainly by a change in the regulatory framework in which the financial benefits of longer term capacity contracts (taking into account the need for flexibility and the fact that gas demand is to a large extent temperature driven) have been altered in favour of short term contracts. The risk of stranded assets is therefore not simply a consequence of changing demand and supply patterns but driven largely by regulatory preferences.

- In this respect Gasunie emphasises the legal requirement as laid down in Article 13 of the Gas Regulation (715/2009) that TSOs must be allowed to recover their costs. The Regulation does not make a distinction in types of assets and does not refer to the risk of stranded assets. Gasunie therefore strongly requests ACER to take into account the requirements of the Gas Regulation and not to introduce new regulatory uncertainty. Also, Gasunie believes that the regulatory framework should continue to enable long term transmission capacity contracts to underpin new and existing investments in gas infrastructure.

- Gasunie recognizes that some investments may not be based on direct market demand but on public service obligations such as for security of supply. Some of these investments may need targeted support to ensure implementation. The TEN-E infrastructure Regulation (347/2013) and the Connecting Europe Facility (CEF) already provide measures for the implementation of such projects.

- A more integrated evaluation of planned investments in gas and electricity infrastructure would seem appropriate and could lead to more optimal solutions for transporting energy through the internal market. This should be based on a balanced view of the needs of both the electricity and gas markets. Gasunie does not agree with the consultation document where it is stated that the gas market must meet the needs of the electricity market. The wish to ensure that the gas market meets the needs of the electricity market must not be prioritized over the need for security of supply or the functioning of the gas market itself for example.

- Gas infrastructure can have a significant role to support an electricity system which is increasingly reliant on generation from intermittent renewable sources. The interactions between the gas and electricity markets should however first be better studied before introducing new measures.

Chapter 4: Implications for governance

- The consultation document is vague on the issue of implementing and enforcing market rules. Gasunie believes that the framework is currently quite clear: on the basis of framework guidelines developed by ACER, ENTSOG has the legal obligation to deliver detailed network codes within a year. These network codes are made binding through comitology. Implementation is then left to TSOs and NRAs (Gasunie believes that the scope for national implementation should be minimised). NRAs are also responsible for the enforcement of (European) legislation. Gas TSOs have been successful in their cooperation in ENTSOG. Three network codes have been developed, agreed and are being implemented. Work is also ongoing in the tariffs network code and on incremental capacity as amendment of the capacity allocation network code. TSOs and ENTSOG have shown a willingness and ability to work together. Similarly, the continued improvement of the TYNDP, based on feedback and new requirements, is ongoing.

- Gasunie also believes that the progress which has been made in a short period must be taken into account as well as the fact that ENTSOG was not established as an EU Agency. In our view therefore, there is currently no need to develop new governance rules, nor does the consultation paper make clear why this would be required. Furthermore, any review of ENTSOG governance should be done by ENTSOG members, not ACER. Similarly, we do not believe that ENTSOG should review the governance arrangements of ACER.

- Regulatory oversight of new entities should be considered only in the context of the legal framework. We note that new entities such as PRISMA have been developed by TSOs within a very short time in order to contribute to the early implementation of the capacity allocation network code and achieving the target set by the European Council to establish the internal energy market by 2014. The governance arrangements for PRISMA have been based on the approved arrangements for ENTSOG. Furthermore Gasunie believes that regulatory oversight as proposed in the consultation document would have been detrimental to the successful development of PRISMA, especially in the timeframe in which PRISMA has now been established.

- ACER should not only seek to increase its oversight on regulated entities but also focus more on cooperation among NRAs, one of its core responsibilities. Implementation of network codes for example is being complicated by unilateral actions by NRAs, resulting in a mismatch in bundled cross-border capacity.

- The ACER Regulation (713/2009) leaves considerable scope of action for ACER. Article 8 for example enables ACER to act as NRA for cross-border decisions. In practise this article does not seem to be used, nor is it obvious that NRAs involve ACER for the application of guidelines as stipulated in article 7.6. In the opinion of Gasunie, the merits of allowing market parties to invoke article 8 instead of only NRAs should be considered in a review of the legal framework.

- The EU, ACER and market parties have an interest in well-functioning markets, also in neighbouring countries. Assistance by ACER to NRAs in Energy Community countries for example is a welcome development. However any such activities should not be to the detriment of the core responsibilities of ACER.

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