ACER

Agency for the Cooperation of Energy Regulators

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Swedenergy response to Acer public consultation on "Energy Regulation: A bridge to 2025"

Swedenergy is the common voice of Swedish electricity industry. Swedenergy is an association of 169 member groups and some 380 companies. There are producers, distributors and traders of electricity. The industry employs approximately 30,000 persons.

Key points

- European countries face different challenges. European legislation cannot tackle these individual challenges at one, but should ensure that solutions made are compatible with the European electricity market and that they don't hinder trading across borders.
- ACER's focus should be on issues that either already have European regulation or have cross-border effects. Especially many consumer-related issues are to a great extent of national nature, and we find little benefits for European intervention in those issues.
- ACER should take a stronger role in following other EU-regulation affecting energy markets for example financial regulation such as MiFID and EMIR.
- There's an urgent need to truly move from national grid planning to regional planning. TSOs need to co-operate and make decisions not from purely national perspective, but from regional and European perspective.
- Regulators should work for a better understanding how security of supply is evaluated and to find a more coordinated way to do that. Security of supply needs to be seen from a broader perspective than from a purely national perspective.

Introduction

The main objective of a regulatory framework is to enable and facilitate efficient use of existing resources and provide signals for cost efficient solutions, long term investments and affordability. Market price signals can provide all this, and may at the same time offer end-users real control of their energy costs.

To support accurate price signals it is fundamental that regulatory authorities around Europe require all stakeholders to contribute to a level playing field for cross border trade.

Regions in Europe face similar but not identical challenges, Swedenergy therefore propose to allow regional solutions and explicitly focus on trade to further the internal market as the tool to balance these challenges. The proposed market approach will encourage convergence and harmonization of rules and regulatory frameworks between regions. ACER is therefore encouraged to recognise the need to develop a regulatory framework in which:

- the role of trade on day ahead, intraday and real time is recognised as tool to balance and encourage convergence and harmonization of rules and regulatory frameworks;
- regional solutions should be allowed to emerge. But regional specificities should not hinder further development of regional/European entities or the integration of regions and trade across regional borders;
- all market actors, on a level playing field, are provided with tools to adjust their positions close to real time thereby decreasing the need for corrective measures;
- all price caps are removed;
- grid constraints are handled where they occur using market based methods;
- demand is provided with the option to be active in the market;
- a development of smart grids and meters to allow demand flexibility and individual choices is strongly supported;
- the targeted supply adequacy level is properly defined.
- market coupled merchant interconnectors are recognised as a driving force for cross border capacity development in the best interest of European end-users.

Fundamentally, the regulation must be stable and predictable for the market players to allow the development of markets and to give enough confidence for investments. The reference to recent events in the Ukraine, water shortages and risk of flooding is rather a question of policy than regulation.

A primary target must therefore be to secure the prompt implementation of existing regulations within all member states within the EU, which includes compliance especially with the prohibition to restrict cross-border trade of electricity.

Lately, there have been an extensive development in the regulatory framework both national and European, which introduces a higher level of insecurity to the market. And in some cases, even though the intentions may have been to the best of will, it may lead to unintended and unwanted consequences. It is therefore crucial that before new regulation is introduced, there must be a clear need for it. Also it must be thoroughly prepared and including extensive cost-benefit analysis.

A Electricity wholesale markets

Swedenergy basically supports the proposed actions where

- the integration of intraday and balancing markets should be prioritised and that the TSO should build a common grid model to ensure that the maximum capacity is made available to the markets;
- RES should be integrated into the markets, e.g. exposed to wholesale prices, all generators should be balancing responsible parties to ensure that the right incentives are given and that balancing markets can send the right price signals;
- generation adequacy should be commonly assessed or at least there should be a transparent assessment following a common methodology. To the extent CRMs are needed, the crucial issue will be to design them properly.

Regarding paragraph 3.4, it should be clarified that the climate should foster *market based* investments.

1. Have we identified correctly the issues and trends within each area of the energy sector?

Swedenergy strongly supports the general approach of ACER, i.e. the need for a strong push for full implementation of network codes and in specifically coordinated cross-zonal capacity calculation and market coupling across all time frames and borders (including balancing market integration as a significant part).

In real time aggregated supply and demand should continuously match. To make that as efficient as possible the supporting market arrangements established for intraday, day ahead and forward should reflect the physical reality of real time as much as possible. The market designs should enable pricing that rewards elasticity both on supply and the demand side providing a level playing field where the willingness to increase/decrease generation/consumption on a short notice is incentivized (section 2.9).

CRM

Every step towards developing CRMs needs to be clearly justified and carefully evaluated on a cost efficiency basis. As long as supply adequacy is regarded a public good there will be a need to decide a targeted level corresponding to the wish of society. The evaluation should be guided by the targeted supply adequacy level so that not inefficient over capacities are stimulated. ACER should develop common methodologies so that supply adequacy takes into account cross border dimensions and that countries at least coordinate their assessment, if they do not choose to have a common regional one. Only where the assessment shows that additional capacity needs to be procured, a CRM can be considered necessary. In that case a proper competitive environment for such a CRM needs to be guaranteed. Swedenergy would like to emphasize that the impact on cross border exchange from different national measures both what regards design and time constitutes a significant threat to the internal market and to investment efficiency regarding interconnection and generation capacity.

Internal grid congestion

Another threat to the internal market is the practice of moving internal congestion to national borders. Internal congestion must be handled through redispatch or countertrade measures or ultimately through a reconfiguration of bidding zones to account for structural congestion.

Financial regulation
Electricity wholesale trading is and has been moving from physical bilateral contracts to power exchange trading and financial hedging contracts. Financial regulation is increasingly affecting the energy market ACER should acknowledge the trend that increasing amount of regulation affecting energy markets is coming from other sectors, especially from financial sector.

2. Have we identified an appropriate regulatory response?

We propose to complement the list of regulatory responses with:

- A regulatory framework to facilitate regional market integration to further development on a cross border scale building on the already achieved integration on a European scale.
- The development of a roadmap to integrate variable production into the power market and make all generators balancing responsible parties. This process should go hand in hand with the creation and integration of balancing markets.
- A new market design for retail markets and tariffs that incentives consumers to use their demand flexibility
- A targeted supply adequacy must be defined.

3. Which regulatory actions are most important and should be prioritised?

The above mentioned issues on CRM are detrimental to the internal market and grid investment.

From the list "Summary of possible regulatory actions" in the annex, Swedenergy would like to give the highest priority to the following actions:

- the need for the rapid implementation of the present electricity Target Model across all geographies and market timeframes and commit to review the need for any changes;
- proactively advise on the design of interventions so that the goals of security of supply and competitive markets are met as far as possible;
- review the process for the development, modification and enforcement of network codes to ensure that it is effective and that the present governance arrangements are robust to the future pace of change.

This implies an extensive development in the regulatory framework both national and European, which can introduce a higher level of insecurity to the market, if handled badly. Therefore Swedenergy wants to emphasise again the importance of proper stakeholder consultation processes, transparency, European coordination and cost–benefit analysis to avoid market insecurity and unforeseen side effects of new regulation.

Swedenergy also agrees with what is referred to in paragraph 2.8, i.e. that current concerns regarding the generation adequacy directly related to the increasing need to manage greater and more sudden fluctuations in the supply system.

To meet this, the regulatory framework should seek to avoid and remove distortions to the energy price formation and activate the demand side. There

is no empirical evidence that the energy only market cannot deliver investments and support supply adequacy. To provide consumers and producers with market based incentives to avoid unnecessary regulatory intervention, from the list in the annex Swedenergy recommends that the following action is prioritised:

- further analysis to develop and improve the common European balancing target model defined in the Network Code.

Swedenergy also share ACER's view that the governance arrangements of ENTSO-e need to be adjusted to better support a cross border perspective. A strong regulatory framework that requires TSOs to allocate their full grid capacity across all time frames and all locations is the single most important regulatory measure to counter the trend of national fragmentation. A strong implementation of the Capacity Allocation and Congestion Management Network Code is the key to take the internal market to the next level:

- assess the appropriate level of regulatory oversight for power exchanges and other market coupling operators, and trading and capacity allocation platforms;
- assess whether bodies performing pan-European functions are regulated adequately and proportionately;
- the development of Regional Security Coordination Centres and investigate the opportunities for these eventually to merge into a single European Security Coordination Centre, or one per synchronous area.

4. Are there other areas where we should focus?

There is a genuine lack of definition and decision on security of supply/generation adequacy, which is a precondition to assess the need for e.g. CRM. In a common market it is also necessary that this is looked upon from a broader perspective than from a purely national perspective.

The amount of financial regulation aimed at financial institutions is increasing and increasingly affecting energy markets. ACER should focus on interacting with Commission and financial regulators in order advice them on energy markets differences from investment instruments' markets and how to implement financial regulation without negative impact on energy markets efficiency.

The trend towards efficient trading arrangements is threatened by rigid application of tightened financial sector rules without recognising the asset/demand-backed characteristics of the energy market. Without possibilities for affordable financial hedging, incl. the use of bank guarantees in the trading of financial electricity contracts, the trading liquidity in both physical day-ahead trading and in financial products would severely suffer, resulting in added costs for the customers.

Swedenergy would also like to emphasise that harmonisation with the means of Network Codes is not an end in itself and should be done more carefully and only when there are observed distortions in trade or capacity allocation from the different models used or when there is a clear cross border impact. Special concerns are related to NC FCA and NC Balancing.

The NC FCA is focused on one market structure being used in CWE-area. The products used in the Nordic market are however different, and a one to one copy could lead to a less well functioning Nordic market, while not improving capacity allocation or leading to better hedging possibilities.

In NC Balancing there is a proposal to limit settlement period to 30 minutes or less. We find this requirement potentially a major threat for the implementation of demand response that typically is based on hourly prices and hourly metering. A too categorical harmonisation could therefore lead to the potential exclusion of demand flexibility from that market.

Furthermore Swedenergy would like to complement the regulatory action list with:

- Activities to support a development where intraday, day ahead and forward should reflect the physical reality of real time so that aggregated supply and demand are continuously matched.
- the development of a regulatory framework that open up for regional development as a driver for increased cross border integration, complementary to, not replacing, the EU-wide development up to date;
- activities to monitor tariffs and to counteract the negative consequences of a too high spread in tariffs
- activities to monitor and counteract unintended negative consequences for the EU-ETS from the increasing amount of subsidies and calls for additional CRMs for other capacities. An energy only approach is also the design options that have the best preconditions to deliver a cost efficient fulfilment of any CO2 reduction target.

B Gas wholesale markets

Swedenergy have no comments.

C Infrastructure investments

In our opinion there is a need for better follow up, more regional coordination to ensure a common model and not the sum of national models.

Regarding 3.22, it should be ensures that new framework for ITC gives the right incentives and does not punish countries which can export their flexibility.

1. Have we identified correctly the issues and trends within each area of the energy sector?

Swedenergy share ACER's view that the rapid growth renewable energy generation capacity, increase the importance of a strengthened transmission grid and that this grid must be governed by a European perspective. An enforced cross border interconnection enable the shared use of generation capacity and resources, leading to lower costs for consumers.

As important as developing new connections is that existing transmission capacities are operated in the most efficient way. Swedenergy therefore

cautions against the (premature) introduction of (national) generation adequacy measures that might hamper the cross-border exchange of electricity and have negative impact on transmission grid development and trade.

2. Have we identified an appropriate regulatory response?

Insufficient development of transmission capacity is one of the main obstacles for the internal market. Swedenergy therefore encourages ACER and NRAs to look for measures to speed up the processes not only for projects of common interest, but for all transmission development related initiatives and projects. One way of guarantee some level of development across borders would be to open up for 3rd party interconnector projects, conditioned on that the full capacity is handed over to the market coupling operator and the operation to the system operator. Thus Swedenergy propose to complement the list of regulatory responses with:

- An initiative set to recognise and enable market coupled third party projects (merchant links) as a complementary driver for TSO-driven cross border capacity development. Currently the exemption in article 17 of the IEM-regulation is not applied in a consistent and foreseeable way. Being a natural monopoly the optimal quantity of transmission grid needs to be realised through a regulated tariff. However, a third party project, subject to a fair regulatory approval and conditioned to use the market coupling mechanism would drive the desired interconnector development when the regulated TSO fail to generate progress within the regulated approach.

3. Which regulatory actions are most important and should be prioritised?

4. Are there other areas where we should focus?

Swedenergy would like to complement the regulatory action list with:

- Activities aimed at incentivise that cross border capacity is developed according to socioeconomic sustainable levels closing the gap between socioeconomic potential and real development, here a combination of regulatory measures may be applied, among those a revised and harmonised application of the merchant links exemption.
- Adopt regulatory framework to incentivise the use of new technologies facilitating public acceptance (e.g. through reduced environmental impact).
- Evaluate under what conditions merchant links effectively may complement the TSO driven development. (see above)
- One potential way to speed up the cross border co-operation of transmission system operation would be to launch a pilot project where system and market operation are optimized cross border and the potential for cost savings for society may be properly evaluated based on empirical data. Such an entity could also perform part or all of the activities referred to in the first bullet above.

D Consumers, retail and the role of DSOs

Swedenergy wants to point out that price regulation is one of the main barriers towards customer empowerment and the foundation of well-

functioning retail markets. Phasing out regulated prices at domestic level – especially if set below market prices – is a precondition for customers to reap the benefits of liberalised markets in which competitive pressure and free market price formation boost competition and spur innovation. We would therefore 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 responsible only to a very limited degree. Numbers from Eurelectric 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%. The development is due to the cost of funding government policies for renewable energy, social support and energy efficiency. Not taking the responsibility for this development, policymakers – and regulators – do not increase consumer trust in the market and the energy companies. Also it should be noted that the value of the price signal decreases as the share of taxes and levies increases.

Swedenergy 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 urge ACER to consider that there are both contractual and technical considerations to be taken into account when discussing options for making switching speedier. 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.)

Swedenergy agrees 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, retailers 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.

The implementation of smart meters is lagging in Europe. These are the prime tools for to ensure active demand side participation into to market. As the share of intermittent generation increases, the more important it becomes

that end-users have a real possibility and motivation to adjust their electricity usage according to electricity hourly prices.

As the energy efficiency develops and micro-generation becomes the energy input from grid decreases while the needed power may even increase. This is leading to situation, where energy based distribution tariffs are no longer applicable, and we see a need to adjust DSO tariffs accordingly in the whole Europe. For example GEODE has done analysis on this subject.

1. Have we identified correctly the issues and trends within each area of the energy sector?

ACER's description provides a good overview of the main drivers that will drive the development on the consumer side of the market. In general, the (smart) developments on the electricity side revolve around better access to data and lowering market barriers so that all market actors can participate in the market when wanted. Improving access to data should be one of the main tasks for DSO's/ TSO's, while regulators should focus on lowering market participation barriers.

2. Have we identified an appropriate regulatory response?

One of the main reasons that there have been relatively limited developments in the area of DSR and Energy Efficiency services is that the business case in many cases is just lacking. For energy efficiency the high upfront investments are an important barrier for customers (even though the business case is often positive), while for DSR services the current price differentials do not give sufficient (price) incentives to customers to engage in DSR.

The uptake of DSR is probably mainly dependent on the level of RES penetration. By the time that higher RES levels make market prices more volatile (and not just lower), and customers are increasingly exposed to these market prices on a real time basis DSR measures will become attractive. For this to happen market actors should become increasingly responsible for their own imbalance as also is envisioned in the revised State Aid Guidelines. This, in combination with easier market access should help to develop DSR to the needed level.

Especially on the retail market level, ACER should acknowledge regional differences. Harmonization of retail markets in Europe should not be a goal in itself, but be carried out where necessary to create a level playing field and accurate price signals. Unlike on a wholesale market level, the benefits of full harmonization in retail markets are much smaller, while it remains a very costly exercise. Harmonization should mainly focus on improving price signals.

Swedenergy believes that the role of the DSO should be that one of a neutral market facilitator. The main task of the DSO should be to the management of data and making it available to the market in a non-discriminatory way. DSO should not become more active in the ESCO area, but focus on smart metering and smart grids. Because these developments require big investments, the regulatory framework for DSO's should be structured in such a way that DSO's are enabled to make the necessary investments.

3. Which regulatory actions are most important and should be prioritised?

Swedenergy supports ACERs approach that primary focus should be on fully implementing the Third Package. This is particularly important for those elements of the Third Package that help to improve the accuracy of price signals (e.g. the 'market' Network Codes) and which should have absolute priority, before ACERs focus shifts to developing new regulation.

Further regulatory intervention should primarily focus on getting price signals right. Price caps in wholesale markets need to be removed, regulated prices in retail markets need to be abandoned and DSO's need to incentivise "smart" technology where suitable. Swedenergy strongly believes that many of the challenges energy markets are currently facing - i.e. lack of demand response, and flexibility - are caused by the absence of correct price signals.

Facilitate the development of household "prosumers", where e.g. the EU VAT directive 2006/112/EC constitutes a barrier for a simple management.

4. Are there other areas where we should focus?

Consumers should increasingly be provided with the possibility to decide if they want to be exposed to real time prices or want complete price certainty. Real time balancing information (and prices) will therefore increasingly be needed from specific customers. Similarly, it should also be up to consumers to determine if they want full supply adequacy contracts or contracts with possible load reductions. Competition in the retail market will ensure that the products needed are offered by different suppliers, and hence the regulatory interventions on product types must be avoided.

Furthermore, as all demand is provided with the option to be active in the market, the activity of aggregation of demand response must be properly defined and regulated. All market actors should be increasingly responsible for their own imbalances, thus retailers should not be responsible for the imbalances of other parties (e.g. third parties that are offering DSR solutions to our customers i.e. Aggregators).

Yours sincerely,

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ACER

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