

**RECOMMENDATION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 03/2013**

of 25 March 2013

**ON THE NETWORK CODE ON GAS BALANCING OF TRANSMISSION
NETWORKS**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹ (hereinafter referred to as the ‘Agency’), and, in particular, Articles 6(4) and 17(3) thereof;

HAVING REGARD to Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005², and, in particular, Article 6(9) thereof;

HAVING REGARD to the favourable opinion of the Board of Regulators of 20 March 2013, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- (1) Since 2003, gas balancing rules were identified as a priority topic by the European Commission, stakeholders and regulators at several Madrid Fora. On 3 March 2011, the Agency became operational and started immediately the formal process for developing the Framework Guidelines on Gas Balancing in Transmission Systems³ (the ‘Framework Guidelines’), that were adopted by the Agency on 18 October 2011.
- (2) On 4 November 2011, the European Commission, in consideration of the Framework Guidelines’ contribution to non-discrimination, effective competition and the efficient functioning of the gas market, invited the European Network of Transmission System Operators for Gas (ENTSOG) to submit a Network Code on gas balancing in transmission networks by 5 November 2012.
- (3) In drafting the Network Code, ENTSOG has endeavoured to extensively involve stakeholders in a transparent process by organising several “Stakeholders Joint Working Sessions” (SJWS), workshops, and public consultations.

¹ OJ L 211, 14.8.2009, p.1

² OJ L 211, 14.8.2009, p.36

³ FGB-2011-G-002

- (4) Throughout the whole process, ENTSOG has closely cooperated with the Agency. ENTSOG published a draft Network Code on gas balancing in transmission systems for public consultation on 13 April 2012. To assist ENTSOG in the finalisation of the Network Code, the Agency evaluated the draft Network Code's compliance with the Framework Guidelines and informally submitted a detailed preliminary Reasoned Opinion to ENTSOG on 14 June 2012. In its letter of 2 October 2012 to ENTSOG, the Agency reiterated ten main areas in respect to which the meanwhile amended draft Network Code was not fully compliant with the general objectives of Regulation (EC) No 715/2009 and with the Framework Guidelines.
- (5) ENTSOG officially submitted the Network Code on Gas Balancing of Transmission Networks (the 'Network Code') to the Agency and the European Commission on 26 October 2012, in which ENTSOG addressed also most of the Agency's concerns expressed in the letter of 2 October 2012.
- (6) According to Paragraph 1.2 of the Framework Guidelines, the Network Code has been evaluated on the basis of the degree of compliance with the Framework Guidelines and the fulfilment of the objectives as set out in chapter 1.3 of the Framework Guidelines. These include the promotion of harmonised balancing regimes in order to encourage and facilitate gas trading across systems and to support the development of competition within the EU, both between Member States and within each Member State, and thereby to move towards greater market integration. The Framework Guidelines' objectives also refer to Article 21 of Regulation (EC) No 715/2009, which requires that balancing regimes are market based.
- (7) In its Reasoned Opinion of 25 January 2013 addressed to ENTSOG (the 'Reasoned Opinion'), the Agency evaluated the Network Code regarding the degree of its conformity with the Framework Guidelines and the attainment of the objectives of maintaining security of supply, supporting completion and functioning of the internal market in gas and cross-border trade, including delivering benefits to customers.
- (8) The Reasoned Opinion, while acknowledging a generally high level of conformity of the Network Code with the Framework Guidelines and a commendable stakeholder engagement process, considered that some particular articles of the Network Code could be brought further into line with the provisions of the Framework Guidelines as well as with the objectives set out therein or in Regulation (EC) No 715/2009. Eight elements were identified, relating to (re)nominations, the neutrality mechanism, transitional measures, information provision on within-day obligations and (re)nominations, definitions related to "paper traders", NRA decision making, and balancing neutrality cash flows. The Reasoned Opinion contained proposals on how to bring the Network Code further into line with the Framework Guidelines.
- (9) ENTSOG officially submitted an amended Network Code on Gas Balancing of Transmission Networks (the 'amended Network Code') to the Agency on 21 February 2013, which sufficiently reflects all of the proposed amendments, except for one concern, from the Reasoned Opinion, as well as revisions related to the legal drafting and further clarifications of the European Commission. In an explanatory document for the Network Code on Gas Balancing of Transmission Networks, submitted alongside the amended

Network Code, ENTSOG coherently described and reasonably argued all amendments of the Network Code.

- (10) The Agency concluded that the amended Network Code sufficiently conforms to the Framework Guidelines and contributes to the respective objectives,

HEREBY RECOMMENDS:

The adoption of the amended Network Code by the European Commission.

This Recommendation is addressed to the European Commission.

The amended Network Code as well as the supporting documents received from ENTSOG are attached to this Recommendation for information purposes.

Done at Ljubljana on 25 March 2013.

For the Agency:


Alberto Pototschnig
Director