

2011-09-28  
Kristian Gustafsson

Commission de régulation de l'énergie  
15, rue Pasquier  
75379 Paris Cedex 08  
France

## **French Energy Regulatory Commission public consultation of 26 July 2011 on the possibility of exempting new electricity interconnectors from Article 9 of Directive 2009/72/EC of 13 July 2009**

Vattenfall welcomes the opportunity to respond to the consultation. The implementation of the 3<sup>rd</sup> energy package is an institutional improvement of the framework and regulation that governs the internal European energy market. The legislative package has unbundling as a major ingredient, but also emphasise the importance of cross border trade and regulation and transmission development.

### **Question 1 :**

*In your opinion, should interconnection capacity management and allocation rules described in network codes apply to new interconnectors for which an exemption has been granted according to article 17 of Regulation (EC) No 714/2009?*

It is important to distinguish between the economical conditions that by necessity must apply to an exempted interconnector in order to attract market based investments from the physical standards and rules that must apply to all units in an interconnected system. The Network codes as such are expected to deal with both, hence the allocation rules as described in the forthcoming codes should apply also to an interconnector that has received exemptions according to article 17 of Regulation (EC) No 714/2009 insofar it is necessary for the efficient and secure operation of the interconnected system, but not restrict the commercial conditions in accordance with the exemption granted for the interconnector in question.

### **Question 2 :**

*In your opinion, how should privileged access to interconnection capacity be prevented in this specific case?*

Vattenfall agrees that this is a problematic case that has to be dealt with in order to maintain credibility for the explicit auction results. Vattenfall views implicit auction as the first choice of allocation principle, however when that is not possible (i.e. due to insufficient liquidity) the

owner of the auctioned capacity must not take part in the explicit capacity auction. This origination of the bids should be monitored by the auctioneer and market surveillance.

**Question 3 :**

*In your opinion, is the indirect participation of an electricity producer or supplier by means of a mass purchase of long-term capacities a method that in practice contravenes the spirit of unbundling or the guarantee of the non-discriminatory nature of third party access to a new interconnector?*

Vattenfall wish to emphasize that capacity allocation according to market prices is a fundamental prerequisite for an socioeconomically efficient and credible handling of cross border capacity. Vattenfall is convinced that the European target model will promote well functioning wholesale markets, and market Coupling is one of the main building blocks in the model.

**Question 4:**

*In your opinion, should the indirect participation of an electricity producer or supplier by means of a mass purchase of long-term capacities be one of the practices that are the subject of a revision clause of a granted exemption? Should it be prohibited (from what level)?*

See answer to question 3. There should from this aspect be made no difference between a large consumer, an electricity producer or a supplier.

**Question 5 :**

*In your opinion, should the reason for investment be taken into account when making the decision whether or not to grant an exemption from the unbundling obligation to a producer or supplier supporting a new interconnector project? If yes, how?*

The general criteria stated in article 17(1) of Regulation (EC) No 714/2009 should indicate the basis for whether or not to grant an exemption. There is no point to make “reason for investment” an explicit criterion.

**Question 6 :**

*What is your opinion of the connection made between the exemption from the non-discriminatory nature of third party access to the new interconnection and the exemption from the unbundling principle?*

A credible exemption from the unbundling principle must be accompanied by a market design that guarantees efficient operation and non discriminatory access to the interconnector capacity. Vattenfall is convinced that the European target model will promote well functioning wholesale markets. Market Coupling is one of the main building blocks in the model. Implicit auction should therefore be the preferred method; however explicit physical auction may be necessary in the case of insufficient liquidity in the wholesale market. Physical rights should however only be allowed in a transitional manner and once market coupling is introduced all capacity should be managed implicitly and transmission rights in the form of Financial Transmission Rights.

**Question 7 :**

*In your opinion, should the fact that the exemption from the non-discriminatory nature of third party access is either total or partial have an impact on the decision on exemption from the unbundling principle?*

No, see answer to question 6.

**Question 8:**

*In your opinion, should exemption from the unbundling principle be based on characteristics of the third party access other than non-discrimination? Which ones?*

See answer to question 9.

**Question 9:**

*In your opinion, should exemption from the unbundling principle be based on criteria other than the level and extent of the exemption from third party access? Which ones?*

No, see answer to question 5. Paragraph 1(f) of article 17 of Regulation (EC) No 714/2009 states "the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked"

**Question 10 :**

*Do you think that producers or suppliers of electricity should be able to sponsor new interconnector projects that do not benefit from exemption from the non-discriminatory nature of third party access?*

Yes, see answer to question 5.

**Question 12 :**

*In your opinion, what measures for protecting the non-discriminatory nature of third party access and confidentiality of commercially sensitive information should be implemented, as a minimum?*

The issue raised in question 2 is important to deal with, such as the auction result is fair, hence it is necessary that the auction process is carried out by an independent party (e.g. Independent System Operator or similar function) under regulatory supervision.

**Question 13:**

*In your opinion, which functions of the operating undertaking should receive particular attention in terms of the non-discriminatory nature of third party access and the confidentiality of commercially sensitive information?*

See answer to question 14.

**Question 14:**

*In your opinion, what provisions in terms of the non-discriminatory nature of third party access and the confidentiality of commercially sensitive information should apply to new interconnectors?*

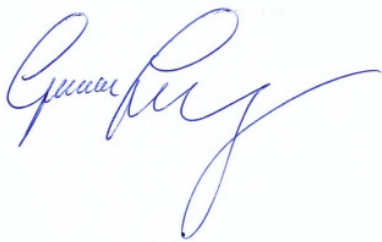
See answer to question 12. The same conditions must apply to the physical operation of the capacity. The roles and responsibility of the owner of line and the party handling the capacity allocation should correspond to those of a transmission owner and system operator.

**Question 16:**

*In your opinion, following the transposition of the 3rd energy package into French law, what additional developments might be desirable when CRE deliberation of 30 September 2010 will be updated?*

In article 3 of the directive it is stated that the main objective is to achieve a competitive market in electricity. In that context, consumers should be able to freely choose their supplier. This tackles transparency of the market and non-discriminatory prices issues.

With kind regards



Gunnar Lundberg  
Vice President European Affairs and Policy Analysis  
Vattenfall AB  
SE-162 87 Stockholm