

Mr. Dmytro Vovk  
Chairman of the Commission  
National Energy and Utility Regulatory Commission  
Ukraine

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Vienna, 03 November 2017  
UA-MIN/O/jko/31/03-11-2017

**Subject: Amendments to the Gas Transmission System Code and accompanying acts**

Dear Mr. Vovk,

We would like to acknowledge the continuous efforts undertaken by the Ukraine's National Energy and Utilities Regulatory Commission ('Regulator') in reforming and improving the legislative framework in the natural gas market of Ukraine.

The Energy Community Secretariat (the Secretariat) reviewed and assessed the draft Resolution "On Amendments to the Gas Transmission System Code" you sent to the Secretariat in the Ukrainian language on 28.09.2017.

The Amendments to the Code of the Gas Transmission System aim at introducing comprehensive balancing rules, including daily balancing and related instruments such information & trading platform, changes to nomination / re-nomination and information exchange procedures as well as to capacity allocation. Moreover, the amendments stipulate conditions and terms under which the Regulator would monitor network development plans and investment decisions.

a) Balancing rules

The amendments referred above revealed their general conformity with the requirements stipulated in Directive 2009/73/EC and Regulation (EC) No 715/2009, as applicable to the Contracting Parties of the Energy Community, as well as with EU's regulatory practices.

Furthermore, the Secretariat notes that the amendments reflect some provisions from Regulation (EU) No 312/2014 establishing a Network Code on Gas Balancing of Transmission Networks ("NC on Balancing") as applicable in the European Union, though the said act is not yet binding in the Energy Community.

The Secretariat welcomes such approach. Nevertheless, the Secretariat notices hereby that there are several non-compliances with Energy Community law indicated:

The deadline of entering into force of the Balancing chapter is linked the certification of the transmission system operator (TSO). The Secretariat notices that the balancing services/rules represent one of the core tasks of a TSO, as requested by the Gas Directive and that such tasks cannot be linked to the status of its unbundling or certification. This is



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potential breach of the Gas Directive. In addition, ability to switch to daily balancing depends on the technical possibilities of a TSO, and not to its unbundling status.

Article 3 of Chapter 5 of Section IV reads ambiguous. It is not clear whether the article refers to the supplier of last resort (reserve supplier), as the used terms said, or also to a supplier with public service obligation, as the text of the point in general suggests.

Those suppliers have different scope of obligations and rights and which cannot be mixed in the transmission code. Furthermore, the balancing rules must not discriminate against system users, which is the fundamental requirement of the Third Package, or in this case, against balancing responsible parties. The balancing rules cannot envisage additional burden for either public service supplier or a reserve supplier and thus, indirectly, place them in a less advantageous positions to other suppliers (i.e. balancing responsible parties), or allow for cross-subsidies between network users. The Secretariat notices that this might be additional obstacle in supplier switching and consequently detrimental to the wholesale and retail market opening. We need further clarification on this point.

Procurement of balancing energy for the purpose of balancing services: the Gas Directive (article 13 para 5) requires from TSOs to procure energy they use for carrying out their functions (inter alia, for the balancing services) in a transparent, *non-discriminatory* and market based procedures. Notwithstanding Ukrainian legislation on public procurement, the amendments to the Code must not disqualify any potential energy provider to participate in this procurement, which must be organised in a transparent and market – based manner.

The Secretariat notices hereby that there are several shortcomings of the draft or a need for further clarifications:

The provisions related to creation of information and/or trading platforms, do not envisage any deadline and could be considered as if they were to be implemented immediately, without allowing reasonable time to TSO to introduce it in operation. We advise amending those provisions in cooperation with the TSO.

Article 4 of Chapter 5 of Section IV defines procedure related to the Register, in the case of switching supplier. Firstly, the supplier switching rules are elaborated at length in other secondary acts; secondly, the amendments seem to impose additional burden to customers when they switch to another supplier. Additional clarifications are needed.

Article 7 of Chapter 1 of Section XI reads that nominations for exit to distribution systems and for intermittent capacity at state interconnection points can exceed allocated capacity. Even if there is enough technical capacity for this action(s), do the amendments elaborate on consequences (penalties etc.) of those and how do they envisage matching with potential imbalance charges?



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Chapters 2 and 3 of Section XI elaborate the nomination and re-nomination submission procedures. Nominations and re-nominations have to be submitted during the Day (D) for the following Day (D+1), or, which is the same, in the previous Day (D-1) for the Day (D). The text and corresponding Abbreviations are not harmonised through the entire text.

b) Network development plans

The amendments referred above revealed their general conformity with the requirements stipulated in Directive 2009/73/EC, as applicable to the Contracting Parties of the Energy Community.

With introducing those amendments, the Regulator elaborates in detail procedures, which are needed to have its monitoring tasks fully applied. However, in doing so, the Regulator will have to have capacity to exercise this demanding tasks, especially given that new chapters added in Section V, on ten year network development plans, might be too demanding, especially when it comes to a frequent (quarterly) reporting.

The amendments need to be aligned with the TSO financial year (Chapter 6), ensuring that TSO will have all requested data. Furthermore, the text defines exact deadlines for TSO, whereas it is silent as to the deadlines for Regulator to respond.

c) the Amendments to the Standard Agreement on the Natural Gas Transportation

The Secretariat would like to support the aim and efforts done in amending other relevant documents (the Code of the Gas Distribution System, the Gas Storage Facilities Code, the Rules of Natural Gas Supply, and the Standard Agreement on the Natural Gas Transmission). All amendments reflect changes stipulated by the main document – the Amendments to the Gas Transmission Code.

However, the Amendments to the Standard Agreement on the Natural Gas Transmission introduce an exemption from payment for the balancing services provided by DSO (sic!), in the second paragraph in point 9.3 of Section IX, which is not clear and requires clarification or deletion. Furthermore, Item 2.4 under the subject matter of the Agreement *excludes* balancing services from the scope of the Agreement, although the entire Section IX "Establishment of balancing services cost and payment procedure" is added to the Agreement. Please, clarify these clashes.

The deadlines for imbalance settlements seem not to match time-wise as it reads that the TSO issues imbalance invoice by 12<sup>th</sup> day of the following month and a Client shall pay an invoice in the same time frame, by 12<sup>th</sup> day of the following month.

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The Secretariat's comments hereinabove shall be without prejudice to any future measures that may be taken by the Secretariat should, *inter alia*, application practices of the above-referred legal acts raise uncertainties about their compliance with Energy Community law.

Unfortunately, due to short notice and already agreed obligations, relevant experts cannot participate to the meeting scheduled for 6 November in Kyiv, but we are available for further discussions, if needed.

We remain grateful for your kind and professional cooperation.

Yours sincerely,



Janez Kopač  
Director