

Gas Network Codes Functionality Process Issue Solution

| Issue details | |
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| Number: | 142-18-01-26-1432 |
| Name: | Ambiguity in text of Regulation 459/2017 (NC CAM) regarding the way of implementation of virtual interconnection points (VIPs) |
| Reporting party: | Gasunie Transport Services (NL) and Gasunie Deutschland Transport Services GmbH (DE) |
| Network Code / Guidelines concerned: | Network Code on Capacity Allocation Mechanisms, Commission Regulation (EU) 459/2017 |
| Article of the Network Code / Guidelines | 19.9 |
| Category: | Cross-border issues with further European relevance |
| Abstract: | |
| <p>In art. 19.9 of NC CAM it is stated that TSOs shall implement functional virtual interconnection points (VIPs) where two or more Interconnection Points (IPs) connect the same two adjacent entry-exit systems. Because of a recent letter (December 2017) from the European Commission (EC) containing its interpretation of the condition in art. 19.9 (a) NC CAM, TSOs are faced with uncertainty about the implications hereof for the implementation process. The EC interpretation differs from the chosen approach of TSOs and introduces the risk that shippers could challenge the way TSOs implement VIPs or even challenge the introduction itself, with the aim to cancel their capacity contracts. We think this ambiguity should be taken away by adapting the NC CAM.</p> | |

| Issue solution(s) | |
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| Publication date: | 14 August 2018 |
| <p>ENTSOG & ACER acknowledged the issue as valid and proposed two options to the European Commission and the Gas committee on 20 June 2018. The aim was to create legal certainty and harmonized implementation across Europe. Both approaches foresee an amendment of NC CAM.</p> | |

Approach 1: All capacity goes to the VIP.

In this approach the sum of technical capacity of all IPs contributing to the VIP will create a single VIP. All existing contracts for capacity at IPs contributing to the VIP shall be transferred to the VIP.

Approach 2: Only new capacity at the VIP, existing (may) stay at IP.

In this approach the existing contracts remain on the IP and available capacities are marketed on the VIP.

An alternative to both approaches was only to postpone the implementation date.

Conclusions:

The ACER/ ENTSOG proposal was to amend the NC CAM. In a letter addressed to ACER and ENTSOG on 6 August 2018, the **European Commission denied to follow the suggested joint change proposal** stating that an amendment of Article 19(9) is not required to deduct its meaning and ensure its correct implementation. Therefore, the joint proposal of ACER/ ENTSOG cannot be pursued instantly.

The EC also stated that the wording of Article 19(9) could be clarified later, in accordance with the ACER/ENTSOG joint considerations on the occasion of future amendments to the NC CAM.

In the letter, the European Commission expresses its opinion that:

- the transfer of contracted and available capacity to the VIP is implicitly required pursuant to Article 19(9) CAM NC;
- an interpretation of Article 19(9) under which a transfer of contracted capacity was not required would prevent the implementation of VIPs in most or even all cases where capacity has been contracted at the interconnection points in question;
- such an interpretation would undermine the application of the Article and contradict the main purpose of the NC CAM, namely to create more liquid and competitive gas markets, and is hence not compatible with the principle of *effet utile*.

The letter referenced contains the Commission services' interpretation of the Article. It is ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

The EC's interpretation of Art. 19(9) CAM NC and its opinion that there is no need to amend the Art. 19(9) CAM is not shared by some EU TSOs and NRAs.

Taking account of all the inputs ACER and ENTSOG received in this process the following key documents are published:

- [ENTSOG/ACER note on VIPs for the EC](#)
- [EC response to ENTSOG/ACER on VIPs](#)