Commission Regulation (EU) No 312/2014 of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 1775/2005[(1)], and in particular Article 6(11) thereof,

Whereas:

(1) The urgent completion of a fully functioning and interconnected internal energy market which contributes to ensuring the supply of affordable and sustainable energy to the Union's economy is crucial to the objective of increasing competitiveness and ensuring that all consumers can purchase energy at the keenest prices.

(2) In order to move towards greater market integration, it is important that rules on gas balancing of transmission networks facilitate gas trading across balancing zones thus contributing towards the development of market liquidity. This Regulation therefore sets out harmonized Union-wide rules on balancing which have the objective to give network users the certainty that they can manage their balance positions in different balancing zones throughout the Union in an economically efficient and non-discriminative manner.

(3) This Regulation supports the development of a competitive short term wholesale gas market in the European Union that enables the provision of gas flexibility, from whatever source, to offer it for purchase and sale via market mechanisms so that network users can balance their balancing portfolios efficiently or the transmission system operator can use the gas flexibility when balancing the transmission network.

(4) Regulation (EC) No 715/2009 sets non-discriminatory rules for access conditions to the natural gas transmission networks with a view to ensuring the proper functioning of the internal market in gas. Market-based balancing rules financially incentivise network users to balance their balancing portfolios via cost-reflective imbalance charges.

(5) Network users are to bear the responsibility of balancing their inputs against their off-takes, with the balancing rules designed to promote a short term wholesale gas market, with trading platforms established to better facilitate gas trade between network users and the transmission system operator. The transmission system operators carry out any residual balancing of the transmission networks that might be necessary. In doing so,

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the transmission system operators should follow the merit order. The merit order is constructed so that transmission system operators will procure gas taking account of both economical and operational considerations, using products that can be delivered from the widest range of sources, including products sourced from LNG and storage facilities. The transmission system operators should aim to maximise the amount of their gas balancing needs through the purchase and sale of short term standardised products on the short term wholesale gas market.

(6) In order to enable network users to balance their balancing portfolios, this Regulation also sets out minimum requirements for information provision to implement a market-based balancing regime. The information flows provided under this Regulation therefore aim to support the daily balancing regime and seek to be a set of information to support the network user in managing its risks and opportunities in a cost efficient way.

(7) In addition to the protection of commercially sensitive information, under this Regulation the transmission system operators should preserve the confidentiality of information and data submitted to them for the purpose of implementation of this Regulation and should not disclose to third parties any of this information and data or part of it except and to the extent legally entitled to.

(8) This Regulation has been adopted on the basis of Regulation (EC) No 715/2009 which it supplements and of which it forms an integral part. References to Regulation (EC) No 715/2009 in other legal acts shall be understood as also referring to this Regulation. This Regulation does apply to non-exempted capacities in major new infrastructures which have received an exemption from Article 32 of Directive 2009/73/EC of the European Parliament and of the Council[(2)] or from the former Article 18 of Directive 2003/55/EC of the European Parliament and of the Council[(3)] to the extent the application of this Regulation does not undermine such an exemption. This Regulation shall be applied taking into account the specific nature of interconnectors.

(9) This Regulation was established according to the procedure as set out in Article 6 of Regulation (EC) No 715/2009. It further harmonises the balancing rules laid down in Article 21 Regulation (EC) No 715/2009 in order to facilitate gas trade.

(10) This Regulation includes provisions that apply to distribution system operators and that aim to harmonise their roles only where and to the extent necessary for the due implementation of these provisions.

(11) National regulatory authorities and transmission system operators should have regard to best practices and endeavours to harmonise processes for the implementation of this Regulation. Acting in accordance with Article 7 of 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 Regulators[(4)], the Agency and the national regulatory authorities should ensure that balancing rules are implemented across the Union in the most effective way.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Committee established pursuant to Article 51 of Directive 2009/73/EC.

HAS ADOPTED THIS REGULATION:

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CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a Network Code setting out gas balancing rules, including network-related rules on nomination procedures, imbalance charges, settlement processes associated with the daily imbalance charge and operational balancing between transmission system operators' networks.

Article 2

Scope

1 This Regulation shall apply to balancing zones within the borders of the Union.

2 This Regulation shall not apply to balancing zones in Member States that hold a derogation on the basis of Article 49 of Directive 2009/73/EC.

3 This Regulation shall not apply to reconciliation that would be necessary between the allocations and actual consumption subsequently derived from final customer meter readings when obtained.

4 This Regulation shall not apply in emergency situations where the transmission system operator shall implement specific measures defined under the applicable national rules and on the basis of Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply[(5)], as appropriate.

5 The respective rights and obligations originating from this Regulation with regard to network users shall only apply to those network users which have concluded a legally binding agreement, being a transport contract or another contract, which enables them to submit trade notifications in accordance with Article 5.

Article 3

Definitions

For the purposes of this Regulation, the definitions in Article 2 of Regulation (EC) No 715/2009, Article 3 Commission Regulation (EU) No 984/2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council[(6)] as well as Article 2 of Directive 2009/73/EC shall apply. In addition, the following definitions shall apply:

(1) 'balancing zone' means an entry-exit system to which a specific balancing regime is applicable and which may include distribution systems or part of them;

(2) 'balancing action' means an action undertaken by the transmission system operator to change the gas flows onto or off the transmission network, excluding those actions

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related to gas unaccounted for as off-taken from the system and gas used by the transmission system operator for the operation of the system;

(3) ‘neutrality charge for balancing’ means a charge amounting to the difference between the amounts received or receivable and the amounts paid or payable by the transmission system operator due to performance of its balancing activities which is payable to or recoverable from the relevant network users;

(4) ‘trading platform’ means an electronic platform provided and operated by a trading platform operator by means of which trading participants may post and accept, including the right to revise and withdraw, bids and offers for gas required to meet short term fluctuations in gas demand or supply, in accordance with the terms and conditions applicable on the trading platform and at which the transmission system operator trades for the purpose of undertaking balancing actions;

(5) ‘trading participant’ means a network user or a transmission system operator holding a contract with the trading platform operator and satisfying the conditions necessary to transact on the trading platform.

(6) ‘balancing platform’ means a trading platform where a transmission system operator is a trading participant to all trades;

(7) ‘balancing service’ means a service provided to a transmission system operator via a contract for gas required to meet short term fluctuations in gas demand or supply, which is not a short term standardised product;

(8) ‘confirmed quantity’ means the quantity of gas confirmed by a transmission system operator to be scheduled or re-scheduled to flow on gas day D;

(9) ‘daily imbalance charge’ means the amount of money a network user pays or receives in respect of a daily imbalance quantity;

(10) ‘daily metered’ means that the gas quantity is measured and collected once per gas day;

(11) ‘intraday metered’ means that the gas quantity is measured and collected a minimum of two times within the gas day;

(12) ‘non daily metered’ means that the gas quantity is measured and collected less frequently than once per gas day;

(13) ‘balancing portfolio’ means a grouping of a network user’s inputs and off-takes;

(14) ‘notification quantity’ means the quantity of gas transferred between a transmission system operator and a network user or network users or balancing portfolios, as appropriate;

(15) ‘allocation’ means the quantity of gas attributed to a network user by a transmission system operator as an input or an off-take expressed in kWh for the purpose of determining the daily imbalance quantity;

(16) ‘re-nomination cycle’ means the process carried out by the transmission system operator in order to provide a network user with the message regarding the confirmed quantities following the receipt of a re-nomination;

(17) ‘within day charge’ means a charge levied or a payment made by a transmission system operator on or to a network user as a result of a within day obligation;

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(18) 'within day obligation' means a set of rules regarding network users' inputs and off-takes within the gas day imposed by a transmission system operator on network users;

(19) 'base case' means the model for information provision where the information on non daily metered off-takes consists of a day ahead and within day forecasts;

(20) 'variant 1' means the model for information provision where the information on non daily metered and daily metered off-takes is based on apportionment of measured flows during the gas day;

(21) 'variant 2' means the model for information provision where the information on non daily metered off-takes is a day ahead forecast

CHAPTER II

BALANCING SYSTEM

Article 4

General principles

1 The network users shall be responsible to balance their balancing portfolios in order to minimise the need for transmission system operators to undertake balancing actions set out under this Regulation.

2 Balancing rules established in accordance with this Regulation shall reflect genuine system needs, taking into account the resources available to transmission system operators and shall provide incentives for network users to balance their balancing portfolios efficiently.

3 Network users shall have the possibility to enter into a legally binding agreement with a transmission system operator which enables them to submit trade notifications irrespective of whether they have contracted transport capacity or not.

4 In a balancing zone where more than one transmission system operator is active, this Regulation shall apply to all the transmission system operators within that balancing zone. In case the responsibility of keeping their transmission networks in balance has been transferred to an entity, this Regulation shall apply to that entity to the extent defined under the applicable national rules.

Article 5

Trade notifications and allocations

1 Gas transfer between two balancing portfolios within one balancing zone shall be made through disposing and acquiring trade notifications submitted to the transmission system operator in respect of the gas day.

2 The timing for submitting, withdrawing and amending trade notifications shall be defined by the transmission system operator in the transport contract or other legally binding agreement with network users taking into account the time, if any, for processing the trade notifications. The transmission system operator shall enable the network users to submit trade notifications close to the time when the trade notification becomes effective.