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RECOMMENDATION OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS No 02/2013

of 25 March 2013

ON THE NETWORK CODE ON DEMAND CONNECTION

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 Regulators[1], and, in particular, Articles 6(4) and 17(3) thereof;

HAVING REGARD to Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003[2], and, in particular, Article 6(9) thereof;

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

WHEREAS:

(1) The Framework Guidelines on Electricity Grid Connections, FG-2011-E-001 (the 'Framework Guidelines')[3], were adopted by the Agency on 20 July 2011, pursuant to Article 17(3) of Regulation (EC) No 713/2009.

(2) Following the adoption of these Framework Guidelines, the Commission invited ENTSO-E, by letter of 5 January 2012, to start the drafting of a network code on Distribution System Operator and industrial load grid connection rules in electricity and to submit it to the Agency, pursuant to Article 6(6) of Regulation (EC) No 714/2009, by 5 January 2013.

(3) In drafting this network code, ENTSO-E endeavoured to involve stakeholders in a transparent process by organising workshops, bilateral meetings, user group meetings open to European-wide associations representing members who have a direct interest in the network code, and public consultations, including a call for evidence, documented on ENTSO-E's website.

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[1] OJ L 211, 14.8.2009, p. 1.
[2] OJ L 211, 14.8.2009, p. 15.
[3] http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Framework_Guidelines/FG%20On%20Electricity%20Grid%20Connections/110720%20FGC%202011E001%20FG%20Elec%20GrConn%20FINAL.pdf

(4) On 4 January 2013, ENTSO-E submitted to the Agency, pursuant to Article 6(6) of Regulation (EC) No 714/2009, the Network Code on Demand Connection (the 'Network Code'), accompanied by the following supporting documents, which the Agency also took into account when assessing the Network Code's content:

- Frequently Asked Questions;
- Justification outlines;
- Evaluation of comments;
- A document entitled "How can the Demand Connection Code facilitate Demand Side Response measures across Europe?".

(5) In their letter of 8 March 2013, ENTSO-E addressed possible concerns of the Agency with respect to Articles 9(3) and 10 of the Network Code. ENTSO-E submitted in an annex specific amendments to the provisions on national scrutiny of the requirements to be implemented at national level and on recovery of costs, to align them with the text of the Network Code Requirements for Grid Connection Applicable to all Generators, as re-submitted on the same date. ENTSO-E asked the Agency to consider the submitted Network Code as being amended by the letter's annex. Further it stated that it saw no need, nor would it use the possibility pursuant to Article 6(8) of Regulation (EC) No 714/2009 to resubmit a revised version of the Network Code merely to amend the provisions on the national scrutiny of the implementation of non-exhaustive requirements and on cost recovery.

(6) The Agency has taken the amended provisions on national scrutiny and cost recovery into account when formulating its opinion of 25 March 2013. Although the Agency raised certain minor concerns, it concluded that the Network Code is overall in line with the Framework Guideline,

HEREBY RECOMMENDS:

The adoption of the Network Code by the European Commission.

The Agency considers that there are a number of areas where the Network Code should be improved.

In the Agency's view, those areas do not affect the compliance of the Network Code with the Framework Guidelines but would still justify a revision of the concerned provisions. Therefore, the European Commission may wish to take them into account when adopting the Network Code.

Those areas are the following:

- Regarding the national scrutiny of the requirements to be implemented at the national level, the drafting proposed in Article 9(5) and the corresponding Recitals (4) and (5) of the amended Network Code seems questionable to the Agency. The recitals do not seem to indicate precisely enough whether they refer only to the situations existing at the time of entry into force of the Network Code or also include future developments

in other countries. This should be clarified. Furthermore, the Agency believes that the European Commission should pay particular attention to Article 9(5), second sentence, regarding its appropriateness and clarity. Finally, the first sentence of Article 9(5) of the amended Network Code does not add any value because it merely states the obvious, i.e. that the allocation of tasks between the Relevant Network Operators is to be in line with the Network Code;

- The Network Code should be without prejudice to the competences of National Regulatory Authorities under the Third Package. This might be misinterpreted as undermined in the current drafting of the Network Code as reference to Article 9(3) is missing in Article 39(8) of the Network Code. The reference to Article 9(3) also lacks clarity in certain articles of the Network Code such as Article 23(1)(a) and Article 20(1)(f);

- The definition of Connection Point in Article 2 of the Network Code does not cover all the types of significant grid users identified under Article 4 of this Network Code. The definition of Connection Point, for instance, refers only to Closed Distribution Networks providing demand side response ('DSR') connected to the Distribution Network, although the Network Code applies to Closed Distribution Networks providing DSR connected to Distribution and Transmission Networks. The definition of Connection Point should be amended in line with the scope of application of the Network Code identified in its Article 4;

- The Network Code lacks consistency in the use of the terms Distribution Network and Distribution Network Connection. Some articles only refer to Distribution Network Connections, although they should cover both Distribution Networks and Distribution Network Connections. For instance, Article 4 of the Network Code is entitled "Significant Demand Facilities and Distribution Network Connections". This Article however covers both Distribution Networks and Distribution Network Connections. Another example may be found in Article 36 of the Network Code addressing the application of the requirements to "Existing Distribution Network Connections". This might exclude Existing Distribution Networks from the application of the Network Code's requirements. The wording of the Network Code should accordingly be scrutinised to ensure consistency in the application of its requirements;

- The provisions in Article 16(a)(i) and (ii) lack clarity on the scope of the national scrutiny of the reactive power ranges to be implemented at the national level. As drafted, it is not possible to determine whether the national scrutiny covers the whole requirement or is limited to the demonstration of possible technical or financial system benefits;

- With regard to the DSR requirements developed in the Network Code, the following should be noted:

    - The drafting of Articles 21 to 24 referring to DSR lacks clarity. The Agency considers that a more productive approach could entail reframing and limiting the obligations with a clear, time-defined role for ENTSO-E to act as an informed adviser supporting the European Commission with technical

expertise when the European Commission progresses DSR through whichever appropriate legislative procedures it chooses to pursue;

- The Network Code may entail a risk of binding the European Commission as to the tool for application of the DSR requirement as well as prejudging the requirements themselves, as set out in Article 23 for DSR System Frequency Control for example;

- The Agency is of the opinion that the European Commission should be free to choose the instrument, i.e. Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products[4] (the 'Ecodesign Directive') or any other instrument that the European Commission may deem more appropriate in its energy efficiency policy. The drafting should allow for any such future requirements to be established in line with the due legislative process chosen by the European Commission and not be prejudged in the Network Code. The European Commission should decide upon the precise necessary requirements, on the basis of an impact assessment and following the procedure applicable for the instrument chosen. In this regard, the cost-benefit analysis performed by ENTSO-E to support the DSR requirements introduced in the Network Code may not be sufficient to justify the automatic introduction of such requirements under the instrument to be chosen by the European Commission in its energy efficiency policy;

- The limitation of potentially mandatory DSR System Frequency Control to Temperature Controlled devices is questionable as it may entail a potential risk of discrimination of possible technical solutions considered under the instrument to be chosen by the European Commission in its energy efficiency policy;

- As drafted, the Network Code entails a risk of limitation and shortcut of the procedure to be followed by the European Commission for the introduction and application of DSR requirements under the Ecodesign Directive or any other instrument that the European Commission may deem more appropriate in its energy efficiency policy[5];

- The interaction between the different requirements if a customer provides more than one DSR service lacks clarity in the Network Code[6];

- The criteria provided in Article 4 of the Network Code for the determination of significant grid users on the basis of the connection to the transmission network may entail differences amongst Member States. The Agency is of the opinion that the network codes

[4] OJ L285, 31.10.2009, p.10.
[5] Particularly in Article 21(4) and (5).
[6] Particularly in Articles 22(1)(l) and 22(1)(m).

to be developed by ENTSO-E in the area of system operation pursuant to Article 8(6)(a), (d), (e) and (f) of Regulation (EC) No 714/2009 and the Framework Guidelines on Electricity System Operation (as adopted by the Agency on 2 December 2011, FG-2011–E-0031)[7] should deliver guiding principles on how to define the transmission network in order to ensure the harmonised, non-discriminatory implementation of the Network Code;

- The Agency has concerns with the Network Code's description of the roles and responsibilities of aggregators as well as how all possible approaches to demand aggregation are considered. Notably, the Network Code lacks clarity as to the role of aggregators for the application of and compliance with the Network Code's requirements. The Agency is of the opinion that the status of aggregators[8] as single users and the possibility accordingly for Demand Facilities to act collectively through an aggregator should be free of possibility of misinterpretation. The Agency advocates the clarification of the definition of aggregator[9] and its consistent use throughout the code to guard against adverse market impacts;

- Albeit the Framework Guidelines specifically request compliance testing and monitoring, the Network Code as drafted may unintentionally lead to a disproportionate burden upon small grid users[10], such as domestic consumers; for example the demonstration of their compliance with the requirements of the Network Code or the requirement of producing simulation models or submitting notifications. The Agency believes that domestic consumers will play an increasingly important role in the transition to a low carbon society and their uptake should not be unnecessarily burdened with administrative tasks. The Agency is of the opinion that the standardisation of electrical devices is fully equipped to address these concerns.

This Recommendation is addressed to the European Commission.

The Agency's Opinion, the Network Code, the supporting documents received from ENTSO-E, and the ENTSO-E letter amending the submitted Network Code with regard to provisions on national scrutiny of the requirements to be implemented at the national level and on recovery of costs, with the amended Network Code included, are attached to this Recommendation for information purposes.

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[7] Framework Guidelines on Electricity System Operation (as adopted by the Agency on 2 December 2011, FG-2011–E-0037, http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Framework_Guidelines/Framework%20Guidelines/FG-2011-E-003_02122011_Electricity%20System%20Operation.pdf)

[8] Particularly in Articles 19(2), 22, 28(1) and (2) and 30(3).

[9] See in this context the definition of the term "aggregator" in Article 2 (45) in the Directive on Energy Efficiency (2012/27/EU) to which the code could refer.

[10] Particularly in Articles 19, 26, 37, 40(5) and also the phrasing of obligations on demand users in recital 5 could be rephrased.

ACER
Agency for the Cooperation of Energy Regulators

Done at Ljubljana on 25 March 2013.

For the Agency:

Alberto Pototschnig
Director

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