



**Comments on the
Draft Guidelines of Good Practice on Open Season Procedures (GGPOS)
- Contribution to the ERGEG Public Consultation Paper -**

GEODE welcomes the opportunity to contribute to the draft guidelines of good practice on open season procedures (GGPOS).

I. Introduction

The development of competition in the European gas market is of significant importance as the European Union is increasingly depended on the import of natural gas from non-EU states. In the past, the European Union has taken important steps to establish a truly integrated and competitive European energy market.

Still, GEODE believes that further steps need to be taken. The development of a competitive internal market with gas prices at a relatively low level due to a sufficient number of market participants, as well as the security of supply call for a legal framework guaranteeing the availability of sufficient infrastructure in the future. In addition to that, a legal framework must ensure that infrastructure is sold at conditions that fit the market's needs and can be accessed on a transparent and non-discriminatory basis. Therefore, the draft guidelines presented by the ERGEG are an important step in the right direction.

II. Comments on the Draft Guidelines

The following part will focus on the draft guidelines with special regard to the issues raised in chapter 6.

1. Role of Open Season Procedure

Chapter 2 of the draft guidelines points out the role of the open season procedure. GEODE is convinced that the open season procedure as described in chapter 2 is an effective measure to foster competition and to guarantee security of supply. In general terms, we would like to emphasize that an open season procedure works both ways: On the one hand, it ensures that sufficient net infrastructure is provided for the energy market. On the other hand, it prevents an over-dimensioning of net infrastructure. Considering this, all market participants – system operators, system users and the end-customer – would benefit from the introduction of an open season procedure.

As far as chapter 2 (7) is concerned, GEODE would like the ERGEG to further stress the system operator's responsibility for ensuring the long-term ability of the system to meet reasonable demands for the transportation of gas. In practice, system operators often do not fulfil their obligations according to Regulation 1775/2005 and Directive 2003/55/EC. Instead, system operators – especially in Germany – deny the necessity to add or enhance capacity in order to protect gas suppliers affiliated with their company. To overcome the lack of competition between large vertically integrated companies and to increase the number of market participants, a future legal framework must ensure that system operators adhere to their obligations. In that respect, GEODE is in favour of a provision allowing the relevant national regulatory authority to require the initiation of an open season procedure. To ensure balanced regulation and to avoid over-regulation, GEODE supports a “two-step” mechanism as described in chapter 2 (11): At first, the regulatory authority should inform the system operator about the necessity of investment in the grid. If the system operator does not agree to the authority's assessment, the regulatory authority can oblige the system operator to initiate an open season process.

Regardless of how the open season procedure is initiated, the national regulatory authority should oversee the complete open season process. Therefore, the regulatory authority must be informed about the start of the open season if the process is started by a sponsor. GEODE believes that only by a regulatory surveillance an open season procedure can fulfil its purpose.

2. Application

According to chapter 3 (13), the draft guidelines apply to new infrastructure understood in analogy to Directive 2003/55/EC. GEODE supports the view that the guidelines should encompass all infrastructure. In particular, this applies to LNG facilities considering the increasing importance of LNG in the European gas market. Storage facilities should also be addressed because of its importance for security of supply.

Exceptions to chapter 3 (13) can be made only if the purpose of the open season procedure can still be fulfilled. In some cases regulation is counterproductive because it imposes additional costs on all market participants. GEODE therefore suggests that the draft guidelines do not apply for small investments. The determination of “small investments” should be subject to further consultations. It is worth noticing, however, that the effectiveness of an open season procedure strongly depends on its broad application. Therefore, exceptions of the application of the draft guidelines must be rare. In particular, the responsible system operator must be obliged to prove that an open season procedure imposes unnecessary costs.

As expressed in chapter 2 (9) of the draft guidelines, a system operator that is properly unbundled from upstream and downstream market players would invest in new infrastructure at conditions fitting market needs provided that the investment is economically viable and appropriate incentives are in place. In these cases, the investing system operator would only pursue the interests of a network operator. GEODE believes that under the prerequisite of proper unbundling an open season procedure would impose an inappropriate level of regulation that is not justified by better market results. However, the current status of unbundling in the European gas market shows – with rare exceptions only – that transmission system operators are not effectively unbundled from other activities of a vertically integrated company. Before this conflict of interests is not solved in an appropriate manner, GEODE rejects an exception as discussed under chapter 6 (40). GEODE also suggests drafting guidelines of good practice on open season procedure in the light of the new proposals by the European Commission concerning ownership unbundling.

GEODE also considers exceptions from the application of the draft guidelines in cases where market-based prices already provide sound investment signals. Still, GEODE is not in favour of any over-hasty exceptions. Exceptions can only be made if there is enough proof of a well-functioning market-based price system. In that respect, the national regulatory authority needs to carry out a market examination with special regard to the question whether there is a transparent consultation process to ensure that sufficient capacities are available and can be accessed on a non-discriminatory basis. Until now, a market-based price system that would justify an exception is not in place. However, GEODE welcomes any step in the future to avoid over-regulation provided the market demands are met in an appropriate manner.

Finally, GEODE would like to emphasize that the draft guidelines must not be extended to high, medium and low voltage systems. Especially in the case of medium and low voltage systems, the application of the draft guidelines would impose unnecessary costs which are not compensated by more competition in the gas market.

3. Guidance on Open Season Procedures

As far as the first step of the open season procedure (proposal to shippers) is concerned, GEODE fully agrees with the procedure described in chapter 4.2. We would like to emphasize that potential users must have as much information as possible and a constant surveillance by the relevant national regulatory authority is necessary to meet the open season's purpose. GEODE supports an effective regulatory regime ensuring that all relevant information is provided by system operators. The amount of information given to the potential users should not be depended on the type of new infrastructure (e.g. LNG or storage facilities). Instead, the stream of information as described in chapter 4.2 should be the same. Furthermore, GEODE welcomes the possibility of users to influence the sponsor's

proposal to better accommodate their needs. In that respect, users should be allowed to influence the sponsor's proposal on all matters mentioned in chapter 4.2 (20).

GEODE also supports the ERGEG initiative with regard to chapter 4.3 (capacity allocation following open season). GEODE believes that a transparent and non-discriminatory capacity allocation is a prerequisite for the success of the open season procedure. In fact, a market test would not have to be carried out if the following allocation does not adhere to the principles of transparency and non-discrimination. We suggest that the national regulatory authority is allowed to examine whether the capacity allocation mechanism applied (pro rata or auction) follows the principles mentioned above. In accordance with the draft guidelines, GEODE also suggests that project sponsors should take into account long term and short term bookings to design the total investment. In case new capacity is only booked long term, the implementation of the open season procedure would create new obstacles in the process of market liberalisation.

The results that are supposed to be made public in (chapter 4.4 (30)) are sufficient enough to inform all market participants about the open season procedure. The national regulatory authority should also have the allowance to evaluate the results of the open season procedure.

III. Coordination with adjacent system operators

GEODE would like to emphasize that adjacent system operators need to be obliged to work together in case of adjacent projects. GEODE always expressed that in-depth cooperation and coordination is essential to create a truly integrated European gas market. With regard to the future competitiveness of the European network, system operators need to coordinate open seasons as well as the capacity allocation in all adjacent projects. This obligation applies to new infrastructure as described under II. 2. of this paper. The regulatory authorities of all countries involved must be informed about the project.

IV. Conclusions

GEODE is happy to respond to the issues raised on the draft guidelines and is looking forward to escorting ERGEG's initiatives in the future. We believe that any of the future actions must focus on developing a truly integrated European gas market. In that respect, GEODE strongly supports the draft guidelines set out by ERGEG.