

**Union of the Electricity Industry - EURELECTRIC Comments on
ERGEG Best Practice Propositions on**

**Transparency of Prices (E05-CFG-03-04),
Customer Protection (E05-CFG-03-06) and
Supplier Switching Process (E05-CFG-03-05)**

April 2006

The **Union of the Electricity Industry–EURELECTRIC** is the sector association representing the common interests of the electricity industry at pan-European level, plus its affiliates and associates on several other continents.

In line with its mission, EURELECTRIC seeks to contribute to the competitiveness of the electricity industry, to provide effective representation for the industry in public affairs, and to promote the role of electricity both in the advancement of society and in helping provide solutions to the challenges of sustainable development.

EURELECTRIC’s formal opinions, policy positions and reports are formulated in Working Groups, composed of experts from the electricity industry, supervised by five Committees. This “structure of expertise” ensures that EURELECTRIC’s published documents are based on high-quality input with up-to-date information.

For further information on EURELECTRIC activities, visit our website, which provides general information on the association and on policy issues relevant to the electricity industry; latest news of our activities; EURELECTRIC positions and statements; a publications catalogue listing EURELECTRIC reports; and information on our events and conferences.

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

Growth, added-value, efficiency

Environmental Leadership

Commitment, innovation, pro-activeness

Social Responsibility

Transparency, ethics, accountability

www.eurelectric.org

**Union of the Electricity Industry - EURELECTRIC Comments on
ERGEG Best Practice Propositions on**

**Transparency of Prices (E05-CFG-03-04),
Customer Protection (E05-CFG-03-06) and
Supplier Switching Process (E05-CFG-03-05)**

April 2006

This Position Paper has been drafted by the members of the WG Retail Markets:

Petter SANDØY (Chairman, NO)

Patrick BAYLE (FR), Norbert BOROSS (HU), Nigel BROMLEY (UK), Yakup CANDIR (TR), Jakob JUUL (DK), Roel KALJEE (NL), Timothy KEANE (IE), Lieve LEMMENS (BE), Ion LUNGU (RO), Tadeusz MARKOWSKI (PL), Jean-Luc SANTINELLI (LU), José Filipe SANTOS (PT), Aurelio Gaetano SARNO (IT), Ludmila SEBESTOVA (CZ), Jan SEGERSTAM (FI), Romualdas STUNDZIA (LT), Andreas UHLIG (DE), Fernando URQUIZA AMBRINOS (ES), Tomas WALL (SE), Susanna ZAPREVA (AT)

Anne-Malorie GERON (EURELECTRIC), Edith HOFER (EURELECTRIC), Eva HOOS (EURELECTRIC)

Approved by the Markets Committee on 4 May 2006.

Union of the Electricity Industry - EURELECTRIC Comments on

ERGEG Best Practice Propositions on Transparency of Prices (E05-CFG-03-04), Customer Protection (E05-CFG-03-06) and Supplier Switching Process (E05-CFG-03-05)

Introduction

EURELECTRIC welcomes the ERGEG propositions on Transparency of Prices, Consumer Protection and Supplier Switching Process and supports their objective of facilitating implementation of the consumer protection provisions of the Electricity Directive.

EURELECTRIC appreciates the opportunity to participate in ERGEG's consultation with other stakeholders. We have been working on consumer protection issues for a number of years, and have established our views on public service obligation, universal service, supplier of last resort and supplier switching. We would like to take this opportunity to share our views on some of the issues raised in the three proposition papers and to highlight the importance of a profound reflection on consumer protection, price transparency and the switching process in the light of full retail market opening in July 2007.

EURELECTRIC considers that consumer protection, including the specific subjects of price transparency and switching, must be looked at in the context of a functioning retail market. Such a market can only develop if a number of other prerequisites are met in addition to good practices on supplier switching, price transparency and overall consumer protection. EURELECTRIC will during 2006 propose a roadmap towards a pan-European retail market, which will elaborate on the prerequisites and look at how to fulfil them.

General Comments

EURELECTRIC agrees overall with the ERGEG propositions, but considers that a number of elements need to be made more specific and that the issue of responsibility should be further developed with stakeholders.

EURELECTRIC notes that the ERGEG papers view consumer protection regardless of whether it relates to network or supply, i.e. monopoly or competitive business. We agree with ERGEG to put a strong emphasis on ensuring network connection and high quality grid services for all consumers as required by the Electricity Directive. Likewise, we welcome the clear recognition that ensuring quality of supply is the responsibility of network operators. It is the cornerstone of the Directive that regulation has a central role in making network infrastructure and the related services universally available to all consumers and suppliers. Quite different is the case of competitive supply, where regulation can serve consumers best if it is limited to high-level principles and provides a general framework of safeguards, avoiding detailed regulation that could be detrimental to market dynamism and stifle competition.

The obligation to publish price information – as contained in the ERGEG Propositions on Transparency of Prices (p. 4, Summary, 1st bullet point) - is a good illustration of the need to differentiate approaches. Under this requirement, obligation is placed on both suppliers and distributors to publish prices in contracts, bills and promotional materials. This principle is intended to ensure that network charges and tariffs are made public and thus guarantee proper regulated TPA and effective unbundling. However, whilst no one would contest that contracts and bills must contain clear price information, a general obligation to publish prices, when applied to the competitive business (supply), could easily become counter-productive. In supply, price-competition is one of the key principles and, therefore, balance is needed between enabling consumers to make well-informed choices and the freedom of suppliers to compete on prices. There is also a risk that price coordination behaviour might emerge if price trends are easily perceivable and suppliers are pushed to match each other's prices mechanically. This would ultimately undermine innovation and competition.

Trust in markets and making participation simple and desirable for consumers should be the basis of a competitive supply market. Thus, regulation should be limited to the minimum necessary, i.e. to the following three main areas: search and selection of supplier; easy and trustworthy contracting; and accurate and clear billing.

Many elements of the consumer-protection framework could be best drawn up by the customers themselves. A good example is price transparency: the consumer is the best judge of what constitutes sufficient and clear information. Consumer protection should be consumer-driven and, above all, needs to be simple and effective. Overly complicated and detailed regulation risks preventing signals of consumer preference from appearing on the market and may reduce the flexibility of suppliers to react.

Best Practice Propositions on Transparency of Prices (E05-CFG-03-04)

EURELECTRIC supports transparency and clarity of price information, and agrees in general with the ERGEG propositions. However, we would like to highlight two areas where more clarification is needed as regards ways of implementing them in practice: publishing price information and price comparison.

Publishing Price Information

In EURELECTRIC's view, transparency is a prerequisite and an attribute of a functioning retail market. Companies have a natural interest to communicate with their customers clearly and effectively, in particular to make their offers and prices clearly understood and appreciated.

The price of energy supply is often a matter of negotiation and is the basic element of a competitive offer. The final price is a major source of competitive advantage and often the main instrument of successful new entrants.

Whilst it must be a fundamental requirement that consumers should have correct information about the price when signing a contract or paying their bill, there should not be any obligation on a company to make individually negotiated prices public.

The bill is an important channel of communication. It must be easy for the customer to understand and serve as unambiguous and straightforward communication on the service performed and its price.

It is common experience that large amounts of complex and detailed information are difficult to absorb and are often not appreciated by consumers. In a properly functioning market, it is ultimately the customers who define the level of details of price and other information.

Customers drive companies' communication strategies, including as regards what is on the bill. While respecting the relevant national law, suppliers must have the freedom to decide the level of detail of the price information on bills and they should be able to decide whether they would like to itemize separately the energy price, the network tariff or any other components of the final price.

Price Comparison

Customers should be able to make an informed choice. Instruments enabling consumers to search for alternative suppliers, gather information on products and services, and to develop a better understanding of the market are essential in order to build a culture of participation and to incentivise consumers to actively seek out new and better services.

Price-comparison websites and tariff calculators are helpful for making consumers active and helping them search for or interact with suppliers and other market actors. They are already used and spreading in a large number of countries and are offered by a variety of stakeholders, including regulators, suppliers, consumer organisations, brokers, universities and other organisations.

Whilst EURELECTRIC agrees with the general principle that prices should be comparable, we would like to point out that pure price comparison is not the only way to provide full information, but a number of other elements are also relevant for the consumer when making a choice. These include the types and levels of services offered, contracting facilities, payment flexibilities and other areas. A rigid focus on price comparison can have negative consequences that should be avoided.

In order to have a meaningful comparison, the products and their prices must be comparable. There is a risk that a rigidly and mechanically applied price comparison system ends up inhibiting innovation and discouraging companies from developing new products. The requirement of price comparability should not force companies to limit their offer to standard products. Moreover, it should not be the role of supply companies to provide price comparison with their competitors or use comparison to highlight their positive price features by detracting from those of their competitors: such practices would be against established principles of law on, *inter alia*, publicity and commercials.

Price comparison websites should be accurate, up-to-date and neutral. Regulators have a role to play in monitoring the development of such websites and to ensure that they are of high quality and that the information posted is neutral and does not favour any specific supplier. It is essential that prices are made as comparable as possible on such websites. A standard comparison model could be helpful; this however should not lead to a situation where companies are forced to limit their offers to standard products.

Best Practice Propositions on Consumer Protection (E05-CFG-03-06)

EURELECTRIC considers that existing consumer-protection legislation also covers electricity and should therefore not be duplicated.¹

Consumer protection needs to be looked at in the context of a functioning retail market and measures should be limited to those specific issues that are not yet covered in existing general consumer protection rules.

EURELECTRIC has specific comments as regards supplier of last resort, passive customers and dispute settlement and in particular as regards certain terminology.

Supplier of Last Resort (SLR)

The exact role and function of the supplier of last resort is a source of confusion and merits further clarification. Interpretations whereby the SLR becomes the provider of services for vulnerable customers or other disadvantaged groups unable to pay the real market price are often used, and may persist despite the proposed ERGEG definition, which seems to favour an interpretation whereby the SLR is the supplier who will step in for a bankrupt supplier.

Likewise, further clarification on the distinction between supplier of last resort and default supplier, defined in the Appendix of the ERGEG Propositions on Customer Protection (pp. 11-12), would be useful. Although the category of “default supplier” is not recognized in the Directive, EURELECTRIC supports the idea that groups of customers serviced by a SLR should be clearly distinguished from inactive customers, i.e. from customers who do not wish to exercise their right to choose a supplier, or those moving from one location to another without declaring this to their supplier.

The term “efficient arrangement” for the SLR requires in our view further explanation and background before the guidelines are finalised and widely disseminated. It is important that the SLR be selected in an objective, transparent and non-discriminatory way and that its mandate be limited in time.

The selection and exercise of the SLR function must not harm competition on the market. As a general principle, the SLR should be used only as an exception to the generally applicable supply conditions, in clearly defined cases and for limited categories of consumers. It should not become a general or default supplier of retail customers, i.e. households and small businesses. With regard to companies under obligation to fulfil the SLR obligation, it is essential that they be remunerated fairly, according to the real costs incurred. In the case of supply to customers with economic problems, this supply should not imply any extra cost either to the supplier or to other customers through cross-subsidies. Vulnerable or disadvantaged customers who are directly supplied through SLR should have the possibility to obtain support from the responsible authorities via social security or similar funds. This would help create a level playing field for suppliers. It should be left for the Member States to select concrete solution for SLR. .²

¹ EURELECTRIC Report on Public Service Obligations, February 2004, p. 20-21

² For a more extensive explanation of EURELECTRIC views on SLR, see EURELECTRIC Report on Public Service Obligations, February 2004, pp. 15-18

Passive Customer

EURELECTRIC likewise seeks further clarification on the definition of “passive” customers and on the use of “efficient, transparent and neutral mechanism” to supply them in a proper manner. Should these meaning force customers to switch, it is questionable whether this is in line with the letter and the spirit of the Directive, i.e. to deliver competitive prices and enable customer choice. Other less stringent measures, such as information campaigns, would be more appropriate.

Furthermore, we believe that customers will have more incentive to become active if the so-called “default supplier” is not allowed to charge less than the market price. More emphasis should in our view be put on the need to ensure that prices for default suppliers are set on the market. A higher-than-average market price for the default supplier would seem to be a natural consequence of his obligation to be continuously available and to bear the related risks, and would create sufficient incentives for customers to become active.

Dispute Settlement

Effective, swift and inexpensive settlement of disputes is an important element of a properly-functioning retail market and is vital to ensure consumer confidence.

Most countries have a dispute settlement system already in place. Existing consumer protection rules apply also to electricity. Disputes are often handled by consumer protection agencies or competition authorities or any other authority which should do this for all sectors to avoid extra cost. EURELECTRIC believes that creating new industry-specific bodies for settling disputes in electricity is unnecessary and should be avoided.

Best Practice Propositions on Supplier Switching Process (E05-CFG-03-05)

In response to the ERGEG propositions on supplier switching, EURELECTRIC would like to propose a generic switching model, which is annexed to this paper. The generic model provides a detailed response to the points raised by ERGEG and develops an approach which maintains a focus on the customer. In this section, we would only react to the ERGEG proposition as regards certain aspects of assigning roles and responsibilities, as we feel it is important to specifically highlight our position on such a key element of the switching process.

EURELECTRIC agrees that roles and responsibilities should be clearly defined. We however disagree with the idea of proposing an obligation that the DSO should in general act as a hub and a market facilitator. Although it is true that the DSO has an important role in the switching process, and is often responsible for handling the critical data, it is the supplier who is the driver of the process. The essence of the switching is the change of supplier in a competitive process. The switching process therefore needs to be supplier-centric. The new supplier must be the single point of contact and the interface with the customer on all aspects and stages of the process.

Moreover, the goal should be to arrive at a European switching process by ensuring that national solutions are compatible with each other. A supplier-centric generic switching model is essential to develop customer choice and competitive retail markets on a European scale. A European switching model can only be achieved step-by-step to reflect the existing differences in the degree of retail market-opening, to take into account the need for adjustment between different national solutions and to avoid excessive costs to businesses and thus ultimately to consumers.