27 June 2006

GIE comments on

ERGEG-Guidelines for Good Practice on Regulatory Accounts Unbundling (GGPRAU)

Rue Ducale 83
B – 1000 Brussels

Tel +32 2 209 05 00
Fax +32 2 209 05 01

gie@gie.eu.com
www.gie.eu.com

Ref. 06GA175

I. General Comments

1. GIE takes this opportunity to comment on the Guidelines for Good Practice on Regulatory Accounts Unbundling (GGPRAU) within the consultation process launched by the European Regulators' Group for Electricity and Gas (ERGEG). Given the extensive scope and possible far reaching impact GIE would nevertheless prefer the GGPRAU to be presented and discussed within the Madrid Forum Process as a well established forum including all relevant stakeholders.

2. Each national regulatory authority is bound by the unbundling requirements set by the specific national legislation transposing Art. 16 and 17 of Directive 2003/55/EC (Gas Directive) into national law. Therefore the respective national law has first to be examined carefully in order to state which obligations, possibilities and freedoms exist for the unbundling of accounts throughout the different member states. The GGPRAU should then be drafted consistently with the regulatory and accounting framework established by the respective national law.

3. Any further regulation should be preceded by a regulatory impact assessment; this includes the GGPRAU but also the already announced ERGEG GGP on informational unbundling and on management unbundling.

4. The accounts unbundling should focus on transparency of accounts; transparency of costs and methodologies underlying the calculation of tariffs are already dealt with by Art. 3 of Regulation 1775/2005 and by respective national law.

II. Some major topics

1. Non-discrimination and additional propositions of ERGEG: The Gas Directive defines specific and detailed unbundling measures for infrastructure operators to reach its central goal of non-discrimination (Art. 9 and 17). National laws transposing the Gas Directive in

this respect are binding for the relevant national regulatory authorities and the companies subject to these laws. GIE would insofar welcome an assessment not only of the basic necessity for but also of the legal basis of further standardised measures concerning cost control, shared services, overhead cost allocation, multi-network operators etc. as foreseen in the GGPRAU.

2. Unbundling of Accounts and the adequacy of costs and tariffs: The requirements on Unbundling of Accounts (Art. 17 Gas Directive) concern the organisation of accounts. They do not cover the aspect of cost control. Therefore, e.g. statements on efficient costs through tendering procedures, shared services, overhead cost, service level agreements and the adequacy of costs and tariffs are not related to the existing energy acquis (and the respective existing national law) on unbundling of accounts.

3. Shared Services and tendering procedures: ERGEG postulates a central role for tendering procedures in the field of shared services. If tendering procedures are not possible the draft GGP call for each concluded service level agreement to be approved by the respective regulator. Apart from the fact that tendering procedures rather belong to the field of cost control then to the unbundling of accounts this principle does not reflect practical demands or the goal of providing efficient shared services. It is neither foreseen by European law nor by national law. There is no tender obligation regarding services in accordance with Article 2 paragraph (3), Article 23 and Article 27 lit. b) of Directive 2004/17/EC within those member states where the right of construction and operation of transmission network is not exclusively reserved to certain companies. Furthermore, any tender of services is excluded by respective employee protection provisions of industrial law (Article 24 lit. d) of Directive 2004/17/EC. According to the judicature of the European Court of Justice the commissioning of services bears the significant risk of triggering a legal transmission of the affected employment contracts, thus those services are not qualified for tendering procedures.[1] As long as accounts are effectively unbundled and any discrimination is excluded a company must have the possibility to create shared services without approval by the regulator.

III. Summarizing Questions of the ERGEG-paper

1. General: Are there any other general guidelines you would like to propose in order to improve cost separation between integrated network companies and other services provided within the group or even within the network company (e.g. for "multi-network" companies)?

Before proposing any further guidelines a regulatory impact assessment should be made reviewing the implementation of existing EU and national law.

2. G1: Are the above mentioned transactions sufficient to cover economic relations between network and affiliated companies?

[1] Judgment of the Court (Sixth Chamber) of 20 November 2003 in Case C-340/01; Judgment of the Court (Third Chamber) of 15 December 2005 in Case C-232/04 and C-233/04

G1 states the need "to publish all major transactions with affiliated companies in their regulatory statements": it should be made clear that the regulatory statements are only to be made available to the relevant national regulatory authority. Any disclosure to the public should not go beyond the obligation of Art. 17 para 2 Gas Directive.
For scope of clarification: the 3 specifications contained in G1 go beyond Art. 17 para 2 Gas Directive, e.g. value of purchase, kind of sales, financing costs.

3. G2: Do you agree that these pieces of information should not be published but only made available to the regulators? Do you agree that the additional information included under G2 may constitute an economic incentive for unequal treatment of affiliated and non-affiliated companies?

The Gas Directive defines that accounts have to be published according to national accounting standards. Where the relevant national regulatory authority has further informational rights they should not be extended to the public.
The second sentence of question 3 needs further clarification in particular with view to "incentives for unequal treatment".

4. G4: A clear definition of necessary network services is supposed to be the basis for cost allocation. Do you agree that in order do treat economies it is proposed to use the method of "standalone cost". Could you imagine different practical solutions to allocate economies? If yes, what are the specific advantages of those methods?

The introduction of any concept of standalone costs should be carefully assessed from a cost/benefit point of view. The concept of standalone costs is a concept that is linked with a number of assumptions. The choice of these assumptions represents an additional regulatory risk which might disincentive investments. Therefore artificial modelling of hypothetical costs should not be introduced as a general principle.
Principles of allocating overhead costs are already established and thoroughly supervised by the relevant national regulatory authorities; they are compatible with non-discriminatory TPA and avoid cross-subsidisation.
Every change of the respective current allocation method should be justified.

5. G5: Working competition via public tendering should guarantee market based prices. Do you agree that these prices should be accepted as market based and do you have proposals on how to calculate cost in case of non-market based procurement (for instance in case of specific services which are only provided by the affiliated company)?

The GGPRAU deal with unbundling of accounts. This question is outside the scope of unbundling of accounts. → See also N°I 4. above.

6. Do you agree that ownership (financing) of assets should not have any impact on capital cost?
The GGPRAU deal with unbundling of accounts. This question is outside the scope of unbundling of accounts. → See also N°I 4. above.