



**EREG Public Consultation on GGP
on Regulatory Accounts Unbundling -
Evaluation of the Comments Received**

**Ref: E06-CUB-16-03
6 February 2007**

1. Background

On 28th April 2006, EREG launched a public consultation on [Guidelines for Good Practice on Regulatory Accounts Unbundling](#). The proposed guidelines make a number of recommendations and establish basic principles on regulatory account unbundling.

The guidelines were directed to regulators and EREG invited all interested parties to comment on issues raised in the text.

Specifically EREG requested comments on the following questions:

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)?*
2. *G1: Are the mentioned transactions sufficient to cover economic relations between network and affiliated companies?*
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 *G2: Do you agree that these pieces of information should not be published but only made available to the regulators?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?*
4. *G4: A clear definition of necessary network services is supposed to be the basis for cost allocation. Do you agree that in order to treat economies it is proposed to use the method of “stand alone cost”. Could you imagine different practical solutions to allocate economies? If yes, what are the specific advantages of those methods?*
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)?*
6. *Do you agree that ownership (financing) of assets should not have any impact on capital cost?*

17 responses¹ were received during the public consultation process and a new version of the GGP on Regulatory Account Unbundling (E05-CUB-11-02) has been prepared as a result of this process.

The following tables present the evaluation of comments received during the public consultation process as well as the EREG's view on these. When comments by stakeholders have been taken into account, they are highlighted in red.

¹ Annex 1 shows the list of responses.

2. Evaluation of comments received during the public consultation process

Issue	Comments received	EREG's position
General	BGW: ownership unbundling is not required; ideal of owning assets, no shared services is not supported; BGW holds that the existing European rules are sufficient; propose to discuss the Guidelines in Madrid	EREG supports ownership as preferred way
	CENTRICA: supports Guidelines as cross subsidies are detrimental → GB experience 15€/customer and year misallocation at the beginning	Comment corresponds to the aim of the Guidelines
	EXXON: Be more general, risk of potential conflict with national rules	General text is found in the directives → GGP have to be concrete
	Eurelectric: Do not agree that Directive sets out only a second best regime	EREG do not agree, see BGW; EREG position is supported by Review Report
	GdF: Implementation of unbundling under the control of the regulator is already today efficient.	Does not contradict the existence of Guidelines; can go further and on a national scale implementation can already today be acceptable
	GIE: discuss it in Madrid	
	NGC: ownership unbundling best way; accounting unbundling guidelines should deal with reporting and not with adequacy of cost	Put forward to GFG; open Supporting EREG's position
	RWE: stay with existing legal framework	Do not agree
	Scottish Southern: Guidelines go beyond what is needed for working competition; benchmarking is an alternative to regulation of cost allocation	Do not agree in practice; discriminatory, and not efficient if everybody is cross subsidizing; sometimes benchmarking is not feasible
	SPP: Guidelines are not binding	Agree at present stage
	VEÖ: no additional requirements needed	See RWE, Scottish
	VIK: supports guidelines, has to be supplemented by management unbundling	Agree
	Western Power: as ownership unbundled company guidelines are not applicable	Agree, already included in the GGP
PTPiREE: Guidelines are beyond existing law; management unbundling and company law are sufficient; EREG has no authority to draft such Guidelines	Not agree on sufficiency of management unbundling and on authority to draft → EREG decision (Art 1 of 2003/796/EC) is quite clear on that question	

Issue	Comments received	EREGG's position
<p>G1 (LUC): The network operator is required to publish all major transactions with affiliated companies in their regulatory accounting statements. In some jurisdictions however rules of confidentiality might restrict publication.</p> <p>Thresholds should be defined by regulators. The thresholds should not be higher than those included in the national (or EU) legislation for public procurement. The publication should contain the following items:</p> <ul style="list-style-type: none"> - Purchases and their value (description of purchases, including whether tendering procedure was used) - Kind of sales and their value (description of sales, including information on participation in tendering procedures) - Financing costs (including dividends paid to affiliated companies, derivatives etc) 	<p>GdF: publication is not required by national or international accounting standards, nor by the directive; does not help the regulator as long as he has full access to data</p>	See NGC
	<p>Geode: Clarify who has to publish</p>	Network company to be included
	<p>GIE: publication is not required</p>	See NGC
	<p>NGC: IAS24 should be the reference for public information, additional information for the regulator only</p>	Agree as at the moment this seems the only feasible and useful solution, but should be published for all legally unbundled companies → to be included in GGPs
	<p>RWE: Publication is already mandatory in Germany, do not link with procurement thresholds</p>	No comment
	<p>Scottish Southern: should not be published when commercially sensitive</p>	Already included in the Guidelines
	<p>SPP: directive does not impose any obligation to publish regulatory accounts</p>	Agree, but does not influence Guidelines
	<p>VDEW: German commercial code is sufficient to report transactions with affiliated companies; shared services is a borderline case</p>	No comment
<p>VIK: dispatching and related cost has to be part of network</p>	Relation to Guidelines not clear	

Issue	Comments received	EREGG's position
<p>G2 (LUC): The network operator is required to forward all structural elements of affiliation to the regulator</p> <ul style="list-style-type: none"> - Exact kind of affiliation with competitive parts of the gas and electricity value chain • Active (network company is share holder in other company, extent of direct and indirect shareholding) • Passive (other company is shareholder in network) 	<p>Centrica: information should be published (if necessary in aggregated form)</p>	Keep it for the regulators only; no convincing arguments for publication
	<p>Geode: only to regulators</p>	
	<p>GIE: clarify incentives of unequal treatment in the question</p>	→ Clarification to be inserted in GGP
	<p>NGC: agrees that loans,.. might constitute an economic incentive to discriminate</p>	Conflicting statements
	<p>RWE: credits, loans,... do not constitute any incentives</p>	Conflicting statements

Issue	Comments received	EREG's position
company, extent of direct and indirect shareholding) – Other relations such as credits, loans, guarantees, long term contracts, usage rights (description of kind of service) – Small affiliations may be published in summary reports.	Scottish Southern: agree	
	VDEW: do not publish; other relations are no incentive to discriminate	Conflicting statements
	VIK: agree	Conflicting statements

Issue	Comments received	EREG's position
G3 (LUC): The unbundling rules for “multi-network” companies should be comparable to those which apply to the separation of accounts between electricity supply and electricity distribution for small companies, i.e. below the threshold for legal unbundling.		No comment received; EREG's interpretation is that the directive is also to be interpreted like G3; G3 seems redundant → delete G3

Issue	Comments received	EREG's position
G4 (LUC, LIC): Every change of allocation method initiated by utilities has to be justified. In general the method has to follow two major principles: – a clear definition of all necessary network services is the basis for deciding whether a service in principle is a network service; – and costs may be allocated according to the relation of stand alone cost.	Centrica: stand alone cost or incremental cost or fully attributed cost as principles	Stand alone cost only one possibility ; no incremental cost; solution to allocation of synergies in a fair way
	Geode: agrees with concept of stand alone cost	
	GIE: sceptical on stand alone cost, present situation is well established, justify a new method	Clarify: Every allocation method or change of the method has to be explained and justified.
	NGC: stand alone cost method not robust; cost allocation on a usage basis better	Agree
	Scottish Southern: No specific method	Agree
	VDEW: stand alone cost very transparent but theoretical – not recommended	Agree → GGP to be adapted
	VEÖ: no process benchmarking	No comment

Issue	Comments received	EREG's position
<p>G5 (LUC): The network operators will define all shared services in a SLA (service level agreement): they will be able to choose between two possibilities of proving market conformity of agreed prices:</p> <ul style="list-style-type: none"> - If a tendering procedure is possible adequacy of the price may be proven by a successful (i.e. receiving several competitive offers) tendering - If the relevant service is very special and competitive tendering not possible, the network operator has to include in the service level agreements with affiliated companies in the broad sense of G2: <ul style="list-style-type: none"> • A clear definition of the services procured; • A rule how cost is calculated; • That the regulator has the right to access all information necessary to evaluate the correctness of cost calculation; • That the contract is subject to final approval by the regulator; - otherwise cost will not directly be accepted in OPEX but assessed according to its efficiency. 	<p>BGW: tendering is not supported as tendering helps in identifying efficient cost but not in unbundling</p>	<p>Do not agree, tendering is part of showing market based prices; tendering is not required but helps to show market based prices which do not cross subsidize → Clarify GGP</p>
	<p>Centrica: tendering is useful but be aware of tailor made conditions</p>	
	<p>Eurelectric: Prefer ex post monitoring to requiring tendering procedures</p>	<p>Agree</p>
	<p>GdF: does not support tendering as it will destroy internal economies</p>	<p>Do not agree</p>
	<p>Geode: agrees but rejects approval from regulator for internal service contracts</p>	<p>Agree → Adapt GGP</p>
	<p>GIE: tendering is outside unbundling</p>	<p>See BGW</p>
	<p>NGC: prefer ex- post control</p>	<p>Agree → see GEODE</p>
	<p>RWE: ex-post control is sufficient</p>	<p>See Geode</p>
	<p>Scottish Southern: tendering not necessary when there is a working regulatory framework → remove G5</p>	<p>Do not agree as benchmarking is a remedy in the long run allowing cross subsidies in the mean time</p>
	<p>SPP: accounting unbundling must not deal with adequacy of cost; tendering is market based, in other circumstances cost + should be the method</p>	<p>But cross subsidies is a subject of unbundling</p>
	<p>VDEW: tendering only where mandatory → cost plus better</p>	<p>Do not agree</p>
<p>VEÖ: would extend regulation on competitive parts of the business; access to all information is too far reaching, no approval</p>	<p>Do not agree, as SLAs of network business with affiliated company is rarely competitive</p>	
<p>VIK: agree to principle of tendering</p>	<p>No comment</p>	
<p>PTPiREE: eliminate any interference with SLAs</p>	<p>Do not agree at all, as SLA is essential in avoiding cross subsidies</p>	

Issue	Comments received	EREG's position
<p>G6 (LUC): The cost for a leased asset base shall not exceed the cost incurred if the assets would have originally been part of the RAB of the network company. The cost is normally calculated as: (approved) RAB * (approved) WACC (Weighted Average Cost of Capital of the network operator)</p> <p>The network company has to disclose information on these assets. To be able to assess the adequacy of the (often leasing) contract, the contract shall include:</p> <ul style="list-style-type: none"> - the right of the regulator to get information on the assets, their book value, yearly depreciation, all detailed information which is necessary to calculate the theoretical cost of capital. 	<p>Centrica: agrees with principle, be more transparent in setting the WACC</p>	<p>General agreement – no need to change</p>
	<p>Geode: agrees</p>	
	<p>GIE: ownership of assets is outside unbundling</p>	<p>Not the point – it is cost allocation not ownership</p>
	<p>RWE: agrees</p>	
	<p>SPP: disagree, leasing has to include the return on capital</p>	<p>Return on capital is included in WACC Agree → Clarify GGP</p>
	<p>VDEW: no publication of these data</p>	<p>Not intended</p>

Annex I: List of responses to the public consultation process

- BGW
- Centrica
- EMIL
- EURELECTRIC
- Gaz de France
- GEODE
- GIE
- National Grid
- RWE
- Scottish Southern Cover Letter
- Scottish Southern
- SPP
- VDEW
- VEO
- VIK
- Western Power Distribution
- Polish Power Transmission and Distribution Association