



VKU • Hausvogteiplatz 3-4 • 10117 Berlin

Committee of European Securities Regulators

11-13 Avenue de Friedland
F 75008 Paris

Council of European Energy Regulators

Rue le Titien, 28
B 1000 Bruxelles

**Verband kommunaler
Unternehmen e.V.**

Hausvogteiplatz 3-4
10117 Berlin

Tel. +49(0)30.58 58 0-0
Fax +49(0)30.58 58 0-100

www.vku.de
info@vku.de

29.08.2008

Ref. CESR/08-509: ERGEG's/CESR's draft response to question F.20

Dear Sir or Madam,

The Verband kommunaler Unternehmen e.V. (VKU), together with the "VKS im VKU", represents the interests of Germany's local public utilities in the fields of energy and water supply as well as sewage and waste management. Nearly 1,400 member companies are organised within the VKU, accounting for a turnover of around €71 billion and employing some 233,000 people in total.

The VKU represents approximately 600 electricity and 570 gas utilities. A large number of these companies make use of the opportunities offered by liberalised energy markets and are actively engaged in energy trading. These undertakings include not only the large municipal utilities with their own trading departments and specialised energy traders but also small municipal energy utilities that have collaborated to form joint procurement companies.

So the current consultation process is highly relevant to the VKU and its members, and we are particularly keen to take this opportunity to respond to some of the points raised:

(4) Do you agree with the analysis [...] on the importance of the transparency/disclosure of fundamental data? If yes, would you consider it useful to set up at the European level a harmonised list of fundamental data required to be published? Is an exhaustive list conceivable or is it necessary to publish additional data on an ad hoc basis if it is considered to be price sensitive?

Bank details
Berliner Sparkasse
Sorting code 100 500 00
Account no. 66 00 00 91 00
VAT ID.: DE 123065069

The publication of fundamental data is in principle an appropriate means of improving transparency for all the market participants.

We would refer here to voluntary initiatives already being taken by the German energy utilities. On the internet site of the EEX energy exchange the capacities and status of numerous power plants are already published and can be seen by all the market participants without restriction. Based on the ERGEG proposals referred to in the consultation paper, this service is to be developed even further in the future as part of a voluntary commitment. Thus, the German energy utilities have assumed a leading role in the creation of market transparency.

When designing a Europe-wide scheme, care must be taken to avoid a situation in which smaller companies in particular are put at a disadvantage by making the disclosure requirements unreasonably high. It would be important, for example, for limits on notification to be set sufficiently high or notification deadlines made acceptably long. To ensure that small companies will also be able to make use of the data published under obligation for the creation of market transparency, this data should be made available on a central platform in a standardised format. The voluntary arrangement agreed with Germany's Federal Ministry of Economics and Technology (BMWi) might serve here as a model for possible Europe-wide data publication obligations.

Any requirement to publish data that goes beyond this – especially commercially sensitive data – cannot be supported (see our answer to the next question).

(6) What is your opinion on the proposals of CESR and ERGEG in the three different areas: disclosure obligations, insider trading and market manipulation?

CESR and ERGEG do not go into the concrete details of the content of a market abuse framework regulation for the energy market, only referring briefly to the idea of taking the *market conduct rules* of the Nord Pool exchange as a possible model. We believe, however, that when framing a concrete regulation certain points should be considered from the outset:

Any disadvantage for small market participants must be ruled out. If the requirements on disclosure obligations are set too high, smaller companies will face a greater burden relative to larger companies. For small companies, compliance would then cause high costs and thus mean a disproportionately high administrative workload. Moreover, there is a danger that larger companies might evade the rules through *regulatory arbitrage*, which would create further disadvantages for the other

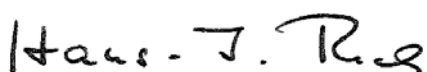
market participants. Finally, in the worst case this might force smaller participants to withdraw from markets or prevent new ones from entering – with corresponding negative impacts on the liquidity of these markets.

The confidentiality of the information must be guaranteed at all times. The data to be demanded of the companies often include very sensitive information. Any disclosure of data should therefore be limited as far as possible. Moreover, careful consideration must be given to the question of what information the authorities really need for market oversight. For these reasons, the arrangement should be for data to be provided *on request* only in cases of concrete suspicion of market abuse rather than a system of permanent and automatic data transmission. The *ad hoc* approach would leave it to the market participants to decide on how the data are stored and in what format, as long as they ensure its appropriateness for use. This approach would also help to keep down the implementation costs.

Only relevant data should be demanded. Large amounts of data are already being collected, for example in relation to those transactions made via the exchanges. In addition, there are numerous commercial providers (such as Platts) offering relevant data. It is therefore important to determine exactly what additional data are needed, since here, too, excessive burdens on smaller companies must be avoided. It may also be possible to set different requirements for certain categories of company. The criteria could be size or membership of corporate structures that have particular potential for market abuse.

If you have any questions do not hesitate to contact Mr Raiko Zwilling (tel. 0049 (0) 30/58 58 0 186, zwilling@vku.de).

Yours faithfully,

A handwritten signature in black ink that reads 'Hans-J. Reck'.

Hans-Joachim Reck
General Director

A handwritten signature in black ink that reads 'Michael Wübbels'.

Michael Wübbels
Deputy Managing Director