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Znak: 16/ MD/ 2008

Warsaw, 18 January 2008

**Ms Fay Geitona
The European Regulators' Group
for Electricity and Gas (ERGEG)
Council of European Energy Regulators ASBL
28 rue le Titien, 1000 Bruxelles
Arrondissement judiciaire de Bruxelles
RPM 0861.035.445**

Dear Ms Geitona,

We submit below comments of the Polish Commercial Chamber of Gas Industry (*Izba Gospodarcza Gazownictwa*), which is an association of leading Polish gas enterprises, about draft Principles on Calculating Tariffs for Access to Gas Transmission Networks, ERGEG document ref. E07-CBT-01-03 ("Principles").

1. General

First of all, we have doubts whether issuing such Principles is reasonable and purposeful.

- 1.1. Tariff setting is governed primarily by national laws. Under Polish law, the transmission system operator (TSO) develops its tariffs on its own and then submits them to the regulator for approval. The regulator may not deny approval to a tariff which complies with the law even if the tariff is not entirely in line with the regulator's vision. By the same token, if Polish operator submitted a tariff compliant with Polish law (including Community laws which are part of the Polish legal system), the regulator would not formally be allowed to deny approval just because the tariff does not conform to the Principles. Yet, the Principles are in some places drafted in such a way that they appear to give themselves the status of mandatory provisions.

- 1.2. On the one hand, it is understandable that efforts are made to harmonise tariff methodologies across the EU. On the other hand, such efforts will cause changes in the existing methodologies in the Member States, thereby adversely affecting the certainty and predictability of doing business in those States.
- 1.3. In addition, contrary to its introductory declarations, the Principles document provides for very little harmonisation of tariff structures (types of rates, calculation principles) and rather unifies the bases on which tariff rates are computed.
- 1.4. Notwithstanding the above, the Principles do not offer a comprehensive regulation of all key issues applicable to gas tariffs. One of such key issues that were omitted in the Principles (notwithstanding the very purpose of issuing such a document) is shifting transmission costs onto end users where transmission has been requested by a trading company (shipper). This becomes even more complicated where the trading company itself is subject to the tariff requirements. It is what happens in Poland. Another important matter is the passing down to end users of those costs incurred by trading companies for the benefit of TSO which result from users' breach of system use obligations so that, for example, imbalance charges arise.
- 1.5. The Principles could relate to the regulators themselves. One of the key aspects of market regulation, is predictability, and especially predictability of tariff policies. If the Principles are adopted, they should offer guidelines for the establishment by the regulators, after giving suitable prior notice to market participants, of long-term tariff approval methodologies. This should not only refer to tariffs in respect of new investment (as in point 5 of the Principles) but also to tariffs for use of existing infrastructure. Absence of predictable tariff policies in relation to existing infrastructure is also a hurdle for new infrastructure projects because, firstly, it discourages potential investors from taking equity participation in operator companies and, secondly, it affects the level of risk incurred by the trading companies using the system.
- 1.6. Predictability is also about ensuring that TSOs' tariffs are approved early enough for the other market participants to have sufficient time to take them into account in their business decisions. TSO behaviour affects a number of decisions made by distribution system operators (DSOs) or trading companies. Polish law knows a good solution by which the transmission grid code is developed and approved first, with distribution grid codes to follow on the basis of TSO's solutions contained in the former code. Such timing (a span of 60-90 days) should also be applicable to tariffs.

- 1.7. The Principles refer in a number of places to a 'comparable' TSO. Such comparison is not possible in Poland and in some other Member States, where virtually all of the national transmission system is managed by one entity. And a comparison to a foreign operator would be difficult and of little help in so much as each market has its specificity. Reference to a comparable TSO could provide a guidance in those countries where there are more such operators than one.

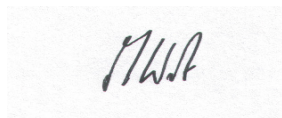
2. Specific

Notwithstanding the above, we will now refer to certain specific solutions the document contains.

- 2.1. The sentence at the end of point 2, reading that costs not related to network operations would not qualify for inclusion in the establishment of tariffs, is imprecise and may be misleading. After all, operators' responsibilities go beyond mere network operations (and include network expansion and capacity marketing, to give just two examples).
- 2.2. We have doubts about point 3.4, requiring operators to purchase fuel gas using a tendering procedure. This issue has already been regulated in Directive 2003/55, which reads at art. 8(4) that *"transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures."* Note that this clause in the Directive is different from the corresponding point in the Principles. ERGEG planned similar far-reaching solutions in its draft Guidelines of Good Practice on Regulatory Accounts Unbundling. Ultimately, the Guidelines were not adopted and, as can be seen from input provided by parties to public consultations on the draft, one of the objections was that the Guidelines were unnecessary with public procurement laws in place.
- 2.3. Point 4.2 is based on an erroneous assumption that national regulatory authorities will be competent and proper for projecting future capacity requirements. For that matter, Polish law neither requires the regulator to make such projections nor offers any tools for it to do the job.
- 2.4. Point 4.6 is not clear. Specifically, it may be doubted whether mechanisms are provided that would enable system users to shift imbalance charges they paid to the operators back onto those who caused them. In particular, where system is used by a trading company that ships fuel gas to customers by delivery at system exit point

(thereby itself entering into a transmission contract), the company's imbalance does not depend on its actions or omissions but only on actions and omissions of its customers (end users). If no cost charge-back mechanism is in place, end users will not have incentives to consume gas in such a way as to avoid imbalance.

Yours Faithfully,

A rectangular box containing a handwritten signature in black ink, which appears to be 'MD' or similar initials.

Mirosław Dobrut
President