VDEW

Verband der
Elektrizitätswirtschaft e.V.

VDEW position

on the

ERGEG (European Regulators Group for Electricity and Gas) „Guidelines for Good Practice on Regulatory Accounts Unbundling“, of 21/04/2006

Verband der Elektrizitätswirtschaft – VDEW – e.V.
(German Electricity Association)

Berlin, 26 June 2006

The guidelines for regulatory accounts unbundling which have been set up by the European Regulators Group are problematic in so far as the basis for accounts unbundling is the national legislation of each country. Though all laws are based upon the provisions of the Directives 2003/54 EC and 2003/55 EC, respectively, there are differences in terms of implementation into national legislation. This is also recognized in the ERGEG draft guidelines which underline e.g. under G1 that information disclosure may be restricted in some legal systems for reasons of confidentiality.

1) General

Unbundling of accounts is based upon national legislation of the respective country. For the German electricity supply companies, the implementation of the measures provided for in the EU Directives is determined in Article 10 of the German Energy Industry Act (German abbreviation: EnWG – Energiewirtschafts-gesetz). The requirements resulting from the EnWG and from the Regulations on network charges even exceed the requirements of the EU Directives E2003/54/EC and E2003/55/EC in some aspects, and ensure sufficient unbundling of accounts for achieving the Directive's objectives.

Therefore, the guidelines on accounts unbundling (ERGEG guidelines) should not go beyond national legislation (Energy Industry Act (EnWG) and the Regulations on charges for the use of electricity and gas networks (German abbreviations: StromNEV und GasNEV).

2) Comments on the questions in paragraph 4 (Guidelines)

<u>As to 2. G1: Reporting of transactions with affiliated companies</u>

Article 10 para. 2 of the German Energy Industry Act already contains provisions concerning the publication of major transactions:

> „Within the meaning of Article 271 para. 2 or Article 311 of the German Commercial Code, major transactions with affiliated or associated companies need to be reported separately in the Appendix to the annual accounts."

An obligation to publish all transactions within a group is not practicable; it would lead to a considerable increase in the companies' administrative expenditure which would inevitably be reflected in prices.

Electricity supply companies include also electricity trading and generating companies exposed to competition. A publication of internal economic company data would contradict the system of competition. Transactions between the competitive parts of an integrated electricity supply company need not be indicated. Shared Services are borderline cases.

The aims of unbundling are defined in Article 6 of the German Energy Industry Act:

> „...Guarantee of transparency and non-discriminatory design and handling of network operation ....“

A publication of all business relations is neither required in Article 19 of E2003/54/EC nor in Article 17 of E2003/55/EC.

Conclusion:

A publication of transactions as provided for in Article 10 para. 2 of the German Energy Industry Act ensures sufficient transparency with regard to the conclusion of transactions with affiliated companies. Therefore, the specifications laid down in the ERGEG Guidelines should not go beyond the requirements of Article 10 para. 2 of the Energy Industry Act.

A to 3. G2: Publication of all structural aspects of company affiliation

A general publication of all structural elements of affiliation does not lead to any benefits in terms of the competitive situation.

The information provided to the national regulatory authorities is sufficient to this end. In this context, too, we refer to the specifications in the Energy Industry Act (EnWG) and in the Regulations on charges for use of electricity and gas networks (StromNEV and GasNEV) which grant extensive powers to supervisory authorities.

Other relations mentioned under G2 such as credits, loans, guarantees, long-term contracts and usage rights do not represent an economic incentive for unequal treatment of affiliated and non-affiliated companies.

As to 4. G4: Definition of necessary network services / stand-alone costs

It is desirable to have a clear definition of necessary network services.

The „stand-alone-cost“ method theoretically provides a high degree of transparency of cost along the lines of ownership unbundling. However, stand-alone costs would have to be analytically determined. Only a plausible and stable method for the determination of stand-alone costs enables additional information to be acquired.

The „stand-alone-cost“ method falls back on premises and assessments of fictitious relations of services. Due to higher administrative expenditure, this method represents a worse alternative for negotiations with the economy.

Conclusion:

The use of the „stand-alone-cost“ method cannot be recommended for dealing with savings.

As to 5. G5: Market-based prices

Requirements according to which services provided by shared services should be subject to a tender procedure, or agreements (SLA - service level agreements) between the network operator and the shared services subject to approval by the regulator are not practicable.

The wide variety of agreements would lead to an unacceptable impediment to the business activities of the regulatory authority and of the company concerned.

According to German law, the supervisory authority has legal possibilities, as part of the price auditing and price authorization procedure, to look at and assess agreements in a demand-oriented manner. This should be a feasible approach in all EU countries.

As a matter of principle, public calls for tenders are useful for accounting of prices in line with the market where tendering is mandatory by Member State's law. However, account has to be taken of the fact that distortions may occur as a result of market entry prices (dumping). Bids submitted as a result of public tendering need to be subjected to critical review. A cost-plus calculation taking account of risks and profit margins would be more suitable.

As to 6. Effects of assets on capital costs

A broad publication of such detailed data is not expedient. We consider that the supervisory authority's powers mentioned as to „G2" are sufficient.

Concerning the impact of asset ownership on capital costs, we refer to the German Regulations on charges for use of electricity and gas networks (StromNEV and GasNEV) which provide for adequate rules in this respect.