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**From:** Alexander Beier <beier@kov-energie.de>  
**Sent:** 06 June 2014 17:39  
**To:** consultation2014001  
**Subject:** ACER Consultation "European Energy Regulation: A Bridge to 2025"  
**Signed By:** beier@kov-energie.de

ACER Agency for the Cooperation of Energy Regulators  
Herrn Alberto Potoschnig  
Director  
Trg Republike 3  
1000 LUBLJANA  
SLOWENIEN

Dear Mr. Potoschnig,

in response to your consultation paper "European Energy Regulation: A Bridge to 2015" we would like to make some specific remarks on the role of DSO and the issue of unbundling.

*Stadtwerke Bogen GmbH,  
Stadtwerke Cham GmbH,  
Stadtwerke Dingolfing GmbH,  
Stadtwerke Furth i.W. GmbH&Co.KG,  
Gemeindewerke Gangkofen,  
Stadtwerke Hemau,  
Gemeindliche Werke Hengersberg,  
Gemeindewerke Lam,  
Stadtwerke Landau a.d.Isar,  
Stadtwerke Landshut,  
Stadtwerke Mühldorf GmbH&Co.KG,  
Stadtwerke Neumarkt/OPf.,  
Stadtwerke Neunburg v.Wald Strom GmbH,  
Stadtwerke Neustadt a.d.Donau,  
Gemeindewerke Obernzell,  
Stadtwerke Pfarrkirchen,  
Stadtwerke Plattling,  
Stadtwerke Bad Reichenhall KU,  
Stadtwerke Tirschenreuth,  
Stadtwerke Traunstein GmbH&CO.KG,  
Stadtwerke Trostberg GmbH&Co.KG,  
Stadtwerke Vilsbiburg,  
Stadtwerke Vilshofen GmbH,  
Gemeindewerke Waging am See,  
Stadtwerke Waldkirchen,  
Stadtwerke Waldmünchen and*

*Stadwerke Zwiesel*

are vertically integrated local municipal utility company with over thousand employees located in the *south* of Germany. *Many* electricity and gas customers are connected to the grid.

The de-minimis rule, which allows member states to decide not to apply certain unbundling rules to network operators serving less than 100,000 connected customers, is of vital importance for these companies. This threshold has proven to be an instrument which allows smaller companies like ours to operate their network efficiently, since the additional benefit for competition – if there is any – would definitely not justify the effort and cost.

Therefore, we strongly object to any consideration to revise the current de-minimis rule, especially since we cannot see any need to question it. According to the rules already established under the Second Energy Package in 2003, vertically integrated undertakings are obliged to meet substantial unbundling requirements. As part of these requirements, DSOs have to handle commercially sensitive information, e.g. meter data obtained in the course of carrying out its business, confidentially (“informational unbundling”). Regarding sensitive information, more or less identical rules apply to TSOs and DSOs. There is no exception for a small undertaking like ours. Therefore, the statement in the consultation paper (page 27) that many DSOs are at present exempted from unbundling does not correctly reflect the current legislative framework.

Besides, all electricity and gas undertakings are obliged to keep separate accounts for their transmission and distribution activities (“unbundling of accounts”, Article 31 of the Electricity and Gas Directives, respectively).

If fully implemented and enforced – as it is the case in Germany today – these requirements guarantee that DSOs act neutrally and non-discriminatorily.

From our point of view, consumers in Germany can easily switch suppliers thanks to standardized market processes and data formats. Moreover, they can choose among a large number of suppliers and tariffs thanks to the successful opening of the electricity and gas market.

Furthermore, we were surprised by ACER’s statement in the context of unbundling that customers, connected to small distribution networks, may not benefit to the same extent as those connected to larger systems. We cannot follow this very general statement, in particular as there is no explanation given. In fact, market rules and obligations on grid use and connection to the grid are the same regardless of the network operator’s size. Neither are there exemptions on the basis of the de minimis-rule based on Art. 27. For that reason, we do not see any relation between the size of a DSO and the fact whether it is connected to a TSO or not on one hand and the opportunities of the DSOs customers to benefit as active grid users from different options on the energy market on the other.

Since a high degree of compulsory automation of workflow processes, like supplier switching and data handling, effectively and efficiently provides for non-discrimination and a functioning market, any further regulatory intervention that leads to the restructuring of businesses would not only be costly and inefficient, but inappropriate.

From our point of view, customer data protection and privacy are a key element and have to be in line with the European data protection law. Additional national technical rules e.g. for minimum cryptographic standards can contribute to customer data protection and privacy. In Germany, data protection for smart meters is ensured by detailed rules for data communication and data handling that apply without any exemptions. The Federal Office for Information Security (Bundesamt für Sicherheit in der Informationstechnik – BSI) has developed “protection profiles” – the so-called “BSI Schutzprofile” and a technical rule “Technische Richtlinie” – which has to be applied when smart meters are implemented.

In conclusion we argue that, before any further measures are envisaged, the full implementation and the stringent enforcement of the existing unbundling rules in combination with effective data exchange processes and data protection rules should be the first step to ensure a level playing field.

Sincerely yours

Alexander Beier  
CEO/Geschäftsführung

Kooperationsgesellschaft Ostbayerischer Versorgungsunternehmen mbH  
Cooperation of 27 local municipal utility companies

Christoph-Dorner-Str. 9, 84028 Landshut,  
Amtsgericht Landshut HRB 4805, USt-IdNr.:DE198154918,  
CEO/GF: Alexander Beier, ARV: Werner Girschick,  
Tel. 0871-276390-61, Fax -55, [www.kov-energie.de](http://www.kov-energie.de), [beier@kov-energie.de](mailto:beier@kov-energie.de)



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