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**Response to the
ACER Consultation „European Energy Regulation:
A Bridge to 2025“**

Stadtwerke München GmbH (SWM)

Munich, June 16, 2014

Stadtwerke München GmbH (SWM) is a multi-utility company owned by Munich City Municipality in Germany. Citizen value is a central theme for SWM. The company employs almost 8,000 employees and had a turnover of about 6.3 billion Euros in 2013. It provides a range of utility services to approximately 1.1 million customers:

- Energy services: electricity, district heating and natural gas supplies;
- Water supply services and 18 municipal swimming pools; and
- Local transportation: subway, bus and tram services.

70% of SWM's power for the city of Munich is produced by combined heat and power (CHP) plants. The company has an ambitious renewable energy target: By 2025, SWM wants to cover all of Munich's consumption with green energy generated in its own plants. Munich intends to be the first city worldwide with more than one million inhabitants to reach this ambitious goal.

All in all, we will earmark a budget of 9 billion Euros for the expansion of renewable energies in the period until 2025.

With already operated and initiated projects for own installations, SWM has a production capacity of around 2.9 billion kWh of power from renewable sources. This corresponds to roughly 39 % of Munich's energy consumption and is thus significantly more than the city's 800,000 households, underground railway and trams need.

According to national law, the electricity and gas network is legally unbundled in the SWM Infrastruktur GmbH.

SWM appreciates the opportunity to comment on the ACER Consultation „European Energy Regulation: A Bridge to 2025“. Please find below our statements:

Key messages

- Market-based approaches are the first choice to tackle future challenges and to support the future integration of the European electricity and gas markets. Accordingly, **regulatory interventions shall only apply in substantively justified cases.**
- As neutral and well regulated entities, DSOs facilitate the market and provide a level playing field for all market parties. Their **influence on retail market functioning should accordingly be maximized rather than minimized.** DSOs should be equally involved in the development and implementation process of the electricity network codes.
- **There is no need to rethink the current unbundling requirements.** Provided the requirements of the internal energy market directives are fully transposed, correctly implemented and strictly enforced at national level, they ensure non-discriminatory network access and market functioning. Ownership unbundling would entail a further reduction of company size which could impede the availability of necessary capital to conduct critical infrastructure investments at DSO level.
- **Considering capacity (kW) in network tariffs** could be beneficial for the electricity sector, since network costs are primarily determined by the electric capacity. SWM does not support dynamic network tariffs.
- **The implementation of a 24 hour switching process should not be prioritised,** as switching rates aren't adequate criteria to measure competition. Low switching rates can not only be linked to a lack of transparency or contractual/technical issues, but can rather be derived from high consumer satisfaction.
- **There is a need for further measures to directly increase trading liquidity via introducing auctions across the European trading hubs.** As a priority action, a controlled joint implementation of publicly available spot auctions like in the electricity markets through exchanges harmonized in time and structure for all virtual gas trading hubs would be one of the first steps to create reliable indices.
- **Infrastructure investments are in particular critical at DSO level and should be facilitated.** Not only investments in new, but also in existing infrastructure should be facilitated. These investments are critical to equip existing infrastructure for the requirements of the future energy system.

Q1-2

Have we identified correctly the issues and trends within each area of the energy sector?

Have we identified an appropriate regulatory response?

A. Electricity Wholesale Markets

Renewables growth driving changes in generation

2.4-2.5

SWM supports the development of an integrated electricity wholesale market and agrees with ACER that this process should be guided by market-based approaches. We agree that **renewable energy sources (RES) will assume a central role in the future wholesale markets** and highlight the necessity to transform the electricity wholesale market in order to cope with increasing shares of variable renewable energies. The integration of RES, especially of intermittent production from wind turbines and solar panels, into the electricity system requires sufficient grid capacities, but also well-functioning wholesale markets.

Continued development of electricity wholesale markets

3.5

SWM agrees that the **development of an integrated wholesale electricity market should be guided by market-based approaches**. We also agree with the respective priorities outlined by ACER in 3.5 and would like to highlight the following priorities:

- no regulated prices, neither on wholesale nor on retail market level
- an integration of renewable energy sources (RES) into the market
- self-dispatch and balance responsibility by all parties
- further development of balancing markets
- further development of intraday markets

- reduction of energy market distortion caused by different national taxation methodologies and surcharges.

B. Gas Wholesale Markets

Integrating gas wholesale markets

2.10-2.11

Achieving liquid pan-European gas markets

3.13-3.14

ACER correctly describes that implementing the network codes will be decisive to establish the single gas market (section 2.10 – 2.11).

We agree with the assessment that **a further integration of markets can contribute to liquidity** which will presumably encourage entry, leading to more competition and further improvements in liquidity (section 3.13).

In addition, **we see the need for further measures to directly increase trading liquidity via introducing auctions across the European trading hubs**. The access to a liquid gas forward trading market is currently limited to the hubs TTF (Title Transfer Facility, The Netherlands) and NBP (National Balancing Point, UK) and many of the smaller market participants are not able to participate.

Market access to forwards through the OTC broker market is limited to size which hinders small market participants. The same applies to exchanges which do not support smaller sizes. Smaller entities, e.g. in Germany, cannot afford the internal and external requirements to participate in foreign markets as they contain additional costs to gain grid access, prepare trading systems etc. Smaller gas suppliers often are not able to trade on exchanges due to the margin requirements.

As a priority action, a controlled joint implementation of publicly available spot auctions like in the electricity markets through exchanges harmonized in time and structure for all virtual gas trading hubs would be one of the first steps to create reliable indices. These are needed for the assessment of portfolio risks and to grant easy access also to smaller market

participants. Alongside with the spot auctions, spare pipeline and cross border capacity has to be offered and auctioned to grant access to the transmission network regulated freely to every market participant.

We do agree on the assessment that there has to be a control instrument for impediment competition through big market players.

Providing electricity flexibility through gas

2.18/ 3.19 – 3.20

SWM agrees that the greater penetration of non-programmable Renewable Energy Sources (NP RES) will increase the need for flexible tools with an ability to respond to any demand or balancing needs. In this case gas-fired plants play an important role for the flexibility needed (section 2.18). Therefore, SWM acknowledges **the need for arrangements in the gas market and in the supporting regulatory framework to facilitate gas-fired plants' ability to fulfil this role.**

C. Infrastructure investment (infrastructure development)

Investment driven by market signals

3.21

SWM shares ACER's view that **infrastructure investments are critical to European energy market integration and security of supply.** We agree that cross border investment in energy infrastructure has to be driven by market signals and needs national and supranational coordination, also among the regulatory authorities.

SWM agrees that regulators have a critical role in facilitating investment. SWM would like to emphasize the need for investments in distribution grids, in particular in the electricity sector. This results from changes in the grid usage, above all from the boost of renewable energies which are mostly connected to distribution grids. Up to 42.5 billion € of distribution grid investment will be needed in Germany until 2030 according to a study on distribution grids published by the German Energy Agency (dena) in 2012.

We would also like to highlight that **not only investments in new, but also existing infrastructure should be facilitated**. These investments are critical to equip existing infrastructure for the requirements of the future energy system.

The development of both the transmission and distribution grid is particularly urgent in regions with high demand and perspective high dependency on national and cross-border electricity flows. This is the case in the south of Germany (Bavaria) with high demand from the industry and high tech sector. Bavaria is in particular affected by the phase-out of nuclear power plants. According to the Chamber of Industry and the Bavarian Energy and Water Association, at the transmission grid level, more than 1,000 km of grid need to be empowered and 650 to be newly installed. In addition, 230 km gas long distance grids need to be installed. The expansion and adaption of the distribution grid is equally pressing in Bavaria due to high shares of decentralized RES generation at distribution grid level. The new grid infrastructure in Bavaria requires investments of approximately 6.6 billion Euros.

D. Consumers, retail markets and the role of DSOs

Technological advances

2.29

We share ACER's analysis on smart grids and their contribution to network management, in particular as regards the accommodation of less predictable generation embedded in lower voltage networks.

As regards smart meters, the example of Germany shows that cost-benefit analyses have not yet proven their economic feasibility. The cost of introducing smart metering could be reduced massively if market processes to implement metering systems would be harmonized at European level.

An appropriate framework for energy customers

3.26

As regards the facilitation of consumers' engagement and switching, we would like to refer to the example of Germany where portals for customers to compare different providers are widely known by customers and are well accepted. German consumers can choose between a large number of suppliers and tariffs thanks to a successful opening and liberalisation of the electricity and gas markets.

We do not share the opinion that the implementation of a 24 hour switching process should be prioritised, as we do not believe in switching rates as adequate criteria to measure competition. As outlined above, switching processes in Germany are highly transparent and can be implemented quickly and efficiently. Low switching rates can therefore not be linked to a lack of transparency or contractual/technical issues. On the contrary, low switching rates can rather be derived from consumer satisfaction. In the latest survey of the German Association of Energy and Water Industries (BDEW), SWM has the highest customer satisfaction rate in Germany and the best image concerning renewable energies. The latest fairness study (October 2013) of focus money evaluates SWM both as gas and as electricity supplier with best marks and we recently got the award "top local supplier".

In any case, we encourage ACER to specify its proposal further and to ensure it applies to the same definitions as in the national regulatory systems. Before developing new provisions for the retail market, the European authorities should focus on the full implementation of the Third Energy Package's rules in all member states.

Enabling the market in demand response

2.31-2.32/ 3.29

As regards data access, TSOs and DSOs need to have access to meter data which are necessary to fulfil regulatory and legal duties without explicit consumer consent, e.g. meter data needed for balancing settlement, monitoring the state of the network and system operation, grid usage billing, historical consumption (according to the EU Energy Efficiency Directive).

Role of DSOs

3.31-3.35

SWM rejects considerations of introducing ownership unbundling at DSO level and therefore advises not to force changes in the organizational structure of DSO companies by extending unbundling requirements.

Provided the requirements of the internal energy market directives are fully transposed, correctly implemented and strictly enforced at national level, – as in Germany since 2005/2011 – they ensure non-discriminatory network access and market functioning on wholesale and retail level. Confidentiality obligations (informational unbundling) and unbundling of accounts are binding for all network operators without any distinction or exception. In addition, ownership unbundling would entail a further reduction of company size which could impede the availability of necessary capital to conduct critical infrastructure investments at DSO level.

We agree that DSOs will play a significant role in facilitating the development of an effective, affordable and customer-friendly retail market and the development of smart grids. They will guarantee neutrality and non-discrimination with regard to market participants and ensure data provision and effective switching of (service) suppliers.

Unlike ACER, SWM holds the view that the influence of DSOs on retail market functioning should be maximized rather than minimized.

We appreciate the approach to define some general principles for DSOs and to respect the national specific situations. The distribution landscape in Europe differs very much among Member States regarding the number of DSOs, their average size, tasks and ownership. Therefore, a one-size-fits all model for Europe is neither desirable nor feasible.

In case metering services are provided by third parties, they have to be tightly regulated and supervised for the following reasons:

- Firstly, as described above, data protection is an important matter, especially with regard to consumer data.

- Secondly, data on energy flows in the grid and on electricity or gas infeed are the essential basis for the information on the system state. The DSO needs this information in order to be able to efficiently operate the network. Thus, even if a third party was responsible for meter data handling, the relevant information would have to be passed on to the DSO.
- Thirdly, in the case of a third party being responsible for data handling, regulatory measures would be necessary to ensure data protection and non-discriminatory data access; as one feature of this construction. In the view of SWM, the installation of such a new player, next to the DSO, is not an efficient way to organise data handling.

Improved coordination 3.36

SWM agrees with ACER's assessment that **greater coordination between TSOs and DSOs** is required. In view of the significant role of DSOs in tackling challenges in view of the strong penetration of NP RES, **DSOs should be equally involved in the development and implementation process of the electricity network codes.**

Network tariffs 3.37

Unlike ACER, **SWM does not support dynamic network tariffs.** Due to high amounts of data, the calculation of dynamic network tariffs is a complex and cost intensive matter. The high costs of dynamic pricing do not compensate the added value of the price signal.

We support considerations to shift network tariffs from a volumetric (kWh) towards a capacity based (kW) system, since most network costs are determined by the electric or gas capacity (kW). Besides, technological developments (e.g. micro-grids, section 2.29) and changing consumer behaviour are likely to lead to decreasing energy volumes taken from the network. Thus, on the basis of today's widely volumetric based network tariff systems, revenues for network operators would decrease which would hamper their potential to operate the network and carry out necessary investments.

We propose a mixed tariff structure based on the capacity of the connection and the volume used. This may constitute an interesting alternative, allowing network operators to recover their costs in a more balanced and consistent way.

Implications for governance

The principle of subsidiarity

In contrast to national regulatory agencies, EU agencies such as ACER do not possess the detailed knowledge of national markets and the respective energy legislation and regulation and their application. This is why SWM questions whether a shift of responsibilities to a supranational level would be beneficial. Transferring responsibilities for detailed energy regulation to EU agencies would also be in contradiction with the principle of subsidiarity, which is fundamental to the functioning of the European Union and, therefore, is also reflected in the Third Energy Package, for instance in article 27 of the Electricity and Gas Directives, respectively.

Q4: Are there other areas where ACER should focus?

As a general remark, SWM would like to encourage ACER to focus on those topics and challenges concerning the regulated sector. Market-based approaches are the first choice to tackle future challenges and to support the future integration of the European electricity and gas markets. Accordingly, **regulatory interventions shall only apply in substantively justified cases, e.g. to overcome market failure in fields relevant for security of supply.**

In many areas, such as regards technical issues concerning grid connection as well as operational questions which are covered by the codes on grid connection and system operation, regionally specific solutions are often rather needed than a “one-size-fits-all“-approach. Thus, the principle of subsidiarity shall be applied where necessary. Besides, the sphere of competence of other institutions shall be respected.



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