GEODE Position Paper on the 3rd EU Energy Package

The European Commission has presented its 3rd Legislative Package on 19 September 2007. **GEODE**[1] would like to take the opportunity of commenting on some of the fundamental issues raised in the new proposals.

I. Introduction

GEODE in general supports the Commission's proposals. We agree with the Commission that there is an urgent need for further action to achieve a competitive European Energy market. We believe that European electricity and gas markets would benefit from deeper unbundling and better coordination between transmission system operators (TSO). Strengthened powers of national regulators and the settlement of a European Energy Agency will also help to bring forward the integrated energy market.

While the general legislative path the Commission wants to take is welcomed by **GEODE**, we nevertheless want to point out that further improvements and enhancements need to be made. In addition to that, **GEODE** is worried about the fact that the role of distribution companies in the European energy landscape is not sufficiently recognized. The following parts will focus on the issues we believe to be of vital importance for a well-functioning energy market.

[1] Established in 1991, GEODE represents over 100 European independent distribution companies of gas and electricity in 11 countries, both privately and publicly owned. GEODE serves a population of 18 million people.

II. Unbundling

GEODE strongly supports the Commission's Proposal of ownership unbundling of monopolistic transmission infrastructure from production and supply activities. Only by means of ownership unbundling, the conflict of interest inherent in vertical integration can be solved. The positive results of deeper unbundling are non-discriminatory access to networks and information as well as investment in infrastructure according to market needs.

While being aware of the legal and political obstacles ownership unbundling might face, **GEODE** encourages all decision-makers to push forward this proposal. In relation to deeper unbundling, we are disappointed to see that Member States have the possibility to opt for the creation of an independent system operator (ISO) instead of (full) ownership unbundling. Even if the ISO had strong competences – as proposed by the Commission - **GEODE** rejects the option because of reasons of regulatory policy. The designation of system operators by Member States and the final approval by the Commission is contrary to the ideas of a competitive market. Apart from that, the interfaces between the ISO and the asset owner will lead to a significant increase of regulatory oversight. Regardless of those serious misgivings, the ISO-option can be abused as a back door for Member States not willing to fully unbundle transmission infrastructure. By vesting the ISO only little competences as suggested by France and Germany, the ISO-option will water down all unbundling efforts.

GEODE would also like to emphasize that the final goal of deeper unbundling should be that several transmission systems will be monitored by a supranational/regional ISO. Deeper unbundling must not stop at national borders. Instead, the integration of national energy markets calls for system operators that transcend national boundaries. Otherwise, energy markets will predominantly remain national and cross-border problems such as the lack of interconnections will not be solved appropriately. In our understanding, a supranational/regional ISO is no alternative to ownership unbundling on national level, but a necessary complement. Some proposals of the 3^{rd} Energy Package like the obligatory cooperation of TSOs already give a picture of how an integrated energy market might work in the future to come.

Finally, **GEODE** wants to express its concerns with over detailed monitoring of distribution activities.[2] In the past, distribution system operators have taken ambitious steps to ensure strict adherence to European unbundling requirements by 1 July 2007. Before new and tougher monitoring is demanded, the existing legislation must be carefully examined. **GEODE** is strongly convinced that a high level of competition is already guaranteed under the Electricity and Gas Directive. **GEODE** does not like requirements including structural measures to be undertaken by network operators as the geographical separation of location, IT infrastructure, separate branding strategies, that are neither of benefit to the market nor to

[2] See amendments to Art. 15 Electricity Directive and Art. 13 Gas Directive.

the customer. On the contrary, it will impose high costs on distribution operators and thereby lead to a situation where small and medium companies are not able to compete in the market. In the end, tougher regulation initially introduced to improve market functioning will foster market concentration.

III. European Energy Agency and National Regulators

GEODE also wants to express its support for the creation of a European Energy Agency. We believe that such an Agency will speed up market integration because cross-border issues can be effectively tackled. The Agency will also help to harmonize the different energy market structures in Europe by providing a collaboration forum for national regulators. **GEODE**, however, points out that the Agency should not only be responsible for cross-border issues but all issues that need harmonisation. National issues should remain within the responsibility of the Member State. Therefore, new legislation must clearly distinct between the competences of national regulators and of the Agency.

GEODE is particularly concerned about the obligation to designate only one regulatory authority on national level.[3] While generally recognizing the need for effective regulatory oversight, we do not see the necessity to establish only a national regulator. Member States must be allowed to keep regulatory authorities on federal and state (regional) level. This especially holds true for countries with a federal structure like Germany. By keeping regulators on state level, distribution companies as well as customers can benefit from better regulative experiences. The legal basis for this demand is the principle of subsidiarity which is a central element of European law.

IV. Regulation 1775/2005

GEODE strongly supports the amendments of Regulation 1775/2005. The new Art. 7 which introduces market based balancing rules will prevent arbitrariness and thereby lead to greater market integration.

V. Vision of GEODE: A framework for a competitive and consumer-friendly European Energy market

GEODE is convinced that liberalized energy markets can not work without an adequate protection of energy consumers. Legislative proposals must take into account the different needs of small consumers (residential, household) and larger consumers (industry, business). Especially residential energy consumers need special protection against market abuses. The proposed European Charter on the Rights of Energy Consumers already provides incentives to encourage moves in this direction. **GEODE** suggests that the 3rd Energy Package will be

[3] See Art. 20 a Electricity Directive and Art. 24 a Gas Directive.

linked closely to a “Energy Consumer’ Rights Package”. Such a package could enhance consumer rights and clarify public service obligation. Due to their local or rather regional roots and their in-depth knowledge about their customers, distribution companies are locally present to easily meet customer needs in a responsible way. In this sense, distribution companies are of vital importance for the implementation of customers’ rights and hence - although they act on a local level – for the creation of a consumer-friendly European Energy market. Having said this, **GEODE** would like to express its support for the Commission’s proposals to establish a Retail Forum in which specific retail issues (e.g. metering and energy efficiency) are dealt with. **GEODE** is already prepared to play an active role in this forum and to present its views on a European retail market.

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