

**COMMISSION DECISION**

**of 26 XI 2008**

**relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the  
EEA Agreement**

**(Cases COMP/39.388 – German Electricity Wholesale Market and COMP/39.389 –  
German Electricity Balancing Market)**

**(Only the English text is authentic)**

**(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>1</sup>, in particular Article 9(1) thereof,

Having regard to the Commission decision of 7 May 2008 to initiate proceedings in this case,

Having expressed concerns in the preliminary assessment of 7 May 2008,

Having given interested third parties the opportunity to submit their observations pursuant to Article 27(4) of Regulation (EC) No 1/2003 on the commitments offered to meet those concerns,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer,

WHEREAS:

#### **1. SUBJECT MATTER**

- (1) The present Decision is addressed to E.ON AG, Düsseldorf (hereafter "E.ON") and concerns the withholding of capacity and deterrence of investment in generation by third parties on the German electricity wholesale market and favouring affiliated companies on the German balancing market as well as preventing power producers from other Member States from selling balancing energy into the E.ON balancing markets.
- (2) In its Preliminary Assessment of 7 May 2008, the Commission came to the provisional conclusion that E.ON holds with RWE and Vattenfall Europe a collectively dominant position on the German wholesale electricity market and that the suspected practices by E.ON of withholding capacity and deterring investment in generation by third parties on the German electricity wholesale market raised concerns as to the compatibility with Article 82 of the EC Treaty<sup>2</sup>. Furthermore, the Commission came to the provisional conclusion that E.ON is dominant on the market for the demand of secondary reserves and that the suspected practices by E.ON of favouring affiliated companies on the German balancing market as well as preventing power producers from other Member

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<sup>1</sup> OJ L 1, 04/01/2003, p.1, as amended by Regulation (EC) No 411/2004 (OJ L 68, 08/03/2004, p.1).

<sup>2</sup> In the preliminary assessment of 7 May 2008 and in the following text a reference to Article 82 of the EC Treaty means a reference to both provisions, Article 82 of the EC Treaty and Article 54 of the EEA Agreement.

States from selling balancing energy into the E.ON balancing markets raised concerns as to its compatibility with Article 82 of the EC Treaty.

## **2. THE PARTIES**

- (3) E.ON is a German undertaking active in the production, transportation, distribution and supply of energy (mainly electricity and gas) in Germany, other EU Member States and world-wide. In 2007, E.ON had a turnover of EUR 68,731 million.<sup>3</sup>

## **3. PROCEDURAL STEPS UNDER REGULATION NO 1/2003**

- (4) The investigation was based on the inspections at E.ON premises in May and December 2006<sup>4</sup> and on fact-finding through requests for information in the course of 2006 - 2008.
- (5) On 7 May 2008 the Commission opened proceedings with a view to adopting a decision under Chapter III of Regulation (EC) No 1/2003 and adopted a preliminary assessment as referred to in Article 9(1) of Regulation (EC) No 1/2003 which set out the Commission's competition concerns.
- (6) This assessment was notified to E.ON AG by letter of 7 May 2008.
- (7) On 27 May 2008, E.ON replied that it disagreed with the preliminary assessment and submitted commitments ("the Commitments") to the Commission in response to the preliminary assessment.
- (8) On 12 June 2008 a notice was published in the Official Journal of the European Union pursuant to Article 27(4) of Regulation (EC) No 1/2003, summarising the concerns and the commitments and inviting interested third parties to give their observations on the commitments within one month following publication.
- (9) On 24 July 2008 and on 9 September 2008 the Commission informed E.ON of the observations received from interested third parties following the publication of the notice. On 15 October 2008 E.ON submitted an amended proposal for commitments.
- (10) On 3 November 2008 the Advisory Committee on Restrictive Practices and Dominant Positions was consulted. On 10 November 2008 the Hearing Officer issued his final report.

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<sup>3</sup> E.ON Annual Report 2007, E.ON Corporate Profile.

<sup>4</sup> Inspection Decision of 24 May 2006 in case COMP/39.326 and inspection decision of 24 November 2006 in case COMP/39.315, 39.316, 39.317, 39.326, 39.388, 39.389. The documents gathered at E.ON premises as part of the investigation of case COMP/39326 in May 2006 were – with E.ON's consent in its answer to the request for information of 11.12.2007 – added to the files of the cases COMP/39388 and 39389.

## 4. PRELIMINARY ASSESSMENT CONCERNING THE WHOLESALE MARKET

### 4.1. Relevant markets

#### *Product market*

- (11) According to the preliminary assessment the product market was considered to be the wholesale market for electricity (imports and generation of electricity for further resale). This is in line with the decision making practice of the Commission<sup>5</sup> and with the final report on the energy sector inquiry ("SI").<sup>6</sup>

#### *Geographic market*

- (12) According to the preliminary assessment for the period assessed (2002 – 2007) the geographic market was considered to be the territory of Germany. This is in line with decision making practice of the Commission<sup>7</sup> and with the conclusions of the SI.

### 4.2. Position of the parties on the relevant market / Dominant position

- (13) In the preliminary assessment the Commission took the view that whereas specific characteristics of the electricity sector may allow each of the largest power generators within the same market to be individually dominant even with limited market presence, that is, within the meaning of the case law, to behave independently to an appreciable extent from their competitors, their customers, and ultimately consumers, the German wholesale electricity market is collectively dominated by the three operators E.ON, RWE, and Vattenfall Europe within the meaning of Article 82 of the Treaty. This view was based on (a) the structure of the German electricity wholesale market, (b) the characteristics of the electricity wholesale market, (c) the implementation of a common policy by E.ON, RWE and Vattenfall and (d) high barriers to entry.
- (14) The German electricity wholesale market is highly concentrated and the market shares of RWE, E.ON and Vattenfall remained quite stable between 2002 and 2006<sup>8</sup> on a joint basis but also on an individual basis, as shown in table 1 below.

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<sup>5</sup> Commission Decision M.1673 - *VEBA/VIAG*, 13/06/2000, paragraph 19 and confirmed again in Commission Decision M.2966 – *EnBW/Laufenburg*, 19/12/2002, paragraph 8.

<sup>6</sup> See the Final Report to the Sector Inquiry carried out by the European Commission at <http://ec.europa.eu/comm/competition/sectors/energy/inquiry>, paragraphs 397-399.

<sup>7</sup> Commission Decision M.1673 - *VEBA/VIAG*, 13/06/2000, paragraph 46 and confirmed again in Commission Decision M.2966 – *EnBW/Laufenburg*, 19/12/2002, paragraph 8.

<sup>8</sup> There are no indications that the market structure changed significantly in 2007.

**Table 1: Generated electricity as a share of consumption (%); 2002-2006\***

Year	E.ON	RWE	Vattenfall	Joint
2002	[20-30]%	[30-40]%	[10-20]%	75%
2003	[20-30]%	[30-40]%	[10-20]%	75%
2004	[20-30]%	[30-40]%	[10-20]%	70%
2005	[20-30]%	[20-30]%	[10-20]%	67%
2006	[20-30]%	[20-30]%	[10-20]%	67%

- (15) E.ON, RWE and Vattenfall not only control most of the capacity, they also have together with EnBW quasi-control over the relatively cheap power generation technologies, i.e. nuclear, hydro and lignite. E.ON, RWE and Vattenfall have together a share of 77% of total cheap generation capacity in Germany, with EnBW controlling a significant proportion of all remaining capacity.
- (16) E.ON, RWE and Vattenfall are the only net sellers<sup>9</sup> with an excess capacity in the wholesale market and each of them is aware of this fact. This position enables them to act more independently on the wholesale electricity market than other operators as e.g. EnBW which are short with capacity.
- (17) Furthermore, RWE, E.ON and Vattenfall are all vertically integrated companies with significant shareholdings in downstream companies, in particular municipal utilities which are active on the electricity retail markets.
- (18) E.ON, RWE and Vattenfall are linked by a network of agreements on production and wholesale supply.
- (19) In addition the following characteristics of the wholesale electricity market allowing collective dominance were identified:
- the product is homogeneous as it is sold as a standard product and is also not evolving
  - the price of electricity is transparent<sup>10</sup> and there is transparency with regard to generation<sup>11</sup>
  - the market is growing at a rather modest rate.

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\* *Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.*

<sup>9</sup> SI paragraph 455.

<sup>10</sup> SI paragraphs 371 & 372.

<sup>11</sup> All main generators use an online service that provides detailed real-time information about power plant usage.

- (20) Furthermore, according to the preliminary assessment of the Commission E.ON, RWE and Vattenfall could have adopted a common policy to raise prices. The implementation of the common policy is possible given the structural links on production and the high degree of transparency between the operators concerned. The implementation of a common policy is possible because the operators have a possibility to counter a deviation by one of them. In terms of production, if an undertaking carrying out a withdrawal of capacity identifies that another one is increasing its production, given transparency the first undertaking could immediately react by doing the same. In terms of prices, the undertakings can immediately react to price offers on OTC markets and wage a price war.
- (21) Last but not least, new entry in the form of investment in new generation capacity is severely restricted and imports impose little competitive pressure on German generators. As outlined in the preliminary assessment the average hourly total import/export capacity relative to the installed generation capacity in Germany for 2004 is 16%<sup>12</sup> and has remained stable since. Consequently the potential competitive constraint of imports remains limited in Germany.
- (22) Therefore E.ON, RWE and Vattenfall are able to keep a stable position in the wholesale electricity market.
- (23) However, in the market test the Commission received a submission that there are structural and cost differences between E.ON and RWE on the one hand and Vattenfall on the other hand. It was stated that, therefore, Vattenfall should not be considered part of the collectively dominant group of undertakings. This was in line with the decisional practice in Germany.<sup>13</sup>
- (24) For the purpose of this decision it can be left open, whether RWE, E.ON and Vattenfall are to be considered collectively dominant as described in the preliminary assessment or whether only RWE and E.ON are to be considered collectively dominant. Under both alternatives E.ON would be considered part of the collective dominant position.

#### **4.3. Substantial part of the common market**

- (25) In the preliminary assessment the Commission took the view that the German wholesale electricity market is a substantial part of the common market as required by Article 82 of the EC Treaty. The German wholesale electricity market is the largest wholesale market in Europe, corresponding to a total of 550 TWh per year on average in the past three years. Its share of the total consumption of electricity in the European Union is about 20%. It also covers the territory of the largest Member State.

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<sup>12</sup> SI Final Report, Table 24 on page 177.

<sup>13</sup> OLG Düsseldorf, VI-2 Kart 7/04 (V), *Stadtwerke Eschwege*, 06.06.2007. The higher regional court of Düsseldorf found that E.ON and RWE were collectively dominant due to their structural similarities (largest shares of electricity generation and generation capacity, high degree of vertical integration), and the fact that there was no competition between them. This was confirmed by the Bundesgerichtshof on 11 November 2008, KVR 60/07 – *E.ON/Stadtwerke Eschwege*.

#### 4.4. Practices raising concerns

- (26) In the preliminary assessment the Commission raised the concern that E.ON would have abused its dominant position on the wholesale market according to Article 82 of the EC Treaty by the short term withdrawal of available generation capacity and the deterrence of investments of third parties in generation on the German wholesale electricity market.
- (27) The application of Article 82 of the EC Treaty is not prevented by the fact that the abuse may have been committed only by E.ON and not necessarily by all dominant undertakings in question. According to established case law undertakings occupying a joint dominant position may engage in joint or individual abusive conduct. It is enough for the abusive conduct to relate to the exploitation of the joint dominant position which the undertakings hold in the market. The abuse only has to be capable of being identified as one of the manifestations of such a joint dominant position being held.<sup>14</sup>

##### *Short term withdrawal*

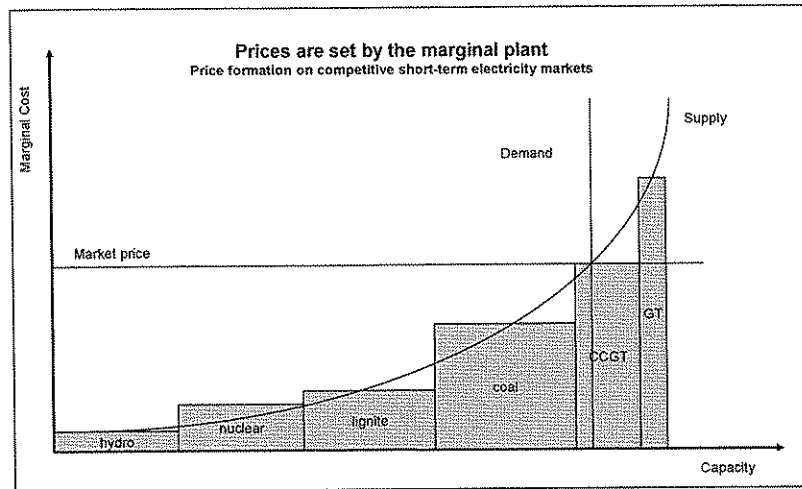
- (28) In the preliminary assessment the Commission raised concerns that E.ON would have designed a strategy to withdraw available generation capacity (limiting the production of certain plants) with a view to raising electricity prices to the detriment of consumers.
- (29) Electricity can be produced in many ways using a variety of fuels and applying different technologies with different cost structures. The SI<sup>15</sup> showed that, on competitive short term markets and in the absence of generation capacity constraints, prices are set by the short run marginal cost (hereinafter: "SRMC") of the plant producing the last unit of electricity required to meet demand. SRMC are mainly the fuel costs and other variable production costs of a plant. The last or marginal unit needed to meet demand is also the one with the highest SRMC of all units running at a given point in time.
- (30) In this respect it is important to underline that the SRMC of the price setting unit determines not only the revenues of the owner of the marginal plant, but also of all other units called to produce in any given hour. Figure 1 explains this concept graphically using a schematic 'merit order'.

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<sup>14</sup> ECJ, Case T-228/97 *Irish Sugar*, judgement of 7/10/1999 paragraph 66; CFI, Joined Cases T-191/98 and T-212/98 to T-214/98 *Atlantic Container Line*, judgement of 30/09/2003, paragraph 633.

<sup>15</sup> SI paragraphs 368-372.

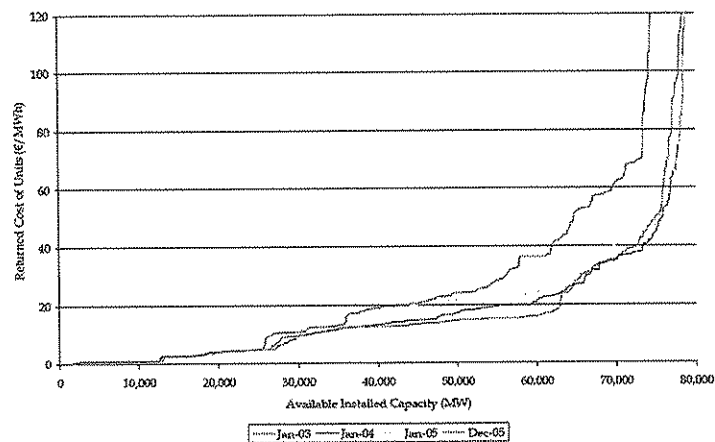
**Figure 1: Illustration of a theoretical merit order**



Source: SI. Note: This graph is only an abstract representation. It does not necessarily reflect actual cost relations between different types of generation and equally does not include the value of CO<sub>2</sub> allowances.

- (31) The diversity in technology is also reflected in the merit order of the German power plant portfolio which is shown in figure 2.<sup>16</sup>

**Figure 2: Merit order curve for Germany**



Source: Electricity Study (2007)<sup>17</sup>. Note: This merit order curve was calculated based on monthly average of each units' available installed capacity at the marginal costs of the unit, calculated using the fuel price and efficiencies returned by each of the companies.

- (32) Figure 2 shows the merit order curve for the months of January 2003, January 2004, January 2005 and December 2005. The main shift in the curve occurred in 2005 and was due to CO<sub>2</sub> prices. The plants on the right part of the curve that are

<sup>16</sup> The curve includes all plants greater than 25MW for all companies with a portfolio of generation assets greater than 100MW that are connected to the high voltage grid.

<sup>17</sup> Electricity Study by London Economics in association with Global Energy Decisions (hereafter the "Electricity Study") at <http://ec.europa.eu/comm/competition/sectors/energy/inquiry>.



gas- and oil-fired power plants were also affected by increases in fuel prices. The marginal costs of the hydro and nuclear plants on the left hand side of the curve remained unaltered because hydro has zero marginal costs and the fuel cost of nuclear generation remains small compared to the fuel cost of other sources of generation despite the increase in uranium price.

- (33) The price of the short-term market in Germany is the price set by the exchange EEX. This price is set for each hour of each day through daily auctions. Each market participant hands in price-quantity pairs for its selling and purchasing plans. The participants are free to set the quantities and prices they offer. The exchange builds accordingly aggregate supply and demand curves. The market price and the corresponding clearing quantity are then set as a result of the matching process. Prices and volumes for the individual hours are publicised by EEX.
- (34) In the electricity sector, the consequences of limiting the supply of electricity are very severe for consumers.
- (35) The price on short-term markets is the result of an auction mechanism determining a single price for the whole market. This price is equal to that of the last offer accepted in the process of matching demand and offer. The offers on the supply side are reflecting a merit order of production facilities which is quite unique: the difference in marginal costs between some of the cheaper baseload generation (nuclear plants) and some of the more expensive ones (gas-fired plants) was more than sevenfold during the period at stake.<sup>18</sup> Correspondingly, this curve is quite steep on its right side (see Figure 2). In addition demand is quite inflexible and the product cannot be stored. Thus, unlike in most other sectors of the economy, withdrawing some of the generation mechanically raises the price of the short-term market and can do so significantly when demand is high (thus when the more expensive plants are called upon to meet demand).<sup>19</sup> This occurs to the benefit of all generation sold (at that given hour) and to the detriment of consumers who cannot reduce their short term consumption.
- (36) The preliminary assessment of the Commission was that E.ON would have designed a strategy to withdraw available generation capacity in the short term to raise prices.
- (37) According to the calculations made by the Commission, E.ON could have withheld substantial capacity which was profitable to run between 2002 and 2007 and especially in 2003 and 2004.
- (38) In the preliminary assessment the Commission considered that the short-term effect could be compounded by a long-term effect as long-term markets are driven

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<sup>18</sup> The marginal cost of nuclear plants was in the range of [5-15]\* €/MWh and the marginal cost of gas-fired plants was in the range of [40 to 100]\* €/MWh. The marginal cost of run-of-rive plants is even lower than that of nuclear plants and the marginal cost of oil-fired plants is higher than that of gas-fired plants.

<sup>19</sup> Withdrawing is larger at peak hours.

by the corresponding trend in short-term prices<sup>20</sup>, i.e. a sustained increase in short-term prices on the EEX in Germany could be translated into an increase in the price for forward products for one, two, three years ahead. A withholding would force buyers to buy forward products at much higher prices than at the level at which they were ready to buy before prices increased in the spot market. In addition, the alleged withdrawal of capacity by E.ON would increase volatility which increases the premium that buyers of forward products are ready to buy.<sup>21</sup>

- (39) Such a strategy is also possible because new entry is very difficult and not in a position to constrain the behaviour of the withholding operator. And even if an operator other than the one withholding generation decided to invest to benefit from an increase in prices it will be constrained by the difficulty to build cheap plants which would be sure to benefit from these prices and replace capacity withdrawn: in practice only more expensive gas-fired capacity was added to the market by the new entrants after 2001 and overall, the increase in capacity was marginal. Further, deciding on a new plant and building it takes a minimum of 3 to 5 years. In the meantime withholding can take place to the detriment of consumers.
- (40) The withdrawal comes at the cost of the foregone profit of the generation not sold. But this is compensated by the increased profits of all the generation which continues to be produced. If an operator has a significant part of its portfolio in baseload capacity (as is the case of E.ON which has in particular the largest portfolio of nuclear plants in the market), it can thus cover its costs and achieve a profit.

#### *Deterring investments*

- (41) In the preliminary assessment the Commission also raised concerns that the short term withdrawal of available generation capacity would have been complemented by a medium and long-term strategy by E.ON of deterring actual or potential competitors from entering the generation market and thereby limiting the market volume in electricity generation.
- (42) Two different forms of behaviour to prevent independent investment by actual and potential competitors were distinguished: long-term electricity supply contracts and offering new competitors a participation in an E.ON power plant.
- (43) The preliminary assessment of the Commission was that E.ON would have designed and successfully implemented such a strategy.
- (44) According to the preliminary assessment, the generation strategy of E.ON was directly linked to its price strategy. E.ON would have been able to maintain a wholesale price level which would not have developed under competitive circumstances. As prices on the wholesale level have a substantial influence on retail prices, E.ON's strategy of deterring investments by third parties does not only harm the retailer, i.e. the direct customer, but also the final end-customer.

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<sup>20</sup> See SI paragraphs 373 et seq.

<sup>21</sup> See SI paragraph 376.

#### 4.5. Effect on trade between Member States

- (45) In its preliminary assessments the Commission considered that the practices in question could have an effect on trade between Member States given that the consequences of this alleged behaviour do not only affect customers who need electricity as an input for their industrial activity on the German markets but also customers in other European markets as higher prices on the German market diminish the scope for exports to other markets.

### 5. PRELIMINARY ASSESSMENT CONCERNING THE BALANCING MARKET

#### 5.1. Relevant markets

##### *Product Market*

- (46) In the preliminary assessment, the product market was considered to be the market for the demand of secondary balancing power (secondary balancing reserves). Unlike the wholesale electricity market, in which electricity is purchased for further resale, balancing power is needed to maintain the appropriate tension level in the grid. This is in line with the previous practice of the Commission<sup>22</sup>. As there are certain technical differences and differences in terms of demand between secondary balancing reserves on the one hand and tertiary balancing reserves as well as other forms of reserves (primary reserve, wind reserve etc.) the relevant product market was limited to secondary balancing power.

##### *Geographic Market*

- (47) In the preliminary assessment the geographic market for the demand of secondary balancing power was considered to be the network area of each transmission system operator ("TSO"). Until December 2007 the TSO procured secondary balancing reserves in practice almost exclusively from generators in its own network area. According to the preliminary assessment the situation did not change significantly after the introduction of a new system of auctions on a national level in Germany in December 2007.

#### 5.2. Position of the parties on the relevant market / Dominant position

- (48) In the preliminary assessment the Commission took the view that E.ON is dominant within the meaning of Article 82 of the EC Treaty on the market for the demand of secondary balancing reserves in the E.ON network area, where the TSO (E.ON Netz, a subsidiary of E.ON) acts as a monopsonist.

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<sup>22</sup> See Commission decision COMP/M.3440 – EDP/ENI/GDP, 9/12/2004, paragraph 91; not contested by the Judgement of the CFI, T-87/05 – EDP/Commission, judgement of 21/09/2005.

### 5.3. Substantial part of the common market

- (49) In the preliminary assessment the Commission took the view that the market for secondary balancing reserves in the E.ON network area which covering about one third of the German territory is a substantial part of the common market.

### 5.4. Practices raising concerns

- (50) In the preliminary assessment the Commission raised the concern that E.ON would have abused its dominant position on the network according to Article 82 of the EC Treaty by first increasing its own costs with a view to favouring its production affiliate and passing the costs on to the final consumer; and second preventing power producers from other Member States from exporting balancing energy into the E.ON balancing markets.
- (51) First, according to the preliminary assessment only [0-3] undertakings were qualified to supply secondary reserves in the E.ON network area in 2005 whereas [20-30] undertakings were qualified to supply tertiary reserves in the same area in 2005. Between January 2003 and May 2005 E.ON Netz bought systematically [...] secondary reserves from its own affiliate E.ON Sales and Trading instead of procuring other forms of balancing energy, i.e. tertiary reserves, from a more competitive environment. Thereby E.ON Netz increased its own costs probably with a view to favouring its own production affiliate and at the same time being able to pass on the additional balancing costs to the final consumer.
- (52) Second, there was the concern that E.ON would have prevented the import of balancing energy by power producers from other Member States into the E.ON balancing area. In some instances generators in other Member States had asked to be prequalified for offering balancing energy in Germany but E.ON had refused their prequalification. This has been done with a view to favouring its own production affiliates and more generally to reserve the German balancing area for the German power producers.
- (53) It was the preliminary view of the Commission that E.ON Netz also would have increased its own costs probably with a view to favouring its own production affiliate and at the same time being able to pass on the additional balancing costs to the final consumer.
- (54) Furthermore, it was the preliminary view of the Commission that E.ON also would have discriminated between domestic balancing energy and import balancing energy. This would be against the general principle enshrined in Article 12 of the Treaty according to which any discrimination on the basis of nationality is prohibited. This is confirmed by the Court, which has applied Article 82 to practices which were discriminatory directly or indirectly on grounds of nationality.<sup>23</sup>

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<sup>23</sup> *GVL*, Case 7/82 [1984] ECR 483 and *AAMS v Commission*, 22 November 2001, Case 139/98, [2001] ECR II-3413.

- (55) It was emphasized that the Court has been critical of practices which restore national divisions in trade between Member States.<sup>24</sup> Practices that do so were generally considered to have as their object the restriction of competition.<sup>25</sup>

### 5.5. Effect on trade between Member States

- (56) In its preliminary assessment the Commission considered that the practices in question could have an effect on trade between Member States given that the consequences of this alleged behaviour do not only affect customers who need electricity as an input for their industrial activity on the German markets but also customers in other markets as higher prices on the German market diminish the scope for exports to other markets.<sup>26</sup>

## 6. PROPOSED COMMITMENTS

- (57) The key elements of the commitments offered by E.ON voluntarily on 27 May 2008 were as follows:
- E.ON will divest the following generation capacity in Germany to an independent and unconnected undertaking of E.ON:
    - E.ON will divest wholly its shares in the run-of-river plants ÖKB/Inn (182.5 MW), Weser (42 MW), Inn (Nußdorf, Eggfing, Ering; together 102.2 MW) and Jansen (Trausnitz, Tanzmühle; together 5.1 MW).
    - E.ON will grant drawing rights for their whole remaining life-time (including possible extensions) and the right to participate in possible new plants in the nuclear power plants Gundremmingen B, C (643 MW), Krümmel (673 MW) and Unterweser (184 MW).
    - E.ON will divest wholly its shares in the lignite power plant Lippendorf (445.5 MW).
    - E.ON will grant a drawing right of 159 MW for the whole remaining life-time (including a corresponding right to participate in any new-build) in the lignite power plant Buschhaus.
    - E.ON will divest wholly its shares in the following hard coal plants: Rostock (256 MW), Zolling (449 MW), Farge (350 MW), Mehrum (345 MW) as well as Veltheim 2/3 (265.3 MW) and Bexbach (79.3 MW).

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<sup>24</sup> Joined Cases 56/64 and 58/64, *Consten and Grundig* [1966] ECR 299, page 340.

<sup>25</sup> See: Case 41/69 *ACF Chemiefarma* [1970] ECR 661, para.128 and Joined Cases 56/64 and 58/64 *Consten and Grundig* [1966] ECR 299, paragraphs 342 and 343.

<sup>26</sup> Furthermore, E.ON's TSO network reaches into other Member States territory.

- E.ON will divest wholly its shares in the gas fired power plants Robert Frank (491 MW).
- E.ON will divest wholly its shares in the pump storage plants Erzhausen (220 MW) and Jansen (Kainzmühlsperre, Reisachhochspeicher; together 127 MW).
- E.ON will also divest its Transmission System Business consisting of its 380/220 kV-line network, the system operation of the E.ON control area and related activities. E.ON has committed to sell the assets to a buyer which is not an undertaking with an interest in generation or supply of electricity (unbundling requirement).
- E.ON may not reacquire either the divested generation capacity or the network for a period of 10 years.

## **7. COMMISSION NOTICE PURSUANT TO ARTICLE 27(4)**

- (58) In response to the publication on 12 June 2008 of a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003, the Commission received 20 responses from interested third parties. The respondents generally welcomed the proposed commitments, which they believed would address the concerns expressed by the Commission.

### **7.1. Divestiture of the power plants**

- (59) The respondents who commented on the divestiture of the power plants confirmed that the remedy was adequate to meet the concerns raised in the preliminary assessment.
- (60) However, as regards the divestiture of generation capacity some respondents suggested that the total amount of generation capacity to be divested should be increased in order to improve the competitive structure on the German wholesale electricity market. This suggestion goes beyond the scope of this procedure as the commitments shall address specific concerns of an abuse expressed in the preliminary assessment and not the dominant position of the undertaking concerned.
- (61) Furthermore, one respondent argued that the number of buyers should be more limited since large players will be more able to compete on equal terms with the players already present in the market, whereas other respondents were in favour of increasing the number of buyers. The degree of limitation of buyers in the commitments ensures that the divestment business is maintained as a viable and active competitive force in competition with E.ON AG and its competitors while providing a broad range of buyers the possibility to access it. Therefore, the limitation is also proportionate.
- (62) Some respondents argued that asset swaps should not be allowed as the number of buyers is thereby limited to those undertakings who own generation assets. In addition swaps would lead to an oligopolistic structure on the European level. First, it has to be emphasized that the text of the commitments does not require or give a preference to asset swaps. The buyer will be chosen by E.ON as long as he

fulfils the purchaser requirements of the commitments, which includes that it must not create *prima facie* competition concerns. Second, it is important to note that according to the preliminary assessment the electricity wholesale market is national.

- (63) Some respondents also pointed to the need that the generation capacity should be sold in smaller quantities as e.g. in lots of 50-100 MW. An additional obligation for E.ON to sell in lots of 50-100 MW would be disproportionate as such an obligation is not necessary to address the concerns on the German electricity wholesale market. It would also prevent the creation of viable competitors.
- (64) One respondent argued that the period of 10 years, during which E.ON is not allowed to re-acquire the plants, would be too short in this sector. According to the preliminary assessment deciding and building of a new plant takes a minimum of 3-5 years. Therefore, a period of 10 years is sufficient to maintain the structural effect of the remedy in this sector. It is also in line with the Commission's Model Texts for Divestiture Commitments under the EC Merger Regulation<sup>27</sup>.
- (65) Furthermore, requests by respondents to limit E.ON's ability to purchase capacity built by a purchaser or to limit E.ON's freedom to purchase during three years the output of plants divested respectively preventing E.ON from becoming the exclusive purchaser of the output do not seem to be justified as they are not necessary to address the concerns expressed in the preliminary assessment.
- (66) It was also pointed out that it is necessary to give the purchaser of gas fired power plants access to gas under competitive terms. In this context it must be emphasized that the divestment business includes all contracts, leases etc. of the divested power plants. Therefore, the purchaser of a gas fired power plant should be able to get gas under competitive terms.
- (67) As regards the divestiture of certain power plants, respondents argued that the lignite power plant Lippendorf, the hard coal power plants Rostock and Bexbach and the nuclear power plant Krümmel would not be a suitable divestiture remedy as third parties have respectively contractual pre-emption or veto rights if shares or respectively drawing rights in these plants are sold. This is not as such an issue, provided that the owners of these rights meet the purchaser requirements of the commitments and in particular that the purchasers do not raise *prima facie* competition concerns. In addition, E.ON produced a waiver for the contractual rights of the following third parties: RWE and Vattenfall.
- (68) After the market test it became apparent that the implementation of the divestiture of the run-of-river plants ÖKB/Inn and Inn could be delayed due to third parties. Therefore, E.ON proposed to substitute these plants by the same type of plants, i.e. run-of-river plants, on the same river with a total capacity and quality which is at least equivalent to the run-of-river plants initially proposed by E.ON<sup>28</sup>.

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<sup>27</sup> Best Practice Guideline: The Commission's Model Texts for Divestiture Commitments, paragraph 3, <http://ec.europa.eu/comm/competition/mergers/legislation/commitments.pdf>.

<sup>28</sup> The plants proposed by E.ON to replace the Ö.B.K./Inn and Inn plants listed in recital (57) are the following plants located on the river Inn representing a current total capacity of 312MW: Rosenheim,

## 7.2. Divestiture of the network

- (69) The respondents who commented on the divestiture of the network confirmed that the remedy was adequate to meet the concerns raised in the preliminary assessment.
- (70) Some comments made in the market test were outside the scope of the procedure. The argument that there is a need for a regulator to act as regards network services cannot be addressed with this antitrust procedure. Regulation 1/2003 allows for behavioural and structural remedies, but it does not allow regulatory measures.
- (71) Furthermore, one respondent argued that the period of 10 years during which E.ON is not allowed to re-acquire the network would be too short in this sector. The Commission takes the view that a period of 10 years is sufficient to maintain the structural effect of the remedy in this sector. It is also in line with the Commission's Model Texts for Divestiture Commitments under the EC Merger Regulation<sup>29</sup>.
- (72) It was also criticized by one respondent that the unbundling requirement, i.e. the purchaser requirement, that the buyer must not have an interest in generation or supply, is not clear enough. This comment showed the need to clarify the unbundling requirement.
- (73) The competition concern of the Commission is that E.ON as a network operator favours its production affiliate, which is supplying balancing energy. Balancing energy is usually provided from power plants within the network zone and may be provided from neighbouring network areas but not from a power plant located more remotely from E.ON's grid.
- (74) The rationale behind the ownership unbundling requirement is that the purchaser should not have distorted incentives and should not be able to engage in an abusive conduct similar to the one identified in the Commission's preliminary assessment. The purchaser requirement of *prima facie* competition concerns addresses any vertical competition problems arising from a buyer with generation or supply interests. Therefore, the unbundling requirement is to be regarded as a specific case of the criterion of no *prima facie* competition concerns.
- (75) In response to the comments received pursuant to the Article 27(4) Notice, E.ON modified its proposed commitments with a revised proposal on 15 October 2008. It proposed to clarify the requirement of ownership unbundling.

## 7.3. Conclusion

- (76) Overall the observations received did not lead the Commission to identify new competition concerns related to the commitments and contained no points such as

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Feldkirchen, Wasserburg, Triebwerk Wasserburg, Teufelsbruck, Gars, Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach, Stammham.

<sup>29</sup> Best Practice Guideline: The Commission's Model Texts for Divestiture Commitments, paragraph 3, <http://ec.europa.eu/comm/competition/mergers/legislation/commitments.pdf>.



to make the Commission reconsider the concerns it expressed in the preliminary assessment. In view of the results of the market test, the Commission also maintains the position that it took in the Article 27(4) Notice, namely that, apart from the amended purchaser requirement for the network and the substitution of the run-of-river power plants, the Commitments are sufficient to meet the competition concerns expressed in the preliminary assessment while also being proportionate.

## 8. PROPORTIONALITY OF THE AMENDED COMMITMENTS

- (77) According to settled case law the principle of proportionality requires that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued.<sup>30</sup> When there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.<sup>31</sup>
- (78) The commitments in their final form are sufficient to address the concerns identified by the Commission in its preliminary assessment without being disproportionate.
- (79) The divestitures of approximately 5,000 MW of generation capacity and of E.ON's transmission business constitute structural remedies which have been offered by E.ON on a voluntary basis in the context of a procedure according to Article 9 of Regulation 1/2003 to address the concerns of the Commission on the German electricity wholesale and balancing markets. The public consultation according to Article 27 (4) of Regulation 1/2003 has confirmed that the commitments offered by E.ON were sufficient to address the Commission's concerns without imposing disproportionate conditions on either E.ON or third parties.
- (80) These structural remedies proposed are suitable remedies to address the concerns. The divestiture of the generation capacity addresses the concern in that it removes the incentive to withdraw generation capacity profitably, which was possible particularly due to the structure of E.ON's power plant portfolio. The divestiture of the network addresses the concern arising from the vertically integrated structure of E.ON which is active in production/supply and transmission.

### *Divestiture of generation capacity*

- (81) There is no equally effective behavioural remedy to a divestment of generation capacity to address the concerns for the electricity wholesale market. The concern of withholding of available generation capacity relates to hundreds of hours per year for a large number of power plants. As explained above, the price of the short-term market in Germany is set for each hour of each day through daily

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<sup>30</sup> Case T-260/94 *Air Inter v Commission* [1997] ECR II-997, paragraph 144, and Case T-65/98 [2003] ECR II – 4653 *Van den Bergh Foods v Commission*. paragraph 201.

<sup>31</sup> Case 265/87 *Schröder* [1989] ECR 2237, paragraph 21, and Case C-174/05 *Zuid-Hollandse Milieufederatie and Natuur en Milieu* [2006] ECR I – 2243, paragraph 28.

auctions. Furthermore, E.ON manages a portfolio of more than fifty plants, each of them differs in numerous technical aspects such as for example fuel type and production technology, (in large part determining the operating cost) and production capacity. Therefore a behavioural remedy controlling E.ON's bidding behaviour on an hourly basis for a large number of plants would have been very difficult to administer. Even if a behavioural remedy controlling the bidding procedure was possible to administer it would with a high likelihood have created a higher burden for E.ON than the structural solution voluntarily proposed by E.ON to divest a significant part of its generation capacity.

- (82) Furthermore, there is a substantial risk of a lasting or repeated infringement by the alleged withholding of capacity that derives from the very structure of the undertaking. According to the preliminary assessment, the Commission had concerns that there could have been a withholding of available generation capacity for hundreds of hours between 2002 and 2007, i.e. repeatedly and lasting for a period of several years. The alleged withholding was possible due to the nature of E.ON's electricity generation portfolio. As explained above E.ON owns and operates a large portfolio of power plants along the entire merit curve. This position gave E.ON the means to engage in a profitable strategy of withdrawing available generation capacity (limiting the production of certain plants) with a view to raising electricity prices to the detriment of consumers.
- (83) The public consultation according to Article 27 (4) of Regulation 1/2003 confirmed that the divestiture of generation capacity is in principle an appropriate commitment to remedy the concerns on the German electricity market. None of the third parties observations commenting on the divestiture of generation capacity mentioned a behavioural remedy or a less onerous structural remedy.
- (84) The selection of the power plants in terms of fuel and technology proposed by E.ON was necessary and proportionate to meet the concerns on the wholesale market for electricity. In order to be able to implement a successful strategy of withdrawing capacity, as explained in the concerns of the preliminary assessment, it is necessary to own and operate a portfolio of power plants which consists of plants along the entire merit curve, i.e. base-load plants as well as flexible plants. Therefore, the plants to be divested include plants with different fuels and technologies (i.e. hydro, nuclear, lignite, hard-coal, gas, pump-storage) reflecting E.ON's portfolio.
- (85) Finally, the divestiture commitment is necessary and proportionate as it also addresses the concerns with regard to deterrence of investment. The divested plants will help actual and potential competitors to get access to new plants and plants with technologies that they do not possess. The acquisition of such generation capacity will allow the competitors to have a more balanced portfolio and more capacity to exert competitive pressure on the incumbents in the wholesale electricity market. In addition, competitors will get access to new sites which will help them to build up (or rebuild) even more generation capacity with new power plants.

#### *Divestiture of the network*

- (86) There is no equally effective behavioural remedy to a divestment of EON's Transmission System Business, consisting of its 380/220 kV-line network, the

system operation of the E.ON control area and related activities, to address the concerns for the electricity balancing market. The balancing market is organised on a quarter of an hour basis and its management by the system operator takes place on a continuous basis. Therefore a behavioural remedy controlling E.ON's purchasing behaviour on a quarter of an hour basis would have been very difficult to administer. Even if a behavioural remedy controlling E.ON's purchasing behaviour was possible to administer it would have created a higher burden for E.ON than the structural solution proposed voluntarily by E.ON to sell its network.

- (87) Furthermore, there is a substantial risk of a lasting or repeated alleged infringement that derives from the very structure of the undertaking. In the preliminary assessment concerns were raised that during previous years E.ON has been systematically purchasing more expensive secondary reserves from its own affiliate than tertiary reserves from a more competitive environment. In addition concerns were raised that E.ON prevented cross-border entry from other Member States into the German grid. These forms of behaviour derive in this case and taking into account the elements which form the basis of the preliminary assessment from an inherent conflict of interest within E.ON as a vertically integrated electricity company which controls both transmission and generation/supply of electricity.
- (88) The divestiture of E.ON's Transmission System Business consisting of its 380/220 kV-line network (i.e. the extra high voltage network), the system operation of the E.ON control area and related activities is necessary and proportionate. The function of balancing is confined to the extra-high voltage level. The network owner of the extra-high voltage network decides on the procurement of balancing power for its area. Therefore, the divestiture of the extra-high voltage network will sever the links between E.ON as an electricity company with an interest in generation and its position as a network owner, responsible for transmission including balancing services.

*Other provisions of the commitments*

- (89) The remaining elements of the commitments as the preservation of the viability of the business to be divested, the hold-separate obligations, and the provisions on ring-fencing, non-solicitation, due diligence and reporting as well as the role conferred upon the Trustee are transitional and ancillary to the main commitments. These provisions are necessary to ensure the implementation of the commitments offered by E.ON. They are also proportionate. They also reflect the standard practice of the Commission in case of divestiture remedies in merger proceedings according to the Commission notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.<sup>32</sup>

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<sup>32</sup> Official Journal C 68, 02.03.2001, p.3. See also Draft revised Commission notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004, published on 24.4.2007 on [http://ec.europa.eu/comm/competition/mergers/legislation/merger\\_remedies.html](http://ec.europa.eu/comm/competition/mergers/legislation/merger_remedies.html).

## 9. CONCLUSION

- (90) By adopting a decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, the Commission makes commitments, offered by the undertakings concerned to meet the Commission's concerns expressed in its preliminary assessment, binding upon them. The present decision does not conclude whether or not there has been or still is an infringement. The Commission's assessment of whether the commitments offered are sufficient to meet its concerns and proportionate at the same time, is based on its preliminary assessment, representing the preliminary view of the Commission based on the underlying investigation and analysis, and the observations received from third parties following the publication of a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003.
- (91) In the light of the Commitments offered, the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end.
- (92) The Commission retains full discretion to investigate and open proceedings under Articles 81 and 82 of the EC Treaty and Articles 53 and 54 of the EEA Agreement as regards practices that are not the subject matter of this Decision.

HAS ADOPTED THIS DECISION:

*Article 1*

The Commitments as listed in the Annex shall be binding on E.ON AG and all its subsidiaries.

*Article 2*

The proceedings in the present case shall be brought to an end.

*Article 3*

This Decision is addressed to E.ON AG, E.ON-Platz 1, D-40479 Düsseldorf and all its subsidiaries including in particular:

E.ON Energie AG, Brienner Straße 40, D-80333 München

E.ON Energy Trading AG, Holzstraße 6, D-40221 Düsseldorf

E.ON Kraftwerke GmbH, Tresckowstraße 5, D-30457 Hannover

E.ON Kernkraft GmbH, Tresckowstraße 5, D-30457 Hannover

E.ON Wasserkraft GmbH, Luitpoldstraße 27, D-84034 Landshut

Donau Wasserkraft AG, Blütenburgstrasse 20, D-80636 München

Gemeinschaftskraftwerk Veltheim GmbH, Möllberger Str. 387, D-32457 Porta Westfalica

E.ON Netz GmbH, Bernecker Straße 70, D-95448 Bayreuth

Done at Brussels, 26 XI 2008

*For the Commission*

Neelie KROES

*Member of the Commission*

Düsseldorf, 14.10.2008

**Cases COMP/B-1/39.388 and 39.389**  
**- Investigation in the German Power Market -**

**COMMITMENTS TO THE EUROPEAN COMMISSION**

In accordance with Art. 9 of Council Regulation (EC) No 1/2003 (*Regulation 1/2003*), E.ON AG offers the following commitments (*Commitments*) to the European Commission (the *Commission*) with a view to remedying the Commission's competition concerns as expressed by the Commission in its Preliminary Assessment (*Preliminary Assessment*) dated 7 May 2008 in the context of its investigation in Cases COMP/B-1/39.388 and 39.389 and enabling the Commission to adopt a decision confirming that the Commitments meet its concerns (*Commitment Decision*).

Consistent with Art. 9 Regulation 1/2003, these Commitments may not be interpreted as an acknowledgement by E.ON AG that it has infringed Competition Law.

E.ON acts on the assumption that, by accepting these Commitments, the Commission will confirm that there are no longer grounds for action by the Commission without concluding whether or not there has been an infringement of EC competition rules.

This text shall be interpreted in the light of the Preliminary Assessment, the Commitment Decision, in the general framework of Community law, and in particular in the light of Art. 81 and 82 EC and Regulation 1/2003.

## SECTION A. DEFINITIONS

For the purpose of the Commitments, the subsequently listed terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by E.ON AG, whereby the notion of control shall be interpreted in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

**Closing:** the transfer of the legal title of the respective divestment business to the respective Purchaser(s).

**Directive 2003/54:** Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, as published in OJ L 176/37.

**Divested Drawing Right(s):** the Drawing Rights listed in **Schedule 1** that E.ON AG commits to divest; the fundamental provisions of the Standard Agreement on Transfer of Drawing Rights in Nuclear Power Plants are outlined in **Schedule 2-A**, the fundamental provisions of the Agreement on Transfer of Drawing Rights in the Lignite Power Plant Buschhaus are outlined in **Schedule 2-B**.

**Divested Power Plants:** the power plants listed in **Schedule 1** that E.ON AG commits to divest.

**Divestiture Trustee:** one or more natural or legal person(s), independent from E.ON AG and Affiliated Undertakings, who/which is/are approved by the Commission and appointed by E.ON AG and who/which has/have received from E.ON AG the exclusive Trustee Mandate to sell the Generation Capacity Divestment Business and, respectively, the Transmission System Business to Purchaser(s) at no

minimum price; i.e. the *Generation Capacity Divestiture Trustee* and the *Transmission System Divestiture Trustee*.

**Drawing Right(s):** the long-term right(s) to draw a share of the capacity, and, correspondingly, the Generation, of a certain power plant, as well as the respective right to build a new plant after retirement of the existing plant as described in more detail in **Schedules 2-A** and **2-B**.

**Effective Date:** the date of adoption of the Commitment Decision.

**E.ON AG:** a company incorporated under the laws of Germany, with its registered office in Düsseldorf, and registered with the Commercial/Company Register at the Local Court of Düsseldorf under number HRB 22315.

**E.ON Netz GmbH:** a company incorporated under the laws of Germany, with its registered office in Bayreuth, and registered with the Commercial/Company Register at the Local Court of Bayreuth, under number HRB 3333.

**Extra-High-Voltage Lines:** power lines at voltage levels 220 kV and higher.

**Generation:** the production of electricity.

**Generation Capacity Basis Divestiture Period:** the period of [...] from the Effective Date.

**Generation Capacity Hold Separate Manager(s):** the person(s) appointed by E.ON AG for the Generation Capacity Divestment Business to manage the day-to-day business under the supervision of the Generation Capacity Monitoring Trustee.

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\* business secret



**Generation Capacity Divestment Business:** the business comprising the Divested Power Plants and the Divested Drawing Rights and defined in more detail in Section B I b (Paragraphs 8 et seqq.) as well as Schedules 2-A, 2-B and 3.

**Generation Capacity Divestment Personnel:** all personnel currently employed by the Generation Capacity Divestment Business, as far as the Generation Capacity Divestment Business comprises the Divested Power Plants, including Key Personnel and staff seconded to the Divested Power Plants on a continuous basis – *continuous* meaning that there is no initial limitation to the secondment period of less than six months.

**Generation Capacity Purchaser(s):** the entity/entities approved by the Commission as acquirer(s) of the Generation Capacity Divestment Business in accordance with the criteria set out in Section B I c (Paragraphs 13 et seqq.).

**Generation Capacity Trustee Divestiture Period:** the period of [...] \* from the end of the Generation Capacity Basis Divestiture Period.

**High-Voltage Lines:** power lines at voltage level 110 kV.

**Key Personnel:** all Personnel necessary to maintain the viability and competitiveness of the respective divestment business as listed in Schedules 3 and 4.

**Monitoring Trustee:** one or more natural or legal person(s), independent from E.ON AG and Affiliated Undertakings, who/which is/are approved by the Commission and appointed by E.ON AG, and who/which has/have the duty to monitor E.ON AG's compliance with the conditions and obligations attached to the Commitment Decision concerning the Generation Capacity Divestment Business and, respectively, the Transmission System Business; i.e. the *Generation Capacity Monitoring Trustee* and the *Transmission System Monitoring Trustee*.

**Personnel:** the Generation Capacity Divestment Personnel and the Transmission System Personnel.

**Proposal Amending Directive 2003/54:** Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003, COM/2007/0528 final - COD 2007/0195.

**Purchasers:** the Generation Capacity Purchaser(s) and the Transmission System Purchaser.

**Transmission System:** the network of Extra-High-Voltage Lines, including transformers directly connected to the Extra-High-Voltage Lines, owned, operated and maintained by the Transmission System Operator.

**Transmission System Basis Divestiture Period:** the period of [...] from the Effective Date.

**Transmission System Business:** the business as defined in Section B II b (Paragraphs 28 et seqq.) and **Schedule 4** that E.ON AG commits to divest.

**Transmission System Hold Separate Manager:** the person appointed by E.ON AG for the Transmission System Business to manage the day-to-day business under the supervision of the Transmission System Monitoring Trustee.

**Transmission System Operator:** in terms of Directive 2003/54, a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the Transmission System in a given area and, where applicable, its interconnections with other systems, and for ensuring the long term ability of the system to meet reasonable demands for the transmission of electricity.

**Transmission System Personnel:** all personnel employed by the Transmission System Business, including Key Personnel and staff seconded to the Transmission System Business on a continuous basis - *continuous* meaning that there is no initial limitation to the secondment period of less than six months.

**Transmission System Purchaser:** the entity approved by the Commission as acquirer of the Transmission System Business in accordance with the criteria set out in Section B II c.

**Transmission System Trustee Divestiture Period:** the period of [...] from the end of the Transmission System Basis Divestiture Period.

**Trustee:** the Divestiture Trustee and the Monitoring Trustee.

**Undertaking Performing any of the Functions of Production or Supply:** includes “undertaking performing any of the functions of production or supply” within the meaning of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in gas and repealing Directive 98/30/EC, OJ L 176/57.

## **SECTION B. THE DIVESTMENT BUSINESSES**

1. In order to meet the concerns of the Commission as expressed in the Preliminary Assessment, E.ON AG commits:
  - To divest, or procure the divestiture of the Generation Capacity Divestment Business by the end of the Generation Capacity Trustee Divestiture Period as a going concern to Generation Capacity Purchaser(s) and on terms of sale approved by the Commission in accordance with the procedure described in Paragraph 14 (*Divestiture of Generation Capacity*); the details of this commitment are stated hereinafter under Subsection I;
  - To divest, or procure the divestiture of the Transmission System Business by the end of the Transmission System Trustee Divestiture

Period as a going concern to the Transmission System Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in Paragraph 33 (*Divestiture of the Transmission System*); the details of this commitment are stated below under Subsection II.

### **Subsection I. Divestiture of Generation Capacity**

#### **a) Commitment to divest**

2. To carry out the Divestiture of Generation Capacity, E.ON AG commits to find Generation Capacity Purchaser(s), and to enter or to procure the relevant Affiliated Undertakings entering into final binding sale and purchase agreement(s) for the sale of the Generation Capacity Divestment Business within the Generation Capacity Basis Divestiture Period.
3. Given good cause shown by E.ON AG, resulting in impossibility or heightened difficulty to comply with the Commitments within the Generation Capacity Basis Divestiture Period, the Commission may grant an extension of the Generation Capacity Basis Divestiture Period of up to [...] \* in respect of the concerned part(s) of the Generation Capacity Divestment Business.
4. If E.ON AG has not entered into sale and purchase agreement(s) at the end of the Generation Capacity Basis Divestiture Period, E.ON AG shall grant the Generation Capacity Divestiture Trustee an exclusive mandate to sell in accordance with the procedure described in Paragraph 53 the Generation Capacity Divestment Business, as far as it has not been sold yet, within the Generation Capacity Trustee Divestiture Period.
5. E.ON AG shall be deemed to have complied with this commitment if,
  - (a) By the end of the Generation Capacity Trustee Divestiture Period, E.ON AG has entered into final binding sale and purchase agreement(s);

(b) The Commission approves the Generation Capacity Purchaser(s) and the terms in accordance with the procedure described in Paragraph 14; and

(c) The Closing in respect of the Generation Capacity Divestment Business takes place within a period not exceeding three months after the approval of the Generation Capacity Purchaser(s) and the terms of sale by the Commission.

6. In order to maintain the structural effect of the Commitments, E.ON AG and Affiliated Undertakings shall, for a period of ten years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Generation Capacity Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Generation Capacity Divestment Business is no longer necessary. This provision does not apply to undertakings in which E.ON AG or Affiliated Undertakings has/have a share and for situations in which E.ON AG has demonstrated that it could not prevent – after having used all its rights and the resulting influence in these undertakings – the acquisition of a plant.
7. The above paragraph does not prevent E.ON AG and/or Affiliated Undertakings from purchasing generation capacity (whether in the form of power plants or Drawing Rights) which the Generation Capacity Purchaser(s) has/have constructed or acquired subsequent to the acquisition (of their respective part) of the Generation Capacity Divestment Business.

- b) Structure and definition of the Generation Capacity Divestment Business**
8. The Generation Capacity Divestment Business consists of the Divested Power Plants and the Divested Drawing Rights as listed in **Schedule 1**.
  9. Insofar as the Divested Power Plants are concerned, the Generation Capacity Divestment Business includes:
    - (a) All tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divested Power Plants;
    - (b) All site-/facility-related licences, permits and authorisations (including the relevant greenhouse gas emission rights) issued by any governmental organisation for the benefit of the Divested Power Plants.
    - (c) All contracts, leases, commitments, credit and other records of the Divested Power Plants.
    - (d) The customers with supply contracts listed in **Schedule 3**, providing for supply of electricity and/or (district) heat directly from one of the Divested Power Plants; and
    - (e) The Generation Capacity Divestment Personnel.
  10. Insofar as E.ON AG commits to divest the shareholdings in joint venture power plants, the Generation Capacity Divestment Business comprises all rights and obligations linked to the shareholdings of E.ON AG and Affiliated Undertaking, in particular associated drawing rights.
  11. The fundamental provisions of the Standard Agreement on Transfer of Drawing Rights Regarding Electric Capacities in Nuclear Power Plants are outlined in **Schedule 2-A**; the fundamental provisions of the Agreement on Transfer of Drawing Rights in the Lignite Power Plant Buschhaus are outlined in **Schedule 2-B**.

12. The agreements between the Generation Capacity Purchaser(s) and E.ON AG or, respectively, its relevant Affiliated Undertakings may provide that, for transitional period(s) of up to three years, E.ON AG or its relevant Affiliated Undertakings continue purchasing, at arm's length, all or parts of the electricity produced by the Generation Capacity Divestment Business.

**c) The Generation Capacity Purchaser(s)**

13. The Generation Capacity Purchaser(s), in order to be approved by the Commission, must fulfil all the following conditions:

(a) Be independent of and unconnected to E.ON AG and Affiliated Undertakings by time of Closing;

(b) Have the financial resources, proven expertise and incentive to maintain and develop the Generation Capacity Divestment Business as viable and active competitive force(s) in competition with E.ON AG and other competitors; to this end, E.ON AG will sell the Generation Capacity Divestment Business to no more than [...] \* Generation Capacity Purchasers – without consideration of [...] \*; and

(c) Neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns, nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Generation Capacity Divestment Business

(the before-mentioned criteria for the Generation Capacity Purchaser(s) hereinafter referred to as the “**Generation Capacity Purchaser Requirements**”);

And may:

(d) Have agreed on the sale to E.ON AG or, respectively, its relevant Affiliated Undertakings of power plants outside Germany or Drawing Rights

in respect of power plants outside Germany in the same or a similar capacity range as that part of the Generation Capacity Divestment Business that is sold to them (*Swap-Transactions*).

14. The final binding sale and purchase agreement(s) shall be conditional upon the Commission's approval. When E.ON AG or, respectively, the relevant Affiliated Undertakings have reached agreement with potential purchaser(s), E.ON AG shall submit a fully documented and reasoned proposal, including copies of the final agreement(s), to the Commission and the Generation Capacity Monitoring Trustee. E.ON AG must demonstrate to the Commission that the proposed purchaser(s) meets (meet) the Generation Capacity Purchaser Requirements and that the Generation Capacity Divestment Business is being sold in a manner consistent with the Commitments.
15. E.ON AG may request and the Commission may approve the sale of the Generation Capacity Divestment Business without one or more assets or parts of the Generation Capacity Divestment Personnel, if this does not affect the viability and competitiveness of the Generation Capacity Divestment Business after the sale, taking account of the proposed purchaser(s).

**d) Related Commitments**

Preservation of viability, marketability and competitiveness

16. From the Effective Date until Closing, E.ON AG shall preserve the economic viability, marketability and competitiveness of the Generation Capacity Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Generation Capacity Divestment Business. In particular, E.ON AG undertakes:
  - (a) Not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Generation Capacity Divestment Business or that might alter the nature and



scope of activity, or the industrial or commercial strategy or the investment policy of the Generation Capacity Divestment Business;

(b) To make available sufficient resources for the development of the Generation Capacity Divestment Business, on the basis and continuation of the existing business plans;

(c) To take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Generation Capacity Divestment Business.

Hold separate obligations

17. E.ON AG commits, from the Effective Date until Closing, to keep the Generation Capacity Divestment Business separate from the businesses it is retaining. However, E.ON AG and Affiliated Undertakings, under the supervision of the Generation Capacity Monitoring Trustee and the Hold Separate Manager, may continue to manage, operate and fulfil, in respect of the Generation Capacity Divestment Business, the following centralized assets, functions and tasks up until Closing:

(a) Dispatching of generation capacity of the Divested Power Plants and the Divested Drawing Rights along with the remaining generation capacity of E.ON AG and Affiliated Undertakings;

(b) Sale of the electricity produced by the Generation Capacity Divestment Business through Affiliated Undertakings, in particular E.ON Energy Trading AG (Düsseldorf); and

(c) Joint procurement of fuels and other primary energy carriers.

E.ON AG also commits to ensure that the Generation Capacity Divestment Personnel, insofar as it is part of the Key Personnel, as well as the Generation Capacity Hold Separate Manager(s) have no involvement in any business retained and *vice versa*. E.ON AG shall also ensure that the Generation Capacity Divestment Personnel does not report to any individual outside the

Generation Capacity Divestment Business, except for reports that are reasonably necessary for the continued management, operation or fulfilment of the centralized assets, functions and tasks listed above.

18. Until Closing, E.ON AG shall assist the Generation Capacity Monitoring Trustee in (a) ensuring that the Generation Capacity Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by E.ON AG; and (b) monitoring the continued management, operation and fulfilment, pursuant to Paragraph 17, of the centralized assets, functions and tasks listed in that paragraph. E.ON AG shall appoint Generation Capacity Hold Separate Manager(s) who shall be responsible for the management of the Generation Capacity Divestment Business, under the supervision of the Generation Capacity Monitoring Trustee. The Generation Capacity Hold Separate Manager(s) shall manage the Generation Capacity Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by E.ON AG.

Ring-fencing

19. E.ON AG shall implement all necessary measures to ensure that it does not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Generation Capacity Divestment Business. In particular, the participation of the Generation Capacity Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Generation Capacity Divestment Business. E.ON AG may obtain information relating to the Generation Capacity Divestment Business which is reasonably necessary for the divestiture of the Generation Capacity Divestment Business, whose disclosure to E.ON AG is required by law, or which is reasonably necessary for the continued management, operation or fulfilment, pursuant to Paragraph 17, of the centralized assets, functions and tasks listed in that paragraph.

Non-solicitation clause

20. E.ON AG undertakes, subject to customary limitations, not to solicit and to procure that Affiliated Undertakings do not solicit the relevant Key Personnel transferred with the Generation Capacity Divestment Business, for a period of two years after Closing. This provision does not apply to undertakings in which E.ON AG or Affiliated Undertakings has/have a share and for situations in which E.ON AG has demonstrated that it could not prevent – after having used all its rights and the resulting influence in these undertakings – the solicitation of a member of the relevant Key Personnel.

Due Diligence

21. In order to enable potential purchasers to carry out a reasonable due diligence of the Generation Capacity Divestment Business, E.ON AG shall, subject to customary confidentiality assurances, data protection laws (where applicable) and dependent on the stage of the divestiture process:
- (a) Provide to potential purchasers sufficient information as regards the Generation Capacity Divestment Business;
  - (b) Provide to potential purchasers sufficient information relating to the Generation Capacity Divestment Personnel and
  - (c) Allow potential purchasers reasonable access to the management of the Divested Power Plants.

Reporting

22. E.ON AG shall submit written reports in English on potential purchasers of the Generation Capacity Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Generation Capacity Monitoring Trustee no later than ten days after the end of every month following the Effective Date (or otherwise at the Commission's request).
23. E.ON AG shall inform the Commission and the (Generation Capacity) Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Generation Capacity Monitoring Trustee before sending the memorandum out to potential purchasers.

**Subsection II. Divestiture of the Transmission System Business**

**a) Commitment to divest**

24. To carry out the Divestiture of the Transmission System Business, E.ON AG commits to find Transmission System Purchaser, and to enter or to procure the relevant Affiliated Undertakings entering into final binding sale and purchase agreement(s) for the sale of the Transmission System Business within the Transmission System Basis Divestiture Period.
25. If E.ON AG has not entered into such agreement(s) at the end of the Transmission System Basis Divestiture Period, E.ON AG shall grant the Transmission System Divestiture Trustee an exclusive mandate to sell, in accordance with the procedure described in Paragraph 54, the Transmission System Business within the Transmission System Trustee Divestiture Period.

26. E.ON AG shall be deemed to have complied with this commitment if
- (a) By the end of the Transmission System Trustee Divestiture Period, E.ON AG has entered into a final binding sale and purchase agreement,
  - (b) The Commission approves the Transmission System Purchaser and the terms in accordance with the procedure described in Paragraph 33; and
  - (c) Closing of the sale of the Transmission System Business takes place within a period not exceeding three months after the approval of the Transmission System Purchaser and the terms of sale by the Commission.
27. In order to maintain the structural effect of the Commitments, E.ON AG and Affiliated Undertakings shall, for a period of ten years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Transmission System Business. This provision does not apply to undertakings in which E.ON AG or Affiliated Undertakings has/have a share and for situations in which E.ON AG has demonstrated that it could not prevent – after having used all its rights and resulting influence in these undertakings – the acquisition of the whole or part of the Transmission System Business.

**b) Structure and definition of the Transmission System Business**

28. The Transmission System Business consists of the network of Extra-High-Voltage Lines, including transformers directly connected to the Extra-High-Voltage Lines, ultimately owned by E.ON AG and operated by E.ON Netz GmbH (the *E.ON Transmission System*), and related assets and personnel, namely:
- (a) All tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability of the E.ON Transmission System, and, in particular, are necessary to ensure the reliability of the E.ON Transmission System;

(b) All licences, permits and authorisations issued by any governmental organisation for the benefit of the E.ON Transmission System;

(c) All contracts, leases, commitments, customers, customer orders, credit and records of the Transmission System Business;

(items (a) to (c) hereinafter collectively referred to as “*Transmission System Assets*”)

(d) The Transmission System Personnel; and

(e) The benefit, for a transitional period of up to two years after Closing and on terms and conditions equivalent to those at present afforded to the Transmission System Business, of all current arrangements under which E.ON AG or Affiliated Undertakings supply products or services to the Transmission System Business, as detailed in **Schedule 5**, unless otherwise agreed with the Transmission System Purchaser.

29. E.ON AG and Affiliated Undertakings will arrange for and procure the separation of E.ON Netz GmbH’s High-Voltage Lines, related assets and related personnel (*High-Voltage Lines Business*) from the Transmission System Business, within a time period of [...] commencing on the Effective Date. Where assets and personnel are jointly used for the High-Voltage Lines Business and the Transmission System Business, these assets and personnel shall be divided proportionally between the two businesses under the supervision of the Monitoring Trustee. Where a proportional division is not possible and the relevant assets and/or personnel is/are at 75 % or more used by the High-Voltage Lines Business, these assets and/or personnel may, under the supervision of the Monitoring Trustee, not be part of the Transmission System Business if the viability and independence of the Transmission System Business is not affected; in such cases, E.ON AG and/or Affiliated Undertakings shall provide the relevant products and/or services to the Transmission System Business at arm’s length, unless otherwise agreed with the Transmission System Purchaser.

30. The present legal and functional structure of the Transmission System Business as operated to date is described in detail in **Schedule 4**.

**c) The Transmission System Purchaser**

31. The Transmission System Purchaser, in order to be approved by the Commission, must fulfil all the following conditions:

- (a) Be independent of and unconnected to E.ON AG and Affiliated Undertakings;
- (b) Have the financial resources, proven expertise and incentive to maintain and develop the Transmission System Business as a viable and reliable facility;
- (c) Neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed; *prima facie* competition concerns could in particular arise if the purchaser is
  - (i) an undertaking that directly or indirectly exercises control over another Undertaking Performing any of the Functions of Generation or Supply or exercises any right over such an undertaking;
  - (ii) an undertaking over which another Undertaking Performing any of the Functions of Generation or Supply directly or indirectly exercises control or over which such another undertaking exercises any right;
  - (iii) an undertaking over which another undertaking directly or indirectly exercises control – this other undertaking also directly or indirectly exercising control over a third Undertaking Performing any of the Functions of Generation or Supply, or exercising any right over such a third undertaking;

- (iv) an undertaking over which another undertaking directly or indirectly exercises control or over which another undertaking exercises any right – this other undertaking also directly or indirectly exercising control over a third Undertaking Performing any of the Functions of Generation or Supply;
  - (v) an undertaking in respect of which an undertaking directly or indirectly exercising control or exercising any right over an Undertaking Performing any of the Functions of Generation or Supply, is entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking; and
  - (vi) an undertaking in respect of which a person being a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of an Undertaking Performing any of the Functions of Generation or Supply, is a member of the supervisory board, the administrative board or bodies legally representing the undertaking;
- (d) Reasonably expected to take up and maintain the function of Transmission System Operator, and – to this end – obtain all necessary approvals from the relevant regulatory authorities for the acquisition and operation of the Transmission System Business, including the approval for energy network operation required under Section 4 of the German Energy Industry Act (§ 4 EnWG).

(The before-mentioned criteria for the purchaser hereinafter referred to as the *“Transmission System Purchaser Requirements”*).

32. The interests and rights referred to in the above Subparagraph (b) shall include, in particular:

- (a) The power to exercise voting rights, or



(b) The power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking.

33. The final binding sale and purchase agreement shall be conditional upon the Commission's approval. When E.ON AG has reached an agreement with a potential purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Transmission System Monitoring Trustee. E.ON AG must be able to demonstrate to the Commission that the proposed purchaser meets the Transmission System Purchaser Requirements and that the Transmission System Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the proposed purchaser fulfils the Transmission System Purchaser Requirements and that the Transmission System Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Transmission System Business without one or more Transmission System Assets or parts of the Transmission System Personnel, if this does not affect the viability and reliability of the Transmission System Business after the sale, taking account of the proposed purchaser.

**d) Related Commitments**

Preservation of viability, marketability, reliability and capability

34. From the Effective Date until Closing, E.ON AG shall preserve the economic viability, marketability and reliability of the Transmission System Business as it exists at the date of submission of the Commitments, in particular minimise as far as possible any risk of loss of the reliability of the Transmission System Business. In particular, E.ON AG undertakes:

(a) Not to carry out any act upon its own authority that might have a significant adverse impact on the value or management of the Transmission System Business, or its reliability, or that might alter the nature and scope of activity, or the industrial or commercial strategy of the Transmission System

Business as it exists at the date of submission of the Commitments, and not to refrain from investments that are necessary for the maintenance of reliability of the Transmission System Business as it exists at the date of submission of the commitments.

(b) To make available sufficient resources for the development of the existing Transmission System Business, on the basis and continuation of the existing business plans; and

(c) To take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all relevant Key Personnel to remain with the Transmission System Business.

Hold-separate obligations

35. Irrespective of the statutory unbundling rules, E.ON AG commits, in the period commencing with the effective separation of the High-Voltage Lines Business pursuant to Paragraph 29 and not later than [...] from the Effective Date, until Closing, to keep the Transmission System Business separate from the businesses it is retaining and to ensure that the Key Personnel of the Transmission System Business – including the Transmission System Hold Separate Manager – have no involvement in any business, including network businesses, retained and *vice versa*. This shall not prevent the existence of appropriate coordination mechanisms to ensure protection of the basic ownership rights of E.ON AG and Affiliated Undertakings acknowledged by the current unbundling rules of Directive 2003/54 and the German Energy Industry Act (*Energiewirtschaftsgesetz*).
36. E.ON AG shall appoint a Transmission System Hold Separate Manager who shall be responsible for the management of the Transmission System Business, under the supervision of the Transmission System Monitoring Trustee. Commencing with the effective separation of the High-Voltage Lines Business pursuant to Paragraph 29 and not later than [...] from the Effective Date, and up until Closing, E.ON AG shall assist the Transmission System Monitoring Trustee in the task of supervising that the Transmission System Business is

managed as a distinct and saleable entity separate from the businesses retained by E.ON AG. The Transmission System Hold Separate Manager shall manage the Transmission System Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and reliability, and its independence from the businesses retained by E.ON AG.

Ring-fencing

37. Aside from procuring compliance with all applicable statutory unbundling rules, E.ON AG shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Transmission System Business. However, E.ON AG may obtain information relating to the Transmission System Business which is reasonably necessary for the divestiture of the Transmission System Business in compliance with customary business practice, or the disclosure of which E.ON AG is allowed by law, or the disclosure of which is consistent with the rules on unbundling stated in Section 9 (2) of the German Energy Industry Act (*Energiewirtschaftsgesetz*).

Non-solicitation clause

38. E.ON AG undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Transmission System Key Personnel transferred with the Transmission System Business for a period of two years after Closing. This provision does not apply to undertakings in which E.ON AG or Affiliated Undertakings has/have a share and for situations in which E.ON AG has demonstrated that it could not prevent – after having used all its rights and the resulting influence in these undertakings – the solicitation of a member of the relevant Key Personnel.

Due Diligence

39. In order to enable potential purchasers to carry out a reasonable due diligence of the Transmission System Business, E.ON AG shall, subject to customary confidentiality assurances and data protection laws (where applicable) and dependent on the stage of the divestiture process:
- (a) Provide to potential purchasers sufficient information as regards the Transmission System Business;
  - (b) Provide to potential purchasers sufficient information relating to the Transmission System Personnel; and
  - (c) Allow them reasonable access to the management of the Transmission System Business.

Reporting

40. E.ON AG shall submit written reports in English on potential purchasers of the Transmission System Business and developments in the negotiations with such potential purchasers to the Commission and the Transmission System Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
41. E.ON AG shall inform the Commission and the Transmission System Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Transmission System Monitoring Trustee before sending the memorandum out to potential purchasers.

**SECTION C. TRUSTEE(S)****a) Appointment Procedure**

42. For each, the Generation Capacity Divestment Business and the Transmission System Business, E.ON AG shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for the Generation Capacity Monitoring Trustee and, respectively, the Transmission System Monitoring Trustee.
43. One month, at the latest, before the end of the Generation Capacity Basis Divestiture Period, E.ON AG shall appoint a Generation Capacity Divestiture Trustee to carry out the functions specified in the Commitments for a Generation Capacity Divestiture Trustee. This clause does not apply once E.ON AG has entered into binding sale and purchase agreement(s) and the Commission, for the Generation Capacity Divestment Business, has approved of the purchaser(s) proposed by E.ON AG. The appointment of the Generation Capacity Divestiture Trustee shall take effect upon the commencement of the Generation Capacity Trustee Divestiture Period.
44. One month, at the latest, before the end of the Transmission System Basis Divestiture Period, E.ON AG shall appoint a Transmission System Divestiture Trustee to carry out the functions specified in the Commitments for a Transmission System Divestiture Trustee. This clause does not apply once E.ON AG has entered into binding sale and purchase agreement(s) and the Commission, for the Transmission System Business, has approved of the purchaser(s) proposed by E.ON AG. The appointment of the Transmission System Divestiture Trustee shall take effect upon the commencement of the Transmission System Trustee Divestiture Period.

45. The Trustee shall be independent of E.ON AG and Affiliated Undertakings, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by E.ON AG in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of the Divestiture Trustee includes a success premium linked to the final sale value of the Generation Capacity Divestment Business or, respectively, the Transmission System Business, the fee shall also be linked to a divestiture within the Generation Capacity Trustee Divestiture Period or, respectively, the Transmission System Trustee Divestiture Period.
46. No later than one week after the Effective Date, E.ON AG shall submit a list of one or more natural or legal persons, or other entities whom/which E.ON AG proposes to appoint as Monitoring Trustee to the Commission for approval. No later than one month before the end of the Generation Capacity Basis Divestiture Period, E.ON AG shall submit a list of one or more legal or natural persons, or other entities whom/which E.ON AG proposes to appoint as Generation Capacity Divestiture Trustee to the Commission for approval. No later than one month before the end of the Transmission System Basis Divestiture Period, E.ON AG shall submit a list of one or more legal or natural persons, or other entities whom/which E.ON AG proposes to appoint as Transmission System Divestiture Trustee to the Commission for approval.
47. The proposals shall contain sufficient information for the Commission to verify that the proposed trustee fulfils the requirements set out in Paragraph 45 and shall include:
- (a) The full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
  - (b) The outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) An indication whether the Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

48. The Commission shall have the discretion to approve or reject the proposed Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, E.ON AG shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, E.ON AG shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.
49. If all the legal or natural persons, or other entities proposed for the function of Trustee are rejected, E.ON AG shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in Paragraphs 42, 43, 44 and 48.
50. If all further legal or natural persons, or entities proposed for the function Trustee are rejected by the Commission, the Commission shall nominate a Trustee, whom E.ON AG shall appoint, or cause to be appointed, in accordance with the Trustee Mandate approved by the Commission.

**b) Functions of the Trustee(s)**

51. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or E.ON AG, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

52. The Monitoring Trustee shall:

(i) Propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Commitment Decision, insofar as they are related to the Generation Capacity Divestment Business or, respectively, the Transmission System Business.

(ii) Oversee the ongoing management of the respective divestment business with a view to ensuring its continued economic viability, marketability and competitiveness (and, in the case of the Transmission System Business, its reliability and capability to ensure security of supply) and monitor compliance by E.ON AG with the conditions and obligations attached to the Commitment Decision. To this end, the Monitoring Trustee shall:

(a) Monitor the preservation of the economic viability, marketability and competitiveness of the Generation Capacity Divestment Business and, respectively, the economic viability, marketability and reliability of the Transmission System Business, and the keeping separate of the Generation Capacity Divestment Business and, respectively, the Transmission System Business from the business retained by E.ON AG, in accordance with Paragraphs 16 to 18 and, respectively, Paragraphs 35 and 36;

(b) Supervise the management of the Generation Capacity Divestment Business and, respectively, the Transmission System Business as a distinct and saleable entity, in accordance with Paragraph 18 and, respectively, Paragraph 36;

(c) In consultation with E.ON AG, (i) determine all necessary measures to ensure that E.ON AG does not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Generation Capacity Divestment Business and, respectively, the Transmission System Business in accordance with Paragraph 19 and,



respectively, Paragraph 37, in particular strive for the severing of the Generation Capacity Divestment Business' and the Transmission System Business' participation in a central information technology network to the extent possible, without compromising the viability of the respective divestment business, and (ii) decide whether such information may be disclosed to E.ON AG as the disclosure is reasonably necessary to allow E.ON AG to carry out the divestiture, as the disclosure is required by law, or as the disclosure is consistent with the rules on unbundling stated in Section 9 (2) of the German Energy Industry Act (*Energiewirtschaftsgesetz*);

(d) Monitor the splitting of assets and the allocation of Personnel between the respective divestment business and E.ON AG or Affiliated Undertakings; and

(e) Monitor the continued management, operation and fulfilment, pursuant to Paragraph 17, of the centralized assets, functions and tasks listed in that paragraph.

(iii) Assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Commitment Decision;

(iv) Propose to E.ON AG such measures as the Monitoring Trustee considers necessary to ensure E.ON AG's compliance with the conditions and obligations attached to the Commitment Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business and, in the case of the Transmission System Business, the reliability and the capability to ensure security of supply and the holding separate of the respective divestment business and the non-disclosure of competitively sensitive information;

(v) In respect of the Generation Capacity Divestment Business: review and assess potential purchasers as well as the progress of the divestiture process, and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Generation Capacity

Divestment Business and the Generation Capacity Divestment Personnel, in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the management of the Divested Power Plants;

(vi) In respect of the Transmission System Business: review and assess potential purchasers as well as the progress of the divestiture process, and verify that, dependent on the stage of the divestiture process, potential purchasers receive sufficient information relating to the Transmission System Business and the Transmission System Personnel, in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the management of the Transmission System Business;

(vii) Provide to the Commission, sending E.ON AG a non-confidential copy at the same time, a written report, prepared in good faith, within 15 days after the end of every month. The report, prepared in good faith, shall cover the operation and management of the Generation Capacity Divestment Business and, respectively, the Transmission System Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending E.ON AG a non-confidential copy at the same time, if it concludes on reasonable grounds that E.ON AG is failing to comply with these Commitments;

(viii) Within one week after receipt of the documented proposal referred to in Paragraph 14, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Generation Capacity Divestment Business after the sale and as to whether the Generation Capacity Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Commitment Decision, in particular, if relevant, whether the sale of the Generation Capacity Divestment

Business without one or more assets or not all of the Generation Capacity Divestment Personnel affects the viability of the Generation Capacity Divestment Business after the sale, taking account of the proposed purchaser;

(ix) Within one week after receipt of the documented proposal referred to in Paragraph 33, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Transmission System Business after the sale and as to whether the Transmission System Business is sold in a manner consistent with the conditions and obligations attached to the Commitment Decision, in particular, if relevant, whether the sale of the Transmission System Business without one or more assets or not all of the Personnel affects the viability of the Transmission System Business after the sale, taking account of the proposed purchaser.

53. The Generation Capacity Divestiture Trustee shall:

Within the Generation Capacity Trustee Divestiture Period, sell at no minimum price the Generation Capacity Divestment Business to one or several purchaser(s), provided that the Commission has approved the purchaser(s) and the final binding sale and purchase agreement(s) in accordance with the procedure laid down in Paragraph 14.

54. The Transmission System Divestiture Trustee shall:

Within the Transmission System Trustee Divestiture Period, sell at no minimum price the Transmission System Business to one or several purchaser(s), provided that the Commission has approved both the purchaser(s) and the final binding sale and purchase agreement(s) in accordance with the procedure laid down in Paragraph 33.

55. The Divestiture Trustee shall:

(i) Include in the sale and purchase agreement(s) such terms and conditions as they consider appropriate for an expedient sale in the Generation Capacity Trustee Divestiture Period or, respectively, the Transmission System

Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of E.ON AG, subject to E.ON AG's unconditional obligation to divest at no minimum price in the Generation Capacity Trustee Divestiture Period or, respectively, the Transmission System Trustee Divestiture Period.

(ii) Provide in the Generation Capacity Trustee Divestiture Period and, respectively, the Transmission System Trustee Divestiture Period (or otherwise at the Commission's request) the Commission with a comprehensive monthly report written in English, in good faith, on the progress of the respective divestiture process. Such report shall be submitted within 15 days after the end of every month with a simultaneous copy to the Generation Capacity Monitoring Trustee or, respectively, the Transmission System Monitoring Trustee, and a non-confidential copy to E.ON AG.

**c) Duties and obligations of E.ON AG**

56. E.ON AG shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of E.ON AG's or the respective divestment business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments, and E.ON AG and the respective divestment business shall provide the Trustee upon request with copies of any such document. E.ON AG and the respective divestment business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
57. E.ON AG shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Generation Capacity Divestment Business and of the Transmission System Business, respectively. This shall include all administrative support functions relating to the respective divestment business, which are currently carried out at headquarters' level. E.ON AG shall provide and shall cause its advisors to provide the Monitoring Trustee, upon request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. E.ON AG shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
58. E.ON AG shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the respective sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the

respective sale process. Upon request of the Divestiture Trustee, E.ON AG shall cause the documents required for effecting the respective sale and the Closing to be duly executed.

59. E.ON AG shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to E.ON AG for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
60. At the expense of E.ON AG, the Trustee may appoint advisors (in particular for corporate, finance or legal advice), subject to E.ON AG’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should E.ON AG refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard E.ON AG. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 59 shall apply *mutatis mutandis*. In the Generation Capacity Trustee Divestiture Period and, respectively, the Transmission System Trustee Divestiture Period, the Divestiture Trustee may use advisors who served E.ON AG during the Generation Capacity Basis Divestiture Period or, respectively, the Transmission System Basis Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

**d) Replacement, discharge and reappointment of the Trustee(s)**

61. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) The Commission may, after hearing the Trustee, require E.ON AG to replace the Trustee; or
- (b) E.ON AG, with the prior approval of the Commission, may replace the Trustee.
62. If the Trustee is removed according to Paragraph 61, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in Paragraphs 42 to 50.
63. Beside the removal according to Paragraph 61, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**SECTION D. THE REVIEW CLAUSE**

64. Pursuant to Art. 9 (2) (a) of Regulation 1/2003, E.ON AG may request the Commission to reopen the proceedings with a view to modifying the Commitments where there has been a material change in any of the facts on which the Commission's Decision pursuant to Article 9 (1) of Regulation 1/2003 is based.

65. Without prejudice to Art. 9 (2) of Regulation 1/2003, the Commission may, should difficulties with implementation occur, in response to a request from E.ON AG showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitments, or
  - (ii) Modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.
66. Where E.ON AG seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall E.ON AG be entitled to request an extension within the last month of any period.
67. Irrespective of a previous extension pursuant to Paragraph 3, the Commission may grant the requested extension in case that, for reasons outside its responsibility E.ON AG is not able to meet the deadline; and it can be expected that E.ON AG will succeed, within a short timeframe, in divesting the respective business, for example in case that relevant Memoranda of Understanding have already been signed, exclusive negotiations are taking place or the number of items left to be divested is marginal.

#### **SECTION E. FINAL PROVISIONS**

68. The Commitments shall take effect upon the date of notification of a decision pursuant to Art. 9 of Regulation 1/2003 by which the Commission makes the Commitments binding on E.ON AG.



69. E.ON AG will publish and keep updated the non-confidential version of these Commitments in a prominent way on its website. The non-confidential version has to be approved by the Commission.

.....

duly authorised for and on behalf of E.ON AG

**Cases COMP/B-1/39.388 and 39.389**  
**- Investigation in the German Power Market -**

**COMMITMENTS TO THE EUROPEAN COMMISSION**

**Schedule 1**

**List of Divested Power Plants and Divested Drawing Rights**

Type/Primary Energy Source	Power Plant	Amount of Power Plant Capacity (MW) to be divested	Category of Divestment
Nuclear	Gundremmingen B,C	643	Divested Drawing Rights
	Krümmel	673	
	Unterweser	184 (share)	
Lignite/ Nuclear	Lippendorf	445.5	Divested Power Plant
	Buschhaus	159 (share)	Divested Drawing Right
Run of river	Weser	42	Divested Power Plants
	Inn (Rosenheim, Feldkirchen, Wasserburg, Triebwerk Wasserburg, Teufelsbruck, Gars, Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach, Stammham)	312.2	
	Jansen (Trausnitz, Tanzmühle)	5.1	

Type/Primary Energy Source	Power Plant	Amount of Power Plant Capacity (MW) to be divested	Category of Divestment
Hardcoal	Rostock <sup>1</sup>	256	Divested Power Plants
	Farge	350	
	Zolling	449	
	Mehrum C	345	
	Veltheim 2/3	265.3	
	Bexbach	79.3	
Gas	Robert Frank	491	Divested Power Plant
Pump storage	Erzhausen	220	Divested Power Plants
	Jansen (Kainzmühlsperre, Reisachhochspeicher)	127	

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<sup>1</sup> Rostock includes drawing right at Rostock conditions from Date of Closing until 30 June 2010.

## Schedule 2-A

Case COMP/B-1/39.388 and 39.389

- Investigation in the German Power Market -

### COMMITMENTS TO THE EUROPEAN COMMISSION

#### Outlines of

#### STANDARD AGREEMENT ON TRANSFER OF DRAWING RIGHTS REGARDING ELECTRIC CAPACITIES IN A NUCLEAR POWER PLANT

Between

**E.ON Kernkraft GmbH**, an affiliated company of E.ON AG, with its registered office in Hannover

- hereinafter referred to as “**EKK**” or the “**Seller**”-

and

Purchaser [X]

- hereinafter referred to as the “**Purchaser**”-

The Purchaser and EKK also each referred to as the “Party” and together as the “Parties”.

#### **Preamble:**

Seller has a right to a share of [●] in the total capacity of [●*name of the designated Nuclear Power Plant*]. By the means of this agreement Seller sells [●] MW to the Purchaser.

#### **Section 1**

#### **Subject of Agreement: Sale and Purchase of Capacities**

##### 1.1 Capacity to be sold

Seller sells and Purchaser purchases an electric capacity of [●] MW (**the Allocated Capacity**) for power generation of the [●*name of the designated Nuclear Power Plant*] (**the Allocated Nuclear Power Plant**) from [●*starting date*] until expiration of the authorisation to operate the Allocated Nuclear

Power Plant pursuant to Sec. 7 of the German Act regarding the Peaceful Usage of Nuclear Energy (Atomgesetz).

If Seller or any other entity has transferred electricity quantities from another power plant to Allocated Nuclear Power Plant pursuant to Sec. 7 subsec. (1b) Atomgesetz, Purchaser's right to use the Allocated Capacity terminates at the time at which the authorisation to operate the Nuclear Power Plant would have expired without the transfer of electricity quantities.

## 1.2 Availability of capacities

1.2.1 The Allocated capacity shall be made fully available to the Purchaser if the Allocated Nuclear Power Plant is operated with its total capacity.

1.2.2 Any reduction of the total capacity of the Allocated Nuclear Power Plant due to technical or legal reasons beyond the control of the Seller or any party entrusted by the Seller with the operation of the plant, leads to an proportional reduction of the the Allocated Capacity as defined in Sec. 1.1. Reasons beyond control are including, but not limited to,

- a) Redispatch measures by grid operators
- b) Coolant supply shortfall
- c) Force Majeure in the meaning of Section 3

1.2.3 Purchase of the Allocated Capacity enables Purchaser to use the Allocated Capacity as if he had a right to a share in the Allocated Nuclear Power Plant itself. Insofar, all risks and expenses attached with holding a share in the Allocated Nuclear Power Plant and its operation rest with the Purchaser proportional to its share of the Allocated Nuclear Power Plant's total electric capacity unless otherwise governed by this agreement. For the avoidance of doubt, Purchaser shall not bear any cost and expenses incurred by making provisions for dismantling cost.

1.2.4 Purchaser has the right and duty to mandate Seller to provide all necessary services for the use of the Allocated Capacity as laid down in Section 2

## 1.3 Extension and replacement of the Allocated Capacity

1.3.1 Provided authorisation of the Allocated Nuclear Power Plant will be extended for any reason not associated with the transfer of electric quantities of another power plant, Purchaser shall opt either (i) to use the Allocated Capacity until the extended authorisation expires or (ii) to terminate the use of the Allocated Capacity at the time at which the authorization would have expired without extension. In case (i), all expenses and cost associated with the extension of the authorisation and the prolongation of Purchaser's drawing rights shall be borne by

Purchaser proportional to its share of the Allocated Nuclear Power Plant's total electric capacity.

- 1.3.2 Provided Seller and other shareholders of the Allocated Nuclear Power Plant in anticipation of an extension of the authorisation for whatever reason, invest in the Allocated Nuclear Power Plant, Purchaser shall bear expenses and cost proportional to its share of the Allocated Nuclear Power Plant's total electric capacity regardless to whether the authorisation will then actually be extended. Provided Seller has a voting right as regards the necessity and the dimension of investments, Purchaser shall have a corresponding voting right vis-à-vis Seller proportional to its share of the Allocated Nuclear Power Plant's total electric capacity.
- 1.3.3 Seller's right to transfer electricity quantities from the Allocated Nuclear Power plant to another power plant pursuant to Sec. 7 subsec. (1b) Atomgesetz remains unaffected. Seller is obliged to make available to Purchaser electric capacity in the power plant to which the electric quantities have been transferred in the amount similar to the transferred Allocated Electric Capacity.
- 1.3.4 Provided authorisation expires for other reason than in Sec. 1.3.3 earlier than defined in Sec. 1.1, Purchaser's right to use the Allocated Capacity also terminates at that earlier expiration date.
- 1.3.5 Provided Seller has the right to share in or install a new Power Plant on the same site, Purchaser shall have the right to share in the newly installed Power Plant or install a new Power Plant. Purchaser's share shall mirror the relation of the capacity sold under this agreement to the total capacity of the Allocated Nuclear Power Plant. All expenses and cost associated with the share in or with installing the new Power Plant shall be borne by Purchaser proportional to its share of the Allocated Nuclear Power Plant's total electric capacity.

#### 1.4 Purchase price

- 1.4.1 Lump-sum payment to be paid up-front.
- 1.4.2 Additional up-front payment of a security which Seller is entitled to realize under Sec. 1.5.2 and Sec. 2.4.
- 1.4.3 Additional lump-sum payment in the case authorization will be extended
- 1.4.4 Terms of payment

#### 1.5 Default

- 1.5.1 In the event Purchaser defaults on any payment to be made under Sec. 1.4.1 and 1.4.2, the Seller is not obliged to transfer the Allocated Capacity.

- 1.5.2 In the event Purchaser refuses to bear all expenses and costs which have incurred in the meaning of Sec. 1.3.1, 1.3.2 or 1.3.5, a three-step escalation mechanism applies: (i) realizing of security in the meaning of Sec. 1.4.2, (ii) surrogate marketing of the Allocated Capacities, (iii) surrogate sale of Allocated Capacities. Any dispute between Seller and Purchaser as to the necessity of the expenses and cost shall be bindingly determined by an independent expert (*Schiedsgutacher*). The opinion of the expert shall have binding effect on the fee charged to the Purchaser.
- 1.5.3 Steps (ii) and (iii) of Sec. 1.5.2 also apply in the case Purchaser fails to comply with its obligation to pay the security as defined in Sec. 1.4.2.
- 1.5.4 In the event Seller defaults on its obligation to make available the Allocated Capacity and Seller's default results in unlimited unavailability of Allocated Capacity the Purchaser may terminate this agreement. This shall not apply in case of Force Majeure in the meaning of Section 3 .

## **Section 2**

### **Services supplied by Seller**

- 2.1 Plant management
- 2.1.1 As far as services which are necessary to enable Purchaser to make full use of the Allocated Capacity are rendered by an entrusted third party operator, Seller shall use its best endeavours to procure that third party operator will enter into a service agreement directly with Purchaser on rendering respective services directly to Purchaser at terms and conditions no less favourable than those agreed with Seller. On request of Purchaser and/or if third party operator does not consent to render services directly to Purchaser and to the extent necessary to enable Purchaser to make full use of its Allocated Capacity, Seller shall then exercise its rights under the agreements with the third party operator in order to enable Purchaser to make full use of the Allocated Capacity.
- 2.1.2 Unless Purchaser enters into a service agreement directly with third party operator, Purchaser may enter into a technical agreement with third party operator on the exchange of all information necessary for the full use of the Allocated Capacity by Purchaser. If third party operator does not consent to enter in such a technical agreement, Seller shall empower Purchaser to exchange with third party operator on Seller's behalf all information as specified in Sentence 1.
- 2.1.3 Seller continues to render remaining services which it renders itself, e. g. supply and disposal of nuclear fuel.

2.1.4 Seller is entitled to entrust third parties to render remaining services as defined before.

2.1.5 Liability

## 2.2 Service Fee

2.2.1 Service Fee consists of a proportional share of the Purchaser in all cost incurred by the operation of the Allocated Nuclear Power Plant, including, but not limited to

- a) Handling of fuels (supply and disposal),
- b) Power for own use;
- c) Maintenance;
- d) Personnel;
- e) IT.

Service Fee is payable to third party operator and/or Seller depending on contractual relationship according to Sec. 2.1.1.

2.2.2 Seller shall present to the Purchaser an business plan stating the calculation of the Service Fee as defined in Sec. 2.2.1 and its anticipated development. Provided Purchaser does not enter into a service agreement directly with third party operator and Seller was presented business plan of third party operator as regards calculation of fee for services rendered by third party operator according to Sec. 2.1.1 (Sentence 2), Seller also shall present this business plan to Purchaser to the extent legally permissible.

2.2.3 Purchaser is entitled to comment on business plan of Seller and to be involved in deciding on single items of business plan proportional to its share in the Allocated Nuclear Power Plant's total electric capacity. In relation to the adoption of the business plan of third party operator, in consultation with Seller and/or third parties or by Seller with other shareholders, Seller shall exercise its rights taking into account Purchasers opinion in proportion to its share in capacities of the Allocated Nuclear Power Plant.

2.2.4 Any dispute between Seller and Purchaser as to the reasonableness of items laid down in business plan or to the reasonableness of an adjustment of the Service Fee shall be determined by an independent expert (*Schiedsgutacher*) by reviewing Seller's business plan. The opinion of the expert shall have binding effect on the fee charged to the Purchaser.

2.2.5 Terms of Payment



## 2.3 Purchaser is responsible for nomination of capacities

### 2.3.1 Nomination of capacities vis-à-vis third party operator:

- a) Purchaser shall nominate capacities directly vis-à-vis third party operator either on the basis of the agreement entered into directly with third party operator under Sec. 2.1.1 or, respectively, in accordance with Sec. 2.1.2.
- b) Purchaser is entitled to nominate capacities below the Allocated Capacity. All cost and expenses associated with reduction and the following increase of used share of Allocated Capacity are to be borne by Purchaser.

### 2.3.2 Nomination of capacities vis-à-vis grid operator:

- a) Purchaser shall nominate capacities vis-à-vis grid operator for the use of transmission of electricity. Seller's rights remain unaffected by the contractual relationship between Purchaser and grid operator.
- b) All costs incurred by nomination and use of grids are to be borne by Purchaser.

2.3.3 Purchaser shall be responsible for any variation between a nomination of Purchaser's capacities in the meaning of Sec. 2.3.1 and a nomination in the meaning of Sec. 2.3.2. Cost and expenses incurred thereby are to be borne by Purchaser.

## 2.4 Liability and Compensation

### 2.4.1 General provision regarding limitation of liability

2.4.2 In the case Seller fails to comply with its obligations as laid down in Sec. 2.1, Seller shall compensate the effect that the electricity can not be delivered as duly nominated by the Purchaser.

2.4.3 In the case Purchaser fails to comply with its obligation to pay the service fee under Sec. 2.2, a three-step escalation mechanism applies: (i) realizing of security as defined in Sec. 1.4.2, (ii) surrogate marketing of the Allocated Capacities, (iii) surrogate sale of Allocated Capacities.

## 2.5 Obligations of both parties to cooperate

2.6 Termination of services for Material Reason in the event of Purchaser's insolvency.

### **Section 3 Force Majeure**

- 3.1 Force Majeure means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the “Claiming Party”) which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its obligations.
- 3.2 No breach or default on the part of the Claiming Party.
- 3.3 Notification of other Party and cooperation between Parties
- 3.4 Rights and obligations of both Parties, if and to the extent affected by Force Majeure, shall be released for the duration of the Force Majeure; notwithstanding, the obligation of the Purchaser to pay the Purchase Price under Sec. 1.4 remains unaffected.

### **Section 4 Confidentiality**

### **Section 5 Assignment**

Seller’s right to instruct third parties to perform any or all services as laid down in Sec. 2.1 shall remain unaffected.

### **Section 6 Severability**

### **Section 7 Arbitration**

- 7.1 Except for decisions of an independent expert (*Schiedsgutachter*) according to Sec. 1.5.2 and Sec. 2.2.4, all disputes arising in relation to this agreement shall be resolved according to the Arbitration Rules of the German Institution of Arbitration e.V. (**DIS**) (Deutsche Institution für Schiedsgerichtsbarkeit e.V.).
- 7.2 Venue of arbitration shall be Düsseldorf.
- 7.3 The language of the arbitration shall be English.

## **Section 8 Governing Law**

This Standard Drawing Rights Agreement is governed by the substantive law of the Federal Republic of Germany, excluding any application of the “United Nations Convention on Contracts for The International Sale of Goods of April, 11, 1980”.

## **Section 9 Final Provisions**

**Schedule 2-B**

Case COMP/B-1/39.388 and 39.389

- Investigation in the German Power Market -

COMMITMENTS TO THE EUROPEAN COMMISSION

**Outlines of**

**AGREEMENT ON  
SALE AND PURCHASE OF ELECTRIC ENERGY**

Between

**E.ON Kraftwerke**

- hereinafter referred to as “**EKW**” or the “**Seller**”-

and

Purchaser [X]

- hereinafter referred to as the “**Purchaser**”-

The Purchaser and EON also each referred to as the “Party” and together as the “Parties”.

**Preamble:**

Seller has a right to a share of 100 % in the total capacity of Kraftwerk Buschhaus. By the means of this agreement Seller sells an electric capacity of 159 MW to the Purchaser.

**Section 1  
Subject of Agreement**

1.1 Capacity to be sold

Seller sells and Purchaser purchases an electric capacity of 159 MW (**the Allocated Capacity**) for power generation of the Kraftwerk Buschhaus (**the Allocated Power Plant**) from [**starting date**] until decommissioning of the Allocated Power Plant.

1.2 Availability of capacities

- 1.2.1 The Allocated Capacity shall be made fully available to the Purchaser if the Allocated Power Plant is operated with its total capacity.
- 1.2.2 Any reduction of the total capacity of the Allocated Power Plant due to technical or legal reasons beyond the control of the Seller or any party entrusted by the Seller with the operation of the plant, leads to a proportional reduction of the Allocated Capacity as defined in Sec. 1.1. Reasons beyond control are including, but not limited to,
  - a) Redispatch measures by grid operators
  - b) Coolant supply shortfall
  - c) Force Majeure in the meaning of Section 3
- 1.2.3 Purchase of the Allocated Capacity enables Purchaser to use the Allocated Capacity as if he had a right to a share in the Allocated Power Plant itself. Insofar, all risks and expenses attached with holding a share in the Allocated Power Plant and its operation rest with the Purchaser proportional to its share of the Allocated Power Plant's total electric capacity unless otherwise governed by this agreement.
- 1.2.4 Purchaser has the right and duty to mandate Seller to provide all necessary services for the use of the Allocated Capacity as laid down in Section 2
- 1.3 Provided Seller had the right to share in or install a new Power Plant on the same site, Purchaser shall have the right to share in the newly installed Power Plant or install a new Power Plant. Purchaser's share shall mirror the relation of the capacity sold under this agreement to the total capacity of the Allocated Power Plant. All expenses and cost associated with the share in or with installing the new Power Plant shall be borne by Purchaser proportional to its share of the Allocated Power Plant's total electric capacity.
- 1.4 Purchase price
  - 1.4.1 Lump-sum payment to be paid up-front.
  - 1.4.2 Additional up-front payment of a security which Seller is entitled to realize under Sec. Sec. 2.4.
  - 1.4.3 Terms of payment
- 1.5 Default
  - 1.5.1 In the event Purchaser defaults on any payment to be made under Sec. 1.4.1 and 1.4.2, Seller is not obliged to transfer the Allocated Capacity.
  - 1.5.2 In the event Purchaser refuses to bear all expenses and costs which have incurred in the meaning of Sec. 1.3, a three-step escalation mechanism applies: (i) realizing of security in the meaning of Sec.

1.4.2, (ii) surrogate marketing of the Allocated Capacity, (iii) surrogate sale of Allocated Capacity. Any dispute between Seller and Purchaser as to the necessity of the expenses and cost shall be bindingly determined by an independent expert (*Schiedsgutacher*). The opinion of the expert shall have binding effect on the fee charged to the Purchaser.

1.5.3 In the event Seller defaults on its obligation to make available the Allocated Capacity and Seller's default results in unlimited unavailability of Allocated Capacity Purchaser may terminate this agreement. This shall not apply in case of Force Majeure in the meaning of Section 3.

## **Section 2**

### **Services supplied by Seller**

#### 2.1 Plant management

2.1.1 Seller continues to perform all services which are necessary to enable Purchaser to make full use of the Allocated Capacity.

2.1.2 Seller is entitled to entrust third parties to perform remaining services as defined before.

#### 2.2 Service Fee

2.2.1 Service Fee consists of a proportional share of the Purchaser in cost and expenses incurred by the operation of the Allocated Power Plant, including, but not limited to

- a) Supply of lignite,
- b) Power for own use;
- c) Maintenance;
- d) Personnel;
- e) IT.

2.2.2 Seller shall present to the Purchaser a business plan stating the calculation of the Service Fee as defined in Sec. 2.2.1 and its anticipated development.

2.2.3 Purchaser is entitled to comment on business plan of Seller and to be involved in deciding on single items of business plan proportional to its share in the Allocated Power Plant's total electric capacity.

2.2.4 Any dispute between Seller and Purchaser as to the reasonableness of items laid down in business plan or of an adjustment of the Service Fee shall be determined by an independent expert (*Schiedsgutacher*) by reviewing Seller's business plan. The opinion of the expert shall have binding effect on the fee charged to the Purchaser.

2.2.5 Terms of Payment

2.3 Purchaser is responsible for nomination of capacities

2.3.1 Nomination of the Allocated Capacity:

- a) Purchaser shall nominate the Allocated Capacity.
- b) Purchaser is entitled to nominate capacities below the Allocated Capacity. All cost and expenses associated with reduction and the following increase of used share of Allocated Capacity are to be borne by Purchaser.

2.3.2 Nomination of capacities vis-à-vis grid operator:

- a) Purchaser shall nominate capacities vis-à-vis grid operator for the use of transmission of electricity. Seller's rights remain unaffected by the contractual relationship between Purchaser and grid operator.
- b) All costs incurred by nomination and use of grids are to be borne by Purchaser.

2.3.3 Purchaser shall be responsible for any variation between a nomination of Purchaser's capacities in the meaning of Sec. 2.3.1 and a nomination in the meaning of Sec. 2.3.2. Cost and expenses incurred thereby are to be borne by Purchaser.

2.4 Liability and Compensation

2.4.1 General provision regarding limitation of liability (only if Parties fail to comply with its respective obligations either intentionally or grossly negligent and unless due to an event in the meaning of Section 3)

2.4.2 In the case Seller fails to comply with its obligations as laid down in Sec. 2.1, Seller shall compensate the effect that the electricity can not be delivered as duly nominated by the Purchaser.

2.4.3 In the case Purchaser fails to comply with its obligation to pay the service fee under Sec. 2.2, an three-step escalation mechanism applies: (i) realizing of security as defined in Sec. 1.4.2, (ii) surrogate marketing of the Allocated Capacities, (iii) surrogate sale of Allocated Capacities.

2.5 Obligations of both parties to cooperate

- 2.6 Termination of services for Material Reason in the event of Purchaser's insolvency.

### **Section 3 Force Majeure**

- 3.1 Force Majeure means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Claiming Party") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its obligations.
- 3.2 No breach or default on the part of the Claiming Party.
- 3.3 Notification of other Party and cooperation between Parties
- 3.4 Rights and obligations of both Parties, if and to the extent affected by Force Majeure, shall be released for the duration of the Force Majeure; notwithstanding, the obligation of the Purchaser to pay the Purchase Price under Sec. 1.4 remains unaffected.

### **Section 4 Confidentiality**

### **Section 5 Assignment**

Seller's right to instruct third parties to perform any or all services as laid down in Sec. 2.1 shall remain unaffected.

### **Section 6 Severability**



## **Section 7 Arbitration**

- 7.1 Except for decisions of an independent expert (*Schiedsgutachter*) according to Sec. 1.5.2 and Sec. 2.2.4, all disputes arising in relation to this agreement shall be resolved according to the Arbitration Rules of the German Institution of Arbitration e.V. (**DIS**) (Deutsche Institution für Schiedsgerichtsbarkeit e.V.)
- 7.2 Venue of arbitration shall be Düsseldorf.
- 7.3 The language of the arbitration shall be English.

## **Section 8 Governing Law**

This Standard Drawing Rights Agreement is governed by the substantive law of the Federal Republic of Germany, excluding any application of the “United Nations Convention on Contracts for The International Sale of Goods of April, 11, 1980”.

## **Section 9 Final Provisions**

**Cases COMP/B-1/39.388 and 39.389**  
**- Investigation in the German Power Market -**

**COMMITMENTS TO THE EUROPEAN COMMISSION**

**Schedule 3**

**Description of Power Plants**

This schedule provides information in respect of the power plants Krümmel [...]\*, Gundremmingen B and C, Unterweser, Buschhaus, Lippendorf, Weser, Inn (Rosenheim, Feldkirchen, Wasserburg, Triebwerk Wasserburg, Teufelsbruck, Gars, Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach, Stammham), Jansen (Trausnitz, Tanzmühle), Rostock, Farge, Zolling, Mehrum C, Veltheim 2/3, Bexbach, Robert Frank, Erzhausen, Jansen (*Data Sheets*). Further information on the Generation Capacity Divestment Business – as far as it concerns the Divested Drawing Rights – is provided in **Schedules 2-A** and **2-B**.

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\* business secret

## I. KRÜMMEL

### 1. General Information

- 1.1. Name of the Power Plant: Kernkraftwerk Krümmel
- 1.2. Location: Elbuferstraße 82, 21502  
Geesthacht
- 1.3. Type / Primary Energy Source: Nuclear Power Plant
- 1.4. Total installed capacity: 1,346 MW (net)
- 1.5. Capacity to be divested: 673 MW (net)
- 1.6. Plant operator: Kernkraftwerk Krümmel GmbH  
& Co. oHG
- 1.7. Planned lifespan: Production rights left as of  
31.12.2007: 88,580.08 GWh

### 2. Legal Structure of Plant Operator

- 2.1. Shareholding of E.ON group:  
E.ON Kernkraft GmbH (50 %)
- 2.2. Other shareholders and their individual shares:  
Vattenfall Europe Nuclear Energy GmbH 50 %
- [...]\*

### 3. Main Assets

Drawing Right (673 MW) in accordance with **Schedule 2-A**.

### 4. Possible Substitute

E.ON AG divests the right to draw electricity from power plant Krümmel. This right is subject to the availability of the plant and is valid until the plant's decommissioning. Pursuant to the German nuclear energy phase-out, this right comprises a certain generation volume from the date of Closing, presumably in 2009.

Should the plant, against expectation, not have been re-opened by the date of Closing due to the publicly known incidents in 2007, the Purchaser of the aforementioned Drawing Right, on request, shall alternatively be delivered electricity from the portfolio of E.ON AG and Affiliated Undertakings on the terms agreed upon with regard to the Krümmel plant, until Krümmel is re-opened [...]\*. The volume of electricity alternatively supplied within this period shall be deducted from the above-mentioned remaining generation volume of the Krümmel plant. [E.ON has the right to substitute Krümmel by Grohnde.]

## II. GUNDREMMINGEN B, C

### 1. General Information

1.1.	Name of the Power Plant:	Kernkraftwerk Gundremmingen	
1.2.	Location:	Dr. August-Weckesser-Str. 1, 89355 Gundremmingen	
1.3.	Type / Primary Energy Source:	Nuclear Power Plant	
1.4.	Total installed capacity:	Plant B	1,284 MW (net)
		Plant C	1,288 MW (net)
1.5.	Capacity to be divested:	643 MW (net)	
1.6.	Plant operator:	Kernkraftwerk Gundremmingen GmbH	
1.7.	Planned lifespan :	Commissioning:	
		Plant B	19.07.1984
		Plant C	18.01.1985
		Production rights left as of 31.12.2007:	
		Plant B	79,749.26 GWh
		Plant C	89,115.70 GWh

### 2. Legal Structure of Plant Operator

- 2.1. Shareholding of E.ON group:  
E.ON Kernkraft GmbH (25 %)
- 2.2. Other shareholders and their individual shares:  
RWE Power AG (75 %)

[...]\*

### 3. Main Assets

Drawing Right (643 MW) in accordance with **Schedule 2-A**

### III. UNTERWESER

#### 1. General Information

- |      |                               |   |
|------|-------------------------------|---|
| 1.1. | Name of the Power Plant:      | Kernkraftwerk Unterweser                                  |
| 1.2. | Location:                     | Dedesdorfer Straße 2, 26935<br>Stadland                   |
| 1.3. | Type / Primary Energy Source: | Nuclear Power Plant                                       |
| 1.4. | Total installed capacity:     | 1,345 MW (net)  |
| 1.5. | Capacity to be divested:      | 184 MW  |
| 1.6. | Plant operator:               | E.ON Kernkraftwerk GmbH                                   |
| 1.7. | Planned lifespan:             | Production rights left as of<br>31.12.2007: 43,595.53 GWh |

#### 2. Legal Structure of Plant Operator

- |      |                             |  |
|------|-----------------------------|--|
| 2.1. | Shareholding of E.ON group: | wholly-owned by E.ON<br>Kernkraft GmbH |
| 2.2. | No other shareholders       |  |
|      | [...]*                      |  |

#### 3. Main Assets

Drawing Right (184 MW) in accordance with **Schedule 2-A**

## IV. BUSCHHAUS

### 1. General Information

- |      |                               |                               |
|------|-------------------------------|-------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Buschhaus           |
| 1.2. | Location:                     | An der B 244, 38350 Helmstedt |
| 1.3. | Type / Primary Energy Source: | Lignite coal                  |
| 1.4. | Total installed capacity:     | 352 MW (net)                  |
| 1.5. | Capacity to be divested:      | 159 MW                        |
| 1.6. | Plant operator:               | E.ON Kraftwerke GmbH          |
| 1.7. | Planned lifespan:             | 2017                          |

### 2. Legal Structure of Plant Operator

- 2.1. Shareholding of E.ON group:  
E.ON Kraftwerke GmbH: 100 % (property, no company)
- 2.2. No other shareholders
- [...]\*

### 3. Main Assets

Drawing Right (159 MW) in accordance with **Schedule 2-B**

### 4. Main Contracts

- 4.1. No fuel supply contract
- 4.2. No main power plant specific supply contracts

## V. LIPPENDORF

### 1. General Information

- |      |                               |                              |
|------|-------------------------------|------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Lippendorf         |
| 1.2. | Location:                     | Werkstraße, 04564 Böhlen     |
| 1.3. | Type / Primary Energy Source: | Lignite coal                 |
| 1.4. | Total installed capacity:     | 937 MW net                   |
| 1.5. | Capacity to be divested:      | 445.5 MW                     |
| 1.6. | Plant operator:               | Vattenfall Europe Generation |
| 1.7. | Planned lifespan              | 2044                         |

### 2. Legal Structure of Plant Operator

- 2.1. Shareholding of E.ON group:
- Südblock: E.ON Kraftwerke GmbH: 50 % (joint ownership)
- Shared assets: E.ON Kraftwerke GmbH: 25 % (joint ownership)
- 2.2. Other shareholders and their individual shares:
- Südblock: EnBW Kraftwerke AG: 50 %
- Shared assets: EnBW Kraftwerke AG: 25 %, Vattenfall Europe Generation AG & Co. KG: 50%

[...]\*

### 3. Main Assets

- 3.1. Lot of land on which power plant is located
- 3.2. Conveyor belt from the coal mine; coal stock yard; coal mills; steam boiler; steam turbine; flue gas cleaning equipment; cooling tower
- 3.3. No intangible assets

### 4. Main Contracts

- 4.1. Fuel supply contract
- 4.1.1. Contracting Party: [...]\*



- 4.1.2. Date of Signing: [...]\*
- 4.1.3. Duration: 15.12.2039
- 4.1.4. Yearly limits to supply: minimum [...]\* t p.a.
- 4.2. No power plant specific supply contracts
- 4.3. No key service/maintenance contracts

## VI. DÖRVERDEN (WESER)

### 1. General Information

- |      |                               |                                     |
|------|-------------------------------|-------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Dörverden             |
| 1.2. | Location:                     | Sympherallee 56, 27313<br>Dörverden |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                  |
| 1.4. | Total installed capacity:     | 3.9 MW                              |
| 1.5. | Capacity to be divested:      | 3.9 MW                              |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut  |
| 1.7. | End of current concession:    | 2025                                |
| 1.8. | Planned lifespan:             | 2014                                |

### 2. Legal Structure of Plant Operator

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### 3. Main Assets

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### 4. Main Contracts

- 4.1. No fuel supply contract
- 4.2. No power plant specific supply contracts with third undertakings
- 4.3. No long-term key service/maintenance contracts

## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

## VII. DRAKENBURG (WESER)

### 1. General Information

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Drakenburg           |
| 1.2. | Location:                     | Balger Straße, 31623 Drakenburg    |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 5 MW                               |
| 1.5. | Capacity to be divested:      | 5 MW                               |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2052                               |
| 1.8. | Planned lifespan:             | 2056                               |

### 2. Legal Structure of Plant Operator

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### 3. Main Assets

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### 4. Main Contracts

- 4.1. No fuel supply contract
- 4.2. No power plant specific supply contracts with third undertakings
- 4.3. No long-term key service/maintenance contracts

## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

## VIII. LANDESBERGEN (WESER)

### 1. General Information

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Landesbergen         |
| 1.2. | Location:                     | Staustufe, 31628 Landesbergen      |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 7.2 MW                             |
| 1.5. | Capacity to be divested:      | 7.2 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2052                               |
| 1.8. | Planned lifespan:             | 2060                               |

### 2. Legal Structure of Plant Operator

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### 3. Main Assets

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### 4. Main Contracts

- 4.1. No fuel supply contract
- 4.2. No power plant specific supply contracts with third undertakings
- 4.3. No long-term key service/maintenance contracts

## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

## **IX. LANGWEDEL (WESER)**

### **1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Langwedel            |
| 1.2. | Location:                     | Intschede, 27337 Blender           |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 7.2 MW                             |
| 1.5. | Capacity to be divested:      | 7.2 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2052                               |
| 1.8. | Planned lifespan:             | 2058                               |

### **2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### **3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### **4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant specific supply contracts with third undertakings
- 4.3. No long-term key service/maintenance contracts



## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

## **X. OLDENBURG (WESER)**

### **1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Oldenburg            |
| 1.2. | Location:                     | Achterdiek, 26131 Oldenburg        |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 0.7 MW                             |
| 1.5. | Capacity to be divested:      | 0.7 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2014                               |
| 1.8. | Planned lifespan:             | 2045                               |

### **2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### **3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### **4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. Power plant specific supply contract with EWE AG, Oldenburg
- 4.3. No long-term key service/maintenance contracts

## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

## **XI. PETERSHAGEN (WESER)**

### **1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Petershagen          |
| 1.2. | Location:                     | Ravensberg, 32469 Petershagen      |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 3.3 MW                             |
| 1.5. | Capacity to be divested:      | 3.3 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2052                               |
| 1.8. | Planned lifespan:             | 2054                               |

### **2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### **3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### **4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant specific supply contracts with third undertakings
- 4.3. No long-term key service/maintenance contracts

## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

## XII. SCHLÜSSELBURG (WESER)

### 1. General Information

- |      |                               |                                     |
|------|-------------------------------|-------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk<br>Schlüsselburg      |
| 1.2. | Location:                     | Brückenweg 51, 32469<br>Petershagen |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                  |
| 1.4. | Total installed capacity:     | 5 MW                                |
| 1.5. | Capacity to be divested:      | 5 MW                                |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut  |
| 1.7. | End of current concession:    | 2052                                |
| 1.8. | Planned lifespan:             | 2056                                |

### 2. Legal Structure of Plant Operator

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### 3. Main Assets

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### 4. Main Contracts

- 4.1. Fuel supply contract: n/a
- 4.2. No power plant specific supply contracts with third undertakings
- 4.3. No long-term key service/maintenance contracts

## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

### **XIII. WAHNHAUSEN (WESER)**

#### **1. General Information**

- |      |                               |                                       |
|------|-------------------------------|---------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Wahnhausen              |
| 1.2. | Location:                     | An der Bundesstr. 3, 34233<br>Fuldata |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                    |
| 1.4. | Total installed capacity:     | 4 MW                                  |
| 1.5. | Capacity to be divested:      | 4 MW                                  |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut    |
| 1.7. | End of current concession:    | 2021                                  |
| 1.8. | Planned lifespan:             | 2080                                  |

#### **2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

#### **3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

#### **4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant specific supply contracts with third undertakings
- 4.3. No long-term key service/maintenance contracts



## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

## **XIV. WERRAWERK (WESER)**

### **1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Werrawerk (Werra)    |
| 1.2. | Location:                     | Letzter Heller, 34346 Hann. Münden |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 2.6 MW                             |
| 1.5. | Capacity to be divested:      | 2.6 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH, Landshut    |
| 1.7. | End of current concession:    | unlimited concession               |
| 1.8. | Planned lifespan:             | 2086                               |

### **2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### **3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### **4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant specific supply contracts with third undertakings

4.3. No long-term key service/maintenance contracts

## **5. Key Personnel**

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

## **XV. AFFOLDERN (WESER)**

### **1. General Information**

- |      |                               |   |
|------|-------------------------------|---|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Affoldern                     |
| 1.2. | Location:                     | Am Mühlengraben, 34549<br>Edertal-Affoldern |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                          |
| 1.4. | Total installed capacity:     | 2.7 MW                                      |
| 1.5. | Capacity to be divested:      | 2.7 MW                                      |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut          |
| 1.7. | End of current concession:    | unlimited concession                        |
| 1.8. | Planned lifespan:             | 2099  |

### **2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

### **3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

### **4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant specific supply contracts with third undertakings
- 4.3. No long-term key service/maintenance contracts

## 5. Key Personnel

For overall number of Weser hydro power stations approx. three positions with responsibilities for the different individual power stations

**XVI. ROSENHEIM (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Rosenheim                |
| 1.2. | Location:                     | Ahornstrasse 10, 83101<br>Rohrdorf |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 35.1 MW                            |
| 1.5. | Capacity to be divested:      | 35.1 MW                            |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2050                               |
| 1.8. | Planned lifespan.             | 2060                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weirs, intake and outlet structures, dams, dykes, pumping stations
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Rosenheim and Feldkirchen; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XVII. FELDKIRCHEN (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Feldkirchen              |
| 1.2. | Location:                     | Oberwöhrn 100, 83543 Rott          |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 38.2 MW                            |
| 1.5. | Capacity to be divested:      | 38.2 MW                            |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2050                               |
| 1.8. | Planned lifespan:             | 2070                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weirs, intake and outlet structures, dams, dykes, pumping stations
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts



## 5. Key Personnel

Person responsible for the power stations Rosenheim and Feldkirchen; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XVIII. WASSERBURG (INN)****1. General Information**

- |      |                               |  |
|------|-------------------------------|--|
| 1.1. | Name of the Power Plant:      | Kraftwerk Wasserburg                     |
| 1.2. | Location:                     | Ponschabaustraße 30, 83512<br>Wasserburg |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                       |
| 1.4. | Total installed capacity:     | 24.1 MW                                  |
| 1.5. | Capacity to be divested:      | 24.1 MW                                  |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut       |
| 1.7. | End of current concession:    | 2013                                     |
| 1.8. | Planned lifespan:             | 2038                                     |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weirs, intake and outlet structures, dams, dykes, pumping stations
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. Service contract with third party for trash removal and cleaning of the trash racks of the pumping stations

## 5. Key Personnel

Person responsible for the power stations Wasserburg, Triebwerk Wasserburg, Teufelsbruck and Gars; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XIX. TRIEBWERK WASSERBURG (INN)****1. General Information**

- |      |                               |                                       |
|------|-------------------------------|---------------------------------------|
| 1.1. | Name of the Power Plant:      | Triebwerk Wasserburg                  |
| 1.2. | Location:                     | Ponschabastr. 30, 83512<br>Wasserburg |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                    |
| 1.4. | Total installed capacity:     | 5.0 MW                                |
| 1.5. | Capacity to be divested:      | 5.0 MW                                |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut    |
| 1.7. | End of current concession:    | 2037                                  |
| 1.8. | Planned lifespan:             | 2109                                  |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Generators, turbines, intake and outlet structure
- 3.2. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Wasserburg, Triebwerk Wasserburg, Teufelsbruck and Gars; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XX. TEUFELSBRUCK (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Teufelsbruck             |
| 1.2. | Location:                     | Teufelsbruck 25, 83564 Soyen       |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 25.0 MW                            |
| 1.5. | Capacity to be divested:      | 25.0 MW                            |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2013                               |
| 1.8. | Planned lifespan:             | 2038                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weirs, intake and outlet structures, dams, pumping station
- 3.3. Sold together with newbuild (Triebwerk Teufelsbruck, with an installed capacity of approximately 5 MW)
- 3.4. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Wasserburg, Triebwerk Wasserburg, Teufelsbruck and Gars; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXI. GARS (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Gars                     |
| 1.2. | Location:                     | Agg 4, 83536 Gars                  |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 25.0 MW                            |
| 1.5. | Capacity to be divested:      | 25.0 MW                            |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2013                               |
| 1.8. | Planned lifespan:             | 2038                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weirs, intake and outlet structures, dams
- 3.3. Sold together with newbuild (Triebwerk Gars, with an installed capacity of approximately 5 MW)
- 3.4. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts



## 5. Key Personnel

Person responsible for the power stations Wasserburg, Triebwerk Wasserburg, Teufelsbruck and Gars; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXII. JETTENBACH (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Jettenbach               |
| 1.2. | Location:                     | Bauhof 1, 84555 Jettenbach         |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 0.4 MW                             |
| 1.5. | Capacity to be divested:      | 0.4 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2026                               |
| 1.8. | Planned lifespan:             | 2024                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Generators, turbines, grid connection, intake channel and outlet structure
- 3.2. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. Revenues according to EEG (Renewable Energy Sources Act)
- 4.3. No key service / maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach and Stammham; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXIII. JETTENBACH 2 (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Jettenbach 2             |
| 1.2. | Location:                     | Bauhof 1, 84555 Jettenbach         |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 5.0 MW                             |
| 1.5. | Capacity to be divested:      | 5.0 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2026                               |
| 1.8. | Planned lifespan:             | 2104                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Generators, turbines, intake and outlet structure
- 3.2. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. Revenues according to EEG (Renewable Energy Sources Act);  
contract with local distribution grid operator E.ON Bayern AG
- 4.3. No key service/maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach and Stammham; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXIV. TÖGING (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Töging                   |
| 1.2. | Location:                     | Werkstraße 18, 84513 Töging        |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 85.3 MW                            |
| 1.5. | Capacity to be divested:      | 85.3 MW                            |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2026                               |
| 1.8. | Planned lifespan:             | 2024                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weir, channel, dams, intake structure with emergency outlet, outlet structure
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach and Stammham; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXV. NEUÖTTING (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Neuötting                |
| 1.2. | Location:                     | Innstraße 11, 84524 Neuötting      |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 26.1 MW                            |
| 1.5. | Capacity to be divested:      | 26.1 MW                            |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2027                               |
| 1.8. | Planned lifespan:             | 2051                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weirs, intake and outlet structures, dams, dykes
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts



## 5. Key Personnel

Person responsible for the power stations Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach and Stammham; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXVI. AUBACH (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Aubach                   |
| 1.2. | Location:                     | Innstraße 11, 84524 Neuötting      |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 0.4 MW                             |
| 1.5. | Capacity to be divested:      | 0.4 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2027                               |
| 1.8. | Planned lifespan:             | 2052                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, channel, intake and outlet bay
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. Revenues according to EEG (Renewable Energy Sources Act)
- 4.3. No key service/maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach and Stammham; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXVII. PERACH (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Perach                   |
| 1.2. | Location:                     | Niederperach, 84567 Perach         |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 19.4 MW                            |
| 1.5. | Capacity to be divested:      | 19.4 MW                            |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2030                               |
| 1.8. | Planned lifespan:             | 2077                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weirs, intake and outlet structures, dams, dykes
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach and Stammham; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXVIII. STAMMHAM (INN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | Kraftwerk Stammham                 |
| 1.2. | Location:                     | Innstufenstraße 15, 84533 Stammham |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 23.2 MW                            |
| 1.5. | Capacity to be divested:      | 23.2 MW                            |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH, Landshut    |
| 1.7. | End of current concession:    | 2030                               |
| 1.8. | Planned lifespan:             | 2055                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:  
E.ON Wasserkraft GmbH, Landshut: 100 %
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, weirs, intake and outlet structures, dams, dykes
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts with third undertakings
- 4.3. No key service/maintenance contracts

## 5. Key Personnel

Person responsible for the power stations Jettenbach, Jettenbach 2, Töging, Neuötting, Aubach, Perach and Stammham; and the single head of the “Competence Group Inn”, who is concerned with all divested power stations along the river Inn

**XXIX. TRAUSNITZ (JANSEN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk Trausnitz            |
| 1.2. | Location:                     | Seestraße 5, 92555 Trausnitz       |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 1.8 MW                             |
| 1.5. | Capacity to be divested:      | 1.8 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2027                               |
| 1.8. | Planned lifespan:             | 2052                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts
- 4.3. No long-term key service/maintenance contracts



## 5. Key Personnel

Person responsible for all Jansen hydro power stations

**XXX. TANZMÜHLE (JANSEN)****1. General Information**

- |      |                               |                                    |
|------|-------------------------------|------------------------------------|
| 1.1. | Name of the Power Plant:      | EWK Kraftwerk LWK<br>Tanzmühle     |
| 1.2. | Location:                     | Tanzmühle 4, 92723 Tännesberg      |
| 1.3. | Type / Primary Energy Source: | Run-of-River/Hydro                 |
| 1.4. | Total installed capacity:     | 3.3 MW                             |
| 1.5. | Capacity to be divested:      | 3.3 MW                             |
| 1.6. | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7. | End of current concession:    | 2027                               |
| 1.8. | Planned lifespan:             | 2059                               |

**2. Legal Structure of Plant Operator**

- 2.1. Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2. No other shareholders
- [...]\*

**3. Main Assets**

- 3.1. Relevant lots of land
- 3.2. Generators, turbines, grid connection, dam, intake and outlet bay
- 3.3. No intangible assets

**4. Main Contracts**

- 4.1. No fuel supply contract
- 4.2. No power plant-specific supply contracts

4.3. No long-term key service/maintenance contracts

## **5. Key Personnel**

Person responsible for all Jansen hydro power stations

**XXXI. ROSTOCK****1. General Information**

- |     |                               |                            |
|-----|-------------------------------|----------------------------|
| 1.1 | Name of the Power Plant:      | Kraftwerk Rostock          |
| 1.2 | Location:                     | Am Kühlturm, 18147 Rostock |
| 1.3 | Type / Primary Energy Source: | hard coal                  |
| 1.4 | Total installed capacity:     | 508 MW net                 |
| 1.5 | Capacity to be divested:      | 256 MW                     |
| 1.6 | Plant operator:               | KNG GmbH                   |
| 1.7 | Planned lifespan:             | 2038                       |

**2. Legal Structure of Plant Operator**

- 2.1 Shareholding of E.ON group:
- E.ON Kraftwerke: 45.72 % (joint ownership regarding power plant, shareholder regarding KNG GmbH)
- E.ON edis AG: 4.66 %
- 2.2 Other shareholders and their individual shares:
- RWE Power AG: 24.62 %
- Vattenfall Europe Generation AG & Co. KG: 25 %
- [...]\*

**3. Main Assets**

- 3.1 Drawing right according to **Annex 3-A** from Date of Closing until 30 June 2010
- 3.2 Supplement Agreement (*Ergänzungsvereinbarung*) to the Consortium Agreement of 17/18/19/20 December 1991 can be terminated with effect from 31 December 2015
- 3.3 Lot of land on which power plant is located
- 3.4 Coal stock yard; coal mills; steam boiler; steam turbine; flue gas cleaning equipment; cooling tower

3.5 No intangible assets

**4. Main Contracts**

4.1 E.ON is not party of a fuel supply contract regarding power plant

4.2 No power plant specific supply contracts

4.3 No key service/maintenance contracts

**XXXII. FARGE****1. General Information**

- |     |                               |                                   |
|-----|-------------------------------|-----------------------------------|
| 1.1 | Name of the Power Plant:      | Kraftwerk Farge                   |
| 1.2 | Location:                     | Berner Fährweg 2,<br>28777 Bremen |
| 1.3 | Type / Primary Energy Source: | hard coal                         |
| 1.4 | Total installed capacity:     | 350 MW net                        |
| 1.5 | Capacity to be divested:      | 350 MW                            |
| 1.6 | Plant operator:               | E.ON Kraftwerke                   |
| 1.7 | Planned lifespan:             | 2024 <sup>1</sup>                 |

**2. Legal Structure of Plant Operator**

- |     |                             |  |
|-----|-----------------------------|--|
| 2.1 | Shareholding of E.ON group: | E.ON Kraftwerke GmbH: 100 % (property, no company) |
| 2.2 | No other shareholders       |  |
|     | [...]*                      |  |

**3. Main Assets**

- |     |  |
|-----|--|
| 3.1 | Lot of land on which power plant is located  |
| 3.2 | Coal stock yard; coal mills; steam boiler; steam turbine; flue gas cleaning equipment; fresh water cooling |
| 3.3 | No intangible assets   |

**4. Main Contracts**

- |     |  |
|-----|--|
| 4.1 | No power plant-specific fuel supply contract |
| 4.2 | No power plant-specific supply contracts     |
| 4.3 | No key service/maintenance contracts         |

---

<sup>1</sup> Lifespan currently under discussion, dates not fixed yet.

**5. Key Personnel**

Power plant management and heads of the following reporting divisions:  
operation, maintenance, process control and monitoring, supply and disposal

**XXXIII. ZOLLING****1. General Information**

- |     |                               |                                 |
|-----|-------------------------------|---------------------------------|
| 1.1 | Name of the Power Plant:      | Kraftwerk Zolling               |
| 1.2 | Location :                    | Leininger Str. 1, 85406 Zolling |
| 1.3 | Type / Primary Energy Source: | hard coal                       |
| 1.4 | Total installed capacity:     | 449 MW net                      |
| 1.5 | Capacity to be divested:      | 449 MW                          |
| 1.6 | Plant operator:               | E.ON Kraftwerke                 |
| 1.7 | Planned lifespan:             | 2039                            |

**2. Legal Structure of Plant Operator**

- 2.1 Shareholding of E.ON group:  
E.ON Kraftwerke GmbH: 100 % (property, no company)
- 2.2 No other shareholders
- [...]\*

**3. Main Assets**

- 3.1 Lot of land on which power plant is located
- 3.2 Coal stock yard; coal mills; steam boiler; steam turbine; flue gas cleaning equipment; cooling tower
- 3.3 No intangible assets

**4. Main Contracts**

- 4.1 No power plant-specific fuel supply contract
- 4.2 Main supply contracts (electricity/district heat): Contract concerning district heat (Fernwärmeversorgung Freising GmbH)
- 4.3 No key service/maintenance contracts



**5. Key Personnel**

Power plant management and heads of the following reporting divisions:  
operation, maintenance, supply and disposal, power plant office

**XXXIV. MEHRUM C****1. General Information**

- |     |                               |                                 |
|-----|-------------------------------|---------------------------------|
| 1.1 | Name of the Power Plant:      | Kraftwerk Mehrum                |
| 1.2 | Location:                     | Triftstr. 25, 31249 Hohenhameln |
| 1.3 | Type / Primary Energy Source: | hard coal                       |
| 1.4 | Total installed capacity:     | 690 MW net                      |
| 1.5 | Capacity to be divested:      | 345 MW                          |
| 1.6 | Plant operator:               | Kraftwerk Mehrum GmbH           |
| 1.7 | Planned lifespan:             | 2023                            |

**2. Legal Structure of Plant Operator**

- |     |   |   |
|-----|---|---|
| 2.1 | Shareholding of E.ON group:                     | E.ON Kraftwerke GmbH: 50 %  |
| 2.2 | Other shareholders and their individual shares: | Stadtwerke Hannover AG: 33.33 %<br>Braunschweiger Versorgungs AG: 16.67 % |

[...]\*

**3. Main Assets**

- |     |  |
|-----|--|
| 3.1 | Lot of land on which power plant is located  |
| 3.2 | Coal stock yard; coal mills; steam boiler; steam turbine; flue gas cleaning equipment; cooling tower |
| 3.3 | No intangible assets   |

**4. Main Contracts**

- |     |  |
|-----|--|
| 4.1 | No power plant-specific fuel supply contract |
| 4.2 | No power plant specific supply contracts     |
| 4.3 | No key service/maintenance contracts         |

**XXXV. VELTHEIM 2/3****1. General Information**

- |     |                               |  |
|-----|-------------------------------|--|
| 1.1 | Name of the Power Plant:      | Kraftwerk Veltheim<br>(Units 2 und 3)          |
| 1.2 | Location:                     | Möllberger Str. 387,<br>32457 Porta Westfalica |
| 1.3 | Type / Primary Energy Source: | hard coal                                      |
| 1.4 | Total installed capacity:     | 100 MW (Unit 2),<br>303 MW (Unit 3)            |
| 1.5 | Capacity to be divested:      | 265.3 MW                                       |
| 1.6 | Plant operator:               | Gemeinschaftskraftwerk<br>Veltheim GmbH        |
| 1.7 | Planned lifespan:             | 2017 (Unit 2), 2018 (Unit3)                    |

**2. Legal Structure of Plant Operator**

- |     |   |                                  |
|-----|---|----------------------------------|
| 2.1 | Shareholding of E.ON group:                     | 66.6 %, E.ON Kraftwerke          |
| 2.2 | Other shareholders and their individual shares: | Stadtwerke Bielefeld GmbH 33.3 % |

[...]\*

**3. Main Assets**

- |     |   |
|-----|---|
| 3.1 | Lot of land on which power plant is located.  |
| 3.2 | One coal stock yard for both units; coal mills; steam boiler; steam turbine; flue gas cleaning equipment; fresh water cooling |
| 3.3 | No intangible assets  |

**4. Main Contracts**

- |     |  |
|-----|--|
| 4.1 | No fuel supply contract                  |
| 4.2 | No power plant specific supply contracts |

4.3 No key service /maintenance contracts

**5. Key Personnel**

Technical and commercial power plant management; heads of divisions reporting to the technical plant manager: operation, maintenance, process control and monitoring, power plant office; heads of division reporting to the commercial plant manager: human resources, finance department

**XXXVI. Bexbach****1. General Information**

- |     |                               |                             |
|-----|-------------------------------|-----------------------------|
| 1.1 | Name of the Power Plant:      | Kraftwerk Bexbach           |
| 1.2 | Location:                     | Grubenstraße, 66450 Bexbach |
| 1.3 | Type / Primary Energy Source: | hard coal                   |
| 1.4 | Total installed capacity:     | 714 MW net                  |
| 1.5 | Capacity to be divested:      | 79.3 MW                     |
| 1.6 | Plant operator:               | Evonik Industries           |
| 1.7 | Planned lifespan:             | 2027                        |

**2. Legal Structure of Plant Operator**

- 2.1 Shareholding of E.ON group:  
E.ON Kraftwerke GmbH: approx. 8.33% (joint ownership)
- 2.2 Other shareholders and their individual shares:  
Kraftwerk Bexbach Verwaltungsgesellschaft mbH<sup>2</sup> (75 %)  
STAWAG Energie GmbH (approx. 16.67 %)

[...]\*

**3. Main Assets**

- 3.1 Lot of land on which power plant is located
- 3.2 Coal stock yard; coal mills; steam boiler; steam turbine; flue gas cleaning equipment; cooling tower
- 3.3 No intangible assets.

**4. Main Contracts**

- 4.1 Fuel supply contract
- 4.1.1 Contracting Party: [...]\*

---

<sup>2</sup> Shareholders: EnBW ca. 66.67 %, Evonik New Energies GmbH ca. 33.33 %.

- 4.1.2 Date of Signing: [...]\*
- 4.1.3 Duration: [...]\* -31.12.2010
- 4.1.4 Yearly limits to supply [...]\* t p.a.
- 4.2 No power plant specific supply contracts
- 4.3 No key service/maintenance contracts

**XXXVII. ROBERT FRANK****1. General Information**

- |     |                               |                            |
|-----|-------------------------------|----------------------------|
| 1.1 | Name of the Power Plant:      | Kraftwerk Robert Frank     |
| 1.2 | Location:                     | Hävern, 31628 Landesbergen |
| 1.3 | Type / Primary Energy Source: | gas                        |
| 1.4 | Total installed capacity:     | 491 MW                     |
| 1.5 | Capacity to be divested:      | 491 MW                     |
| 1.6 | Plant operator:               | E.ON Kraftwerke            |
| 1.7 | Planned lifespan:             | 2022                       |

**2. Legal Structure of Plant Operator**

- |     |                             |  |
|-----|-----------------------------|--|
| 2.1 | Shareholding of E.ON group: | E.ON Kraftwerke GmbH: 100 % (property, no company) |
| 2.2 | No other shareholders       |  |
|     | [...]*                      |  |

**3. Main Assets**

- |     |  |  |
|-----|--|--|
| 3.1 | Lot of land on which power plant is located                                  |  |
| 3.2 | Gas turbine; steam boiler; steam turbine; fresh water cooling; cooling tower |  |
| 3.3 | No intangible assets   |  |

**4. Main Contracts**

- |     |                          |                    |
|-----|--------------------------|--------------------|
| 4.1 | Fuel supply contract     |                    |
|     | 4.1.1 Contracting Party: | [...]*             |
|     | 4.1.2 Date of Signing:   | [...]*             |
|     | 4.1.3 Duration:          | [...]* -30.06.2009 |
|     | 4.1.4 Limits to supply:  | No supply limit    |

4.2 No power plant specific supply contracts

4.3 No key service/maintenance contracts

**5. Key Personnel**

Leader of department at power plant Robert Frank



**XXXVIII. ERZHAUSEN****1. General Information**

- |     |                               |   |
|-----|-------------------------------|---|
| 1.1 | Name of the Power Plant:      | EWK Erzhausen                           |
| 1.2 | Location:                     | Erzhäuser Straße 34, 37547<br>Kreiensen |
| 1.3 | Type / Primary Energy Source: | Pump-storage/Hydro                      |
| 1.4 | Total installed capacity:     | 220 MW                                  |
| 1.5 | Capacity to be divested:      | 220 MW                                  |
| 1.6 | Plant operator:               | E.ON Wasserkraft GmbH                   |
| 1.7 | End of current concession:    | unlimited concession                    |
| 1.8 | Planned lifespan:             | 2074                                    |

**2. Legal Structure of Plant Operator**

- 2.1 Shareholding of E.ON group:
- E.ON Energie AG, München 91.92%
- E.ON Kraftwerke GmbH, Hannover 8.08%
- 2.2 No other shareholders and their individual shares
- [...]\*

**3. Main Assets**

- 3.1 Lot of land on which power plant is located
- 3.2 Generators, turbines, grid connection, hydro reservoir, pressure pipeline, pumps, intake and outlet bay
- 3.3 No intangible assets

**4. Main Contracts**

- 4.1 Fuel supply contract: n/a
- 4.2 Main power plant specific supply contracts
- No power plant specific supply contracts with third undertakings

4.3 No long-term key service or maintenance contracts

**5. Key Personnel**

Person responsible for the plant

**XXXIX. KAINZMÜHLSPERRE (JANSEN)****1. General Information**

- |     |                               |                                    |
|-----|-------------------------------|------------------------------------|
| 1.1 | Name of the Power Plant:      | EWK Kraftwerk Tanzmühle            |
| 1.2 | Location:                     | Tanzmühle 4, 92723 Tännesberg      |
| 1.3 | Type / Primary Energy Source: | Pump-storage/Hydro                 |
| 1.4 | Total installed capacity:     | 28 MW                              |
| 1.5 | Capacity to be divested:      | 28 MW                              |
| 1.6 | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7 | End of current concession:    | 2027                               |
| 1.8 | Planned lifespan:             | 2059                               |

**2. Legal Structure of Plant Operator**

- 2.1 Shareholding of E.ON group:
- E.ON Energie AG, München, 91.92%
- E.ON Kraftwerke GmbH, Hannover, 8.08%
- 2.2 No other shareholders and their individual shares
- [...]\*

**3. Main Assets**

- 3.1 Lot of land on which power plant is located
- 3.2 Generators, turbines, grid connection, hydro reservoir, pressure pipeline, pumps, intake and outlet bay
- 3.3 No intangible assets

**4. Main Contracts**

- 4.1 No fuel supply contract
- 4.2 No power plant specific supply contracts with third undertakings.
- 4.3 No long-termed key service/maintenance contracts

**5. Key Personnel**

Person responsible for all Jansen hydro power stations

**XL. REISACH HOCHSPEICHER (JANSEN)****1. General Information**

- |     |                               |                                    |
|-----|-------------------------------|------------------------------------|
| 1.1 | Name of the Power Plant:      | EWK Kraftwerk Reisach              |
| 1.2 | Location:                     | Seestraße 6, 92555 Trausnitz       |
| 1.3 | Type / Primary Energy Source: | Pump-storage/Hydro                 |
| 1.4 | Total installed capacity:     | 99 MW                              |
| 1.5 | Capacity to be divested:      | 99 MW                              |
| 1.6 | Plant operator:               | E.ON Wasserkraft GmbH,<br>Landshut |
| 1.7 | End of current concession:    | 2027                               |
| 1.8 | Planned lifespan:             | 2061                               |

**2. Legal Structure of Plant Operator**

- |     |                             |                                       |
|-----|-----------------------------|---------------------------------------|
| 2.1 | Shareholding of E.ON group: |                                       |
|     |                             | E.ON Energie AG, München, 91.92%      |
|     |                             | E.ON Kraftwerke GmbH, Hannover, 8.08% |

2.2 No other shareholders

[...]\*

**3. Main Assets**

- |     |   |
|-----|---|
| 3.1 | Lot of land on which power plant is located   |
| 3.2 | Generators, turbines, grid connection, hydro reservoir, pressure pipeline, pumps, intake and outlet bay |
| 3.3 | No intangible assets  |

**4. Main Contracts**

- |     |  |
|-----|--|
| 4.1 | No fuel supply contract  |
| 4.2 | No power plant specific supply contracts with third undertakings |
| 4.3 | No long-term key service/maintenance contracts                   |

**5. Key Personnel**

Person responsible for all Jansen hydro power stations

**Annex 3-A**

Case COMP/B-1/39.388 and 39.389

- Investigation in the German Power Market -

COMMITMENTS TO THE EUROPEAN COMMISSION

**Outlines of**

**AGREEMENT ON  
SALE AND PURCHASE OF ELECTRIC ENERGY**

Between

**E.ON Energy Trading**

- hereinafter referred to as “**EET**” or the “**Seller**”-

and

Purchaser [X]

- hereinafter referred to as the “**Purchaser**”-

The Purchaser and EET also each referred to as the “Party” and together as the “Parties”.

**Preamble:**

E.ON Kraftwerke and E.ON edis (“EON”) have a right to a share of 50.38 % in the total capacity of 508 MW of Kraftwerk Rostock. Due to [agreement #1] EON has assigned its right to make use of its capacities to [...] until 30 June 2010.

Purchaser has purchased EON’s share by the means of [agreement #2] and, in respect of the fulfilment of the Commitments to the European Commission, this share should be made available to Purchaser immediately as of [date]. Since EON is contractually bound due to [agreement #1], it can not make available capacities to the Purchaser in the period of [date] until 30 June 2010. Therefore, Parties enter into this agreement due to which Seller shall deliver electric energy to the Purchaser in an amount comparable to the amount Purchaser could dispose of as if EON made capacities available to it immediately as of [date].

---

\* business secret

## **Section 1 Subject of Agreement**

Subject of this agreement is the delivery of electric energy out of Seller's portfolio from [date] until 30 June 2010. The amount of delivered electric energy shall be oriented at the operation of the Kraftwerk Rostock and, thus, dependent on its generated load and its operation hours.

## **Section 2 General conditions of Virtual Delivery**

2.1 Seller is obliged to deliver electric energy to [*balancing zone of German control zone*] (**Delivery Point**) to the extent electricity is generated in the Kraftwerk Rostock under following technical conditions.

2.1.1 Maximum operating hours: 8.760 h/a

2.1.2 Available capacity: 50.38 % of 508 MW

2.1.3 Starting time of delivery: [date]; end time of delivery: 30 June 2010

2.1.4 No backed-up operation

2.1.5 Further conditions.

The maximum electric energy to be delivered under this agreement is the electric energy generated under the aforementioned conditions in Sec. 2.1.1 to Sec. 2.1.5 (**Allocated Electric Energy** or – on a daily basis – the **Daily Allocated Electric Energy**).

2.2 Any reduction of Kraftwerk Rostock due to technical or legal reasons beyond the control of the Seller or any party entrusted by the Seller with the operation of the plant, leads to a proportional reduction of the Allocated Electric Energy as defined in Sec. 2.1. Reasons beyond control are including, but not limited to,

2.2.1 Redispatch measures by grid operators

2.2.2 Coolant supply shortfall

2.2.3 Force Majeure in the meaning of Section 8

2.3 Seller is free to decide on in which of its or of other E.ON affiliates' power plants the Allocated Electric Energy is generated. Cost and expenses for the transportation to the Delivery Point are to be borne by the Seller.



### **Section 3 Nomination**

- 3.1 Nomination vis-à-vis Seller:
  - 3.1.1 Purchaser shall nominate vis-à-vis Seller on a daily basis for every day at 10.00 a.m. of the previous business day the latest.
  - 3.1.2 Purchaser is entitled to nominate below the Allocated Electric Energy as far as operation of the Allocated Power Plant remains technologically feasible.
  - 3.1.3 Details of nomination.
- 3.2 Purchaser is obliged to accept electric energy as nominated under Sec. 3.1.1 and delivered to Delivery Point.
- 3.3 Nomination of capacities vis-à-vis grid operator:
  - 3.3.1 Purchaser shall nominate capacities vis-à-vis grid operator for the use of transmission of electricity. Seller's rights remain unaffected by the contractual relationship between Purchaser and grid operator.
  - 3.3.2 All costs incurred by nomination and use of grids for the transportation from the Delivery Point to the respective exit points are to be borne by Purchaser.
  - 3.3.3 Purchaser shall be responsible for any variation between a nomination of Purchaser's capacities in the meaning of Sec. 3.1 and a nomination in the meaning of Sec. 3.2. Cost and expenses incurred thereby are to be borne by Purchaser.

### **Section 4 Delivery Price**

- 4.1 Calculation of delivery price
  - 4.1.1 Capacity price based on total fixed costs
  - 4.1.2 Energy price based on total variable costs
- 4.2 Up-front payment of a security

### **Section 5 Terms of Payment**

## **Section 6 Liability and Compensation**

- 6.1 General provision regarding limitation of liability (only if Parties fail to comply with its respective obligations either intentionally or grossly negligent and unless due to an event in the meaning of Section 8 ; exception for revision of Kraftwerk Rostock etc.)
- 6.2 In case Seller fails to comply with its obligations as laid down in Section 2 , Seller shall compensate the effect that the electricity cannot be delivered as duly nominated by the Purchaser.
- 6.3 Failures of Purchaser
  - 6.3.1 In the case Purchaser fails to comply with its obligations as laid down in Section 3 , the obligation to pay the Delivery Price under 4.1 remains unaffected. In this case, the Delivery Price has to be calculated on a basis as if Purchaser nominated the Daily Allocated Electric Energy.
  - 6.3.2 In the case Purchaser fails to comply with its obligations to pay the Delivery Price under 4.1, Seller may realize security as defined in Sec. 4.2. In the event the security has already been completely realized, Seller is released from its obligations as laid down in Section 2 regardless to any further nomination of the Purchaser in the meaning of Sec. 3.1.

## **Section 7 Termination**

- 7.1 Agreement terminates at 30 June 2010.
- 7.2 Premature termination.

## **Section 8 Force Majeure**

- 8.1 Force Majeure means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the “Claiming Party”) which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its obligations.
- 8.2 No breach or default on the part of the Claiming Party.
- 8.3 Notification of other Party and cooperation between Parties

- 8.4 Rights and obligations of both Parties, if and to the extent affected by Force Majeure, shall be released for the duration of the Force Majeure; notwithstanding, the obligation of the Purchaser to pay the Delivery Price under Section 4 remains unaffected.

## **Section 9 Confidentiality**

## **Section 10 Assignment**

## **Section 11 Severability**

## **Section 12 Arbitration**

- 12.1 Arbitration Rules of the German Institution of Arbitration e.V. (**DIS**) (Deutsche Institution für Schiedsgerichtsbarkeit e.V.)
- 12.2 Venue of arbitration shall be Düsseldorf.
- 12.3 The language of the arbitration shall be English.

## **Section 13 Governing Law**

This Standard Drawing Rights Agreement is governed by the substantive law of the Federal Republic of Germany, excluding any application of the “United Nations Convention on Contracts for The International Sale of Goods of April, 11, 1980”.

## **Section 14 Final Provisions**

**Cases COMP/B-1/39.388 and 39.389**  
**- Investigation in the German Power Market -**

**COMMITMENTS TO THE EUROPEAN COMMISSION**

**Schedule 4**

**Transmission System Business**

**A. LEGAL STRUCTURE OF THE TRANSMISSION SYSTEM BUSINESS**

1. The Transmission System Business consists of the network of Extra-High-Voltage Lines, including transformers directly connected to the Extra-High-Voltage Lines, ultimately owned by E.ON AG and operated by E.ON Netz GmbH, and related assets and personnel.
2. E.ON Netz GmbH's business division concerning the network of Extra-High-Voltage Lines is currently not legally separated from the business division concerning the network of High-Voltage Lines (110 kV). Only the business concerning the network of Extra-High-Voltage Lines shall be divested. Against this background, E.ON AG and Affiliated Undertakings will arrange for and procure the separation of E.ON Netz GmbH's High-Voltage Lines (110 kV), related assets and personnel from the Extra-High-Voltage Lines currently operated by E.ON Netz GmbH, related assets and Personnel.
3. E.ON Netz GmbH is directly wholly-owned by E.ON Energie AG, a company incorporated under the laws of Germany, with its registered office in Munich, Germany and registered with the Commercial/Company Register at the Local Court of Munich under number HRB 132000. E.ON Energie AG is directly wholly-owned by E.ON AG. E.ON Netz GmbH is unbundled from E.ON

Energie AG, E.ON AG and Affiliated Undertakings pursuant to the terms of the German Energy Industry Act (*Energiewirtschaftsgesetz; EnWG*).

**B. TRANSMISSION SYSTEM ASSETS**

4. The Transmission System Business includes the subsequently listed (a) main tangible assets; (b) main intangible assets; (c) main licences, permits and authorisations; (d) main contracts, agreements, leases etc.; and (e) customer records and record-keeping systems:

**a) Main tangible assets:**

5. (i) Approx. 10,000 kilometres of power lines at voltage levels 380 and 220 kV, with relevant real estate and rights in third undertakings' real estate, respectively; a grid map is attached as **Annex 4-A**;

6. (ii) Interconnectors to other German and European networks of Extra-High-Voltage Lines, with relevant real estate and rights in third undertakings' real estate, respectively;

7. (iii) Switchgears (*Schaltanlagen*) integrated into the network of Extra High-Voltage Lines, with relevant real estate and rights in third undertakings' real estate, respectively;

8. (iv) Transformer stations (*Umspannwerke*) directly connected to the Extra-High-Voltage Lines, with relevant real estate and rights in third undertakings' real estate, respectively; and

9. (v) The grid operation centres in Lehrte and Dachau, related real estate and/or leases for the premises, and accessories, as far as they concern the network of Extra-High-Voltages Lines.

**b) Main intangible assets:**

10. The E.ON brand and related trademarks shall not be transferred;
- c) **Main licences, permits and authorisations in respect of the network of Extra-High-Voltage Lines:**
  11. (i) The Transmissions System Operator permit (*Netzbetreibergenehmigung*) – to be transferred under the terms of Section 4 para.1, 3 of the German Energy Industry Act (*§ 4 EnWG*);  
  
(ii) All permits in respect of the Extra-High-Voltage Lines, switchgears and transformer stations, issued by any authority on the basis of planning approval procedures pursuant to Section 43 of the German Energy Industry Act (*§ 43 EnWG*) or, respectively, its predecessors, in conjunction with Section 72 et seqq. of the Administrative Procedures Act (*§§ 72 ff VwVfG*);
- d) **Main contracts, agreements, leases etc. in respect of the network of Extra-High-Voltage Lines:**
  12. (i) Building (lease) contracts;  
  
(ii) Use-of-system contracts (*Netznutzungsverträge*);  
  
(iii) General network connection contracts (*allgemeine Netzanschlussverträge*);  
  
(iv) Network connection contracts for power plants (*Netzanschlussverträge für Kraftwerke*);  
  
(v) Balancing group contracts (*Bilanzkreisverträge*);  
  
(vi) Maintenance contracts;  
  
(vii) Concessional contracts (*Strom-Konzessionsverträge*); and  
  
(viii) Contracts regarding the use and/or (congestion) management of interconnectors;
- e) **Main customer records etc.:**

13. All existing customer records of the Transmission System Business, in both hard copy and electronic formats, and computer systems as far as they are necessary to access this information.

**C. MAIN FUNCTIONS AND PERSONNEL TO BE TRANSFERRED:**

14. The main functions, including personnel, of the Transmission System Business to be transferred comprise the *Pure Transmission System Operator Functions* within E.ON Netz GmbH, which are functions of E.ON Netz GmbH solely related to the business division concerning the network of Extra-High-Voltage Lines, and the *Basic Grid Functions*, which are functions within E.ON Netz GmbH that serve both the business division concerning the network of Extra-High-Voltage Lines and the business division concerning the network of High-Voltage Lines (110 kV). Only as a reference, the current organisational structure of E.ON Netz GmbH is described in the organisational chart as of May 2008 attached as **Annex 4-B**.
15. The Pure Transmission System Operator Functions shall be included in the Transmission System Business, in full.
16. The Basic Grid Functions shall be included proportionally, i.e. to the extent that they have to be attributed to E.ON Netz GmbH's business division concerning the network of Extra-High-Voltage Lines and are necessary for the continued operation, as a going concern, of a viable and reliable Transmission System Business; the individual extent, in each case, is defined as a certain percentage which relates to a certain criterion, both stated below, subsequent to the respective Basic Grid Function.
  - a) **Pure Transmission System Operator Functions**
17. The following Pure Transmission System Operator Functions and the related about [...] \* employment positions shall be transferred:

---

\* business secret

**aa) Grid Economy**

18. Balance management, including purchasing of balancing power, congestion management, co-ordination of international affairs on European level, energy data management, handling of the requirements pursuant to the German Act on the Promotion of Renewable Energy Sources;

**bb) Customer relations and contracts**

19. Handling of the power exchange balance group contracts;

**cc) Grid planning**

20. Analysis of system stability and security of supply, grid studies on national and European level, and long-term grid extension plans;

**dd) Grid operation and dispatching**

21. Handling of ancillary services, collecting and aggregating schedules, operational handling of congestion management, guaranteeing security of supply and system stability, dispatching balancing power;

**ee) Asset Management and Engineering**

22. Engineering and management of existing offshore grids;

**b) Basic Grid Functions**

23. The following Basic Grid Functions and the related about [...] employment positions shall be transferred – to the extent, expressed as percentage figures, that they have to be attributed to E.ON Netz GmbH's business division concerning the network of Extra-High-Voltage Lines; the percentage figures shall be applied to the criteria listed subsequently:

**aa) Grid Economy**

24. Regulatory affairs, planning of grid economic key figures, concepts for network usage and network connection – approx. 50% according to the complexity of the task (e.g. extent of effective incentive and quality regulation the respective business is exposed, level of national/international inter-



Transmission System Operator coordination in Regional Markets);

**bb) Customer relations and contracts**

25. Handling of all requests and demands of customers, co-ordination of grid connection; management of the grid connection contracts – approx. 50% according to number of customers;

**cc) Grid planning**

26. Analyses and planning of necessary extensions and reinforcements of the grid due to customer needs and aging infrastructure – approx. 50% according to the related assets;

**dd) Grid operation and dispatching**

27. Online operation of the grid – approx. 50% according to the related assets;

**ee) Asset Management and Engineering**

28. Defining the maintenance and asset replacement strategy, defining and monitoring necessary projects and budgets, technical co-ordination of grid connection concepts, defining technical standards, project management of grid projects; and management of licensing procedures for new power lines approx. 50% according to the related assets;

**ff) Maintenance and service**

29. Detailed maintenance planning; evaluation of asset condition reports; controlling of external service providers, inspections, routine maintenance – up to 50% according to workload;

**gg) Procurement**

30. Approx. 50% according to workload;

**hh) Human resources**

31. Up to 50% according to number of personnel;

ii) **Commercial functions**

32. Controlling, accounting, IT, billing, finance and tax – approx. 50% according to, *inter alia*, the assets;

jj) **Others**

33. Legal and regulatory affairs, communication, HSE and others – approx. 50% according to the complexity of the task (e.g. extent of effective incentive and quality regulation the respective business is exposed, dimension of grid development projects and level of public resistance against new lines, complexity of public permission procedures).

**D. KEY PERSONNEL TO BE TRANSFERRED:**

34. [...] \* At present, the functions and responsibilities of Key Personnel to be named and transferred are as follows:

a) **Key Function of grid economy:**

35. With such responsibilities as strategic management of system services, energy data management, Renewable Energy Act implementation, energy economics, transmission services concepts, co-ordination of inter-Transmission System Business-cooperation;

b) **Key Function of customer relation and contract management:**

36. With such responsibilities as key account management of grid customers;

c) **Key Function of grid planning:**

37. With such responsibilities as system analyses, transmission requirements estimation, grid connection, grid development, system studies;

d) **Key Function of grid operation and dispatching:**

38. With such responsibilities as schedule management, operational congestion management, dispatch balance management, online operation of grid

(monitoring grid status, switching operations, dispatching);

**e) Key Function of asset management and engineering:**

39. With such responsibilities as maintenance and asset replacement strategies, technical standard setting, project management, authorisation management for new lines;

**f) Key Function of offshore grid:**

40. With such responsibilities as engineering and operation of grid connection for offshore wind farms in North and Baltic Sea connected to onshore grids according to Transmission System Operator's obligation under national Renewable Energy Law;

**g) Key Function of maintenance and service:**

41. With such responsibilities as operational maintenance planning, asset condition monitoring and assessment, steering and controlling of external service provider, in field inspection and maintenance;

**h) Key Function of procurement:**

42. With such responsibilities as management of supply with products and services;

**i) Key Function of Human Resources:**

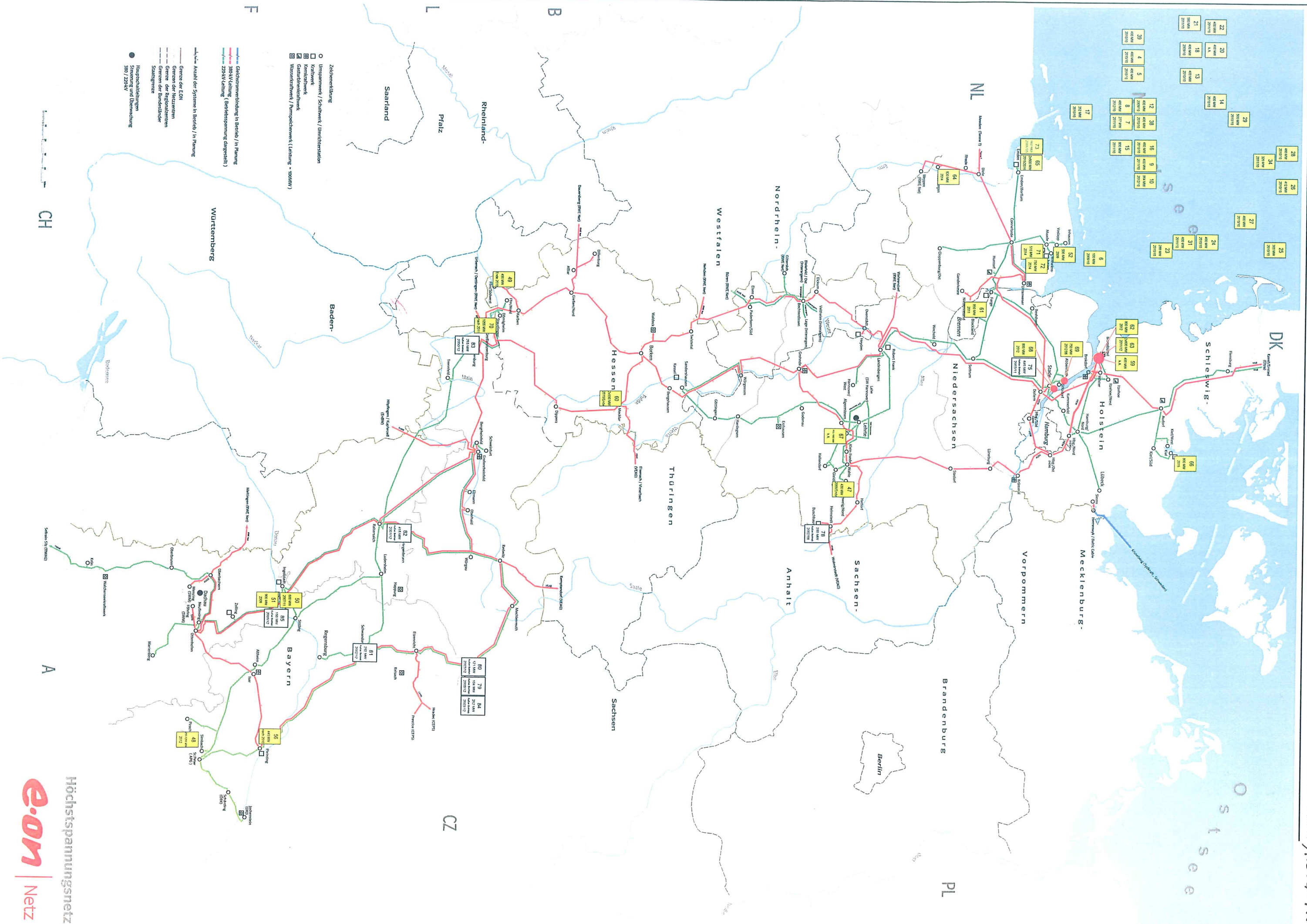
43. With such responsibilities as recruiting, HR management and development;

**j) Key Function of commercial affairs:**

44. With such responsibilities as controlling, accounting, IT, billing, finances, taxes;

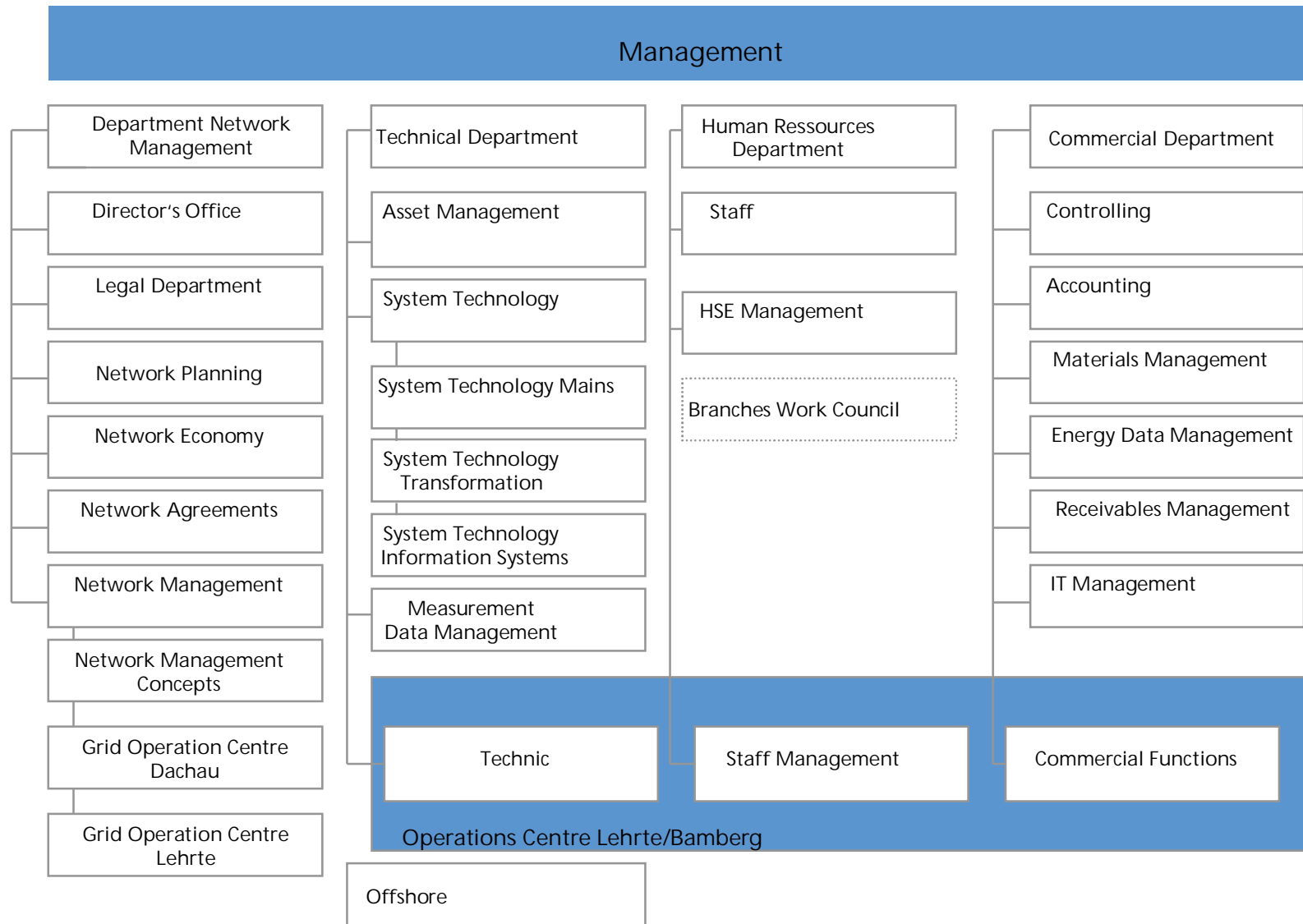
**k) Key Function of corporate affairs:**

45. With such responsibilities as legal and regulatory affairs, communication, health, safety and environment.



- Zubehör**
- Umspannwerk / Schaltwerk / Durchlaststation
  - Kraftwerk
  - Gesteuerter Zonenpark
  - Wasserzweckwerk / Pumpspeicherkwerk (Leistung = 100MW)
- Legende**
- Zahl: Anzahl der Systeme in Betrieb / in Planung
  - Grenze der EDN
  - Grenze der Regionen
  - Grenze der Bundesländer
  - Staatsgrenze
  - Hauptschaltstellen
  - Steuerung und Überwachung 380 / 220kV

# Current Organisational Chart of E.ON Netz GmbH (May 2008)



**Cases COMP/B-1/39.388 and 39.389**  
**- Investigation in the German Power Market -**

**COMMITMENTS TO THE EUROPEAN COMMISSION**

**Schedule 5**

**Current Arrangements under which E.ON AG or Affiliated Undertakings (except for E.ON Netz GmbH) Supply Products or Services to the Transmission System Business**

Product/Service	Benefit for Transmission System Business	Remark
Communication Lines	<ul style="list-style-type: none"> <li>– Substation Access Lines</li> <li>– Telephone Lines</li> <li>– Protection Lines</li> </ul>	
Automatic Meter Reading System	<ul style="list-style-type: none"> <li>– Data acquisition</li> </ul>	
Agreement on technical grid service regarding network in the region of Schleswig-Holstein	<ul style="list-style-type: none"> <li>– Technical in-field-services concerning lines and substations</li> <li>– Maintenance</li> <li>– Construction supervision</li> <li>– Standby</li> </ul>	
IT assets and IT infrastructure	<ul style="list-style-type: none"> <li>– Corporate Network (CN)</li> <li>– Full customer service support, hotline</li> <li>– Shared service catalogue</li> <li>– Specified performance criteria and related commercial contract conditions for each IT asset and IT infrastructure service category</li> <li>– Update support</li> <li>– Incident management</li> <li>– System management and operation, client services</li> <li>– User- and asset management</li> </ul>	Based on various contracts - Service Level Agreements (hereinafter: <i>SLA</i> ).

Product/Service	Benefit for Transmission System Business	Remark
Business continuity management	<ul style="list-style-type: none"> <li>– Data centre and system disaster recovery</li> <li>– Data disaster recovery</li> <li>– Corporate solutions</li> </ul>	
Commercial applications	<ul style="list-style-type: none"> <li>– Corporate and consistent workflows</li> <li>– Full customer Service</li> <li>– Incident management</li> <li>– Archiving</li> <li>– Product evaluation, procurement IT systems and services</li> </ul>	Based on various SLA
Technical and grid-planning/analysing applications (including network calculation system)	<ul style="list-style-type: none"> <li>– Providing of software applications, common server platforms and system administration</li> <li>– Online release research</li> <li>– Data backup system</li> <li>– Provision for format and exchange conventions</li> </ul>	Based on various SLA
Document management and archiving	<ul style="list-style-type: none"> <li>– Corporate structure and operation, data storage and backup</li> </ul>	Based on various SLA
Energy data applications	<ul style="list-style-type: none"> <li>– Corporate energy data management (market partner communication, common processes and requirements)</li> </ul>	Based on various SLA
Portals and Intranet/Internet	<ul style="list-style-type: none"> <li>– Corporate portal solutions for human resources services und management</li> <li>– Corporate design and guidelines for internet and intranet performances</li> </ul>	Based on various SLA
IT-security-governance and applications	<ul style="list-style-type: none"> <li>– Corporate IT-security and extensive organisation</li> <li>– IT-security administration and operation (VPN, firewalls, antispam, virus scanning, special networks, remote access, public key infrastructure etc.)</li> <li>– IT-security policies</li> </ul>	Based on SLA
Data protection	<ul style="list-style-type: none"> <li>– Responsible data protection officer</li> <li>– Corporate data protection policies and guidelines</li> <li>– Checking compliance with federal data protection acts (Bundesdatenschutzgesetz)</li> </ul>	Based on Market Unit agreement

Product/Service	Benefit for Transmission System Business	Remark
Communications (telephony, video)	<ul style="list-style-type: none"> <li>– Corporate Network incl. voice and video</li> <li>– Similar to IT-infrastructure, equivalent benefits</li> <li>– Real time collaboration</li> </ul>	Based on corporate telecommunication-contract and SLA
IT-projects management and implementation	<ul style="list-style-type: none"> <li>– IT-projects guideline, IT-governance</li> <li>– Know-how E.ON IS</li> </ul>	
Special services, Licence management	<ul style="list-style-type: none"> <li>– Corporate procurement processes</li> <li>– Competence centre licence management</li> </ul>	
Portfolio management and delivery of energy in order to balance the losses in the grid	<ul style="list-style-type: none"> <li>– System security</li> <li>– Cost efficient usage</li> </ul>	
IT and Internet application for the procurement of losses and balancing energy and auctioning of bottleneck capacities.	<ul style="list-style-type: none"> <li>– Execution of important business processes</li> </ul>	Part of the overall internet/IT agreement.
Tax consulting	<ul style="list-style-type: none"> <li>– Tax optimization</li> </ul>	
Accounting services	<ul style="list-style-type: none"> <li>– System control SAP</li> <li>– Accounts receivable (basic claims data support, payments)</li> <li>– Accounts payable (basic claims data support, payments)</li> <li>– Accounting system ISU (financial accounting interface, payments)</li> <li>– Bank-related accounting (electronic banking) and cash-pooling</li> <li>– Taxes (operative clearing/tax computation: taxes on income, value-added tax, eco-tax and property tax)</li> </ul>	
Risk Consulting Service	<ul style="list-style-type: none"> <li>– Optimizing insurance portfolio</li> </ul>	
Insurances	<ul style="list-style-type: none"> <li>– Economies of scale within the E.ON group</li> </ul>	
Regulation Management System	<ul style="list-style-type: none"> <li>– Data base for regulatory issues</li> </ul>	



Product/Service	Benefit for Transmission System Business	Remark
Credit Risk Management	–Rating of counterparties	
Category management/ Procurement Network	– Optimal prices – Optimal contract conditions	
Procurement Support	– General terms and conditions of purchasing, – Warehouse processes – Inventory – Supplier Relationship Management – Business Warehouse – Customizing SAP MM	
EBP	Electronic procurement system (online tool)	
Master data maintenance	Standardisation of materials	
Facility-management for administration buildings incl. rent	– Office space – All facility benefits (housekeeping, maintenance, cafeteria and so on)	
HR-Shared Services	– Payroll accounting for employees executives and employees with partial retirement – Travel expense accounting	
Service in the field of company pension	– Actuarial calculations – Calculation of company pension – Information about company pension	
GISY Web	– Documentation of environmental management (especially waste-management) – Documentation of safety-management – Data system for legal demands and reporting	
Internal Auditing	Commercial and technical Auditing services	Coordinating function
Service of technical equipment	Service of transformers and converters	

<b>Product/Service</b>	<b>Benefit for Transmission System Business</b>	<b>Remark</b>
Rentals	Rentals of administrative locations	
Rentals	Rental of storage space	
Facility services	Facility services of administrative locations	