Standard contract and the adjustment of prices in the course of DH upgrading projects.

Price amendment clauses

Dominika Moczko, Policy officer
d.moczko@agfw.de

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Regulation of DHC in Germany. General overview

No specific regulation of DHC (unlike electricity and gas)

- Traditionally market-oriented approach
- Free competition between different heating technologies in the heating market
- No regulation of DHC networks
  - No TPA
  - No unbundling
- DH companies are subject to general legislation, e.g. competition law and consumer protection law
- Competition legislation prohibits the misuse of a dominant market position
- No licensing, concessions etc.

- No price regulation, only a framework for price amendment clauses
- The DH companies operate on a business basis – profit-making is allowed
- Each company calculates its prices on its own
- The prices vary a lot between different companies, depending on the operating costs, the local circumstances such as geology, system setup, local by-laws etc.

Price control by the competition authority possible
Legal basis

- Framework for DH contract clauses is the Ordinance on general conditions of heat delivery (AVBFernwärmeV)
- Special framework for standard terms and conditions for the supply of DH
- RESULT: a balance is struck between technical and economical features of DH and customer interests
- DH customers are supplied accordingly to the general rules laid out in the ordinance if standard terms and conditions are being used
  - Standard terms and conditions are model contracts / contract terms that are predefined for a large number of contracts
- DH utilities can deviate from these conditions with the explicit consent of the customer
  - EXCEPTION: Rules on heat metering are mandatory
- EXCEPTION: Not applicable towards industrial customers
Legal basis

CONTRACT

Standard contract
Predefined contractual terms, AVBFernwärmeV

Individual contract
Individually negotiated terms or predefined contractual terms, but other than AVBFernwärmeV

Contract with an industrial customer
General overview

» Covers entire contractual relationship, e.g.:
  » Conclusion of contract
  » Disconnection & Termination of contract
  » Liability
  » Technical connection conditions
  » Metering
  » Billing
  » Price amendment clauses
Conclusion of a contract, § 2 AVBFernwärmeV

- **Conclusion of contract**
  - **Explicit**
    - In writing
      - Basically form-free
  - **Implied**
    - Verbally
      - The supplier confirms the conclusion of a contract in writing
    - VIA
      - Purchase of heat
        - At prices applicable to similar contractual situations
Supply and adjustment of the contract

» The DH supplier is obliged to provide heat to the extent agreed at any time (§ 5)
  » Agreement on a max. capacity (connected load)
  » Connected load is ordered by the customer
  » Liability of the supplier in case of interruption or irregularity of supply – damages

» The customer is obliged to cover his heat requirements to the extent agreed from the network of the DH supplier (§ 3)

» The customer has right to **contract adjustment** if she wants to cover her heat demand by using renewable energy sources (§ 3)
  » Duration of contract remains unaffected
  » No right of termination!
Duration of the contract, § 32 AVBFernwärmeV

Max. 10 years

5 years
Duration of the contract, § 32 AVBFernwärmeV

Max. 10 years

9 months notice period

5 years

2 months notice period, if tenant is the contracting party, in case of removal
Termination of a contract, § 32, § 33
AVBFernwärmeV

Termination of contract

- Ordinary termination
- Termination without notice

By the supplier

- Immediate danger to the safety of persons or installations
- Bypassing, influencing the heat consumption
- Non-payment despite reminder
- Disturbances of other customers or disturbances of installations

Termination of contract

Standard contract
Price amendment clauses, § 24 AVBFernwärmeV

By the conclusion of the contract:

- Regulation of initial prices
- Regulation of subsequent prices: price amendment clauses

Possibility to take the current / changed generation structure into account

Automatic cushioning effect on the price by taking into account the development of the heating market (market element) – incentive to be better than the competition on the market
Standard contract

**Price amendment clauses, § 24 AVBFernwärmeV**

» Price amendment clauses designed take *adequately* into account both the development of *costs* for the production and supply of DH and the respective *conditions* in the heating market
  » Generation and market factors shall be adequately considered – the supplier has a certain room for maneuver

» The relevant factors shall be shown in full and in a generally understandable form
  » Use of official / stock exchange listings

» The percentage share of the price factor covering the fuel costs shall be shown separately

» The contract should include a precise definition of the price adjustment dates

» Automatic price adjustment – mandatory passing-on of price reductions
Preisanpassungen

Preisanpassungen bei langfristig laufenden Verträgen sind kein Privileg der Fernwärmeversorgung, sondern überall zu finden, wo sich die Kosten für eine Dienstleistung über einen Zeitraum ändern können.

Öfterweisen gibt es dabei keine freie Einflussnahme seitens eines Vertragspartners. Die Anpassung erfolgt in der Regel über festgelegte mathematische Formeln, die automatisch wirken und so preissensitiv, aber auch preissicher sein können. Für die Darstellung der Kosten werden vorrangig Faktoren gewählt, die vom Kunden kosten- und barrierefrei abrufbar sind.

Unser Service für Sie:

Download einer Vielzahl von Indizes des Statistischen Bundesamtes, die häufig in Preisanpassungsformeln verwendet werden und Links zu den EEX-Gaspreisen sowie den CO₂-Zertifikatepreisen.

- Indizes des Statistischen Bundesamtes
- EEX-Börsenpreise Gaspool, NGG, EGIX
- EEX-Preise CO₂-Zertifikate
Standard contract

Price amendment clauses, § 24 AVBFernwärmeV

» No standard formula for the clauses possible, as subject to individual circumstances

» Example of a typical price amendment clause:

\[
BP_1 = BP_0 \times \left( x \times \frac{I_1}{I_0} + y \times \frac{W_1}{W_0} \right)
\]

\[
EP_1 = EP_0 \times \left( x \times \frac{F_1}{F_0} + y \times \frac{HM_1}{HM_0} \right)
\]

Whereas:

"_1" = Year under report

"_0" = Base year

BP = Base price

I = Investment

W = Wages

EP = Energy price

F = Fuel

HM = Heating market
Introduction of a new price amendment clause

» General civil law methods of amending the content of contracts
  » Amendment agreement
  » Notice of termination pending a change of contract

» Change by public announcement (§ 4 para. 1 and 2 AVBFernwärmeV)
  » Change of the general supply conditions by public announcement
  » Price amendment clause is to be considered as part of general supply conditions
  » However: disputable by customer protection organizations and more recently by courts
my best choice
district heating ...

because it’s clean and helps,
to save CO₂ for a better environment.

In case of questions, please
do not hesitate to contact me:

Mgr. Dominika M. Moczko
LL. M.
+49 69 6304-218
d.moczko@agfw.de

www.smart-heat-grid.de