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EU: Communication from the Commission on Energy Prices and Costs in Europe

by Lazaros Sidiropoulos (Athens)

On 22 January 2014 the European Commission issued a Communication (and on 29 January a corrigendum thereof) providing an analysis of electricity and gas prices and costs in Europe. According to the analysis, in contrast to significant decreases of wholesale prices in the period 2008-2012, particularly in the electricity sector, retail electricity and gas prices rose in the same period for both households and industry over inflation. This is attributed to several reasons such as: increases in taxes/levies; increases in network costs; high levels of investments needed for the shift away from imported fossil fuels as well as for the shift from public monopolies to liberalised markets; distortion of competition due to high levels of market concentration or universal retail price regulation applied in some Member States; existing supply constraints in some gas markets; gas prices often indexed to oil prices, thus being disconnected from actual demand and allowing rises in oil prices to lead to rises in gas prices etc. Moreover, the Commission diagnosed significant price differences between Member States: instead of European prices gradually converging on the way to the internal energy market, consumers in the highest priced Member States where found to be paying 2.5 to 4 times as much as those in the lowest priced Member States. Such disparities are, among others, due to wide differences between Member States' policies on network costs and taxes/levies. In addition to the above, an increasing differential of EU average energy prices with the prices of external competitors from other continents points to an expected reduction of EU's share in global export markets for energy intensive goods. For instance, EU average industry gas prices are three to four times higher than comparable US, Indian and Russian prices and 12% higher than China's, and EU industrial retail electricity prices are more than twice those in the US and Russia and 20% more than China's. The Commission's prediction is that rising fossil fuel costs as well as necessary investments in infrastructure and generation capacity are likely to lead to a further increase of electricity costs up to 2020, when costs are finally expected to stabilise and then slightly decrease as fossil fuels are replaced by renewable energy. In the long run, cheaper energy should also emerge from enhancement of competition as a result of liberalisation of the market, which in the short term may cause higher costs related to necessary new investments.

Bulgaria: Competition Commission Sanctioned Bulgarian Electricity Company Energo-Pro Grid AD for Abuse of Dominant Position

by Svetla Stoykova (Sofia)

By its Decision no. 64 of 22 January 2014 the Bulgarian Commission for Protection of Competition (the Commission) ascertained that the public company Energo-Pro Grid AD (formerly named E.ON Bulgaria Grid AD), one of the three main electricity distributors in Bulgaria, has committed an infringement of Art. 21 of the Law on Protection of Competition by abusing its dominant position. The Bulgarian legislation provides a number of measures to promote the production of electricity from renewable energy sources not only as a part of the long-

term EU policy for the development of low-carbon power, but also with a view to the liberalisation of the electricity market, thus providing the opportunity to consumers to purchase "green energy". According to Art 13, Para 2 of the Bulgarian Renewable and Alternative Energy Sources and Biofuels Act, which was in force during the period of the infringement (2009-2011), distribution companies are required to provide priority access to the network to producers of electricity from renewable or alternative energy sources that meet the statutory conditions. Energo-Pro Grid AD has impeded market access by unreasonably delaying the access to the company "B 2 M" Ltd, a producer of electricity from renewable energy sources. The Commission found that the anti-competitive behavior of the distribution grid operator in this case is of nature to affect not only the activity of the particular producer of electricity, but also has a significant impact on the market because it reflects on the promotion of investments in new renewable power plant projects. The Commission imposed a sanction to Energo-Pro Grid AD amounting to 266,040 Levs, which constitutes 2% of the revenues of the Company in 2011 from the accession of new users to the grid. The case will be reviewed by the Supreme Administrative Court on appeal of Energo-Pro Grid AD against the decision of the Commission.

Greece: Ownership Unbundling of TSO and its Privatisation

by Mira Todorovic Symeonides (Athens)

On 12 February 2014 the Greek Parliament enacted Law 4237/2014 on Regulation of ADMHE Matters (Official Journal 36 A/12-2-2014), which regulates the ownership unbundling and privatisation of the Greek TSO ADMIE (subsidiary of the vertically integrated state-owned PPC) and amends the Government Decree no 15/2013 on Approval of Reconstruction and Privatisation of PPC. According to the Law, 66% of the ADMIE shares shall be sold to an investor in a public tender procedure, while 34% shall be transferred to a separate Greek public body, in accordance with Article 9.6 of the 2009/72/EC Directive. The price for acquisition of the shares by the Greek State will be calculated on the basis of the price agreed with the purchaser of the 66% of shares. The Law allows offsetting of this price with the State's claims against PPC, such as taxes or future claims or rights. The eligibility criteria, which shall be regulated by the tender, have been indicatively listed in the Law as: experience in operation of electricity transmission grids, application of European Acquis on electricity transmission, financial and legal eligibility and sufficiency. The Law authorises the Ministries of Finance and of Environment, Energy and Climate Change to further regulate the necessary details regarding the implementation of the procedures, without changing the deadline for finalisation of the tender procedure, set for the end of the second quarter of 2014. The employment and social security rights of ADMIE employees guaranteed with the article 103 of the Law 4001/2011 shall be preserved. The Parliament Committee for Production and Trade shall provide its comments and proposals to the text of the Tender Public Invitation within 30 days from receiving of its draft.

Greece: New Regulatory Framework for Electricity Production, Network Operation and Supply in the Non-Interconnected Islands

by Lazaros Sidiropoulos (Athens)

After several years of intensive preparation, the regulatory framework for the opening of the electricity markets in the non-interconnected islands of Greece is now completed; three Decisions of the energy regulator (RAE) were issued in February 2014 aiming to address all main issues related to the operation of the autonomous networks of the non-interconnected islands: apart from RAE's Decisions no. 14/2014 (Official Journal 270 B/7-2-2014) and no. 15/2014 (Official Journal 278 B/10-2-2014), which regulate some particular issues relating to the calculation of the charges paid to the electricity suppliers in non-interconnected islands for the provision of "public services", i.e. for charging island consumers with the same tariffs as the equal consumer categories of the main network, the most important new regulatory instrument is without doubt RAE's Decision no. 304/2014 (Official Journal 304 B/11-2-2014) introducing the network code for the regulation of the autonomous electricity systems in the non-interconnected islands. This network code aims to regulate all main issues relating to the comprehensive duties of the common operator of all autonomous networks of the non-interconnected islands (DEDDIE), including issues of operation and maintenance of the networks; supervising, auditing and contractually interacting with producers and suppliers; operating the local electricity markets and performing relevant transactions etc. The new regulatory framework, which shall come gradually into force within a period of five years, aims to provide suitable solutions for the optimal operation of the uniquely structured autonomous networks of the non-interconnected islands, with a view to enabling new electricity producers and suppliers to enter these challenging markets.

Bulgaria: Unbundling of the National Electric Company and the Electricity System Operator

by Daniela Dzabarova Anagnostopoulou (Sofia)

On 4 February 2014 the next stage of unbundling of the National Electric Company (NEK) and the Electricity System Operator (ESO), both companies owned solely by the Bulgarian Energy Holding, was completed through registration of their reorganisation via separation in the Commercial Register of Bulgaria. In compliance with the Energy Law and Ordinance № 3 the registration in the Commercial Register received prior approval of the State Energy and Water Regulatory Commission by its Decision no. P-205/18.12.2013. As a result of the unbundling, ESO acquired ownership of the transmission grid and assumed sole responsibility for its maintenance and investments, while NEK will be the one in charge of the production and commercial activity.

EU: Commission Guidelines on Hydraulic Fracturing

by Mira Todorovic Symeonides (Athens)

On 22 January 2014 the European Commission issued the Communication to the European Parliament, and the Council on the exploration and production of hydrocarbons using high-volume hydraulic fracturing in the EU (the Communication) and the Recommendation no. 2014/70/EU on minimum principles for the exploration and production of hydrocarbons (such as shale gas) using high-volume hydraulic fracturing (the Principles). The Communication records the progress and tendencies in the Member States' (MSs) energy sectors in regard to shale gas. The Principles set non-binding rules intending to ensure protection of public health, climate and environment, efficient use of resources and information of the public in the MSs that decide to permit hydraulic fracturing explorations and exploitation in their territories. The MSs are invited to give effect to the Principles by 28 July 2014 while the annual reports on the implemented measures should be submitted to the European Commission starting from December 2014. In July 2015 the Commission plans to review the effect of the Recommendation implementation and may decide to put forward a legally binding legislation, if it deems it necessary. The Principles are complementary to the existing EU legislation. Among others, following provisions are included: a strategic environmental assessment on the impact on and risks for human health and environment should be prepared before issuing of the respective exploration or production licenses; the public concerned should have the opportunity to participate in developing the strategy and the environmental impact assessment; an environmental baseline, satisfying the criteria from the Recommendation, is determined and submitted to the competent authority before the beginning of the fracturing operations; MSs shall ensure that installations are constructed in a way that prevents possible surface leaks and spills to soil, water or air; water, transport and risk management plants are developed; and a respective survey is carried out after each installation's closure. The provisions of the Directive 2004/35/EC on environmental liability should apply to all activities on the installation site even if currently not within the scope of the Directive. MSs should further ensure that before beginning of the operations the operator provides a financial guarantee or equivalent, covering its environmental liability.

Energy Community: Secretariat Initiates Dispute Settlement for Non Compliance with the RES Directive Requirements

by Mira Todorovic Symeonides (Athens)

On 11 February 2014 the Energy Community (EnC) Secretariat initiated preliminary dispute settlement procedures against Albania, Bosnia and Herzegovina, FYR of Macedonia, Montenegro and Ukraine for failing to adopt and notify to the Secretariat their National Renewable Energy Action Plans (the National RES Plans). With the Decision of the Ministerial Council of the EnC D/2012/04/MC-EnC as of 9 June 2012 the Contracting Parties to the Treaty undertook the obligation to implement Directive 2009/28/EC on the promotion of the use of energy from RES by 1 January 2014 and to submit the National RES Plans, setting out the national targets for the share of energy from renewable sources consumed in transport, electricity and heating and cooling in 2020 and adequate measures to be taken to achieve those national overall targets, to the EnC Secretariat by 30 June 2013. The Mandatory national overall targets for 2020 in regard to the share of energy from RES in gross final energy consumption for Albania is 38%, Bosnia and Herzegovina 40%, FYR of Macedonia 28%, Moldova 17%, Montenegro 33%, Serbia 27%, Ukraine 11% and Kosovo* 25%. The National RES Plans should be prepared in accordance with the template provided by the European Commission Decision 2009/548/EC. So far only Serbia and Kosovo* have fulfilled this obligation.

Serbia: Amendments to the PPA Rulebook

by Vuk Stankovic (Belgrade)

In January 2014 the Ministry of Energy, Development and Environmental Protection of the Republic of Serbia issued amendments to the Rulebook on Power Purchase Agreements (PPA) which now, apart of existing models of PPA with Privileged Producers (Offtake PPA) introduced in July 2013, provides a new Offtake PPA model for the generation facilities of privileged producers, with total installed capacities over 50MW. This Offtake PPA model for capacities over 50MW partly replaces the existing Offtake PPA model for capacities over 5MW, the latter now covering generation capacities in the range between 5MW and 50MW. The new Offtake PPA model for over 50MW provides new solutions predominantly in issues of dispute resolution and pricing. The contractual parties may agree on the jurisdiction of the competent Serbian Commercial Court or the Institutional Arbitration of the Serbian Chamber of Commerce. Only if the privileged producer is a company whose majority shares are owned by a foreign company, the jurisdiction of an ICC International Court of Arbitration or of Vienna International Arbitral Centre is acceptable. Furthermore, the Offtake PPA model for capacities over 50MW regulates the adjustment of Feed-in Tariffs to the annual inflation in the EU, based on a certain formula. In case of combined generation, in addition to the mentioned formula, the Feed-in Tariffs shall be adjusted to the changes of prices of natural gas in the EU market.

EU: Recent Case Law Regarding Renewable Energy Sources (RES) Financing

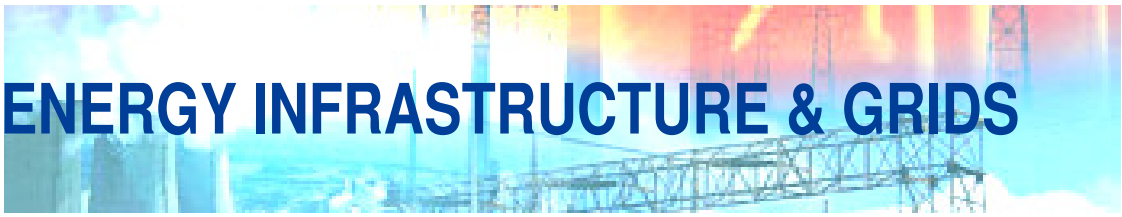
by Haris Synodinos (Athens)

1. Following a request for a preliminary ruling under Article 267 TFEU from the Conseil d'État (French Council of State), the ECJ (Second Chamber) issued an important judgment on 19 December 2013 (C 262/12, Association Vent De Colère) regarding ministerial orders laying down the conditions for the purchase of electricity generated by wind-power installations. The main applicants had contested the above orders for annulment before the Conseil d'État, in particular for introducing State aid within the meaning of Article 107(1) TFEU. According to the national applicable law (No 2003-8 of 3 January 2003 on the gas and electricity markets and the public energy service) the additional costs arising from the obligation to purchase wind-generated electricity, imposed on national distributors, are offset in full through a public service fund for the generation of electricity, financed by charges payable by the final consumers of electricity located in national territory. The said amount is calculated in proportion to the quantity of electricity consumed and determined by the Minister for Energy by order on a proposal from the Commission de régulation de l'énergie (national energy regulator). In accordance with Law No 2000-108, the Caisse des dépôts et consignations (a public law corporation controlled by the State) centralises the sums collected in a special account before paying them out to the operators concerned, thereby acting as an intermediary in the management of those funds. ECJ held that Article 107(1) TFEU must be interpreted as meaning that a mechanism for offsetting in full the additional costs imposed on undertakings because of an obligation to purchase wind-generated electricity at a price higher than the market price that is financed by all final consumers of electricity in the national territory, such as that resulting from Law No 2000-108, constitutes an intervention through State resources.

2. The competent Chamber of the Greek Council of State (Simvoulion tis Epikratias – supreme administrative Court) issued two judgments (4586 & 4555/2013) ruling that the fees collected from consumers through LAGIE (Greek Market Operator, a corporation controlled by the State), by virtue of a decision of the Greek Energy Regulatory Authority (periodically renewed), in order to finance RES producers constitute a levy which is collected in an anti-constitutional manner. In particular, according to the Greek Constitution (art. 78) it is not permitted to collect a levy without a specific law specifying all details about the imposition and the collection of the particular levy. Because it is a crucial award, the Chamber of the Council of State decided to refer the cases to the plenary session of the Court, according to Greek Constitution. It is important to point out that in Greece there is a deficit of 650 million euros in the LAGIE RES' fund and that a negative ruling in the plenary session of the Court could provoke a collapse in the financing mechanism of RES in Greece.

3. In Germany a similar situation emerged. Judgment no I-19 U 180/12 of Oberlandesgericht Hamm, (Court of Appeal of North Rhine-Westphalia), referred on 14 May 2013 an appeal to the Bundesgerichtshof (Federal Supreme Court of Germany) in order to rule on the constitutionality of the levy of RES in Germany, as according to art. 110 of the German Constitution all revenues and expenses of the public must pass through the State budget. Pursuant to German law, distribution and transmission operators of electricity are obliged to accept energy produced by RES producers in an order of priority and compensate them at a fixed guaranteed price stipulated by law. Operators are also required to manage energy accounting under the new balancing mechanism and then sell the energy to the energy exchange market. The difference between the guaranteed price paid to the producers of RES and the wholesale price of energy received in the energy exchange market is covered by the RES levy paid by the energy suppliers, which normally pass this expense on to final consumers, without being obliged to do so by law. Following the above, the European Commission decided to launch a state aid procedure against Germany concerning aspects of the German renewable energy law which the Commission considers not to be compatible with Article 107 TFEU (Commission, State aid SA.33995 (2013/C) (ex 2013/NN) – Germany – Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, 18.12.2013, C(2013) 4424 final).

The final judgements in the above stated ongoing cases are expected with great interest.



EU: ACER Opinions on ENTSO–E's Proposals Regarding the Operation of the Central Information Transparency Platform

by Anna Maria Philippa (Athens)

On 18 December 2013 ACER published its Opinion no. 26/2013 on the "Manual of Procedures (MoP) for the ENTSO-E Central Information Transparency Platform (CITP)", which was submitted to ACER by ENTSO-E on 31 October 2013 pursuant to Article 5 of Regulation (EU) No 543/2013 on submission and publication of data in electricity markets. On the CITP ENTSO-E will be publishing fundamental information related to generation, load, transmission and electricity balancing submitted to it by each TSO. ACER acknowledged that the MoP is contributing to the objectives of the relevant EU Regulation and addresses appropriately the criteria set by Article 5 of said Regulation. In terms of structure, the draft MoP consists of a concise basic document that refers to more detailed documents and in terms of form is an on-line resource facilitating the cross-referencing of material. However, the MoP is still incomplete as information is to be added following completion of the web form design. Thus, ACER may issue an updated Opinion upon relevant completion. Further, on 4 February 2014 ACER published its Opinion no. 03/2014 on the "Proposal for Operation of the ENTSO-E Central Information Transparency Platform", which was submitted to ACER by ENTSO-E on 5 November 2013 pursuant to Article 3 (2) of Regulation (EU) 543/2013. According to ACER the Proposal contains a very concise description of operation. However, it is considered that the Proposal should explicitly state that all data is to be published, updated and available for at least 5 years on CITP. Finally, ACER has requested additional information in order to be able to assess the cost effectiveness of CITP.

EU: ACER Opinions on the Cost Benefit Analysis Methodologies Submitted by ENTSO-E and ENTSO-G

by Anna Maria Philippa (Athens)

On 15 November 2013 ENTSO-E and ENTSO-G published and submitted to ACER, in compliance with Regulation (EU) 347/2013 on guidelines for trans-European energy infrastructure, their methodologies for a harmonised energy system-wide Cost Benefit Analysis (CBA) at Union level for projects of common iInterest, to be applied for the preparation of each subsequent ten year development plan developed by ENTSO-E and ENTSO-G respectively. In turn, ACER, published in 30 January 2014 and 13 February 2014 its Opinions no. 01/2014 and 04/2014 commenting respectively on ENTSO-E's and ENTSO-G's methodology documents and inviting both to perform certain adaptations before submitting their final methodologies to the European Commission for approval.

In relation to ENTSO-E, ACER found that the CBA methodology is to a large extent in line with the principles set in Regulation (EU) 347/2013, provided that ENTSO-E would adapt nine specific recommendations included in

ACER's opinion before submitting it to the European Commission. It also recommended the development of a separate CBA guideline to identify specific benefits of electricity storage before the selection of projects of common interest in 2015.

In relation to ENTSO-G, ACER found that the CBA methodology does not adequately cover all requirements of Regulation (EU) 347/2013 and proposed that ENTSO-G delivers a more credible analysis by taking into full consideration both costs and benefits, finds a way to adequately provide consistent results of impacts of individual projects, identifies and assesses complementary and competing projects and becomes more practical from the viewpoint of project promoters. Furthermore, ACER urges ENTSO-G to give a summarized and clearer account of the stakeholders' comments and proposals.

EU: Financing the Energy Renovation of Buildings with Cohesion Policy Funding

by Georgia Ilianna Karamani (Athens)

On 17 February 2014 the European Commission published the Technical Guidance on Financing the Energy Renovation of Buildings with Cohesion Policy Funding in the period 2014-2020, prepared for the European Commission by the ICF INTERNATIONAL, Hinicio and CE Delft. The EU is planning during this period to allocate a minimum of €23bn to sustainable energy, particularly in refurbishment and construction of both residential and non-residential buildings in Member States (MSs).The MSs shall appoint Managing Authorities for the implementation of this operational program at national, regional or another level, which shall have the responsibility for the effective and efficient implementation of the above funds and will determine the target building categories and the possible public or private beneficiaries and recipients, while the baseline for energy performance requirements, the eligible types of measures and the performance thresholds will be defined by the Energy Performance of Buildings Directive (Directive 2010/31/EU) and the Renewable Energy Directive (Directive 2009/28/EC). The Managing Authorities shall assess in advance and identify market failures or alternative investment options and evaluate individual financial mechanisms or probable combinations of forms of support. Such forms could be preferential loans, renovation loans, a combination of grants and loans, guarantees, equity and energy performance contacting (Regulation 966/2012). Both advantages and disadvantages of each form of support are referred to in the Guidance. Assistance by project developers can be achieved through Project Development Assistance Facilities (mobilising relevant stakeholders, developing feasibility studies and business cases, applying for funding and addressing legal issues). The disbursement process varies depending on the financial instrument selected and the measurement and verification process also varies depending on the condition of the building.

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