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EU and EnC

Market

CEER Publishes Report on Regulatory Frameworks for European Energy Networks

by Kosmas Karanikolas (Athens)



On 18 January 2019, the Council of European Energy Regulators (CEER) published its annual report concerning the regulatory regimes implemented on energy (i.e. electricity and gas) networks across the European Economic Area (EEA). In this regard, the report examines the regulatory practices in place and identifies the existing similarities as well as the fundamental differences on the methods employed and the approaches adopted by the National Regulatory Authorities (NRAs) which are responsible for the supervision of each country's energy market. The report focuses mainly on 4 elements; the cardinal approach on regulation adopted by each NRA, the factor used for the estimation of the rate of return, the methods deployed for the computation of the Regulatory Asset Base (RAB) as well as those applied for the calculation of the depreciation of the assets owned by the energy operator.

As far as the underlying rationale on regulation is concerned, it is noted that the cost-based approach formerly adopted tends to be replaced, in most legal orders, by an incentive-based approach which employs financial awards as well as penalties to ensure achievement of the desired goals (efficient cost base) whereby the regulated company is allowed some discretion in how to achieve them. Moreover, the report suggests that most NRAs calculate the energy operators' rate of return, namely their earned profits expressed as a percentage of the costs incurred, by applying the Weighted Average Cost of Capital (WAAC) factor. The latter computes the firm's cost of capital by proportionally weighting all its sources. It must be noticed that, while in the electricity networks' field the nominal WAAC before taxation is taken into account, in the gas sector the real WAAC before taxation is also frequently used.

Furthermore, the report deals with the computation of the energy operators' Regulatory Asset Base (RAB), i.e. the value of their net invested capital considered for regulatory purposes, which is used for the determination of the allowed revenue. As the RAB can be comprised of several components, the report explores whether certain assets are taken into account for its reckoning in each country. In this regard, the report ascertains that only fixed assets are counted by all NRAs for the calculation of the RAB while other assets, such as the working capital, assets under construction, leased assets and contributions from third parties, are regarded as part of the RAB in some legal orders but excluded in others. In addition, the report detects the absence of consensus on the method used for the evaluation of an energy operator's assets; the historical cost method is prevailing but some NRAs prefer the re-evaluated assets method or a mixture of the two aforementioned methods. Finally, given that the NRAs have to evaluate the aforementioned assets' inescapable depreciation (insofar the lifetime of a typical network asset ranges from 30 to 50 years), the report discusses the methods applied for the valuation of such depreciation. In this respect, it is adduced that most NRAs apply the straight-line depreciation method for both gas and electricity network operators. According to the latter, the value of an asset is reduced uniformly over each period until it reaches its salvage value, i.e. its value at the end of its useful life.

Finally, as a concluding remark, the report stresses the importance of its periodical update in light of the impending transition from conventional to renewable energy sources, the ever-growing cooperation between (and inside) European energy networks and the anticipated integration of smart elements into the networks.

Electricity

ACER Issues Methodologies for Capacities in Intraday and DAH Electricity Markets

by Mira Todorovic Symeonides (Athens)

On 25 January 2019, the Agency for the Cooperation of Energy Regulators (ACER) issued its decision n. 01/2019 on Establishing a single methodology for pricing intraday cross-zonal capacity, which sets the framework for pricing among bidding zones. The chosen model introduces three pan-European implicit auctions to price cross-zonal capacity in addition to the already functioning single

intraday coupling based on continuous trading. The implementation timeline, and where relevant, the conditions for their implementation will be developed in the framework of the amendment of the algorithm methodology.

On 27 February 2019, ACER issued its decision no. 02/2019 on the Core CCR TSO's proposal for the regional design of the day-ahead (DAH) and intraday (IDA) common capacity calculation methodologies which apply to the cross-border capacities in Austria, Belgium, Croatia, the Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands, Poland, Romania, Slovakia and Slovenia (the Core region) i.e. for 13 Member States, 16 TSOs and 19 bidding zone borders. The implementation period is expected to be from December 2020 until December 2022. The new methodologies are expected to increase the cross-zonal capacities between the relevant TSOs and Member States, the transparency and reduce the discrimination between internal and cross-zonal electricity trading.

Competition & State Aid

Agitation among the Big Energy Companies in Germany

by Harris Synodinos (Athens)

The well known energy companies based in Germany E.ON and RWE who are both currently active across the whole energy chain (from generation and wholesale to distribution and retail of electricity) and presents in several European Union countries, decided to proceed to a complex asset swap. More precisely RWE wants through this transformation (redesign of activities) merger to be primarily active in upstream electricity generation and wholesale markets while E.ON wants to focus on the distribution and retail of electricity and gas (case separately assessed and in a strong way by the European Commission, which opened an in-depth investigation into E.ON's proposed acquisition of Innogy, see IP/19/1593).

In February this year, Commission approved RWE's acquisition of E.ON electricity generation assets, and accepted that RWE acquires the majority of E.ON's renewable and nuclear generation assets (as payment for the assets RWE will get a 16.67% minority interest in E.ON). This approval derived from the assessment that the merger at stake is unlikely to hinder effective competition in the generation and wholesale supply of electricity, and unlikely to affect RWE's ability and incentives to influence market prices (see IP/19/1432).

We are looking forward to seeing what the Commission will finally decide in the remaining part of the said asset swap (i.e. E.ON's proposed acquisition of Innogy), let alone the fact that these companies decided not to submit commitments during the initial investigation in order to address preliminary concerns of the Commission. It is important to notice that the Commission during its investigation is cooperating with the German competition authority, and the Competition and Markets Authority, the UK competition authority.

French Schemes for Floating Offshore Wind Farms Approved (cases SA.49672, SA.49673, SA.49674 and SA.52085)

by Viktoria Chatzara (Athens)

On 25 February 2019, the European Commission issued its decisions on four French state aid projects aiming to promote electricity generation from renewable wind energy sources, namely the "Golf du Lion" project (SA.49672), located in the Atlantic Ocean, the "Eolmed" project (SA.49673), the "Groix Belle Ile" project (SA.49674), and the "Provence Grand Large" project (SA.52085), all three located in the Mediterranean Sea. All four demonstration floating wind farms will be composed from three to four turbines and each one will have a total installed capacity of 24 megawatt, using a particular combination of turbine, floater and cables. The turbines will be installed in the sea on floaters, interconnected with each other and connected to land through an underwater cable. The aid provided to the four projects is intended to be both investment and operating aid, while part of the investment aid will be paid in the form of repayable advances.

The above state aid measures were examined by the Commission in the light of the applicable EU state aid rules, as well as the Commission's Guidelines on State Aid for Environmental Protection and Energy. The Commission determined that said measures will contribute to the EU energy and climate goals, as their aim is to test the above described different technological solutions of electricity generation from renewable sources, with the long-term goal to test this technology before deploying it on a larger scale. According to the Commission's assessment, the aforementioned French projects will promote the development of a new type of offshore wind energy and the potential growth of a novel renewable energy technology, while at the same time the level of aid granted to the projects at hand is proportionate and will avoid overcompensation for the beneficiaries of the public support, in line with the requirements of the Commission's Guidelines. Taking the above into account the Commission concluded that the four projects will promote the EU energy and climate goals, without unduly distorting the competition and, thus, decided not to raise objections against the proposed state aid measures.

In-depth Investigation into British Capacity Market Scheme (SA.35980)

by Viktoria Chatzara (Athens)

On 11 March 2019, the European Commission decided to open an in-depth investigation into the British Capacity Market scheme (case No. SA.35980) with regard to its compatibility with the internal market. The Commission's decision was issued despite the fact that the judicial procedure concerning the first decision of the Commission, which was issued in July 2014, is pending. Namely, in its first decision on the British Capacity Market scheme, the European Commission ruled that said state aid scheme was compatible with the applicable EU state aid rules, as it was necessary to guarantee security of electricity supply in Great Britain, it was in line with the EU energy policy objectives, and it did not distort competition in the Single Market. Nevertheless, a company operating in the relevant market filed an appeal before the General Court against the Commission's decision, which was upheld by the General Court. To be noted in this relevance that the General Court did not assess the above mentioned measure's compatibility with the Single Market, but rather considered that the Commission should have opened an in-depth investigation, in order to gather and examine the measure at hand on the basis of more information. Furthermore, and despite the fact that the Commission complied with the General Court's decision and opened the in-depth investigation, the judicial procedure is still pending, as the Commission has appealed the General Court's decision before the European Court of Justice.

According to the applicable provisions, the measure at hand was designed as a capacity market where the UK would organize centrally-managed auctions to procure the level of capacity required to ensure generation adequacy. The auctions would be open to existing and new generators, demand side response (DSR) operators and storage operators. In this context, any successful bidders would be entitled to receive a steady payment for the term of the capacity agreement, in return for their commitment to deliver electricity at times of system stress, following a relevant request from the System Operator. As far as the financing of the scheme is concerned, it would be financed through a levy on electricity supplies. Pursuant to the design of the scheme, the UK Government would remain responsible for its strategic oversight and draft the Rules for the Capacity Market, which however would be subject to any amendments after the first capacity auction by the market Regulator (Ofgem). Ofgem would be also the competent authorities for the resolution of any disputes between applicants on the pre-qualification stage. Moreover, the System Operator would be providing advice on the security of supply, recommending the amount of capacity to auction, pre-qualifying auction participants, administering the capacity auctions and issuing the contracts, etc. Under the applicable law, a new Capacity Market Settlement Body was also established, a private company owned by the Government, competent to provide ultimate accountability, governance and control of the settlement process and payments disbursed under capacity agreements.



State Aid for Support of Biomass-operated Generators Close to Forests Approved (SA. 48881)

by Nikolaeta Nikolaou (Athens)

On 9 January 2019, the European Commission (EC) issued a press release regarding the approval of a 320€ million scheme for the support of biomass-operated generators close to forests. More specifically, the EC approved in accordance with EU State aid rules, a Portuguese scheme to support biomass energy installations located near forest areas, regarded as "critical" because of the increased risk of fires. As it was concluded, the aforementioned measure will undoubtedly contribute to the motivation of forest owners to clean the forests at risk by using the forest residues to produce biomass energy and results in prevention of future forest fires as well. Moreover, the aid will be provided in the form of a feed-in premium to the selected installations for every unit of electricity produced and an environmental tariff premium combined with the use of biomass in the "critical areas" as well. In addition, the scheme will have a duration of 15 years, until 31.12.2020 with a financial budget of approximately 320€ million and will be funded via an increase in energy tariffs. In conclusion, the European Commission notes that this measure will have a significant progress in Portugal's increase in sharing electricity produced from renewable sources to meet its climate targets in compliance with the environmental objectives for European Union.

Approval of Investment Aid to LG Chem's Electric Vehicles Batteries Plant (SA.47662)

by Evridiki Evangelopoulou (Thessaloniki)

On 28 January 2019, the European Commission issued a press release regarding the approval of a €36 million Polish investment aid to LG Chem's electric vehicles batteries plant in the Dolnośląskie region of Poland. According to the Commission, the above mentioned investment aid to the chemical company LG Chem complies with the Guidelines on Regional State Aid for the years 2014-2020. In particular, the new plant is going to manufacture lithium-ion (Li-ion) batteries, used in electric vehicles, and is anticipated to supply batteries for more than 80.000 electric vehicles per year in the European Economic Area (EEA). Overall, it is expected that the aid will contribute to the development of the region by supporting local economy and employment, as well as by promoting regional cohesion in the Single Market.

Energy Efficiency

Referral of Czechia and Slovenia for Incorrect Transposition of Directive 2010/31/EU

by Andriani Kantilieraki (Athens)

On 24 January 2019, the European Commission issued a press release concerning the referral of Czechia and Slovenia before the European Court of Justice (ECJ) for failure to comply with the Energy Performance of Buildings Directive 2010/31/EU. In more detail, pursuant to the aforementioned Directive, Member States are obliged to set and apply minimum energy performance requirements for all buildings, ensure the certification of buildings' energy performance and require the regular inspection of heating and air conditioning systems. The main goal of the Directive is to promote the improvement of the energy performance of buildings within the Union, with the view of achieving a 20% cut in the annual primary energy consumption of the EU by 2020 and creating nearly zero-energy buildings by 2021, considering that buildings account for 40% of the EU's total final energy consumption and over 1/3 of its CO₂ emissions.

The Directive also requires of Member States to ensure that energy performance certificates are displayed in buildings frequently visited by the public, thus raising awareness and providing incentives for renovations. Pursuant to these provisions, in 2015, the European Commission, informed the competent national authorities of Czechia and Slovenia on the improper transposition of the aforementioned requirement and sent official letters in the course of the following years (namely 2017 and 2018). Until today however, these Member States have failed to ensure the proper display of energy performance certificates for buildings by amending their legislation in conformity with the Directive. As a result the Commission referred both Member States before the ECJ.

ALBANIA

Electricity

Establishment of a Capacity Allocation and Congestion Management Code

by Manuela Cela (Tirana)

On 17 January 2019, the Albanian Energy Regulatory Authority (ERE) issued its decision no.2 initiating the procedures for the approval of the "Proposal of all TSOs on generation and load data provision methodology, in accordance with Article 16 of European Commission (EU) 2015/1222 of 24 July 2015 for the establishment of a capacity allocation and congestion management guide ". ERE's decision took under consideration the TSO's proposal dated 11 December 2018, which was drafted in accordance with the provisions of Law no. 43/2015 "On the Electricity Sector" as amended by Law No. 8/2018, as well as the obligations set in the Broadcasting Code.

According to the aforementioned decision, which was taken by the European Network of Transmission System Operators for Electricity (ENTSO-E), the provided methodology will be applied to all the TSOs of the member states, who are responsible for submitting it for approval before their respective regulatory authorities. TSOs of non- EU members are also encouraged to submit it to their regulatory authorities.

Approval of the Electricity Market Monitoring Code

by Manuela Cela (Tirana)

On 7 March 2019, the Albanian Energy Regulatory Authority (ERE) issued its decision no. 40 initiating the procedures for the approval of the guide on electricity market monitoring. ERE's decision took under consideration that during 2018, with the assistance and consultancy of USAID/ RTI (United States Agency for International Development/ Research Triangle Institute) a Code for monitoring the electricity market was drafted in support of ERE's obligations for monitoring the energy market, in accordance with Law no. 43/2015 "On the Energy Sector". The aforementioned Code contains an overview of the establishment of market monitoring functions by ERE and the necessary steps which have to be made in the process of developing market monitoring functions; the role of market participants in the process, set by ERE under the relevant legislation in Albania; Principles that need to be adapted for market monitoring; Guidelines for implementing market monitoring responsibilities, regulatory requirements placed on market participants, organization of the internal market and structuring of the market monitoring function and the rules for the implementation of the requirements.

BiH

Competition & State Aid

EnC: Tuzla 7 Guarantee on Approved against EnC Advice

by Mirjana Mladenovic (Belgrade)

On 28 February 2019, the Parliament of the Federation of Bosnia and Herzegovina (Parliament) announced a vote on the approval of the public guarantee granted in favor of the export-import bank of China for a loan by the latter to the public utility Elektroprivreda BiH d.d. Sarajevo. Namely, the loan in question will be used for the construction of Block 7 of the Tuzla lignite power plant project.

It should be noted that in October 2018, the Energy Community Secretariat (Secretariat) advised the Parliament not to approve the guarantee having in mind that it represents illegal state aid, while the Secretariat repeated this advice on 26 February 2019. Taking under consideration that the Secretariat considered that this guarantee represents illegal state aid, it decided to conduct an investigation on whether the guarantee which is on the Parliament's agenda is in compliance with the State aid rules determined by the Energy Community Treaty or not. The Ministry of Finance of the Federation of Bosnia and Herzegovina, Elektroprivreda BiH d.d. Sarajevo and the State Aid Council agreed to cooperate in the Secretariat's investigation. Also, the Secretariat decided to collaborate with an independent law firm to verify its findings. Further to the above, the Secretariat asked the Parliament to postpone its decision as there is a certain probability that such decision would bring the country in a state of non-compliance with Energy Community law. Upon its investigation, the law firm concluded that the Tuzla 7 guarantee contains elements of state aid. Therefore the State Aid Council has to relaunch the relevant procedure and re-examine the guarantee in line with the Energy Community State aid acquis. Having in mind all the above the Secretariat considers that the Parliament should not approve the guarantee, based on a non-compliant decision from its State aid authority.

RES

Amendments to RES Law

by Vuk Stankovic (Belgrade)

On 27 February 2019, the Government of the Republic of Srpska, during the 10th session held in Banja Luka, confirmed the Draft Law on Amendments to the Law on Renewable Energy Sources and Efficient Cogeneration by urgent procedure (Draft Law). By virtue of the new Draft Law, all provisions related to the electricity generated from wind farms are abolished, the phrase "Wind Farm" is hereby deleted and all incentives for wind energy producers including feed-in tariffs are canceled. According to the written statement, the aim of such regulatory change is to limit the growth of the extra charge for renewables and efficient substantial cogeneration, which is paid by the end-consumers of electricity. Additionally, the written statement refers to the reason for the urgent parliament procedure is prevention, having in mind that some of the wind developers could reserve the privileged producer status and available capacities in line with the existing law. The parliamentary discussion and adoption of the Draft Law is expected to occur within the first half of 2019.

BULGARIA

Market

Initiation of the Trilateral Market Coupling Project between Croatia, Serbia and Bulgaria

by Veronika Yordanova (Sofia)

Belgrade, 13 February 2019, a meeting for initiation of the trilateral market coupling project between Croatia, Serbia and Bulgaria (HR-RS-BG) was successfully held. The meeting was attended by all main stakeholders - TSO's (HOPS, EMS and ESO EAD), PX's (CROPEX, SEEPEX and IBEX) and national regulatory authorities (HERA, AERS and EWRC).

The Initiative was welcomed by all parties involved. A joint commitment was confirmed to provide all necessary efforts and resources in order to ensure project feasibility and its timely implementation. Final goal of this project is to implement trilateral market coupling within MRC framework which is expected to provide long-term benefits for market participants and consumers within the current initiative.

Electricity

Launch of the Procedure for a Strategic Investor for "Beline" NPP Project

by Veronika Yordanova (Sofia)

In implementation of decisions of the National Assembly of 7 June 2018 and of the Council of Ministers of 29 June 2018, Natsionalna Elektricheska Kompania EAD announces a call for selection of a strategic investor for the construction of Belene nuclear power plant. The call also allows for expressions of interest to acquire a minority shareholding in the future project, as well as and/or to purchase electricity from the future power plant. The purpose of the call is to provide certain information to the applicants wishing to participate in the procedure. The Bulgarian state, through NEK EAD, reserves the right of a blocking quota when deciding on certain issues within the competence of the shareholders' general assembly in the project company. The construction of the plant is envisaged to be carried out on a market principle, without the conclusion of long-term power purchase agreements with the state or provision of any sovereign guarantees.

The Bulgarian side will participate in the project company operating "Beline" NPP with the contribution in kind, including the licensed site, the available equipment, the issued decisions, permits, licenses and other documents related to the project.

According to Minister of Energy Temenuzhka Petkova, the selection process will include: a nine-stage process; no state guarantees; a stipulation that the state will keep majority voting rights (either by holding 34% of the capital or holding 10% of the capital where the company's statutes allow for specific voting restrictions); an investment amount not exceeding EUR 9 million; an operation date of no later than eight years after work commences; a commitment to the delivery of fresh fuel; only those investors with expertise in working with VVR1000; and a commitment to the technical project as reported to the EU Commission in 2007.

An application in the procedure for selection of a strategic investor or, respectively, interest in acquiring a minority share in the project company may be submitted by Bulgarian or foreign legal entities, as well as consortium thereof. The deadline for receipt of applications shall be until the 90th day as of the date on which the call is published in the Official Journal of the European Union. The indicative deadline for completion of the procedure shall be 12 months from the date of publication of this invitation in the Official Journal of the European Union.

Competition & State Aid

Fine to BEH Group for Blocking Access to Key Natural Gas Infrastructure in Bulgaria

by Veronika Yordanova (Sofia)



On 17 December 2018, the European Commission fined the Bulgarian Energy Holding (BEH), its gas supply subsidiary Bulgargaz and its gas infrastructure subsidiary Bulgartransgaz (the BEH group) with €77.068.000,00 for blocking competitors' access to key gas infrastructure in Bulgaria in breach of article 102 of TFEU. The Commission opened a formal investigation into the BEH Group's behaviour on July 4, 2013, following an inspection carried out at its premises in September 2011 and issued a statement of objections on March 23, 2015.

More precisely, according to the EU Commission, between 2010 and 2015 the BEH Group blocked the access to the following gas infrastructure: the domestic Bulgarian gas transmission network; the only gas storage facility in Bulgaria and the only import pipeline bringing gas into Bulgaria, which was fully booked by BEH. Without access to this essential infrastructure, it was

impossible for potential competitors to enter wholesale gas supply markets in Bulgaria.

In the infringing decision, the EU Commission has found that the BEH group: (i) holds dominant positions both in the gas infrastructure markets and in the gas supply markets in Bulgaria and (ii) has abused its dominant positions by foreclosing entry into the gas supply markets in Bulgaria having unduly restricted access to the infrastructure it owned and operated. BEH used the dominant position of one subsidiary, Bulgartransgaz, to protect the near monopolistic position of Bulgargaz on supplying gas. In addition, Bulgargaz hoarded capacity on the only import pipeline bringing gas through Romania to Bulgaria so that it could not be used by potential competitors.

GREECE

Electricity

Relaunched PPC Lignite Units Tender

by Ifigeneia Argyri (Athens)

On 9 March 2019, law no. 4602/2019 on geothermal resources research, management and exploitation of the Ministry of Environment and Energy was published in the OJ A'45/2019. The said law amongst various provisions introduces the revised legal framework for the repetition of tendering process as regards with the divestment of Public Power Corporation's (PPC) lignite-fired production units at Meliti and Megalopoli. In short it is worth to be reminded that in 2008 Greece was found by the European Commission in infringement of competition rules, particularly Articles 102 and 106 of the TFEU by giving the state-owned electricity incumbent, PPC, privileged access rights to lignite, and was called to propose remedies to ensure fair access to lignite-fired plants for PPC's competitors. The suggested remedies were incorporated into law. no 4533/2018 (A'75/27.04.2018) including firstly the incorporation of two subsidiaries namely Meliti and Megalopoli, into which PPC should transfer some of its lignite production units along with exploitation rights on lignite reserves and other rights such as human resources equal to 40% of PPC's total asset. Secondly, the law provided the launch of an international tender for the sale of the two subsidiaries' shares by 31 May 2018. Although, in 8 February 2019 PPC'S BoD declared the tender null and void as considered offers as unsatisfactory.

The repetition of the abovementioned void tendering process is provided by Article 3A law no. 4533/2018. (Article 86 law 4602/2019). In concreto, according to the law PPC shall transfer the total number of shares to be issued by each of the diverted companies to any legal person(s) interested in and will be selected as preferred investor(s) through the repetitive tender. The tender shall be conducted with PPC's diligence and costs and under the Greek's government supervision. It will be completed upon the signing of the share purchase agreement (SPA) of each of the two subsidiaries. After a public call announced in PPC's website on 8 March 2019, both the interested bidders that took part in the initial tender and the new potential investors will have to express their interest within seven days from the call. The public call defined the procedure and the pre-qualification and final selection criteria of the participants. In the context of the said tendering process, the interested parties may submit offers either for the acquisition of the total number of shares of both new companies or of one of them. Furthermore, according to the Law, PPC in order to ensure the fair valuation of the market value of the contributed segments holds the right, subject the prior approval of the European Commission, to appoint an independent valuator who will provide a new fair value range for each of the companies. In that case the independent evaluator should take into consideration the equivalent commercial transactions in the European market, as long as the results of the former tender. Moreover, PPC according to the new legal framework is obliged to appoint an independent international expert, such an international investment bank in order to seek a fairness opinion. Contrary to the former legal framework the new independent expert will not take into consideration the evaluation submitted according the provisions of article 3 paragraph 4 of the amended law. no 4533/2018. The Greek state and PPC will, after the approval from the European Commission, appoint a monitoring trustee of the European Commission who will monitor the conduction and the progress of the tender. Moreover, the amended law predicts the application *mutatis mutandis* of law 4533/2018 provisions of paragraphs 6 to 11.

To that end the definite scope of the revised legal framework is to lead to a successful bidding offer in accordance with Hellenic Republic's commitments towards to European Commission. Despite the tough procedure PPC knows that another failure will increase the likelihood of eventual pressure from the EU for the inclusion of the hydropower units into the sale package, so it seems that the new tender will lead to a bidding offer.

Regulation on Operation of DAH and IDA Electricity Market

by Mira Todorovic Symeonides (Athens)

On 31 December 2018, RAE's Decision no. 1116/2018, issued on 13 November 2018, regarding the Approval of the Regulation on operation of the Day ahead (DAH) and intraday (IDA) market in compliance with articles 9,10 and 18 of the law 4425/2016 (regulating the Greek Energy Exchange - EXE), was published in the OJ B'14/2018. The initial proposal of the Regulation was made by EXE and submitted to RAE on 20.03.2018. A public consultation, organised by RAE in July 2018 followed while the final draft was submitted to RAE on 31.10.2018. Some of the issues regulated by the Regulation include: types of markets, competences of EXE, participants, trading on behalf, negotiation methods, regulated maximum and minimum prices, measures for protection of markets, and data protection.

This EXE Regulation will apply to DAH and IDA from the beginning of their operations on 6 June 2019 under the condition that RAE previously approves the terms of operations of EXE. In addition EXE should submit to RAE for approval several methodologies such as the Methodology for regulating of the minimum and maximum prices for clearing for DAH for which EXE is currently exploring the possibilities of organization of the Second Auction, methodology for calculation of regulated parameters for the Non compliance

charges for participants and for members of EXE. It should be noted that a) in regards with both DAH and IDA, the provisions of the Regulations applicable to not-coupled markets will apply from the beginning of their operations; b) in regards to DAH market coupling operations, RAE should issue a new decision for the beginning of application of the provisions of regulations related to the market coupling; and c) in regard to IDA coupled operations, RAE should issue a new decision after proposal from EXE and the electricity TSO, ADMIE, which will also activate provisions on the Continuous intraday trading and supplementing regional intraday auctions. The same applies for the full coupling operations of IDA.

Approval of the Balancing Market Code

by Andriani Kantilieraki (Athens)

On 31 December 2018, decision n. 1090/2018 of the Regulatory Authority for Energy (RAE) on the approval of the Balancing Market Code pursuant to articles 17 and 18 of law n. 4425/2016, was published in the OJ B' 5910/2018. RAE took under consideration the provisions of the national legislation as well as numerous EU Regulations & Directives and approved the Independent Power Transmission System Operator's (ADMHE) proposal on the Balancing Market Code.

In more detail, the Energy Balancing Market refers to the market where Participants offer electricity used by the Operator to maintain the System frequency within a predetermined range, as well as the electricity generation and demand balance, whereas the Balancing Market includes the Balancing Capacity and Power Markets as well as the Imbalances Settlement Procedure. The proper function and regulation of the Balancing Market is the main responsibility of the TSO and is determined by the relevant Code, whose main goal is to ensure security of supply and capacity.

The main provisions of the Code refer to the proper function of the market, the access to and requirements for the participation in relevant market transactions, as well as the rights and obligations of the parties. The Code further deals with the following issues: the criteria, rules and procedures for the calculation of the available transmission capacity, the allocation of electricity within the networks, the measures for tackling energy grid losses or imbalances, the methodology for calculating prices and balancing power remuneration, as well as the market clearing rules.

Apart from the approval of the Code, with its decision RAE stated that the Balancing Market is to commence its operation on 9 June 2019 and requested of ADMHE to submit further propositions regarding certain methodologies.



Provision of Last Resort Electricity Supply Services

by Paraskevi Res (Athens)

On 18 February 2019, the Regulatory Authority for Energy (RAE) announced a tender for the provision of Last Resort Electricity Supplier (LRES) services for a three-year period commencing on 23.03.2019. According to RAE if no interest is expressed, the electricity Supplier with the largest market share will be selected by RAE as the provider of LRES services. Further, in accordance with Articles 56 and 57 of Law 4001/2011 and in accordance with its Decision no. 57/2019 where the terms and procedure of this tender are defined, RAE invites interested parties to express their interest in the provision of LRES services. Pursuant to Article 57 (1) of Law 4001/2011 and Article 43 (1) of the Code of Electricity Supply to Customers, LRES is required to supply electricity temporarily for a maximum period of three (3) months to Customers, who are not represented by a Supplier and no Supplier provides electricity supply services to them due to Supplier's fault, in order to allow Customers to have enough time to negotiate a contract with a new Supplier. Within three (3) days from the day that the Customer is not represented by a Supplier, the Network Operator (Hellenic Electricity Distribution Network Operator S.A.) provides to the LRES the Customers' number of electricity supply, the addresses of their electricity supply installation and their contact details.

Only Suppliers that are licensed to supply electricity and meet the requirements of Article 134 of Law 4001/2011, are entitled to participate in the tender. Also, RAE in its decision no. 543/2012 determined the procedure, the terms and the selection criteria for the selection of Public Power Corporation S.A. (PPC) as LRES in order to provide services for the last five years starting in 23.03.2013 and ending on 22.03.2018 (decision No. 543/2012 of RAE). Also, RAE pursuant to its decision no. 240/2018 assigned the services of LRES to PPC for one (1) year starting from 23.03.2018 and expiring on 22.03.2019. Expressions of interest must be submitted in the Greek language within 35 days after the last publication of the tender was made.

Oil & Gas

DEPA Unbundling

by Anastasia Bolari (Athens)

On 9 March 2019, Law n. 4602/2019 providing the further unbundling and privatization of DEPA (Public Gas Corporation of Greece S.A.), was published in the Official Journal (A' 45/2019). The law provides that within three months of its entry into force, DEPA should be divided into two companies, DEPA Infrastructure and DEPA Trade.

More specifically, article 80I provides that DEPA will transfer by means of universal succession the infrastructure industry to a new company, called "DEPA Infrastructure S.A.". The transferred infrastructure industry includes a) the gas distribution network, b) DEPA's participation in the gas distribution companies in EDA Attica, DEDA, EDA Thessaloniki-Thessalia, c) the participation of DEPA in international projects i.e. the Greece Italy interconnection pipelines (IGI), Greece – Bulgaria interconnection pipeline (IGB) as well as the Eastern Mediterranean Pipeline (EastMed), and d) all rights and obligations stemming from the Memorandum of Cooperation for the construction of the Floating Storage Regasification Unit (FSRU) in Alexandroupoli. It is worth mentioning that DEPA Infrastructure is required to establish a new subsidiary within three months of the completion of the DEPA split, and to transfer to it the international projects. According to article 80 II, the State will have strong presence in "DEPA infrastructure", holding 51% of its share capital, whereas the transfer of assets and liabilities to "DEPA Infrastructure" will take place automatically with the registration of the notarial deed of the divestment company at the Companies' Registry (GEMI). However, the damages of DEPA will not be transferred to "DEPA Infrastructure". Finally, the law provides that "DEPA Infrastructure" will absorb all personnel of "EDA Attiki SA" and "DEDA SA", which has a dependent employment relationship, as well as the staff of "DEPA SA", which is exclusively engaged in the infrastructure sector and under a contract for dependent employment agreement.

Upon completion of the infrastructure transfer, DEPA will be renamed to "DEPA Trade". The main activities of "DEPA Trade" will be the import and supply of natural gas and electricity, as well as any activity associated with the development of the expansion and operation of the gas supply. Within 3 months of the completion of DEPA split, "DEPA Trade" will have to absorb its subsidiary companies. As regards the transfer of shares of DEPA Trade, Article 80 II provides that the public will sell 50.1% of its share. The share distribution process may begin before the completion of the DEPA split, but is conditional upon the realisation of the decomposition of DEPA and the absorption of its subsidiaries. Moreover, according to article 80 IΔ the investor holding the majority of shares in "DEPA Trade" is required to sign an agreement with the State, providing to it the right to exercise veto to strategic policy issues such as a) compliance with the obligations arising from existing long term gas supply contracts, b) implementation of existing and future contingency plans and measures to ensure the country's energy security, c) the safeguard of geopolitically diversified sources of gas supply in the country and d) compliance with the commercial obligations undertaken for international projects, including, but not limited to, quota commitments in the Bulgarian pipeline interconnector (IGB) and the floating terminal gasification in Alexandroupoli (FSRU). Finally, it is worth mentioning that according to article 80 IB the personnel of "DEPA Trade" will not be fired due to economic or organizational reasons for the first 3 years after the transfer of the shares.

Preventive Actions Plan for Ensuring Gas Supply in Emergency

by Kosmas Karanikolas (Athens)

On 16.01.2019 and on 22.02.2019, the Greek Regulatory Authority on Energy (RAE) issued two important decisions concerning particular, technical issues relating to the implementation of its Preventive Action Plan aiming at the assurance of uninterrupted gas supply, in the event of emergency circumstances. More specifically, the first decision, no. 1299/2018, encompasses alterations and amendments of certain provisions of (i) the Code on the Management of the Greek Electricity Transfer System and (ii) the Code on Transactions in Electricity, intending to facilitate the applicability of the aforementioned Preventive Action Plan. The second decision, no. 175/2019, defines the methodology applicable for the computation of the quantity of the Maximum Daily Natural Gas Consumption from electrical power units, in the context of the application of the above mentioned Preventive Action Plan.

Thus, in view of the composition of such Emergency Plan, that would realize the relevant provisions of EU Regulations 994/2010 and 1983/2017 (which repealed and replaced the former), RAE drafted in September 2017 a Risk Assessment Study concerning the 2017-2020 period. In the latter, the overall safety risks affecting security of supply at national level were assessed and the importance of the establishment of certain measures for the support of critical power generation units was stressed, insofar the lack of supply with natural gas may cause serious disruptions in the electricity network or prevent the production and/or transmission of natural gas. The observations of this study were taken into consideration during the formation of RAE's Preventive Action Plan.

In the event that a crisis or an emergency has been declared in ESFA, the ESFA Operator (DESFA) submits to the Transmission System Operator (TSO), in accordance with the Emergency Plan and the Preventive Action Plan, the following quantities, for each day; (a) the estimated quantity of natural gas available for electricity generation (calculated in thermal MWh), the LNG security stock being excluded, and (b) the relevant estimated quantity of natural gas available for electricity generation of the LNG security stock. Then, the aforementioned quantities of maximum daily natural gas consumption are converted by the Transmission System Operator

into quantities of maximum daily infusion of electricity (computed in MWh), in accordance with a methodology determined by RAE decision, issued upon proposal of the Transmission System Operator.

For the enactment of the above mentioned general provision, RAE decision no. 175/2019 was issued. The latter defines the methodology applicable for the computation of the quantity of the Maximum Daily Natural Gas Consumption from electrical power units, in light of the implementation of Action D6 of the Preventive Action Plan. More specifically, the decision specifies the steps that need to be followed so that the conversion factor, i.e. the index that expresses the relationship between a quantity of heat/electricity produced and the amount of fuel used for such production, is calculated. Thus, for the determination of the conversion factor the following principles apply : (i) consideration shall be given to all production units charged with fuel natural gas at 80% of their net power, (ii) the weighted average specific heat consumption (in MWhNG / MWh) of all natural gas units is calculated, whereby for each unit the specific heat consumption corresponding to the above stated charge level is taken into account, based on the unit's registered characteristics and (iii) the conversion factor amounts to the quantity of the maximum Daily Natural Gas Consumption from electrical power units, increased by 5%, as a margin for declinations that might accrue during the operation of the system.

RAE Decisions no 1211/2018 and 1287/2018 on the Security of Gas Supply

by Nikoleta Nikolaou (Athens)

On 31 December 2018, RAE's decisions no 1211/2018 and no 1287/2018 concerning the implementation of security measures regarding gas supply were published in OJ B' 5894/2018 and B' 5900/2018, respectively. More specifically, according to the first decision, the significant contribution of natural gas in the energy sector during the last years requires the adoption of some further rules to ensure the security of the energy consumers' supply. In other words, the following measures were adapted as a part of the preventive action plan in order to strengthen the security of consumers in case of unforeseen disorders: Improvement of demand management measures' effectiveness; Both emergency supply and temporary storage of LNG; and Increase of electricity sector preparedness.

In addition, according to the regulation 2017/1938 the EU State- Members are obliged to take the most effective and least costly measures so as to ensure the uninterrupted supply of the whole European Union with natural gas, which are also designed to minimize the negative impact on energy consumers. Furthermore, the legislature imposed a levy in the form of an increased charge to finance the measures of the aforementioned preventive action plan, which is received by the administrator of the National System of Natural Gas as a supply charge. In RAE's decision is described in detail both the procedure of receiving this fee and its contribution to risk avoidance as well. The second RAE Decision no 1287/2018 entitled "Rules relating to management of National System of Natural Gas for the implementation of the preventive action plan in order to ensure the security of gas supply" determines additionally the level of security buffer for every owner of production license, who has a stockholding obligation. In conclusion, the abovementioned adopted measures, the implementation of which is regulated by RAE decisions, are special regulatory measures for the period during which the producers of electricity hold a security buffer.

Establishment of the Hellenic Agency for Geologic and Metallurgic Research

by Anastasia Bolari (Athens)

Law Number 4602/2019, published in the OJ A' 45/09.03.2019, established the "Hellenic Agency for Geologic and Metallurgic Research". The main responsibilities of the new entity are: the research and scientific monitoring of geological and metallurgical issues on behalf of the State, the preparation of studies and the provision of proposals on geosciences, geological, geo-environment, energy, metallurgic and other related subjects. In order to achieve its purpose, the "Hellenic Agency for Geological and Metallurgic Research" is to be structured in six separate Directorates, each of which is further divided in Departments, Services, Regional Units and Offices. Under the provisions of the aforementioned law, the Agency will be directed by a four-year BoD, a Director-General and Deputy Directors-General. The authority's resources will come from the regular budget of the Ministry of Environment and Energy, revenues from the management of the private property of the Authority as well as from donations.

TAP's Application for an Independent LNG Management License

by Paraskevi Res (Athens)

On 12 February 2019, the Regulatory Authority for Energy (RAE) issued a press release regarding the company Trans Adriatic Pipeline AG (TAP) licensing procedure. In more detail, TAP submitted on 21 December 2018 an application to RAE in order to obtain a License for the Management of the Independent Natural Gas System in accordance with the Natural Gas Licensing Regulation (OJ B' 3430/2018). According with RAE's announcement, any person who establishes a legitimate interest may, within fifteen (15) days of publication on the RAE website, submit to RAE objections to the submitted application accompanied by all necessary evidence to support these objections.

Also, TAP in accordance with article 15 para 1b of the previous Natural Gas Licensing Regulation (Government Gazette B '464/2010) which was replaced in 2018 by the above Regulation, submitted to RAE its application for the amendment of its License

for the Management of the Independent Natural Gas System regarding the extension of its commercial operation from the first quarter of 2019 to 2020 and the change in its ownership i.e. its shareholder Fluxus Europe BV changed to Fluxus Europe BVBA/SRPL and Axpo Trading AG changed to Axpo Solutions AG. At the moment, TAP's shareholders are: AzTAP GmbH holding 20%, BP Gas Marketing Ltd holding 20%, Statoil Holding Netherlands B.V. holding 20%, Fluxys Europe BVBA/SRPL holding 19%, Enagás Internacional S.L.U. holding 16% and Axpo Solutions AG holding 5%.

Installation License of the Greek-Bulgarian Gas Pipeline (IGB)

by Paraskevi Res (Athens)



On 7 February 2019, the Minister of Environment and Energy issued decision n. 11425/289, granting license to the company ICGB AD for the Installation of the Greek and Bulgarian natural gas pipeline (IGB), which was published in the OJ B' 490/19.02.2019. ICGB AD is a company incorporated in 2011 under the Bulgarian law with headquarters in Sofia. The shareholders of ICGB AD are the company Bulgarian Energy Holding EAD (holding a 50% stake) and the company IGI Poseidon SA (holding the rest 50%). IGI Poseidon SA is a company equally controlled by the Greek Public Gas Corporation (DEPA) and by the Italian company EDISON. According to the decision, ICGB AD is authorized to install within the following five years and complete the IGB project in the Regional Unit of Rodopi of the Region of Eastern

Macedonia-Thrace, according to the submitted plans, installation and safety studies and budget. ICGB AD undertook according to the decision to implement during the construction procedure the necessary security measures for the life and health of workers or of the citizens of the areas close to the natural gas pipeline.

The license granted to ICGB AD is a step forward in order for the IGB project to be completed following the previously issued decision on the installation and route in Greece and the corresponding Construction License issued in Bulgaria in 2017. The decision for the installation license is a prerequisite for the commencement of the construction works of the pipeline in Greece and is granted after all the necessary licenses for the construction of the Metering Station in Komotini were granted. The License for the Independent Natural Gas System (INS), which is expected to be issued by the Greek Regulatory Authority for Energy (RAE) in the second quarter of 2019, is the last licensing step prior to the start of the construction works of the pipeline.

RES

First Joint Wind and Solar competitive Tender Procedures in April/May 2019

by Nikoleta Nikolaou (Athens)

On 28 February 2019, RAE launched the invitation for participation in this first joint solar / wind competitive procedure by issuing Decision 230/2019 (OJ B' 656/2019) and offering state aid for 600 MW (400 MW were planned for 2018 and 1/2 of the quantities for 2019). In other words, solar and wind RES producers will in April/May 2019 compete for the first time for the operating state aid and place in the Greek Energy Market in a joint competitive tender procedure organized by the Greek Energy Regulatory Authority (RAE). This is the first tender in which participate as investors both in wind and photovoltaic parks. This auction addresses to large units designed in the Renewable Energy Sector. More specifically, this competitive procedure is open for participation to individuals and legal persons who at the time of submission of their Application for Participation are owners of: a. Wind farms with maximum production capacity above 50 MW; b. PV units with installed capacity above 20 MW; c. PV units which have been included either in Fast-Track Authorization Procedure of article 9 Law 3775/2009 (OJ A' 122) or in Procedures of Strategic Investment of Law 3894/2010 (OJ A' 204) with implemented capacity above 20 MW; d. Groups of at least 2 wind farms which have a joint connection point to the System/ Network with maximum production capacity above 50 MW; e. Groups of at least 2 PV units with a joint connection point to the System/Network with installed capacity above 20 MW; f. Groups of at least 1 wind and 1 PV unit with joint connection point to the System/Network with maximum production capacity above 50 MW; and g. PV units which have been included by the same decision either in Fast-Track Authorization Procedure or in Procedures of Strategic investments, as mentioned above, with total installed capacity above 20 MW. The competitive procedure will have two steps: A' during which the participants will submit the application and other necessary documents and register at the electronic platform. The deadline for submission of the applications is 21 March 2019; and B' with the 15 April 2019 on-line auction and the subsequent announcement of the results.

Law 4602/2019 on Geothermal Energy

by *Andriani Kantilieraki (Athens)*

On 9 March 2019, law n. 4602/2019 concerning the utilisation of Greece's geothermal dynamics and the establishment of the Hellenic Agency for Geothermal and Metallurgic Research, was published in the OJ A' 45/2019. The main goal of the new provisions is the establishment of a legal framework for the efficient utilisation of the geothermal potential of Greece, i.e. the research, exploration, exploitation and management of geothermal energy as a renewable source.

According to the provisions of the law, the rights of research and exploitation of the geothermal energy belong to the Hellenic Republic and are to be exercised by the Ministry of Environment and Energy, whereas the aforementioned rights may be granted as a concession (leased) via a tender procedure. The participants will have to submit their offers and will be assessed according to their experience and their ability to meet the undertaken obligations. The right to research may be leased for a maximum period of 7 years, while the right of exploitation for a maximum period of 50 years. Meanwhile, in the case of discovery of a geothermal field, the researcher is given the right to submit (within 3 months) a study for the exploitation of the field, in which case the relevant right is also leased unless the study is deemed to be insufficient or inadequate.

The law further provides for the rights and obligations of the lessee. In more detail, according to article 8, the lessee is obliged to fully comply with the research schemes, pay an annual rate for the exploitation and provide the lesser with all the necessary information and documents required. Moreover, article 9 provides for the legal remedies in cases of dispute, whereas article 10 underlines that the lessee is prohibited from further assigning such right, without the approval of the competent authority. Finally, it should be mentioned that all matters concerning the framework of geothermal related work, insurance and health issues will be regulated by a Ministerial Decision of the Minister of Environment and Energy.

Amendments to the RES Support Scheme

by *Mira Todorovic Symeonides (Athens)*

The law 4602/2019 (OJ A'45/2019) introduces amendments to the RES support scheme particularly in regards to a) the Feed in Tariff (FiT) for the electricity produced by small solar production units; and b) the phenomena of obtaining operational state aid in the form of FiT by avoiding to participate in competitive procedures by way of splitting of the projects into two or more plants, thus reducing their total capacity below the threshold for compulsory participation in competitive procedures.

The FiT for small PV below 500 kW, which were until now the only category of PV plants to receive FiT without participation in competitive procedures, is starting from 01.01.2020 not calculated in relation to the Margin Market Price on the Day Ahead Electricity Market and shall be equal to the average price of the three consecutive competitive procedures for PV held previous to the one before the respective application, increased for 5%. PV units of Energy communities with capacity up to or equal to 1 MW as well as PV with capacity up to 500 kW held by professional farmers are added to this category. Their FiT will be equal to the average price of the three consecutive competitive procedures for PV (of the same category of PV or if such were not organised than of the PV which have been organised) held previous to the one before the respective application, increased for 10%.

With the exception of small PV plants described above, any individual or legal person directly or indirectly through participation in the management or as a shareholder or a partner in a legal entity (any percentage of participation) may not conclude agreements on operational state aid without participation in competitive procedures for more than 2 plants of the same technology if the respective competitive procedures are organised for these technologies. RAE and other authorities shall closely monitor the application of this prohibition and shall undertake the respective measures. For example RAE, when granting production license for such plant (exceeding two plants) with the capacity generally exempted from participation in competitive procedures shall grant the production license containing the term that the operational aid for such project may be obtained only through participation in competitive procedures.

Energy Efficiency

Law n. 4602/2019 on Energy Efficiency in Buildings

by *Anastasia Bolari (Athens)*

Law n. 4602/2019, published in the OJ A' 45/09.03.2019, introduced new provisions on the energy efficiency in buildings. In more detail, as of 1 January 2021, all new buildings should be of nearly zero energy consumption whereas public buildings will have to comply with the relevant provisions as of 1 January 2019. In addition, the law provides that as of 1 January 2020, in order to acquire a building permit, there is a necessary prerequisite of submission before the competent structural policy authority of an energy efficiency study of the building, certifying the compliance of the building with the requirements of nearly zero energy consumption. Finally, the law provides that an Energy Manager will be appointed to all the public buildings, whereas the appointment process and the tasks of the Energy Managers will be specified by virtue of a ministerial decision by the Minister of Environment and Energy.

Environment

Amendments to Enhance Cost-effective Emission Reductions and Low-carbon Investments

by Mira Todorovic Symeonides (Athens)

On 13 February 2019, the Joint Ministerial Decision of the Minister of Finance and Development, Minister of Environment and Energy and Minister of Infrastructure and Transportation, no. 425/2019 harmonising Greek legislation with the Directive 2018/410/EU with aim to enhance cost-effective emission reductions and low-carbon investments, was published in the OJ B' 390/2019. This aforementioned Decision amends Decision 21906/2014 regulating indirect emission costs and Decision 965/2017 regulating the System for greenhouse gas emission allowance trading (ETS). The main amendments are that the authority in charge of granting the support will now be the Operator of RES and Guarantees of Origin (former Market Operator LAGIE), who will hold an account for granting of the support to which up to 25% of annual income from the emission allowances auctions will be collected. Details will be specified by a ministerial decision. In case the above amount exceeds 25%, the Ministry for Environment and Energy will be obliged to prepare and publish a report providing respective details, including the prices of electricity paid by energy intensive consumers that benefit from this support as well as about the measures undertaken in regard to sustainable reduction of the indirect cost of carbon-dioxide emissions in middle and long term planning.

ROMANIA

Competition & State Aid

Infringement Proceedings regarding Energy Efficiency in Buildings

by Madalina Carmen Ion (Bucharest)

On 24 January 2019, the Commission decided to open EU infringement proceedings against Croatia and Romania as both Member States have failed to submit progress reports in reaching cost-optimal levels of minimum energy performance requirements for buildings and its elements. None of these Member States reported on the progress made in achieving cost-optimal levels of minimum energy performance requirements for buildings and their components. If the countries still fail to comply, the Commission may decide to refer the matter to the Court of Justice.

Directive 2010/31/EU this Directive promotes the improvement of the energy performance of buildings within the EU, taking into account outdoor climate and local conditions, as well as indoor climate requirements and cost-effectiveness. In order to follow the directive, Member States should establish and apply minimum energy performance requirements for all buildings. Moreover, Member States should ensure the certification of buildings' energy performance and insure the regular inspection of heating and air conditioning systems. The Directive sets out that by 2021 the Member States will have to secure that all new buildings are so-called nearly zero-energy buildings. When setting requirements, Member States may differentiate between new and existing buildings and between different categories of buildings. They should undertake the necessary measures to ensure that minimum energy performance requirements are set for building elements that form part of the building envelope and that have a significant impact on the energy performance of the building envelope when they are replaced or retrofitted, with a view to achieving cost-optimal levels. Member States shall take the necessary measures to ensure that minimum energy performance requirements are set for building elements that form part of the building envelope and that has a significant impact on the energy performance of the building envelope when they are replaced or retrofitted, with a view to achieving cost-optimal levels.

Investigation against a Gas Distributor Suspected of Abuse of Dominance (Delgaz Grid)

by Madalina Carmen Ion (Bucharest)

In January 2019, the Romanian Competition Council opened an investigation into the possible abuse of a dominant position of Delgaz Grid SA, a member of the E. ON Romania Group, manifested by a differential treatment applied to operators authorized to carry out verifications and technical revisions of natural gas installations. A regulation issued by the National Regulatory Authority for Energy (ANRE) sets out the obligation for the natural gas distributors to develop a database of the technical revisions of the installation. This revision has to be made by an authorized economic operator. ANRE authorize the economic operators who perform the technical revision and then the end customer selects one of them. The technical revision is carried out under competitive conditions.

Delgaz Grid holds a distribution license on a geographical market, holding a dominant position on that zone. Delgaz Grid distributor is questioned by the competition authority of a preferential treatment granted to another company within the E. ON Romania group

that may have as impact for end-users increasing the cost by lessening their possibility to choose the companies authorized to carry out checks and technical revisions of natural gas installations. Within this investigation, the Competition Council carried out unannounced inspections at the headquarters of Delgaz Grid SA and at the working points in Iasi. The documents gathered are under the analysis of the competition authority. Unannounced inspections were also carried out at the headquarters of other companies not targeted by the investigation in order to obtain evidence of a possible violation of the Competition Law. Unannounced inspections do not represent a prior decision of the Competition Council regarding the existence of a violation of the Competition Law, but represent only a preliminary stage of the investigation procedure. Unannounced inspections are authorized by the Bucharest Court of Appeal and are justified by the necessity to obtain all the information and documents necessary to clarify a possible anticompetitive practice. If the Competition Council finds infringement of the competition rules, Delgaz Grid is liable to a fine of up to 10% of its turnover. The competition authority is also conducting several investigations on possible abuse of dominant position in areas related to gas distribution by Distrigaz Sud Retele SRL, Gaz Sud and SC Megaconstruct SRL.

SERBIA

Oil & Gas

Secretariat Issues Opinion regarding Gastrans Pipeline Project Requesting Additional Conditions

by Aleksandar Mladenovic (Belgrade)

On 1 February 2019, the Energy Community Secretariat issued an opinion concerning the Gastrans pipeline project to be built in Serbia as the downstream extension of a new pipeline which is expected to connect with the TurkStream project. On 1 October 2018 Gastrans had applied for and received by the Energy Regulatory Authority of Serbia (AERS), an exemption from three core principles of the Third Energy Package concerning the unbundling, third party access and tariff regulation.

In its opinion the Secretariat concluded that a new pipeline entering Serbia from the south will improve security of supply by diversifying supply routes. However the Secretariat is also of the opinion that the project may also entrench and perpetuate the dominance of Gazprom and Srbijagas due to which reason the Secretariat did not confirm exemption granted by the AERS to Gastrans and requested that any exemption in this regards should be conditioned on the possibility for new market entrants to access a significant share of the pipeline capacity via auctions; also a certain amount gas would have to be offered to third countries on the by the incumbents, which condition does not seem contestable. In addition, further measures should be put in place by AERS in order to create a more liquid and transparent market by offering non-discriminatory access and trading possibilities for all market participants.

Resolution on TPA Exemption of New Natural Gas Interconnector

by Mirjana Mladenovic (Belgrade)

On 5 March 2019, the Council of the Energy Agency of the Republic of Serbia (AERS) adopted the final Resolution on the Exemption of the New Natural Gas Interconnector (Resolution). By the Resolution AERS approved the exemption to Gastrans d.o.o. Novi Sad (Gastrans) from the rules on third party access (TPA) on a future gas pipeline which will be constructed through the Republic of Serbia and which will be connected to the Bulgarian and Hungarian national transmission systems. AERS issued the Resolution taking in the account, to the maximum extent possible, the Opinion of the Secretariat of the Energy Community delivered to AERS on 5 February 2019.

In accordance with the Resolution, Gastrans is obliged to adopt, among other, the following documents: a) act on the conditions for appointing the person in charge of monitoring the Program, with the consent of the Agency; b) Model of an agreement for the transport of natural gas, c) Non-discriminatory behaviour program.






Additionally, on 8 March 2019, AERS gave its consent to the company's acts adopted by Gastrans in accordance with the Resolution. Adoption of such acts represents a condition that must be fulfilled prior to implementation of the binding phase of the long-term capacity allocation of this interconnector. Namely, AERS gave the consent to the following documents: a) Model of an agreement for the transport of natural gas, b) Tariff methodology for tariff calculation for natural gas transportation services; c) Non-discriminatory behaviour program; d) Decision on determination of the conditions for appointing persons in charge of monitoring the Non-Discriminatory Behaviour Program, and 5) prior consent to the appointment of the persons in charge of monitoring the Program. AERS also confirmed that the accompanying documentation which is necessary for the adequate implementation of the binding phase of capacity allocation and the acquaintance of the bidders with the rules of this procedure is also in line with the requirements determined by the Decision on Capacity Allocation and Capacity Management Mechanisms.

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