

# The Electricity Market in the EU and the Main Features of Legislation

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*Abstract:* The article presents the most important regulatory provisions, which control the energy sector in the Republic of Slovenia, the operation of the Slovene energy regulator and the authorised organisations for monitoring the electrical power market. As the Republic of Slovenia has adopted the *acquis communautaire*, the most important EU regulatory provisions which are directly applied are also dealt with.

*Key words:* energy market, Energy Agency, electrical power, legislation, legal provisions.

## 1 Introduction

In the background of expectations for a completely liberalised internal electricity market, which the legislation anticipates for 2007, there is a need for further development of common goals, such as the protection of vulnerable consumers, ensuring the quality of supply, minimising detrimental environmental impacts and making new investments into infrastructure. The technical systems can not be regulated by engineers, and involving economists and lawyers is inevitably necessary here [1, 2]. The EU has contributed considerably to fulfilling the stated goals in Slovenia in the field of energy supply with its policy and aspiration through the introduction of a Single Market, where the existing *acquis communautaire* envisaging the liberalisation of the energy sector, the Energy Act [3] and regulations have fundamentally changed the course of events in the energy sector in the past few years, including the relationships between market participants, newly established institutions and ultimately also in the mentality. New approaches in the relations between consumers and suppliers have been developed, which is why success in this field will require a lot of adapting and monitoring of the energy market in Slovenia, which is the main task of the Energy Agency<sup>1</sup> of the Republic of Slovenia in

accordance with the provisions of the Energy Act<sup>2</sup>.

## 2 The competences of the Energy Agency of the Republic of Slovenia

The Energy Agency of the Republic of Slovenia (hereinafter: the Agency) carries out regulatory, development and technical tasks in the energy sector with the aim of ensuring a transparent and unbiased operation of the electricity (and natural gas) market in the interest of all participants. The Agency is bound to obtain and duly consider the opinion of the interested public in adopting general acts [5].

The Agency carries out the following tasks in the field of the electricity market:

- a) Issues general acts for execution of public powers on:
  - The methodology for the calculation of the network charges,

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the founder are executed by the government. The Energy Agency is subject to regulatory provisions which regulate public agencies, except for matters which the Energy Act regulates differently.

<sup>2</sup> Competence for the monitoring of the operation of the electricity market was entrusted to the Agency by the Energy Act of the Republic of Slovenia, which was adopted in 1999 (Official Gazette of the Republic of Slovenia No. 79/99).

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<sup>1</sup> The Energy Agency is a public agency [4]. The rights of

- The methodology for fixing the network charges and criteria for the establishment of eligible costs and the system of calculating these costs,
  - The methodology for the drafting of tariff systems,
  - The method of determining the share of individual production sources and the method of their presentation;
- b) Gives its consent to:
- Rules on assigning interconnection capacities,
  - Operating system instructions,
  - General terms for supply of electricity from the transmission and distribution networks,
  - The tariff system for the supply of electricity for tariff consumers,
  - Rules for implementing the compensatory market for electricity,
- c) Determines:
- The network charge for the use of electricity networks,
  - Eligible costs and other elements of the network charges for the use of the electricity network;
- d) Decides on:
- Issuing and withdrawing of licences for performance of power supply activities [6],
  - Disputes which arise due to:
    - Access to networks,
    - Calculated prices for the use of networks,
    - Asserted violations of general supply terms and conditions and system operation instructions,
    - Established deviations and sums for settling of costs of balancing deviations and violations of general acts which regulate the deviations and their balancing, appeals against decisions on consensus for connection (dispute between the network user and the system operator);
- e) Assesses:
- The eligibility of costs of performing system operator services according to the criteria used to assess costs of the network operator, if the latter leases, rents or otherwise acquires the right to operate, manage and develop the network, part of the network or sites linked into a network and required for the operation thereof. The Agency assesses the eligibility of costs of the owner of the states sites according to the same eligibility criteria as those applied for the assessment of the operator's costs,
- Irregularities in the operation of the electricity market;
- f) Monitors:
- The operation of the electricity market,
  - The independence of system operators<sup>3</sup>,
  - The time required to repair mobile and distribution networks,
  - The time required to connect to a network,
  - The publication of information on interconnections, network utility and capacity allocation, whereby the data is treated as confidential,
  - Deadlines, terms and tariffs for connection of new producers,
  - Effective separation of distribution and transfer from productions and supply and
  - The level of transparency and level of competitiveness of the electricity market;
- g) Issues:
- Certificates on the origin of electrical power,
  - Marketable green certificates for the production of electrical power from renewable resources<sup>4</sup>.
- The Agency also carries out other tasks in the field

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<sup>3</sup> The system operator may deny access to the transmission network due to technical or operating restrictions in the transmission network.

In deciding on access to the transmission network, the system operator thereof must consider the evident and non-discriminatory criteria, such as the consecutive order of received requests for access to the network, proportional reduction of access to all users requesting access, public auction etc. These criteria, which may be different for individual parts of the network, are determined by the system operator in agreement with the Agency.

Irrespective of the above stated facts, the system operator of the transmission network may deny access to the transmission network, if this should in any way disable or hinder the supply to consumers in the Republic of Slovenia [7].

The system operators of the distribution network must conclude an annual agreement with the system operator of the transmission network on access thereto for the coming calendar year no later than the 30<sup>th</sup> of November of the current calendar year, on the basis of which the system operator of the distribution network enforces its access to the transmission network for eligible consumers and producers connected to the distribution network.

The Agency determination on the basis of the agreement regarding access to the transmission network is binding on all parties.

<sup>4</sup> The Agency exercises similar powers in the natural gas sector as well, although this article does not deal with the latter.

of power supply:

- Cooperates with the competent authorities and inspectorates,
- Drafts annual reports, reports to the EU Commission and other reports, which are submitted to the government and the ministry competent for power supply, as well as providing public information,
- Performs tasks provided for by the Energy Act and the Decision on the Establishment of the Energy Agency of the Republic of Slovenia [4], cooperates in bipartite talks and with international organisations in the field of monitoring the electricity market.

Due to the performance of mandatory public services, which are provided for the energy subjects by the relevant laws, the Agency is also obliged to monitor parameters, which take into account the quality of the supplied power, standard services and the protection of consumers of electrical power.

### **3 The Competence of Energy agency in resolving the disputes**

The Agency decides over disputes at the first and second instance. The Agency decides in individual matters on the basis of expert opinion and the work of authorised decision-makers. The Agency also decides in administrative procedures when the Energy Act does not determine otherwise. The Agency ensures all subjects on the market an unbiased resolution of disputes.

The Agency decides over disputes on the basis of provisions included in Articles 84, 87 and 88 of the Energy Act and relevant regulations.

Approval or rejection of applications for connection to the energy network is issued by the system operator with a decision in an administrative procedure. The Agency decides on appeals to the respective decision at the second instance and on the basis of paragraph five of Article 71 and paragraph two of Article 88 of the Energy Act.

#### **3.1 The decisions at the first instance**

At the first instance, the Agency decides in administrative procedures according to the provisions included in the General Administrative Procedure Act, when the Energy Act does not determine otherwise, namely in disputes between the users of the network or rather interested parties (beneficiaries) and system operators or market organisers in individual matters, which arise due to:

- Access to networks,
- Calculated prices for the use of networks,
- Claimed violations of general terms of supply and system operation instructions,
- Established deviations and sums for the settlement of balancing out imbalances, including violations of general acts which regulate deviations and their balancing.

#### **3.2 Appeal against the decision of the Agency**

In deciding over appeals against Agency decisions, an appeal is permitted, namely filed with the Ministry of Economy, which is submitted directly and either in writing, by post or given orally for the record within 15 days upon receipt of the decision at the Energy Agency of the Republic of Slovenia, Maribor.

The relevant ministry may nullify the decision, but may not change it or replace it with its own decision. An appeal against an Agency decision does not suspend its execution.

The Energy Agency performs administrative execution of its decisions.

#### **3.3 The decisions at the second instance**

Issuing an approval or rejecting a request for connection to the energy network is decided upon by the system operator in an administrative procedure. The Agency decides on the appeal against the decision on consent at the second instance on the basis of Article 71, para. 5 and Article 88 para.2 of the Energy Act.

The deadline for submission of an appeal is fifteen days from receipt of a decision by the system operator. The appeal is filed with the system operator which issued the decision at the first instance.

Submitted appeals are subject to stamp duty in accordance with the Administrative Fees Act [8]. If the appeal is filed directly with the Agency, the latter forwards it to the system operator, who assesses whether the appeal is valid and timely and whether it has been filed by a legitimate claimant.

When the stated pre-requisites are not met, the system operator rejects the appeal with a decision.

If the system operator judges that the appeal is valid, the matter is settled differently and a new decision challenges the previous one.

If the system operator does not replace the challenged decision with the new one, the operator is required to file an appeal within fifteen days upon receipt thereof with the Agency, which deliberates

over the decision. An appeal must be supplemented with all records relating to the matter, with the documents in the appropriate order. An appeal against a decision on consent for connection to the network is decided upon by the Agency in an administrative procedure.

The Agency may:

- Dismiss an appeal,
- Reject an appeal,
- Fully or partially annul the challenged decision,
- Change the challenged decision or
- Render the challenged decision void.

#### 4 Alternative resolution of disputes

The Agency may intervene in disputes which are not provided for by the Energy Act, if both parties involved in the dispute give their consent. The role of the Agency is limited to mediation in achieving consensus between the disputing parties. Any party may withdraw from such a process at any given time. If the disputing parties reach a consensus, such an agreement between the said parties is binding. Such resolution of disputes obviously does not exclude judicial proceedings, although alternative resolution of disputes is the best and fastest way to a mutual resolution of disputes. Judicial proceedings generally represent an inconvenience for all parties involved due to the lengthy process involved.

Alternative resolution of disputes is generally categorised into three types.

#### 5 Conclusion

Disputes between contracting parties are a common integral part of company operations, which also frequently occur between participants in the electricity power market [9]. However, for the manner of achieving a speedy resolution of a dispute, entailing minimum costs, and of course finding a solution to suit both disputing parties, we suggest mediation as an alternative form of dispute resolution, as it represents one of the most efficient methods of dispute resolution in most cases. It is a quick process, much cheaper than classical judicial proceedings. It allows, above all, for both parties in the dispute to present their case and find a solution acceptable to both parties.

Key elements of mediation as a form of dispute resolution are as follows:

- The presence of an impartial third party,
- Adoption of a mutually beneficial solution,

- Confidentiality of proceedings,
- Confrontation of the views and interests of both parties in the procedure, which gives them considerably greater power than in the case of classical judicial proceedings.

When considering the term »dispute resolution« most people often think of court proceedings, especially in cases of legal actions which emanate from various business and similar relationships, and sometimes also disputes involving the state or another public body. It is worth mentioning that legal action is not the only possibility »disputing« parties have in such circumstances. There is, moreover, a whole range of other, less formal procedures, which can perhaps help us avoid legal action altogether, saving both sides a lot of time, money and inconvenience.

This range of procedures is commonly characterised by the acronym ADR (*alternative dispute resolution*), and is no novelty in the contemporary legal system. However, we can safely assume that the application of such procedures is not as common in our country as it should be. Legal setbacks, which have long been a major problem of the Slovene legal system (they have been a burning issue lately due to the case before the European Court of Human Rights), are to a certain extent a consequence of insufficient application of out-of-court dispute resolution.

Using alternative dispute resolution not only benefits the courts but in particular the disputing parties. As the dispute is not brought before a court, this eliminates legal costs and costs of representation before the court. Furthermore, there is also the added value of not having to disclose private information to the public, as disputes can be resolved before a much smaller »forum« behind closed doors, while at the same time they may determine the manner of resolving the dispute themselves, as they are not bound by rules of procedure and evidence, which are characteristic for judicial proceedings.

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