

Basic organizational structure of the regulatory agency (ERO)

Composition of regulatory board or Commission

The President of the Energy Regulatory Office is the regulatory authority responsible for implementation and supervision of the energy market liberalization process in Poland. In performing the regulatory tasks he is supported by the Energy Regulatory Office (ERO). The ERO consists of seven units (departments and bureaus) and nine regional branches.

The President of the ERO is Leszek Juchniewicz (P.hd.) performing his function since the very beginning of this office, i.e. since 23 June 1997 (appointed to a second term of office by the Prime Minister on 23 June 2002).

Main statutory objectives

The regulatory framework for liquid and gaseous fuels, electricity and heat as well as development of competition in the energy sector is defined in the Energy Law Act of April 10, 1997.

The President of the ERO acting in accordance with the provisions of the Energy Law regulates activities of energy undertakings and promotes competition on the energy market.

The scope of responsibilities and competences of the President of the ERO covers in particular:

- 1) organization and conducting tendering proceedings for new power generation capacities,
- 2) authorization of the operators' Grid Codes in part pertaining to balancing and congestion management of the gas and power systems,
- 3) monitoring of the gas and electricity markets including practical implementation of the third party access to the transmission and distribution systems,
- 4) designation of the gas and electricity transmission and distribution systems operators including defining the area of their operation,
- 5) issuing (or refusing to issue), amending and withdrawing licenses for generation of electricity and heat, storage of gaseous and liquid fuels, transmission and distribution of fuels, electricity and heat, trade in fuels, electricity and heat,
- 6) approval and control of tariffs for gaseous fuels, electricity and heat,
- 7) agreeing on the draft development plans aimed at meeting present and future demand for gas, electricity or heat, submitted by network undertakings,
- 8) resolving disputes related to refusal of rendering the transmission or distribution services, refusal to connect to the grid, refusal to conclude electricity, gas or heat sales contract or unjustified discontinuity of supplies,
- 9) imposing fines upon energy undertakings violating the provisions of the Energy Law or licence conditions,
- 10) monitoring of conduct of energy undertakings,
- 11) cooperation with other authorities responsible for protection of competition in order to avoid distortion of competition,
- 12) publication of information on energy effectiveness improvements.

Main enforcement powers to implement its role (e.g. issue Regulatory Decisions or Directions, Issue Licences)

The President of the ERO performing his duties defined in the Energy Law acts on the basis of the Code of Administrative Procedure. Issuance of any decision (an individual act of law addressed to a natural or legal person) is preceded by an administrative proceeding. Licences issued, tariffs approved, disputes solved or fines imposed are in a form of administrative decisions. The parties of the administrative proceeding can appeal against the decision of the President of the ERO. The appeal is submitted to the antimonopoly court (the Court for the Protection of Customers and Competition), which is a part of the civil court, via the President of the ERO. He is empowered to changing the appealed decision without transferring it to the court. The amended decision is subject to the another appeal.

The President of the ERO can monitor the energy market using the powers to control the conduct of the licensed energy undertakings. It includes the right to audit the accounts of regulated undertakings and right to request information from energy undertakings concerning their activities. The state and commercial regulations on treatment of confidential information apply.

Independence and accountability.

The President of the ERO is a central government authority. The Chairman of the Council of Ministers (the Prime Minister), upon the request of the minister responsible for economy, appoints the President of the ERO for a term of 5 years, with a possibility of renewal. The President of the ERO shall submit an annual activity report to the minister responsible for economy. He is also obliged to submit information related to his activities to the minister upon his request.

The President of the ERO may be recalled by the Prime Minister before the end of his term only in the event of illness which renders the performance of his duties permanently impossible, resignation or in case he is found guilty of a criminal offence by a final unappealable sentence of court.

Electricity market

The powers and duties of the President of the ERO make him responsible for correct functioning of the electricity market. The President of the ERO aims at securing the balance between market participants, preventing abuse of dominant market position, protecting vulnerable costumers and undertaking actions ensuring security and quality of supply.

One of the most important indicators describing the level of market liberalization is the market opening rate. In Poland it is currently close to 80%, however the actual supplier switching has been rather limited so far due to persisting barriers. The primary and most important is lack of legal unbundling of DSOs. Although the President of the ERO is authorized to settling disputes pertaining to grid access there have been few application from dissatisfied customers. , To learn more about milestones of the Polish electricity market opening see **Table 3.1.1.**

The interconnectors used for cross border electricity exchange between Poland and neighboring countries belonging to UCTE (Germany, Czech Republic and Slovakia) are permanently congested. The yearly and monthly coordinated (without Slovakian TSO) auctions for cross border transmission capacities were launched in January 2005, followed by the daily (day-ahead) auction introduced in April 2005.

The President of the ERO initiated a meeting focused on preparations to coordinated auctions for allocation of the interconnectors capacities. Representatives of Regulators from Czech Republic, Germany and Poland as well as involved TSOs were present.

Since 2002 the revenue cap regulation method has been used by the President of the ERO in the process of approval of distribution companies' tariffs. The incentive kind of regulation is assured by using the adjustment coefficients (X). describing a planned improvement of company's efficiency and change of business conditions. They are established for a fixed period of time known as the regulation period. Originally in 2002 and 2003 few companies decided to apply tariffs for a several year period. The length of the regulation period is individual for every company and varies from 3 and 5 years.

During the tariff structure elaboration process the President of the ERO monitors only its conformance with formal requirements. To some extent the tariff structure depends on the kind of the energy activity performed and results directly from the law.

Quality of electricity supplier is not monitored by the President of the ERO systematically. However he reacts to any reliable information with this respect. TSOs and DSOs are obliged to provide information to the market participants on tariffs, connection charges and conditions approved

by the President of the ERO. This obligation is met by publishing in the “Bulletin of ERO”¹. Also TSOs and DSOs spread the information by placing it at their websites, publishing in newspapers and making it available at customer service offices.

The Energy Law Act amendment, in force from 3rd May 2005, strengthens the President of the ERO competences pertaining to balancing services making him responsible for approval of the balancing and congestion management rules.

Majority of the Polish power sector is state owned. The Minister of State Treasury supervises the state owned companies. During 2004 he was implementing “The Program of Implementation of the Ministry’s of Treasury Ownership Policy towards Electricity Sector” adopted by the government in 2003. The program consists of three steps: consolidation, restructuring and privatization of electricity companies.

In case of infringement of accounts unbundling rules by an undertaking the President of the ERO is empowered not to approve its tariff. Moreover, if a company does not comply with accounts unbundling requirements the President of the ERO can impose a financial fine on it and/or on its’ management. To learn more about restructuring process see **Table 3.1.4**.

The structure of Polish electricity market is very specific. Although no single producer (even after consolidation) has a dominant position the competitive market mechanisms do not function properly.. The level of consumption of electricity is lower than available generation but the competition among producers is limited because of existence of long term contracts covering 44,5% of electricity sold in 2004.

The wholesale trade. The data on wholesale electricity market are presented in **Table 3.2.1**. The growth of the HHI indicator in 2004 is due to creation of a holding structure of three major electricity producers. The surplus of generation capacity in terms of peak demand still observed in 2004 can be subject to rapid change after Poland starts fulfilling new limits of gas’ emissions obligations in 2008. In 2004 a change of power producers’ behavior was observed. They began searching for new opportunities to profit from electricity sold. It resulted in a significant increase (by 20% as compared to 2003) of direct purchases of the trading companies from producers.

The role of the Power Exchange (PEX) on the Polish market is limited – only 1,5% of total volume of electricity was bought at the PEX.

The important part of electricity market are ancillary services supplied by the condensation power plants.

It was not possible to calculate a price correlation factor of the Polish electricity market with the of neighboring countries’ markets because of the structural differences and lack of data.

The retail trade. Currently the undertakings performing the tasks of DSOs are also main electricity suppliers. The Energy Law provides for the 1 of July 2007 deadline of DSO legal unbundling. There are 386 licensed suppliers in Poland but only 20 carried out the trading business actively in 2004. The relatively small number of active suppliers contributes to low number of switching customers. The switching process was still not straightforward due to barriers raised by the incumbents. The following ones are worth mentioning:

- lack of legal and functional unbundling of network activities from trade in electricity,
- high cost of modernization of metering-settlement systems, data transmission links and the IT system supporting market operations,
- unfavorable rules of consumption planning, scheduling and settlement of imbalances imposed by the incumbents (who act are balance responsible parties),
- lack of real-time pricing and price competition on the wholesale market,

¹ „Bulletin of ERO” is available at EROs’ website: www.ure.gov.pl

- non-energy related reasons like bad financial situation of the substantial part of eligible customers (for example lack of financial liquidity).

Measures to avoid abuses of dominance.

Main information related to operating rules on electricity market is published on the websites of TSO and distribution companies (for example Grid Codes). Proper treatment of market participants is also ensured by the provision of the Energy Law stipulating that the President of the ERO is responsible for approval of the balancing services and congestion management rules which are a part of the Grid Codes.

Monitoring responsibilities of the market functioning are divided among the President of the ERO, the President of the Office for Competition and Consumer Protection, the Minister of Economy and Labor and the Minister of State Treasury.

Gas market

In Poland, the demand for gas is fulfilled by supplies originated in imports – about 9.3 bcm, and, to a smaller extent, by national supplies – about 4.3 bcm. At present the use of gas amounts to about 13.6 bcm per year and, it has been kept on the constant level for several years. Gas share in the primary energy supply accounts for over 12%. This is among the lowest in Europe, which is due to dominating position of coal in the Polish energy supply. Gas imports and transit take place under the umbrella of long-term take-or-pay agreements and corresponding governmental agreements between Russia and Poland. In addition, smaller volumes of gas are imported from Germany and Norway and from Central Asia via Ukraine.

Until recently the structure of Polish gas market has been highly monopolized by the Polish Oil and Gas Company which used to be a vertically integrated monopoly for imports, transmission, storage and distribution of natural gas. Therefore significant measures aimed at liberalization of Polish gas market were undertaken in 2003. Six local distribution companies were unbundled from the POGC holding. Moreover an independent TSO was established on 1st July 2004 but its activities were initiated as of 1st of July 2005. In the next step a Storage System Operator is expected to be unbundled from the POGC structure into a separate legal entity. So far the POGC has not been offering storage services for eligible users. They are only provided for internal use of the POGC and for specific activities of the TSO mostly related to balancing.

With respect to the supplier choice following tasks are to be imposed on the system operators: implementation of the indispensable investment undertakings related to furnishing the transmission and distribution networks with metering equipment availing of the expertise of other branches, working out the grid code, development of the uniform telemetric and IT standards for efficient data transmission binding for the market participants, and implementation of the procedures enabling benefiting from the supplier switching, upgrading the national gas network and cross-border interconnections to the extent needed, especially with the EU Member States. The system of the market information exchange will be built, to ensure the reliable flow of information allowing for predicting the further market trends as well as monitoring of the security of gas supplies. Within this system, a user-addressed sub-system will be created to inform users about its functioning and of their rights.. Further gradual elimination of subsidizing provided for within the tariffs approval procedures will come next.

Also, it is planned to sell shares of POGC via a public offer on the Warsaw Stock Exchange. One of the objectives of this partial privatization of the company is improvement of its investment plans regarding the gas fields exploration.

Security of supply

The dominant contribution of coal in the Polish domestic balance of fuel maintains security of energy supply at a high and stable level (see **Table 5.1.c**). This situation contributes to the competitiveness of the Polish economy, especially when the recent rapid growth of oil and gas prices in the World is taken into account; even if a need for new investments in environmental friendly coal usage technologies accrues.

The security of electricity supply to the end users is at a good level. Nevertheless, the condition of the electricity network, especially distribution grid in the rural areas, is somewhat poor and requires improvements. Furthermore, an additional factor that may contribute to the decline in the level of electricity supply security and may force building new generation capacities at the same time, is the obligation to fulfill the ecological requirements posed by the EU's legislation and the writ of Accession Treaty. It particularly applies to 2008-2016 period. Meeting this regulations will require resignation operation of several units that do not fulfill the appropriate standards. In that context, the replacement and construction of new generation capacities that use very efficient coal combustion technologies becomes necessary. In comparison with other European countries, security of gas supply in Poland is at a good level (see **Table 5.2**). This results from, first of all, relatively high share of domestic production relative to the imports and existing underground gas storage facilities. Gas supplies that come from the domestic extraction cover, in principle, total household demand for this energy source. Furthermore, ensuring the security of supply during the peak demand periods is possible thanks to usage of storage installations and so-called strategic reserves. Increase of natural gas imports from Germany is also viable; for instance by reverse supplies through Jamal gas pipeline, it would require new investments conducted with modernization of existing pipelines though.

Public Service Issues - rights and obligations of market participants.

Amended *Energy Law* of 10 April 1997 has fully adopted measures on consumer protection, indicated in Annex A to Directives: 2003/54/WE and 2003/55/WE. This legal act does not contain a definition of vulnerable consumers. Consequently, the President of the ERO resolving each individual dispute, takes into account all legal and actual circumstances, with a view to balancing interests of customers and energy undertakings.

Consumer protection is mainly accomplished by application of legal instruments indicated in *Energy Law*, as well as by applying, in a subsidiary manner, protection mechanisms explicitly indicated by *Act of 15 December 2000 on Competition and Consumer Protection*.

Relating to the protection of the consumers of electricity, heat and fuels the *Energy Law* in detailed manner determines *inter alia* conditions justifying disconnections of gaseous fuels, electricity and/or heat supplies. Moreover, the *Energy Law* introduces provisions which guarantee proper functioning of gas, electricity and heat systems and take into consideration safety and reliability of functioning of the above mentioned systems as well as the equal treatment of their users, natural environmental requirements and requirements concerning establishing and operation of the equipment installations and grid.

Under Article 23 of the above mentioned Act the President of the ERO is obliged to collect and process information relating to the energy entrepreneurs, as well as to compute and to publish no later than on 31 March every year average sale price of electricity co-generated within heat as well as to publish average sale price of electricity on competitive market.

The President of the ERO is also obliged to publish information with a view to improve energy efficiency and fuels utilisation as well as to co-operation with the relevant bodies in

counteracting monopolistic practices of energy undertakings as well as to define method of control and to take measures in order to improve energy entrepreneurs effectiveness.

The institution of the supplier of last resort implemented in accordance with the market Directives , will function in Poland from 1 July 2007.

In reference to the price regulation it should be pointed out that 100 % of gas customers pay the tariff price, as well as over 60% of large and very large industrial customers of electricity; 100% of medium industrial, commercial, small and household electricity customers . For detailed information about regulation of end users prices refer to **Table 6**.

From 1 July 2001 the President of the Energy Regulatory Office has released the energy undertakings which have licenses for production and trade in electricity from the obligation to submit tariffs for approval. In reference to the transmission charges it should be underlined that they are still the main subject of the regulation.