

Notes on the amendment of 26 July 2013 to the Energy Law Act of 10 April 1997

(from the Volume Editors)

Articles

Filip Ostrowski, **The introduction of ownership *unbundling* in the energy sector through commitments decisions of the European Commission – evaluation attempt**

Table of contents:

- I. Introduction
- II. The Energy Sector
- III. Article 9 Resolution 1/2003
- IV. The E.ON. Case
- V. The RWE Case
- VI. The ENI Case
- VII. System issues
- VIII. Conclusions

Summary: The paper covers commitment decisions issued by the European Commission and addressed to energy sector enterprises. The analysis focuses on those decisions, where the companies concerned have undertaken to conduct ownership unbundling, that is, to sale part of their assets. Three such decisions, the E.ON., the RWE and the ENI case, are discussed in detail in this paper followed by an attempt to assess the actions undertaken by the Commission in each of those cases. The individual analyses are followed by a general review of the case law of the European Commission and the jurisprudence of European Courts.

Key words: commitment decision; unbundling; structural remedies; energy sector; transmission lines; vertically integrated entities.

Michał Będkowski-Kozioł, **The obligation to maintain the operability of equipment, installations and grids in order to ensure the supply of fuels or energy under Article 4 Section 1 of the Polish Energy Law Act – chosen issues**

Table of contents:

- I. Introduction
- II. Scope of Article 4 Section 1 of the Polish Energy Law Act
- III. Legal nature of Article 4 Section 1 of the Polish Energy Law Act
- IV. Limitations of the obligation under Article 4 Section 1 of the Polish Energy Law Act

Summary: The reliability and proper condition of network infrastructure is a key element of ensuring the ongoing and uninterrupted supply of fuels and electricity to customers. It also makes it possible for energy system users to benefit from a competitive energy market. With this in mind, Polish legislature imposed on those providing services consisting of the transmission and distribution of fuels and energy, as well as of gas storage and natural gas liquefaction or regasification (of liquefied

natural gas), the obligation to keep their infrastructure in good working order. This duty concerns the capability of the equipment, systems and networks to supply the specific fuels or energy in a continuous and reliable manner, while maintaining the existing quality requirements (Article 4 Section 1 of the Polish Energy Law Act). This paper attempts to analyze some of the problems related to the interpretation and application of this legal provision covering: the scope of the 'maintenance' obligation under Article 4 Section 1 of the Polish Energy Law Act, its legal nature and the delimitation of its limitations.

Key words: energy law, energy infrastructure, energy networks; obligation to maintain the operability of equipment, installations and grids in order to provide supply of fuels or energy

Filip Elzanowski, **On the legal issues surrounding the concept of an entity executing the tasks of a statutory seller**

Table of Contents:

- I. Support for the production of electricity from renewable sources - general information
- II. Formation of the contents of the obligation to purchase energy from a Renewable Energy Source
- III. Substance of the obligation to purchase energy from a RES
- IV. Subjective scope of the obligation to purchase energy from renewable sources – entity performing the tasks of the Last Resort Supplier
- V. Conclusions

Summary: The purpose of this paper is to highlight the problem of interpreting the provisions of the Polish Energy Law Act concerning the definition of the obligatory scope to acquire energy from renewable resources, when there is no statutory seller appointed, with reference to the sources directly connected to the transmission grid. The issue is presented from the historic perspective of the institution of a statutory seller and the definition of the entity that executes the tasks of the statutory seller.

Key words: renewable energy purchase obligation, last resort supplier, entity performing tasks of the last resort supplier

Adam Frąckowiak, Protection and safety of smart meter data in the context of the new Energy Law Act and the recent amendment to the existing Energy Law Act

Table of contents:

- I. Introduction
- II. Protection and safety of smart meter data in EU law
- III. Protection and safety of smart meter data in Polish law – the evolution of past legislative proposals and existing law
- IV. Views on the latest amendment to the Energy Law Act in the context of the protection and safety of smart meter data
 1. No obligation to install smart meters
 2. Obligation to protect smart meter data pursuant to the Act on the Protection of Personal Data

- V. Need to amend the current Polish legal framework concerning the protection and safety of smart meter data
1. Are the provisions of the Act on the Protection of Personal Data sufficient?
 2. Forthcoming changes to EU personal data protection law
 3. Need to amend current Polish law

VI. Conclusions

Summary: The paper analyses whether there is a need for the creation of a comprehensive legal framework for the protection and safety of smart meter data in Poland. Assessed in this context are EU legislation and non-binding recommendations as well as existing Polish legal provisions, recent amendments to the Energy Law Act and the new Energy Law Act. A need is indicated in conclusion for the introduction of a comprehensive legal framework for the protection and safety of smart meter data in Polish law, which would need to be in line with relevant EU recommendations.

Key words: meter data, personal data, smart meters, smart grids, meter data protection, meter data safety.

Aleksander Stawicki, Wojciech Kulczyk, **Legal certainty of provisions, the breach of which may result in the imposition of fines on entrepreneurs – comments based on the judgment of the Polish Supreme Court of 6 October 2011 in case no. III SK 18/11**

Table of contents:

- I. Judgment of the Supreme Court of 6 October 2011 in case no. III SK 18/11 – need for a precise definition of a prohibited act
- II. Nature of penalties and procedural standards
- III. *Nullum crimen sine lege, nulla poena sine lege* vs. legal certainty of a prohibited act
- IV. Conclusions

Summary: This article is a voice in the debate on the legal certainty of provisions, the breach of which may result in the imposition of fines on entrepreneurs. The starting point for this discussion is the judgment of the Polish Supreme Court dated 6 October 2011 in case no. III SK 18/11. It was stated therein that an entrepreneur cannot be convicted based of a very general provision that basically states that any violation of the law gives rise to a fine. A legitimate question may thus arise as to whether it should also be clearly determined, at the level of substantive law, which behaviours should be considered as prohibited. That is, if procedural standards known from criminal law are to be applied in proceedings before the NCA and the NRA in the energy sector. In search of an answer, the paper refers to the study of criminal law in relation to the matter of legal certainty of prohibited acts, as well as to the jurisprudence of courts and tribunals, both Polish and European.

Key words: principle of legal certainty; procedural standards; substantive law; fine; sanctions; President of the ERO, President of the OCCP.

Janusz Lewandowski, **The impact of a new CHP in a district heating system for its effectiveness**

Table of contents:

- I. A model of an ideal district heating system
- II. The ideal model vs. the actual district heating system
- III. Conditions of market competition in heat generation in district heating systems

- IV. Profit generation in district heating systems
- V. Roles of local government on heat markets
- VI. Conclusions

Summary: The paper presents a model of an ideal district heating system, inspired by the electricity system model. With this background, the Warsaw district heating system is shown as an example. The paper considers also problems associated with the implementation of an ideal system. Particular attention is drawn to the conditions and effects of the entry of a new CHP into an existing system seeing as excess generation capacities do not decrease, but in fact increase the price of heat for consumers. Identified in the paper are also the roles and capabilities of local governments with respect to the development of district heating markets.

Key words: model of an ideal heating system, entry costs of a new CHP, the roles of local governments

Legislation and case law review

Tables of judgments of the Supreme Court, Court of Appeals in Warsaw and Competition and Consumers Protection Court in energy matters

Table of judgments of the Supreme Court (Tomasz Feliszewski, Marek Prętki, Anna Urbańczyk)

Table of judgments of the Court of Appeals in Warsaw (Tomasz Feliszewski, Marek Prętki, Anna Urbańczyk)

Table of judgments of the Competition and Consumers Protection Court (Tomasz Feliszewski, Marek Prętki, Anna Urbańczyk)

The publication of general 'connectivity conditions' to a network does not preclude the applicability of the technical and economic connectivity condition

Judgment of the Supreme Court of 11 April 2012 r., III SK 33/11 (Marek Prętki)

When is a distribution company a party in proceedings on the unjustified discontinuation of energy supplies

Judgment of the Supreme Court of 12 April 2013 r., III SK 26/12 (Anna Urbańczyk)

Asking the right questions: a few reflections about the applicability of the private investor test

Case comments to the judgment of the Court in case T-156/04 *Électricité de France/European Commission* and to the judgment of the Court of Justice in case C-124/10 P *European Commission/EDF* (Małgorzata Cyndecka)

Table of contents:

- I. Introduction
- II. Factual background of the dispute
- III. The argument of infringing Article 87 (1) EC by not applying the private investor test
- IV. Commission's answer to the argument of the necessity to apply the private investor test
- V. Judgment of the General Court and its analysis
- VI. Judgment of the Court of Justice and its analysis
- VII. Conclusions

Summary: This case annotation discusses two issues concerning the private investor test (the PIT) which have not been subject to a debate until the 2009 General Court's judgment in *Électricité*

de France vs. the European Commission judgment (EDF judgment). This was so, despite the fact that they are of key importance to the PIT, which is a legal instrument that has been applied in the field of State aid law since the 1980s. The first issue to be assessed is the necessity to make a distinction between establishing the applicability of the PIT to a given state intervention and its application to this intervention by the state. Alternatively, from the Commission's point of view, it is the examination of its application by the state with the view of establishing the compliance with the test. The second issue is the way in which the applicability of the PIT to a given state intervention should be established. Both issues were of decisive importance for a tax waiver awarded by the French state to Électricité de France in 1997. The EDF case involved not only one of the most important public undertakings in France, but also one of the most relevant actors in the European energy sector. The judgments of the General Court of 2009 and of the European Court of Justice of 2012 raised much controversy. However, the uniqueness of this case is first and foremost about opening a proper discussion on the core of the PIT – the distinction between two capacities of the state: the public authority and the entrepreneurial one and its consequences.

Keywords: private investor test, the applicability v. the application of the private investor test, State aid, a tax waiver, recapitalization of a public undertaking, Article 107(1) TFEU.

Gas power struggle – the Commission has opened proceedings against Gazprom

(Eryk Dziadykiewicz)

Reports

Practical aspects of investments in green energy

Report from a conference organised by IOZE.pl 9 and the quarterly ENERGETYKA WODNA (Hydroenergy) (Ilona Szwedziak-Brok)