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TOE's comments to the Regulation (EC) 1228/2003 Compliance Monitoring, Second Report 2008 published on 17th September 2008.

As an Association of companies trading in electricity we consider the fact of preparing a *Report on practical implementation of the Regulation (EC) 1228/2003 provisions and Congestion Management Guidelines 2006/770/EC* by ERGEG extremely valuable. With the liberalization process of the European energy market the significance of the inter-system exchanges of electricity has been rising. The importance of the commercial exchange as regards the total consumption of electric energy has been rising as well. Poland has been a country exporting electricity for years. This results from two mutually correlated factors: - the surplus of production capacities and prices generally lower than in the neighbouring countries (Germany, Czech Republic, Slovakia, Sweden). Presently, we are witnessing a dramatic change in these relations. Polish prices are more and more often the highest ones in the region and it is more and more often that we hear about the lack of production capacities, which, consequently, leads to such dramatic events as blackouts.

Surely, the development of regulations concerning the intra—system exchange both on the European and regional level must be assessed positively. Poland as a participant in the system of coordinated auctions is a beneficiary of such positive changes. Current rules theoretically provide the basis for smooth, transparent and non-discriminatory "trade on the borders". It must be emphasized that on the level of operational contacts with the participants in the market PSE-Operator is willing to cooperate and often responds positively to the proposed changes.

In spite of these positive aspects we regret to note that the policy of PSE-Operator as regards offering cross-border transmission capacities and acting within the scope of developing additional export and import opportunities has been very conservative.

Over the last 3 years commercial exchange has been gradually capped with the current year witnessing the height of this curtailment. Currently, PSE-Operator offers capacity (up to 300MW) at daily auctions only. Such situation, with the total lack of transmission capacities at yearly and monthly auctions, makes Poland an energy island condemned to self-sufficiency, and leads to the considerable decrease in trading contacts between Polish and foreign companies.

Such activities stand in contradiction to the EU policy in the scope of creating regional energy markets within the European Community. No investments in the development of new cross-border capacities or in the increase of transmission capacities of the already existing connections must also be regarded as threatening the security of the energy system.

As our experience shows, the just provisions included in the ERGEG Report and in the guidelines in practice have not been implemented by a number of TSOs, but not by all of them to the same degree.

Our attention has been specifically drawn to the situation of the compliance of some of the operators with the provisions of the Regulation (EC)1228/2003 in the scope of the management of intra-system connections capacity, while other operators have still not made some parts of connections capacity available (e.g. Slovak and Hungarian border). In case of contracts the execution of which requires the reservation of transmission capacities on several borders such situation causes unequal treatment of sellers and increases the risk related to the execution of the concluded contracts for international sale of energy.

We believe that in the consecutive reports more detailed activities of particular TSOs should be presented providing examples as regards the activities supporting the development of cross-border trade and indicating such TSOs who put obstacles in the way of its development together with their justification.

We believe that a crucial matter in a successful implementation of any regulations and guidelines of the European Commission is the behaviour of TSO.

Transmission Systems Operators must implement the adopted actions as regards the cross-border trade with full conviction, and not treat it as an area which may be minimized upon the occurrence of first problems related to balancing the system and always justify their activities with the threat to its security. As far as it is possible, technical conditions necessary for the maximization of available transmission capacities must be determined.

Operators must be convinced that the cross-border exchange constitutes a vital element in balancing the system and maintaining its security.

As participants in the European market of electricity we fully support the guidelines presented in the Report, in particular the following:

- Enabling access to the so-called commercial cross-border connections such as Polish-Swedish cable (Swepol) within the capacities offered in tenders. Its implementation will be possible when the TSOs are the owners of the connections, which not always takes place
- Strengthening the role of regulators in the process of the implementation and control of provisions concerning cross-border trade
- Detailed and precise determination of conditions for practising *countertrading* and *redispatching*.

It should support the maintenance of the system security standards and not be treated as a field for free interpretation serving the justification of the undertaken actions or their abandonment by interested parties.

Should you have any questions please do not hesitate to contact us directly.

Further information on TOE and our activity is available on our website www.toe.pl.

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