

National Report

***The President
of the Energy Regulatory Office
in Poland
2012***

July 2012

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Acronyms and Abbreviations

ACER	Agency for the Cooperation of Energy Regulators
BNetzA	<i>Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen</i> – Federal Network Agency
CNG	Compressed Natural Gas
n/d	no data
DSO	Distribution System Operator
EMA SA	Energy Market Agency SA
ENTSO-E	European Network of Transmission System Operators for electricity
ENTSO-G	European Network of Transmission System Operators for gas
ERO	Energy Regulatory Office
ERO President	The President of Energy Regulatory Office
EU	European Union
GK PGNiG SA	Polish Oil and Gas Company SA Capital Group
IRIESD	Distribution Grid Code
IRIESP	Transmission Grid Code
LNG	Liquefied Natural Gas
LT PPAs	Long Term Power Purchase Agreements
NES	National Electricity System
OGP Gaz-System SA	Operator of Gas Transmission Pipelines Gaz-System SA
PGNiG SA	Polish Oil and Gas Company SA
PSE SA	Polish Power Grid Company SA
PSE Operator SA	Polish Power Grid Operator Company SA
RES	Renewable Energy Sources
SGT EuRoPol Gaz SA	Transit Gas Pipeline System EuRoPol Gaz SA
SSO	Storage System Operator
TSO	Transmission System Operator
TPA	Third Party Access
UCTE	Union for the Co-ordination of Transmission of Electricity
UOKiK	Office of Competition and Consumer Protection

1. FOREWORD

The year 2011 was another year of changes in the Polish energy sector and further development of competition on the energy market. The Polish electricity and gas markets were largely influenced by the recent amendments to the Polish regulations, including subsequent changes to the Energy Law. In consequence in 2011, like in previous years, the President of the Energy Regulatory Office was equipped with additional prerogatives and new responsibilities in the area of regulation and promotion of competition. Whenever the Polish Regulator had insufficient power to reinforce the pro-competitive behaviour on the market, the non-administrative measures were employed. Hence, the year 2011 was marked by a number of various projects and initiatives undertaken by the President of ERO, organised independently by the Regulator or in cooperation with other institutions, social partners, academia, as well as other sector participants. The goal of these initiatives was to support the further development of the Polish energy market so it could become more secure, more competitive, non-discriminatory and transparent.

In 2011 activity of the Polish Regulator was also affected by the European Union energy policy initiatives. On 4 February 2011 the European Council decided that the EU single market should be completed by 2014. The setting of this specific and rather short term to achieve the major EU energy goal influenced the pace and direction of the activities, both at the EU, regional and national levels. Additionally, on 3 March 2011 the third energy package, yet another step towards the deregulation and integration of the European energy market, entered into force. The package provided a substantial reinforcement for the national regulatory authorities, offering them a wider range of powers and duties while introducing the obligation to guarantee the independence of national regulators. The finalisation of the ongoing process of implementation of the third energy package into the Polish national law will ensure better conditions for the further development of the energy market in Poland and its integration with other EU markets to create a common European energy market.

This year's report presents the situation on the Polish energy market in 2011, as well as the objectives and initiatives undertaken by the President of ERO to ensure the continued development of competition, deregulation and integration of the Polish gas and electricity markets. By submitting the present report the President of ERO fulfils the obligation set out in the Energy Law and European Union directives.

A handwritten signature in black ink, appearing to read "Henryk Mackay". The signature is written in a cursive, flowing style with a large initial 'H'.

2. MAIN DEVELOPMENTS IN ELECTRICITY AND NATURAL GAS MARKETS

The year 2011 marked the introduction of new EU regulations and amendments to the Polish law which significantly affected the operation of the national energy market. The section below provides a summary of main developments on the Polish electricity and gas markets, as well as the measures undertaken by the President of ERO in order to promote competition. A more detailed description of the developments over 2011 was described in following chapters.

Wholesale Market

The current structure of the power sector and the level of concentration have been influenced by the process of the horizontal, followed by the vertical concentration of the power companies owned by the State. The process is a direct effect of the implementation of the "Programme for Electric Power Sector", adopted by the Council of Ministers in 2006. The share of individual energy groups, as well as their structure, remained largely unchanged in 2011. The biggest share in the generation subsector, as was the case in the recent years, continues to be held by the capital group PGE Polska Grupa Energetyczna SA. Tauron Polska Energia SA on the other hand is the leader on the end-user supply market. Although the consolidation process has not been completed yet, it will substantially affect the potential for the further development of the competition on the wholesale market.

As vertically integrated energy groups are present on the market, the electricity generation and supply sectors are still highly concentrated. The extent of competition in the power market has been illustrated largely by the market concentration measures. The HHI index based both on the installed capacity and the volume of power fed into the network (including the amount of power delivered by the generators directly to the end-users) changed only minimally in 2011 in comparison with 2010. The level of competition on the domestic electricity generation market is also illustrated by the market share index of the three major companies, which provides a better understanding of the market power of the key utilities. This index, based on the volume of power fed into the network (including the volume of electricity delivered by the generators directly to the end-users), remained high in 2011, at 65.5% (an increase by almost 1% in comparison with 2010). The three major power generators (the ones that function in the following equity groups: PGE Polska Grupa Energetyczna SA, TAURON Polska Energia SA, EDF) operated over a half of the total installed capacity and provided almost two thirds of the overall domestic electricity generation.

Compared to previous years, 2011 saw a significant reorganisation of the wholesale power market, especially as regards the vertically integrated equity groups. The obligation to electricity generators to sell the generated electricity by power exchange, which came into effect on 9 August 2010 under Article 49a of the Energy Law, brought about the expected effects. In 2011 the power exchange became a major electricity trading platform (trading through the commodity exchange, the stock exchange and platforms for electricity trading). While in 2009 the sale on the power exchange amounted to only approx. 0.2% of the total volume of energy sold by the generators, in 2010 it came to 4.2% and reached 58.7% in 2011. Bilateral contracts accounted for less than 40% of all forms of wholesale trade, whereas in the year before this share amounted to 89.8%. The remaining part of sales was predominantly carried out through the balancing market (in order to ensure the secure operation of the NGS) and only in minimum extent was sold to foreign buyers.

In 2011 a significant change in the structure of transactions completed in the wholesale market took place, whereas until 2010 it continued to remain relatively unchanged. Up until 2010 the trading companies were key purchasers of electricity in the wholesale market, while in 2011 most of transactions were carried out on power exchange. In relation to generation companies, a major change in the structure of concluded transactions took place as a result of the recent obligation to direct generated electricity to public sale forms. The part of energy sold to trading companies decreased, for the benefit of power exchange (a decrease of 53.8% and an increase of 54.5% respectively, change for the period 2011/2010). The share of electricity sold by the generators to end users also decreased – in 2011 this group comprised less than 1% of all customers.

A change in preferences regarding the directions of purchase and sale of electricity could also be seen within trading companies. In 2011 they usually purchased electricity from other suppliers in the

sector and through the power exchange. The generation companies clearly lost in significance while until 2010 they represented the major segment that sell electricity to the trading companies (the volume of electricity purchased from generators in 2011 decreased by 65% compared to 2010). In 2011 the trading companies sold equal amounts of electricity to the end-users and other trading companies (each group of the customers had 42% share in total sale of the trading companies). In comparison, in 2010 the role of end users was much less significant.

For the Polish Power Exchange (POLPX) 2011 was another year of dynamic growth. This was mostly due to the key features of power exchange, such as: transparency of rules, easy access for all participants, search optimisation of the best power offerings, or notifications to power generators on the price expectations among customers. The biggest market within POLPX is the Commodity Derivatives Market where electricity is sold with a delivery at a fixed time in the future. The Day-Ahead Market showed also some significant growth in 2011. The two other markets operated within POLPX in 2011 – the Intra-Day Market and the Electricity Auctions, recorded a minimal significance. However, it should be noted that those two markets started trading in the latter half of 2011.

The information and data concerning POLPX have only confirmed that the power industry has been an active player on the Polish power exchange. As a result, the liquidity of the Polish electricity market significantly increased, what in turn contributed to the increasing importance of Polish energy market in the international arena. Within this context it is reasonable to mention the introduction of the market coupling mechanism on a high-voltage direct current link between Poland and Sweden (SwePol Link), with commercial transmission available as of 16 December 2010. The market coupling mechanism allows for the more effective use of the interconnectors as energy tends to flow from lower price areas to higher price areas – in Q1 2011 electricity was only transmitted from Poland to Sweden, with the trend reverting in the following months of the year. This was due to the fact that as of April 2011 the average hourly electricity prices in Sweden were lower than the prices in Poland. These changes prove the maturity of the Polish energy market and its striving for applying the rules of transparent competition. Ensuring the liquidity of the power exchange is an important contribution to building common and transparent energy market in Europe.

The wholesale gas market in Poland in 2011 continued to be a single entity segment. The wholesale gas trade defined as sale of gas to resellers was dominated by Polskie Górnictwo Naftowe i Gazownictwo SA (PGNiG SA) and most of transactions were completed exclusively within the PGNiG equity group (GK PGNiG). Gas trading companies outside the PGNiG equity group were not, in principle, involved in wholesale trade. There were four entities that purchased small amounts of natural gas for further resale; however they did not take advantage of the TPA rule. These transactions concerned Liquefied Natural Gas (LNG).

Natural gas trade in 2011 was exclusively based on bilateral contracts. The gas trading through exchange or hub, which are so common across other EU countries, did not exist in Poland. Gas prices are not differentiated according to gas utilization (direct consumption or further resale). Prices are mostly determined by the ordered capacity, considered separately for each reception point. The volume of energy purchased is not a factor which has a direct differentiating impact on the price.

In 2011 the amended Act on Stocks was adopted with the assumption that the provisions of the Act will improve the wholesale gas market operation and provide the necessary conditions for the real competition development (including gas supplies by new entities). According to amended act, if specific conditions are met, there is a possibility to maintain natural gas reserves in storage installations located outside Poland, within the territories of EU member states and EFTA countries – parties to the agreement on the European Economic Area (EEA). In addition, the maximum amount of natural gas imports was raised from 50 million cubic metres to 100 million cubic metres (over a calendar year), which enabled exemptions from the obligation to maintain natural gas reserves.

In 2011 Transmission Grid Code of the Polish section of the Yamal-Europe pipeline was approved by the President of ERO, what also contributed to the development of the competition on the Polish gas market. The grid code, submitted by OGP Gaz-System SA, entered into force on the date of its approval, i.e. on 31 August 2011. The approval of the Code enabled the Operator to provide transmission services under contracts concluded with new users of the Polish section of the Yamal pipeline. As a result, the Polish gas market acquired new participants. Additionally, the virtual reverse flow was also implemented on Polish section of Yamal pipeline, what allowed for purchasing gas from other suppliers from the west. This has significantly contributed to the diversification of gas supplies.

In addition, considering a need to introduce changes to the Polish gas market, in 2011 the President of ERO initiated the works on draft Roadmap for gas price deregulation, with the Gas

Release Programme as its integral element. The aim of the Programme is to ensure the increase in gas market liquidity.

Retail Market

Apart from the end users (both household and non-household consumers), the retail market includes also the companies that provide services and manage the distribution network (DSOs) as well as electricity suppliers (trading companies). The biggest share in electricity sales to end users in 2011 was achieved by the "incumbent" suppliers – parties to the common service agreements (agreements combining the terms of a buy-sell agreement and a distribution agreement with consumers). They act as default suppliers to household consumers who did not decide to switch to a new supplier. About 170 other suppliers represent vertically integrated industrial power companies which, in addition to sales, also provide distribution services. The total number of entities licensed to trade electricity in 2011 was about 340.

In 2011 the obligation to submit tariffs for households for the President of ERO approval was sustained in reference to default suppliers. The households are the only group of consumers in relation to which the President of ERO continues to exercise price regulation.

The market continues to show that consumers are still tied to their current suppliers, with only minimal extent of switching taking place, despite the fact that since 1 July 2007 all consumers can take advantage of TPA rule. Although still a relatively small number of consumers decided to switch suppliers, those who exercised this right in 2011 represented a group which was four times the number recorded in 2010. It is worth to underline that the switching rate for households was not only much higher than in the previous period, but it was also greater than in the group of industrial and commercial consumers. The number of household consumers who switched supplier increased tenfold compared to the end of 2010.

As regards the electricity prices, the prices offered to consumers who did not exercise the right to switch supplier showed a rising trend between Q4 2010 and Q4 2011. Compared to the period between Q4 2009 and Q4 2010 (which saw an overall decline in prices by 0.51% and did not show a clear rising tendency), in the analyzed period price increase of 4.68% was observed. The highest increase was recorded for consumers from G group (households) – by 6.49%, and the lowest one for consumers from B group – by 1.49%. Consumers who decided to switch suppliers had their price for electricity set in bilateral contracts.

Similarly to the previous years, the Polish gas market in 2011 was dominated by equity group PGNiG. The PGNiG group includes, among others, PGNiG SA company that trades natural gas, as well as six distribution system operators responsible for providing gas to households as well as industrial and commercial consumers. DSOs are also responsible for the operation, repairs and development of the pipeline infrastructure.

The high level of concentration in the Polish gas market, resulting from the dominant position of PGNiG equity group, for years has been affecting the structure of the retail market and the speed of changes within it. Approximately 96.38% of all gas sales are still carried out by PGNiG SA, remaining 3.62% is handled by several dozen other entities striving to develop and strengthen their market position. A vast majority of these companies purchased gas from PGNiG SA and sold it through their own local distribution networks. However, these entities are important to the functioning of the gas market as they are usually active in areas which are not operated by PGNiG SA. They fill the market niche by combining distribution and trading activities using their own distribution networks. In 2011 there was only one entity without its own network that provided gas supplies under the TPA rule. Furthermore, there are also other entities in the market which sell LNG without the use of gas networks.

As of 1 July 2007 all gas consumers, similarly to electricity ones, had the right to freely choose and switch their supplier. In practice, however, this right has been used to a minimal extent. Several cases of switching were recorded in 2011, which should be considered as a positive prognosis. In order to provide consumers with a real possibility of supplier switching, specific amendments were introduced to the transmission grid code in 2011. Special emphasis was put on introduction the principles governing the ordering of contractual capacity. After the approval of the Transmission Grid Code (IRiESP) by the President of ERO on 27 September 2011, DSOs were required to correct their Distribution Grid Codes

accordingly. Consequently, it is expected that the amended distribution grid codes (containing the details of the switching procedure) will be approved by the President of ERO in 2012.

Due to the lack of competition on the Polish gas market all gas prices are still subject to regulation. The most important in this context is PGNiG tariff as the company continues to supply gaseous fuels to over 90% of consumers in Poland. The PGNiG SA tariff changed once in 2011, on 15 July. Afterwards, the company requested for tariff approval by 30 September 2011, but the President of ERO extended the term until 31 December 2011. The supplier requested for the amendment of prices as of 15 November, however, the proceeding in this case was not completed by the end of 2011.

The key factor that influenced on the increasing methane gas price was the rising cost of import purchases, completed under one primary and five supplementary import agreements. This cost is equally influenced by the import prices at which the gas is purchased and the rates of exchange (USD and EUR). As a result of the approval of new PGNiG tariff the average high methane gas prices rose by approximately 8.9%, nitrogen gas GZ – 41.5 (Lw) by 7.6%, and nitrogen gas GZ – 35 (Ls) by 6.3%.

Conclusions

The changes introduced over 2010 and 2011 resulted in a significant increase in liquidity and transparency of the Polish electricity market. Substantial effects were brought about by the implementation of the obligation that required generation companies to offer specific proportion of generated electricity in public sale form. This in turn led to a significant increase in the number of transactions completed via POLPX, with the bilateral contracts losing in significance, which contributed to the transparency of the market. The market coupling mechanism introduced on SwePol Link also positively affected the market liquidity, allowing for a greater diversification of electricity supplies. As regards the retail market, the growing number of supplier switching, also among households, was observed.

Situation on the gas market is more difficult than in the electricity sector. The market is highly concentrated and continues to be subject to full regulation. However, the initiatives undertaken in 2011 by the President of ERO (also in cooperation with other stakeholders) did bring about noticeable and positive effects in 2011. In this context it is worth to mention the amendments made to the transmission grid code, which led to the introduction of more players into the Polish gas market and allowed for the import of gas from new direction. In addition, in 2011 the President of ERO initiated also other projects aimed at speeding up the deregulation of the gas market and providing additional stimuli to the wholesale market development (e.g. the Gas Release Programme). These projects have been continued in 2012.

Public Service Obligations and Consumer Protection Issues

Despite the fact that the President of ERO has limited powers related to promotion of the competition, it is one of the most important fields of Polish Regulator's activity. To promote competitive behaviour on the market, President of ERO has been employing purely administrative tools as well as persuasive measures.

As regards electricity sector, in 2011 several actions and initiatives were continued to accomplish the full deregulation of electricity market, as provided for in the "Roadmap for Price Deregulation for All Electricity Consumers. Towards Consumers Rights and Effective Competition in the Energy Sector", published in January 2008. However, there are still two conditions outstanding that require legal amendments, i.e. implementation of a "vulnerable customer" definition and mechanisms for their protection as well as establishment of the supplier of last resort mechanism. These issues should be addressed in the amended Energy Law which is currently being drafted. Concerning gas market, some significant actions oriented on introduction of the market-based instruments took place. In December 2011 the President of ERO presented to the Gas Market Deregulation Advisory Group (established by the Inter-Ministerial Team for the Implementation of "Energy Policy of Poland until 2030") a draft of the "Roadmap to Gas Market Deregulation", which spurred discussion on the future conditions of gas price deregulation. One of the prerequisites for deregulation is the implementation of the Gas Release Programme by PGNiG SA. The objectives of the Programme were developed by ERO in October 2011 on the basis of a survey completed among market participants.

Many of the initiatives undertaken by the President of ERO to promote competition should be considered as so-called soft measures which the Regulator believes to be necessary. Information activities, such as the 2011 educational campaign "Electricity is also a commodity. Decide, from whom you buy it" should also be recognized as aimed at promoting competition. The goal of that initiative was to make household consumers aware of their rights and empower them as market participants what would contribute to the further development of the competition on the market. Based on the results of social survey, 58% of the respondents are aware of their rights, with every third respondent lacking such knowledge. As a result, the Regulator has planned to launch additional initiatives in 2012, including a national educational campaign promoting energy efficiency behaviours.

In addition, in consequence of amending the ERO's statute (implemented through the Ordinance of the Minister of Economy of 7 September 2011 and effective as of 26 September 2011), the ERO's organisational unit known as the Spokesman for Fuel and Energy Consumers was liquidated. This organisational change was required under the third energy package. In its place the Information Point for Consumers were established, which meets the requirements of the third energy package in reference to a single point of contact. From its establishment on 26 September 2011, until the end of 2011 consumers raised 620 cases. The enquiries were dominated by problems related to electricity subsector (83%), the gas subsector (8%) and the heating subsector (6%). As far as the subjects of the cases are concerned, the majority of the inquiries concerned the supplier switching procedure (26%) as well as the terms and conditions of already concluded agreements (18%). A number of cases were also related to billing (12%), price issues (6%), and the metering systems (including the replacement, damage or reading – 4%).

Since 2007, when the right to change the supplier was introduced, the number of consumers who switched their supplier amounted to over 21,000 industry and commercial consumers and over 14,000 household consumers (as for the end of 2011). Compared to the previous year (7,611 and 1,340 respectively), the enormous improvement has been observed.

Infrastructure

Infrastructural investments planned by TSOs and DSOs are identified in the network development plans (with the drafts subject to agreement with the President of ERO) and are reflected in the tariffication process in electricity and gas sectors.

In 2010 the President of ERO initiated a process aimed at creating a strong framework allowing to start a new regulatory period for the electricity DSOs (unbundled on 1 July 2007) from 2011. The key precondition for this was the development of a new operating cost efficiency and cost of network losses assessment model. As a new regulatory period could not be started within the envisaged timeframe (among others due to the lack of possibility to assess DSOs efficiency performance in the regulatory period of 2008-2010), the associated works continued in 2011. In effect, a reasonable level of operating costs and a volume of network losses were determined for each DSO for a period of 2012–2015. Thereby 2012 became the first year of another four-year regulatory period. The tariff process carried out in 2011 in reference to electricity DSOs continued to be based on the weighted average cost of capital, introduced during the tariff approval process in 2010 for the period 2011–2015. As it was announced, some of the parameters used to determine the weighted average cost of capital have been amended. In 2011, working in cooperation with DSOs representatives and due to the concerns related to the interpretation and application of the new method of rewarding regulatory asset value, the method was subject to a review. The provisions which raised concerns were rephrased and circumstances affecting regulatory asset value unforeseen at the method development stage (including the application of aid funds from non repayable sources of funding) were taken into account. For the TSO, as was the case in the previous year, the tariff process carried out in 2011 was based on the cost of service regulation. As there is only one TSO in Poland, the comparative method could not be applied.

In the tariffs for gas transmission, set in 2011, the entry-exit rates were applied for the first time. The tariffs also contained the methods of charging for services offered under short-term contracts (including single-day contracts), the terms of offering the service and charging for interrupted transmission services, as well as the methods of charging for the reverse gas flow. 2011 was the first year when a multi-year regulatory model was applied in the tariffication process of gas distribution companies. The model will be in force over the next three full tariff years, starting on 15 July 2011,

until 30 June 2014. Under the extended regulatory period the following aspects were agreed upon: the methodology of calculating the weighted average cost of capital employed in the distribution business (WACC), individual paths leading to the full reward of the regulatory asset value (RAV), the baseline for operating costs dependent on the companies (the so-called OPEX₀), which is a basis for determining these costs for the next years of the regulatory period. Moreover individual factors leading to the improvement of cost performance over the following years of the regulatory period and the sector efficiency factors were determined.

The key source of information on the planned investments are the network development plans which comprise network modernisation and development projects along with the projected methods of their financing.

Transmission System Operators (TSOs)

In April 2011 the transmission system operator PSE Operator SA applied to the President of ERO for the agreement of a new version of the development plan for meeting current and future demand for electricity over 2010–2025, in reference to 2012–2016. The need to update the plan was an effect of providing additional specifics and updating the work schedules and pre-investment processes. In June 2011 the President of ERO declared as agreed draft update to the development plan for the period in question.

In reference to the transmission system operator OGP Gaz-System SA, in 2011 the development plan that was agreed back in 2009 for the period from 1 May 2010 to 30 April 2014 was in force.

Distribution System Operators (DSOs)

In reference to the electricity DSOs unbundled on 1 July 2007, the agreement process of the draft development plans for the period 2011–2015, started in the previous year and was continued in 2011. Following the review of the development plan delivery reports submitted by the operators, the President of ERO agreed the drafts for the upcoming years, i.e. 2012–2015. The assessment and verification of the drafts development plans were carried out with the application of a methodology developed under a project financed by the European Union. Because of the new structure of the development plans, this methodology will be used in 2012 to assess the delivery reports for 2011.

As regards the gas DSOs, in 2011 development plans drawn up for the period 2009–2013 were in force, fully agreed in 2009 in terms of their material scope, and in scope of the justified level of capital expenditures only for 2010 and 2011. Despite the agreement of the investments for the two years, justified DSO investment expenditures were estimated for 2009–2013. Due to specific difficulties and the extended works on the implementation of a new methodology of assessing investment plans for gas companies (developed under the Transition Facility 2006/018–180.02.04 project), investment expenditures assessed in accordance with the current methodology are agreed each year. In 2011 the President of ERO declared as agreed four draft development plans for gas DSOs. A development plan for one gas DSO is currently a subject to agreement.

Transmission Capacity Allocation

In 2011, as was the case in the previous year, the number of the NES interconnections with the neighbouring grid systems and the nature of operation of the interconnections did not change. The NES investments completed in 2011 did not have a direct influence on the transmission capacity for the cross-border exchange. The availability and allocation of the transmission capacity is governed by PSE Operator SA. As regards the region of Central and Eastern Europe (CEE), the transmission capacity allocation rules adopted in 2010 were in place as of 1 January 2011. Transmission capacity at interconnectors with the CEE region countries was made available by PSE Operator under the co-ordinated explicit auctions organised and managed by the Central Allocation Office (located in Freising, Germany), in accordance with the intraday mechanism. The transmission capacity at the high voltage direct current link with Sweden (SwePol Link) was allocated under the market coupling

mechanism, organised by power exchanges, i.e. POLPX and Nord Pool Spot AS through the implicit auctions on the day-ahead market.

In addition, in September 2011 capacity allocation mechanism was initiated at the Polish-Ukrainian interconnector. The interconnection is a single-track 220 kV line between Zamość and Dobrotvir, connecting the dedicated Dobrotvir Power Station's generation units with the NES. The available transmission capacity is allocated among market participants through quarterly explicit auctions which are uncoordinated (unilateral), with the transmission capacity available from Ukraine to Poland.

In 2011 total transmission capacity at the cross border gas interconnections amounted to 18,134 cubic metres per year. The proportion of the reserved transmission capacity at all entry points into the national system was 100%, but the import transmission capacity was utilized in approximately 60%. This means that there is a potential for gas imports by new market participants, outside the PGNiG capital group, but it is a subject to specific limitations¹⁾. However, this situation may improve, as the transmission capacities at the interconnections with EU countries, i.e. Germany and the Czech Republic, increase.

Gaz-System SA carried out two Open Season procedures in 2011: the additional capacity allocation procedure at the entry point in Lasów and the Market Screening for further increase of capacity at this entry point. The procedure of additional capacity allocation at Lasów was connected with the development and modernisation of the transmission system in Lower Silesia carried out by Gaz-System SA. As a result of the procedure, applied for by 28 companies, a prorated allocation of the available capacity was conducted and in October 2011 gas transmission agreements with 27 participants of the procedure were signed. The Market Screening for further increase of capacity at the Lasów entry point was carried out in parallel, covering the period 2016–2025. The applications received as a result of the procedure confirmed the high interest in the further development of the connection at Lasów.

In addition, in the latter half of 2010 a virtual exit point from the transmission system was established, the so-called Lasów Reverse. The point offers the virtual interrupted gas transmission. Although the operator received several applications for this service, only one transmission service contract was signed. Demand was also reported for the Lasów Reverse, however with the requested capacity of approximately 50,000 cubic metres per hour which is below 10% of the primary transmission capacity direction. Initial assessment of the Market Screening Procedure indicates no pending interest in transmitting gas in the western direction in quantities equivalent to the import capacity.

In September 2011 construction of a new interconnection between Poland and the Czech Republic was finalised as an effect of an earlier capacity facilitation procedure for an interconnection within the Podbeskidzie area. The subject of the procedure was the allocation of transmission capacity for the investment project concerning building a gas pipeline from the Polish-Czech border by Cieszyn (which would also be the location of a new entry point to the transmission system) to Skoczów where it will be connected with the existing transmission system. This new pipeline provides a capacity for transmission of approximately 500 million cubic metres of natural gas per year.

As part of the President of ERO responsibility to monitor the rules of managing and allocating capacities, in 2011 ERO conducted a review of the virtual reverse flow service on the Yamal pipeline. The reverse flow (at the Mallnow entry point) was offered in 2011 as an interrupted service. The transmission capacity at the virtual reverse flow at Mallnow amounted to 15,965,000 cubic metres per day. In accordance with the Transmission Network Code of the Polish Section of the Yamal-Europe Transit Gas Pipeline System approved by the President of ERO on 31 August 2011, OGP Gaz-System SA carried out a transmission service application procedure for 2012, 2013, 2014 and 2015. In response, five applications for the virtual reverse flow service were submitted, with four concerning long-term service and one a short-term service from 1 November to 31 December 2011. The quantities applied for exceeded the available transmission capacity.

¹⁾ For example, the interconnection with the German transmission system at Lasów was used at over 97%, preventing any additional gas transmissions.

Security of Electricity and Gaseous Fuel Supply

Provision of safe and secure supplies of electricity and gas across the country depends on a number of factors, including the structure of energy carriers composing the country energy mix, the extent of external supply diversification, as well as the technical condition and performance of the transmission and distribution facilities.

The 2011 national gross electricity generation amounted to 163,153 GWh and exceeded the output for 2010 by over 4%. The key contributor to the increase in electricity generation was the heightened demand for electricity connected with the economic growth recorded in 2011. The domestic consumption of electricity amounted to 157,910 GWh and was almost 1.9% higher than in 2010. Most of electricity was generated in utility heat and power plants, using hard coal and lignite. Of note is the increased proportion of energy generated from renewable sources, mostly wind. The cross border exchange balance in 2011 amounted to 5,250 GWh. As in the previous years, in 2011 Poland was a net exporting country. The biggest volume of actual flow was directed from the NES to the Czech Republic and Slovakia, with the majority of the physical energy flows coming from Germany.

The level of investment expenditures of TSOs and DSOs (unbundled on 1 July 2007), as provided for in the tariffs for 2011 and 2012, have been consecutively growing in relation to the investments completed in 2009. Over 2008–2010 the transmission system operator and the distribution system operators (currently six DSOs unbundled on 1 July 2007) committed 12.5 billion PLN to investments in the extension, rebuilding and modernisation of the network infrastructure. Over the next five years (2011–2015) they plan to invest over 34 billion PLN which is three times the amount spent over the last three years. Such a significant increase of investment expenditures is a direct result of the need to reinforce and develop the network infrastructure i.a. in order to provide the conditions for connecting new customers and new sources of energy, while ensuring a higher level of security of electricity supply.

The improvement of security of supply is also dependent upon the timely realisation of investments in the electricity sector, both in the area of electricity generation and network infrastructure. The President of ERO has been equipped with additional powers concerning the monitoring the investment plans and their realisation, allowing for a better assessment of the security of electricity supply. Following the legal changes that came into force in 2011, the Regulator acquired new powers and competences, such as the right to collect information on any existing, currently under construction or planned energy infrastructure for the natural gas and electricity sectors. The security of electricity supply will be further enhanced by initiatives associated with e.g. the introduction of additional ancillary services, such as reduction of the electricity demand (through the application of demand management tools and improvement of electricity efficiency).

As regards the gas sector, the total 2011 gas consumption in Poland amounted to 14,380.99 million cubic metres. Foreign gas supplies amounting to 10,915.28 million cubic metres were supplemented with domestic production in the amount of 4,329.42 million cubic metres, which accounted for almost 30% of the total national gas demand. The total 2011 foreign gas supplies were provided under the long-term contract (concluded in 1996 between PGNiG SA and OOO "Gazprom Export") as well as intra-Community supplies from Germany and the Czech Republic. Under the contract referred to above 9,335.54 million cubic metres of natural gas were purchased, which accounted for approximately 85% of the gas imports to Poland. The imports were supplemented with contractual deliveries from Germany and the Czech Republic, with a total of 1,579.74 million cubic metres, which accounted for approximately 14% of the total gas imports to Poland.

In March 2011 PGNiG SA and OOO "Gazprom Export" signed an addendum to the purchase and sale agreement for natural gas to Poland, dated 25 September 1996. Pursuant to the terms and conditions of the addendum, which was in force until 31 December 2011, the parties agreed for the potential increase of the daily receipt of natural gas at the Vysokoye interconnector point to 13.95 million cubic metres per day, while maintaining the current level of the contracted annual quantities. Despite consuming the compulsory gas reserves over the 2010/2011 season, more supplies to the system were required due to the significant temperature drops over the winter. In order to avoid supply restrictions to all industrial consumers, a restriction of several days was only imposed on one large industrial consumer which was compliant with the terms and conditions of its contract. In addition, on 31 March 2011 PGNiG SA requested OOO "Gazprom Export" to renegotiate the gas price according to the terms and conditions of the contract

of 25 September 1996, in order to obtain a reduction. The parties could not reach an agreement and exercising the right provided for in the contract, on 7 November 2011 PGNiG SA submitted the case to the Arbitration Tribunal in Stockholm.

It needs to be noted that on 1 January 2011 natural gas supplies delivered under the contract dated 26 October 2004 with NAK "Naftogaz Ukraine" were suspended at the interconnection point in Zosin by Hrubieszów. The suspension of deliveries by NAK "Naftogaz Ukraine" was, as it was argued, caused by a change of the internal Ukrainian regulations according to which all natural gas produced in Ukraine should be allocated solely for domestic use. This prevented the Ukrainian party from delivering gas to Poland. Works to resume deliveries for the Hrubieszów area by NAK "Naftogaz Ukraine" are still ongoing. It should be stressed, however, that despite the suspension of the Ukrainian gas supplies all Polish consumers normally supplied by this source were provided with gas from other sources.

Under the applicable Polish regulations on the security of gas supplies, including the Act on the Stocks, PGNiG SA is required to maintain an obligatory reserve of natural gas. Between 1 October 2010 and 30 September 2011 PGNiG SA maintained an obligatory reserve of 530.1 million cubic metres, whereas between 1 October 2011 and 30 September 2012 it should hold an obligatory reserve of 555.8 million cubic metres.

In order to diversify natural gas sources a number of investment initiatives were undertaken in 2011, including the continued construction of the LNG terminal, finalisation of the extension of Lasów interconnector and the Czech-Polish interconnection in the Cieszyn area, and the initiation of Polish-Lithuanian cooperation in connection with the planned development of an interconnection between these countries. Other TSOs and DSOs investments were carried out under the agreed development plans. The total 2011 investment value for the DSOs amounted to 1,293,770,000 PLN.

Additionally, search and extraction activities for unconventional gas sources were continued in 2011. The appearance of additional amounts of inexpensive gas on the market could be a substantial stimulus for the economy, which in turn could give new impetus to the investments in the gas infrastructure in Poland. A confirmation of explorable shale gas reserves in Poland in the near future and the possibility of extracting unconventional gas would be of significant importance for the country energy security, offering a diversification of supplies sources and directions. In addition, this prospect would enhance competition on the domestic gas market, resulting from the appearance of new suppliers offering gas at competitive prices and the potential to transmit gas to other European consumers using the interconnectors with neighbouring countries.

Regulation

The full list of tasks performed by the President of ERO includes both competences specified in the Energy Law²⁾, and those set forth in the provisions of other acts. In consequence of substantial amendments of the regulations introduced over the last years (including the regulations implemented in 2011) the specific tasks envisaged to be performed by the President of ERO were set forth in seven different acts.

The range of responsibilities and competences of the President of ERO has been expanded over the last years and increased also in 2011. On 1 January 2011 Articles 9o–9s of the Energy Law introduced under the amending act of 8 January 2010³⁾ came into effect. These provisions concerned the business activity in the area of producing agricultural biogas and producing electricity from agricultural biogas, including also – important for the President of ERO activity – the principles of issuing and redeeming certificates of origin from agricultural biogas.

Another amendment to the Energy Law was introduced on 19 August 2011⁴⁾ and entered into force on 30 October 2011. This amendment was mainly aimed at clearing up some inaccurate legal

²⁾ The Act of 10 April 1997 – Energy Law (Journal of Laws of 2006, no. 89, item 625, no. 104, item 708, no. 158, item 1123 and no. 170, item 1217 of 2007, no. 21, item 124, no. 52, item 343, no. 115, item 790 and no. 130, item 905 of 2008, no. 180, item 1112 of 2009, no. 3, item 11, no. 69, item 586, no. 165, item 1316 and no. 215, item 1664 of 2010, no. 21, item 104 and no. 81, item 530 and of 2011, no. 94, item 551, no. 135, item 789, no. 205, item 1208, no. 234 and item 1392).

³⁾ The Act of 8 January 2010 on the amendments to the Energy Law and certain other acts (Journal of Laws of 2010, no. 21, item 104).

⁴⁾ The Act of 19 August 2011 on the amendments to the Energy Law and certain other acts (Journal of Laws of 2011, no. 205, item 1208).

regulations. However, some new tasks for the Polish Regulator were also introduced. Special attention should be given to the following powers and competences of the Regulator:

- cooperation with the Financial Supervision Authority in order to carry out the statutory tasks in appropriate way,
- collection of information on any existing, currently under construction or planned energy infrastructure concerning natural gas and electricity sector (including electricity from renewable sources, excluding however installations for the production of electricity from agricultural biogas) as well as liquid biofuels and submission of such information to the Minister of Economy. The information should be submitted within timeframes and scopes as provided for in the Council Regulation (UE, EURATOM) No. 617/2010,
- extension of the scope of information collected under Article 28 of the Energy Law in order to assess the fulfilment of the obligations related to the new type of certificates of origin and the obligation to sell electricity through the commodity exchanges and on the regulated market.

Also in 2011 the Energy Efficiency Act⁵⁾ was adopted. The new law set forth new regulations concerning the national targets for energy efficiency improvement, the principles of obtaining and redeeming energy efficiency certificates, the principles of conducting energy audits, including the principles of becoming a certified auditor. Furthermore, the Act lists the public sector authorities competent to perform new responsibilities, including the President of ERO. *Vacatio legis* for specific provisions of the Act has not been defined coherently. As a rule, the Act entered into force on 11 August 2011, with various subsequent regulations coming into effect on 1 January 2012, 1 July 2012 and 1 January 2013 respectively. Under the Energy Efficiency Act, already in 2011 the President of ERO was specifically obliged to appoint qualifying committees which would examine candidates for certified energy efficiency auditors. Moreover, under specific circumstances, the President of ERO was also empowered to dissolve the qualifying committees or dismiss their individual members. The provisions of the Energy Efficiency Act also entitle the President of ERO to apply financial penalties. However, in 2011 only one provision of new Act related to imposing penalties came into effect. According to it, the sanctions could be imposed on those customers who submitted untrue or misleading information in their statements on the completion of the energy efficiency improvement projects. It should be also underlined that in consequence of adoption of the new energy efficiency regulations further amendments of the Energy Law had to be introduced.

Another amendment of the applicable regulations was related to the Biofuels Act⁶⁾. Pursuant to Biofuels Amended Act of 27 May 2011⁷⁾, the possibility of reduction of the National Indicative Target (NIT) was introduced, what resulted in additional tasks for the President of ERO. Moreover, the amendment set forth the templates of reports and the obligation to submit an annual report by companies obliged to achieve the NIT (not later than within 90 days of a calendar year end). In principle, the amending act came into effect on 10 August 2011, with the exception of the regulations concerning the responsibilities of the President of ERO which entered into force on 1 January 2012. However, the exemption was made (Article 5 section 2 of the amending act) and the President of ERO was obliged to develop and present the first template of the above-mentioned annual report within two months of the date on which the amending act came into effect.

The Act on Stocks⁸⁾ in turn was changed with the amending act of 16 September 2011⁹⁾. Within amended Act some provisions were modified, especially concerning the obligation to maintain compulsory gas stocks (the obligation was limited to energy companies engaged in importing natural gas for resale) as well as the exemption from the obligation. Furthermore, it introduced the possibility to maintain such reserves in facilities located outside the territory of Poland, if specific conditions are

⁵⁾ The Energy Efficiency Act of 15 April 2011 (Journal of Laws of 2011, no. 94, item 551).

⁶⁾ The Act on Biocomponents and Liquid Biofuels of 25 August 2006 (Journal of Laws of 2006, no. 169, item 1199, as amended).

⁷⁾ The Act of 27 May 2011 on the amendments to the Fuel Quality Monitoring and Controlling Act and certain other acts (Journal of Laws of 2011, no. 153, item 902, as amended).

⁸⁾ The Act on Stocks of Crude Oil, Petroleum Products and Natural Gas specifying the principles of proceeding in circumstances of a threat to the fuel security of the State and disruption on the petroleum market¹ of 16 February 2007 (Journal of Laws of 2007, no. 52, item 343, as amended).

⁹⁾ The Act of 16 September 2011 on the amendments to Act on Stocks of Crude Oil, Petroleum Products and Natural Gas specifying the principles of proceeding in circumstances of a threat to the fuel security of the State and disruption on the petroleum market (Journal of Laws of 2011, no. 234, item 1392).

met. In addition, the amended Act extended the range of financial penalties which may be imposed by the President of ERO as well as modified the scope of Regulator's control powers. As a consequence, some amendments as regards licences for foreign trade in natural gas were introduced into the Energy Law's provisions.

Furthermore, in 2011 the Law on preparation and realization of investments in nuclear power facilities and accompanying investments¹⁰⁾ came into effect. This in turn resulted in further amending of several provisions of the Energy Law related to inclusion of nuclear energy facilities into the provisions regarding connection to the grid and licensing. These regulations, however, do not have a direct impact on the range of powers of the President of ERO.

As concerns the EU regulations, the third energy package came into effect on 3 March 2011. 2011 was spent on intensive legislative work with the aim of implementing those provisions of European law that required transposition. However, the transposition process was not completed in 2011 and is currently underway. Despite lacking legislative powers, the President of ERO has been actively consulting the drafts acts implementing the third energy package's directives both in 2011 and in 2012.

In 2011 also the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT)¹¹⁾ came into force. The Regulation sets out the principles of cooperation between Member States on the monitoring of the gas and electricity markets in order to prevent potential abuse in the wholesale energy market. REMIT requires market participants to meet a number of reporting obligations connected with the prohibition of market manipulation and the use of insider information. Moreover, the Regulation gives national regulatory authorities new investigatory and enforcement powers and requires the Member States to implement specific regulations in that area by 29 June 2013.

Unbundling

In 2011 there was one transmission system operator in Poland, Polskie Sieci Elektroenergetyczne Operator SA (PSE Operator), which is a fully state-owned joint stock company and the owner of the transmission assets. PSE Operator carries out economic activity in scope of transmission under a licence issued by the President of ERO. The company was designated a transmission system operator under a decision of the President of ERO dated 24 December 2007. The ownership supervision over the TSO was transferred from the Ministry of Treasury to the Ministry of Economy.

Since 1 January 2011 PSE Operator SA has also acted as the TSO for the Polish section of the Polish-Swedish interconnector SwePol Link (pursuant to the decision of the President of ERO). The link is owned by the energy company SwePol Link Poland Sp. z o.o. that holds a licence for transmission of electricity. Therefore, the agreement was concluded between SwePol Link Poland Sp. z o.o. and PSE Operator SA under which PSE Operator SA was entrusted to carry out TSO's obligations on the Polish section of interconnector.

As far as gas TSO is concerned, in 2011 there was one gas transmission system operator, Operator Gazociągów Przesyłowych Gaz-System SA, designated by the President of ERO under its licence of 2006. OGP Gaz-System SA is fully owned by State Treasury and is the owner of the transmission assets. The company runs the activity of gas transmission under a licence issued by the President of ERO.

On 17 November 2010, under a decision issued by the President of ERO, OGP Gaz-System SA was also designated as the TSO for the Polish Section of the Yamal-Europe Pipeline. The pipeline is owned by the energy company SGT EuRoPol Gaz SA that holds licence for gas transmission and is controlled by persons from third countries

In 2011 the distribution activity on the electricity market was carried out by 84 DSOs designated by the President of ERO, including 6 entities, legally unbundled from former distribution companies, as well as 78 DSOs released from the unbundling obligation (serving less than 100,000 customers). As a result of the horizontal consolidation of the electricity distribution companies within TAURON equity group which took place on 1 September 2011, the number of the unbundled DSOs fell from 7 to 6,

¹⁰⁾ Journal of Laws of 2011, no. 135, item 789.

¹¹⁾ Regulation No. 1227/2011 of the European Parliament and of the Council (EU) of 25 October 2011 on Wholesale Energy Market Integrity and Transparency (Official Journal of the European Union, L 326/1 of 8 December 2011).

compared to 2010. However, as the process of DSOs' designation was not completed in 2011 and will continue in 2012 the overall number of DSOs is expected to rise.

The above-mentioned unbundled DSOs operate within vertically integrated energy groups. The supervisory role over those equity groups is, in principle, carried out directly by the State Treasury, and over the DSOs – indirectly by its holding companies or parent companies which were subject to the unbundling process. There is only one DSO which is owned by a company not related to the State Treasury.

In 2011 the distribution activity in the gas market was carried out by 18 distribution system operators designated by the President of ERO, including 6 entities unbundled from the former distribution companies, as well as 12 operators which had not been legally or organisationally unbundled.

The DSO unbundling was completed by 6 DSOs that operate within the PGNiG equity group. Under the decision of the President of ERO all companies were designated as DSOs for the validity period of their distribution licences. According to the national law, the unbundling obligation applies also whenever the company sell more than 100 million cubic metres of gas fuel annually. Thus, in 2011 DSO unbundling process was continued, relating to two vertically integrated entities which in 2010 sell more than 100 million cubic meters of gas.

Conclusions

2011 marked further changes to the electricity sector in Poland. These changes resulted from the further amendments introduced into the Energy Law as well as continuation of consolidation process within the equity groups. The process of liberalisation and competition development is more apparent on the electricity than on the gas market. The increased volume of electricity traded on the POLPX power exchange, improvement of capacity allocation and congestion management mechanisms as well as the implementation of the TPA rule are only a few of the factors contributing to the continued development of the electricity market. Although the market liberalization process has not been completed yet and the prices for households consumers are in general still subject to regulation, the year 2011 has been another step towards reaching that goal. Gas market in Poland is still dominated by the monopolist PGNiG SA. However, there were also some favourable developments in 2011. Price regulation was maintained in relation to all consumer groups and the PGNiG equity group retained its dominant position on the market but on the other hand the additional capacity was made available on Lasów interconnection point and the virtual reverse flow was introduced on the Yamal Pipeline. In 2011 the President of ERO was also actively engaged in initiatives leading to fostering the process of the Polish gas market's deregulation. In order to achieve that goal Regulator launched works on draft Roadmap for gas price release in Poland. On the basis of this document, the Gas Price Release Programme was prepared.

The President of ERO also initiated a number of programmes to develop competition in the Polish energy market. As in previous years, these actions were based both on purely administrative tools applied by the Regulator and persuasive measures.

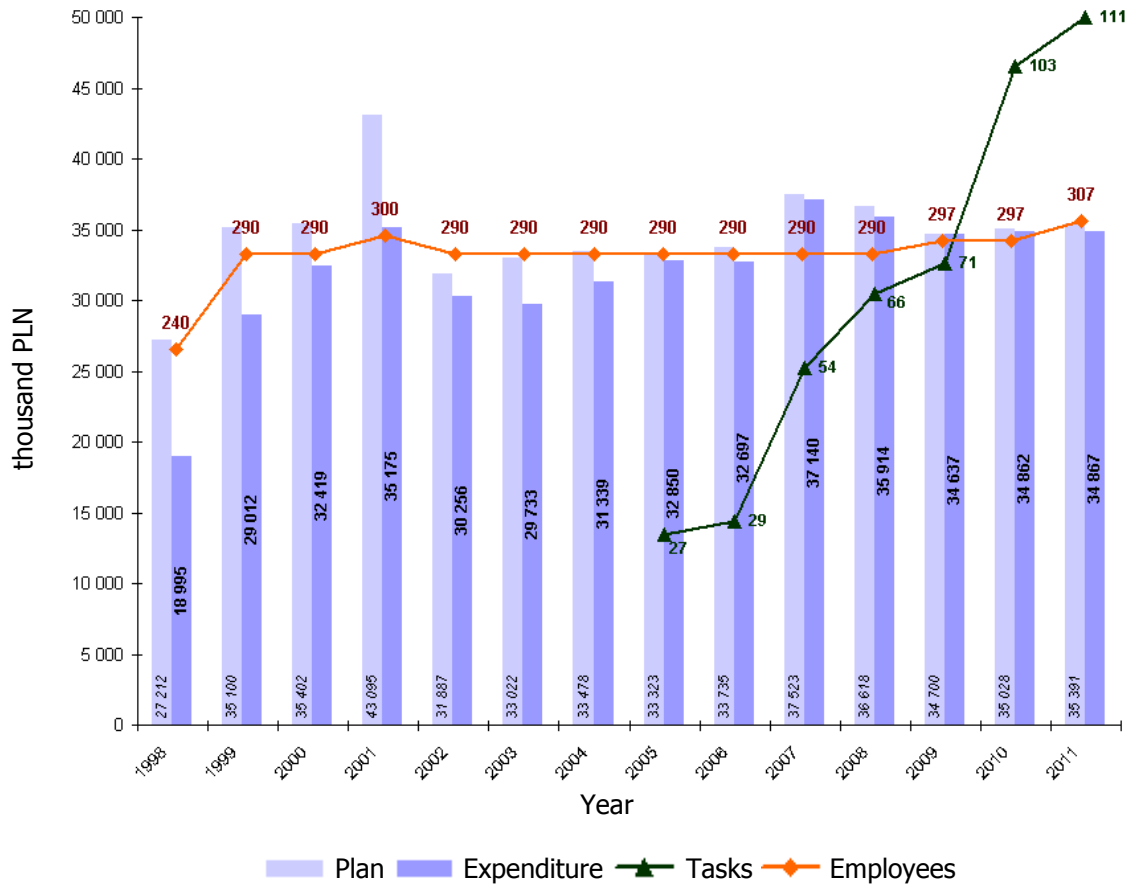
With the objective of reinforcing the effectiveness of regulation and improving the competition on the market, over the last year the President of ERO presented a number of initiatives undertaken independently or in cooperation with other partners.

The efforts undertaken by the President of ERO over 2011 were mainly affected by the amended Energy Law and other national and European regulations which equipped the Regulator with new powers and competences.

It should be stressed that over last fourteen years of the Regulator's activity the Energy Law was subject to numerous amendments, resulting in the additional responsibilities assigned to the President of ERO. Currently, the list of the tasks of President of ERO exceeds one hundred. However, this substantial and dynamic increase in the number of the President of ERO responsibilities has not been connected neither with appropriate increase in financial measures nor human resources available for Regulator to carry out its activity. Comparing the situation at the end of 2011 with the situation in the first year of operation of the Energy Regulatory Office (1998), it can be noted that while number of the professional staff has minimally increased only after ten years (overall employment rose by just

over 2%), the number of Regulator’s tasks has been expanded by 311% over the past seven years. It is without any doubt, however, that the range of responsibilities of the President of ERO will continue to grow, considering new national and European regulations.

Picture 2.1. ERO expenditure in 1998–2011, with reference to number of employees and realised tasks



Source: ERO.

3. THE ELECTRICITY MARKET

3.1. Network regulation

3.1.1. Unbundling

Designation and certification of transmission system operators

In 2011 the President of ERO did not carry out any certification proceedings for transmission system operators as the implementation of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Official Journal of the European Union L.2009.211.55) was not completed in the part applicable to the TSO certification. Moreover, none of transmission network owners requested the President of ERO for certification of a transmission system operator.

The activity of the President of ERO in the area of designating system operators in 2011 was determined by the provisions of the Energy Law. Under the statutory regulations electricity and gas system operators (hereinafter referred to as "system operators") are designated by the President of ERO through a relevant administrative decision:

- 1) at the request of network or installation owner,
- 2) *ex officio* when the owner failed to request for the designation of a system operator, or when the request was rejected.

According to the Energy Law, there is one transmission system operator within the territory of Poland. The entity operates as a joint-stock company with the shares held solely by the State Treasury. Moreover, only the owner of a transmission network or an entity with which the owner concluded an agreement entrusting the party to carry out TSO obligations using the owner's network or installations (with the formula similar to the *Independent System Operator*) can act as transmission system operator.

In view of above-mentioned regulations, at the end of 2011 there was a single transmission system operator (TSO) in Poland – Polskie Sieci Elektroenergetyczne Operator SA (PSE Operator SA). PSE Operator is a Treasury-owned company and the owner of transmission assets on which it performs the duties related to transmission of electricity, under a license issued by the President of ERO. The company was designated a transmission system operator through the decision issued by the President of ERO on 24 December 2007. The ownership supervision over the company is performed by the Minister of Economy.

As of 1 January 2011 PSE Operator SA has been acting as the TSO for the Polish section of the Polish-Swedish SwePol Link interconnector. The link is owned by the company SwePol Link Poland Sp. z o.o., which holds a license for transmission of electricity. Thus, an agreement was concluded under which PSE Operator SA was entrusted to perform TSO obligations on the link and a relevant decision was issued by the President of ERO as regards TSO designation.

However, the SwePol Link Poland Sp. z o. o. intends to sell to PSE Operator SA its assets (i.e. the high-voltage direct current link between Poland and Sweden) and stop its licensed activity as regards electricity transmission. Due to that it has been agreed that PSE Operator SA will cease to provide TSO services under an entrustment agreement. In consequence, in Poland there will be a single fully unbundled TSO, as provided for in Article 9 section 1 of Directive 2009/72/EC.

Unbundling of distribution system operators

The operational conditions and the obligations of system operators are determined in the Energy Law. Electricity distribution system operators (DSOs), operating within vertically integrated energy groups and serving more than 100,000 customers are required to become independent in terms of legal structure, organization and decision making (Article 9d of the Energy Law).

Pursuant to Article 9d sections 1 and 2 of the Energy Law, DSOs should become fully unbundled from other types of business operation not related to the transmission or distribution of electricity. A review of the applicable regulations leads to the conclusion that an undertaking engaged in network activity is not allowed to have shares in companies involved in generation or supply. Possession of

such shares by a network undertaking would involve a direct financial interest in the related supply sector and, as a consequence of that fact, the board of the company will lose its ability to “act independently”. Furthermore, section 1a of the said regulation provides that the above-mentioned operators are not allowed to perform any functions related to generation or trading of gaseous fuels or electricity, and are not allowed to perform such functions under an agreement concluded for the benefit of other energy undertakings.

In 2011 distribution activity was carried out by 84 DSOs designated by the President of ERO, including 6 undertakings legally unbundled from the former distribution companies and 78 DSOs released from unbundling obligation (serving less than 100,000 customers).

Due to the horizontal consolidation of the electricity distribution companies within TAURON capital group which occurred in 2011 (on 1 September 2011), the number of the legally unbundled DSOs decreased from 7 to 6 compared to 2010. However, as the DSO designation process was not completed in 2011 and is continued in 2012, the overall number of DSOs is expected to rise.

The above-mentioned legally unbundled DSOs operate within groups of companies which are vertically integrated undertakings. The supervision role over those energy groups is primarily carried out by the State Treasury, and over the DSOs – indirectly by its holding companies or parent companies which were subject to unbundling process. There is only one DSO that is owned by a company whose major shareholders are not related to State Treasury.

Table 3.1. Unbundling status as of 31 December 2011

Item	Number
TSO – ownership unbundling	1
TSO – ownership unbundling – following the certification procedure	0
TSO – independent system operator– following the certification procedure	0
TSO – independent transmission system operator – following the certification procedure	0
DSO	84
DSO – ownership unbundling	0
DSO – legal unbundling	6
DSO – legal unbundling, ownership of assets (network)	6
DSO – legal unbundling, no assets (network)	0
DSO – less than 100,000 customers	78

A major impediment to the supervising the independence of the legally unbundled DSOs is the fact that the operators remain parts of the vertically integrated undertakings and well-developed structures of energy groups, what, however, is allowed pursuant to the provisions of Directive 2009/72/EC and the Energy Law.

The Energy Law sets forth that transmission and distribution system operators failing to comply with the conditions and criteria of independence are subject to fines. Fines shall also be imposed on those entities which fail to ensure meeting the conditions and criteria of independence to a company designated as system operator for its network. Such fines may not be smaller than 1% and greater than 15% of the revenue of penalized undertaking for the preceding year. Fines are imposed by the President of ERO. In addition, the President of ERO may impose a fine on the person managing an electricity undertaking, however, the fine cannot be greater than 300% of his/her monthly remuneration.

As the Energy Law was amended in March 2010, the President of ERO was equipped with new competences related to the approval of programmes, in which the distribution system operators specify measures to be taken in order to ensure non-discriminatory treatment of system users, including the specific responsibilities of personnel resulting from such programmes, called Compliance Programmes (hereinafter referred to as the Programmes). The new tool has allowed the President of ERO, to a limited extent, to influence the contents, implementation and realization of the Programmes. In addition, the President of ERO monitors the realization of the Programmes in practice and analyzes the annual operator reports on the Programme implementation. The President of ERO developed and published on its website the “Framework Guidelines for the Contents of Compliance Programmes Developed by Distribution System Operators (DSOs) and Transmission System Operators (TSOs)” which, although not legally binding, were accepted as recommendations and became the basis for the development and submission of the Compliance Programmes by the operators.

In 2011, following the administrative procedures the President of ERO approved the Compliance Programmes for seven distribution system operators. The approved Programmes provided a uniform treatment of the following issues:

- 1) in relation to contents of the Programmes:
 - list of entities required to comply with the programme,
 - list of non-discriminatory and equal treatment areas,
 - specification of discriminatory and anticompetitive behaviours,
 - list of sensitive information, specification of the rules of managing and protecting sensitive information,
 - list of personnel responsibilities, including the requirement to attend training courses on the Programme and the sanctions for the failure to comply with the Programme,
 - specification of measures taken to ensure Operator's independence;
- 2) in relation to implementation and realization of the Programme:
 - list of actions required to implement the Programme, along with a list of tasks and procedures,
 - defining the body responsible, in particular, for the implementation, interpretation and compliance with the Programme – Compliance Officer,
 - specification of the competences and independence of the Compliance Officer;
- 3) in relation to the monitoring the Programme and reporting:
 - the scope and methods of collecting data on Programme realization,
 - any violations of the Programme and the associated risks,
 - measures to be taken in case of Programme violations,
 - contents of the report, including the data obtained through the monitoring performed by the Operator.

Under the approved Programmes operators committed themselves to have their personnel trained in order to ensure absolute compliance with the Programmes.

3.1.2. Technical functioning

Balancing services

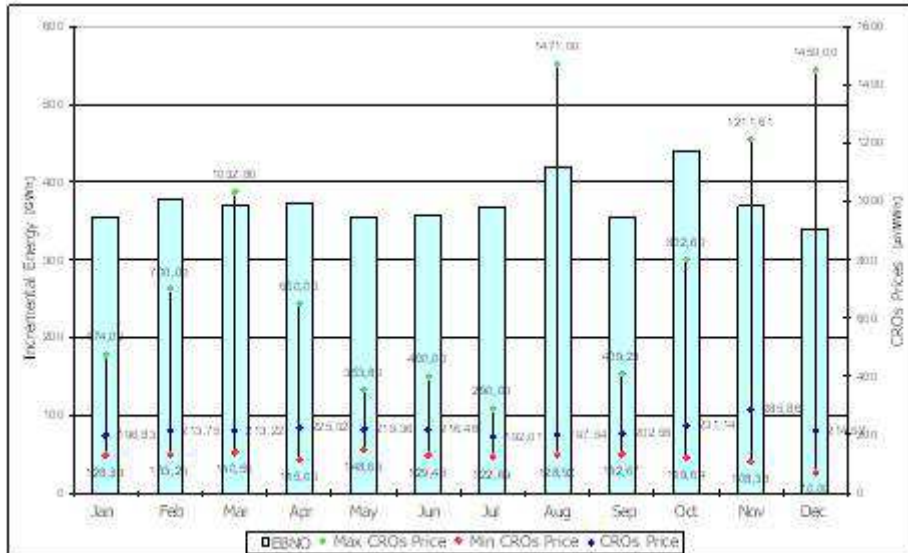
The principles of system balancing and congestion management within the NES are specified by transmission and distribution system operators and are subject to approval by the President of ERO within the Distribution and Transmission Grid Codes. Under the powers vested in the President of ERO, regulator monitors operators' activity while reviewing the information and periodic reports published by the transmission system operator. Furthermore, the President of ERO assesses the correctness of the adopted rules through the market developments monitoring and through the analytical reviews of the causes of potential disruptions.

As was the case in previous years, PSE Operator SA managed the balancing of the transmission system in accordance with the principles set forth in the section of Transmission Grid Code related to system balancing and congestion management. In general, the principles did not change substantially in relation to the 2010. The commercial schedules resulting from the concluded electricity sale agreements on the domestic market are notified to the transmission system operator between 9am and 2:30pm of the day preceding the supply delivery date and may be corrected not later than one hour prior to the supply in scope of the intraday market. As regards cross-border exchange, the transmission capacity for the annual and monthly auctions is nominated between 12 noon and 5pm two days prior to the supply delivery date, and from the daily auctions between 10.30am and 1.30pm one day ahead. On the borders with systems of Germany, Slovakia and the Czech Republic a mechanism for intra-day congestion management has been introduced. Reservation of capacity under this mechanism is equivalent to capacity nomination. The sale contracts are notified between 3.30pm on the day preceding the supply realization and 10pm on the day when contract is executed, but the notifications must be made 1 hour prior to the supply. Cross-border exchange on the SwePol Link is carried out under the market coupling mechanism. Market participants submit electricity purchase and sale bids on the POLPX not later than by 11.30am, and the clearing price is published after it was determined in cooperation with the Scandinavian power exchange, Nord Pool Spot AS, not

later, however, than by the gate closure for sale contracts on the balancing market. Then, these contracts are notified to the transmission system operator for realization.

Information on the volume and prices of the balancing energy on the Balancing Market is subject to monitoring by the President of ERO. The data have been shown in Figure 3.1.

Figure 3.1. 2011 trade volume (EBNO) and electricity prices in the balancing market (CROs)



Source: ERO, based on the data submitted by PSE Operator SA

In 2011 the total volume of electricity purchased on the Balancing Market (EBNO) decreased in comparison to 2010 from 5.23 TWh to 4.48 TWh, i.e. by almost 14%. The average price level of balancing energy supplied through the Balancing Market increased, as well as the range of price fluctuations. The top values recorded in August and December of 2011 were approaching the threshold limit (1500 PLN/MWh) of the bidding prices which may be reported on the Balancing Market. As the price formula for the Balancing Market is based on the marginal prices from utilized balancing bids submitted by generators, it can be inferred that in certain hours capacity reserves available in the system were low, and PSE Operator SA had to accept most expensive offers.

The balancing bids of generators which participate in balancing mechanism are submitted independently for the individual centrally dispatched generation units (CDGUs). To a certain extent, this helps to prevent the excessive concentration in this market segment, although it can not be guaranteed that the dominant market participants, operating in accordance with the strategy of consolidated undertakings, would not use its market power. Generators holding CDGUs are obliged to submit bids. To mitigate the market power, including the prevention of setting balancing bid prices at extremely high levels, the energy settlement mechanism for must-run generation is used. The mechanism applies whenever a balancing bid cannot be used at a bidding price due to the technical limitations of the grid (if it is necessary to ensure the reliability and safety of NES operation).

The monitoring of congestion management covers, among others, the costs associated with actions undertaken by the transmission system operator. Compared to 2010, the total costs of meeting the demand and the costs of congestion management changed significantly. The total costs of meeting the demand within the Balancing Market decreased significantly over the previous year. On the other hand, the costs of managing congestion, compared to 2010, dropped over the first three quarters of the year, and then showed a rising tendency in the last quarter of the year.

As far as the balancing of the distribution network is concerned, the role of distribution system operators is limited mainly to managing the measurement data. These principles have been set forth in the Distribution Grid Codes and affect the implementation of the TPA rule. In addition, distribution

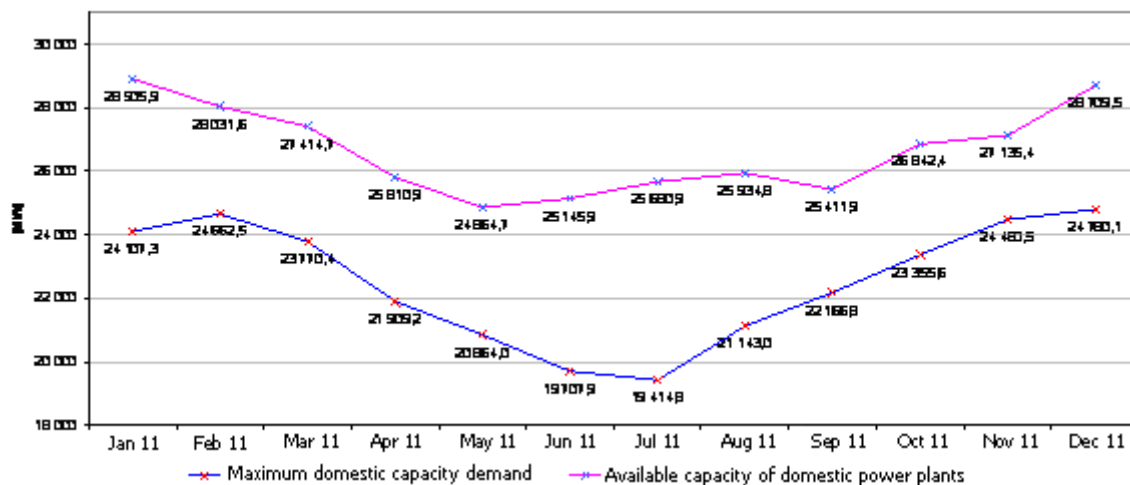
system operators may, under special circumstances, undertake actions by order of the transmission system operator – specific provisions for such situation have been set forth in the Transmission Grid Code.

Security and reliability standards, quality of service and supply

The standards concerning the quality of supply and customer service have been set forth in the Ordinance of the Minister of Economy on the specific conditions of the functioning of the power system (executive ordinance to the Energy Law). The 2010 amendment of the Energy Law imposed an obligation on the electricity system operators to develop and submit for approval complete grid codes (including the principles governing balancing and congestion management, as well as technical standards) which, among others, provide for the network security and reliability standards, as well as for the quality of supply and customer service standards. This, in fact, means that the standards are subject to approval by the President of ERO before they can be implemented by the electricity system operators.

As far as the security and reliability standards are concerned, the President of ERO continues to review the measures and actions undertaken by system operators as part of their statutory obligations. Regulator assesses such measures and actions in view of ensuring proper functioning of the network, taking into account the criteria identified by the operators in the grid codes. In particular, as part of the monitoring of electricity system functioning, assessments were made on the relation of the available capacity of the domestic power plants to the maximum capacity demand within the NES across each month of 2011, as shown in the figure below.

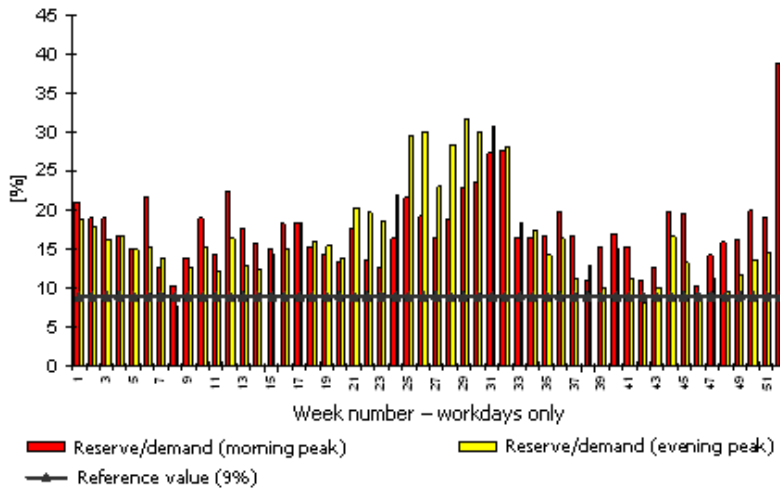
Figure 3.2. Available capacity of domestic power plants and the maximum domestic capacity demand at the evening peak, average 2011 values on business days in a month [MW]



Source: ERO, based on the data submitted by PSE Operator SA

In 2011, at morning and evening peaks the relation of the capacity reserves to the capacity demand from the individual working weeks exceeded the reference value set in the Transmission Grid Code at 9% (required level of operational reserves). The exceptions included weeks 8 and 42 when the reserve versus the demand (at the evening peak) amounted to 8%. Over the summer months the capacity reserves both at the morning and evening peaks were greater than those recorded in Q1. The figure below shows the 2011 capacity reserves at the morning and evening peaks of power demand.

Figure 3.3. 2011 capacity reserve in relation to capacity demand at the morning and evening peaks (based on the weekly reports submitted by PSE Operator SA, showing weekdays only)



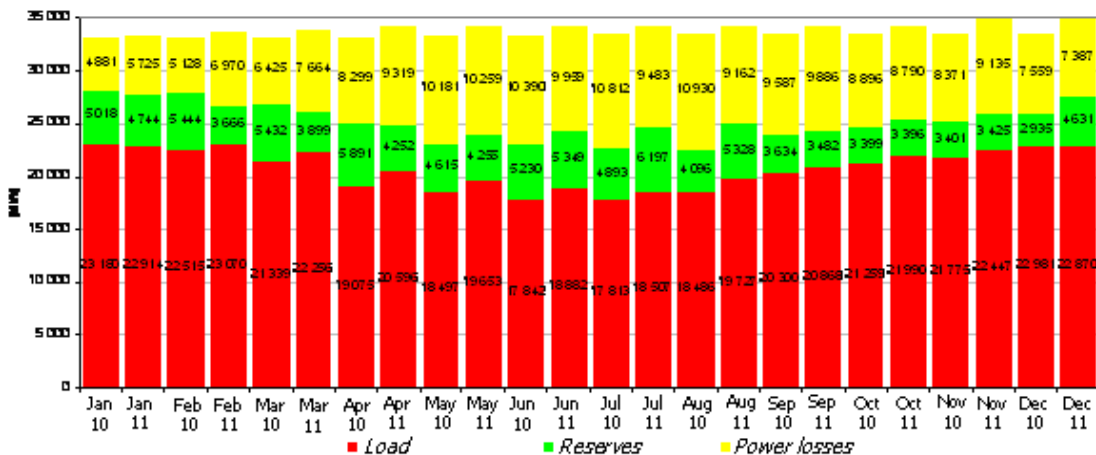
Source: ERO, based on the data submitted by PSE Operator SA

Table 3.2. 2011 minimum and maximum capacity reserves (based on the daily reports submitted by PSE Operator SA)

	Morning Peak		Evening Peak	
	Capacity Reserve [MW]	Reserve /Demand [%]	Capacity Reserve [MW]	Reserve /Demand [%]
Min	1,285	6	1,063	5
Max	15,531	106	13,494	82

Figure 3.4. shows a comparison of the average daily values (from evening peaks on business days) of the system loads, power losses and reserves by subsequent months of 2010 and 2011. The reported data indicate that in 2011 decrease in the capacity reserve in relation to the recorded load amounted to approximately 1.3%, compared to the average value for 2010. Similarly, based on the average monthly values from evening peaks on business days (shown in Figure 3.5.), it can be observed that the average value of power losses dropped slightly in comparison to the data for 2010.

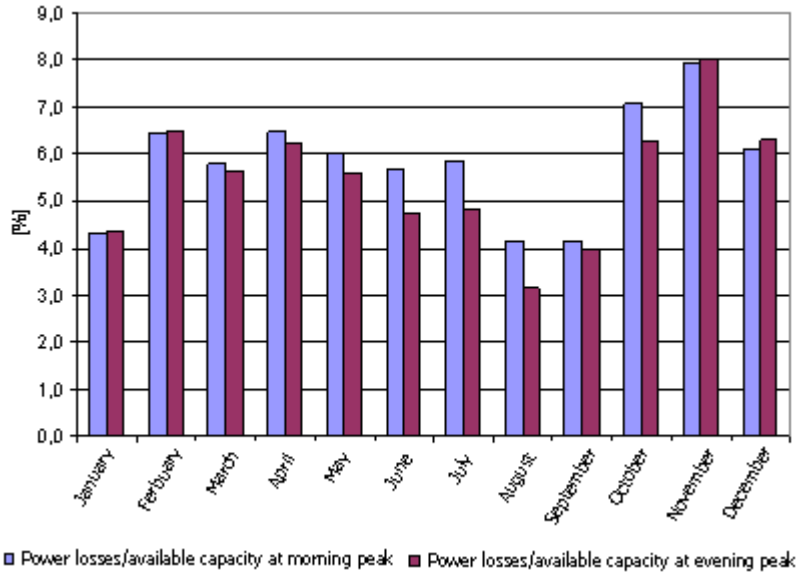
Figure 3.4. Utility power plants – a comparison of selected operational aspects for 2010 and 2011 (based on the average annual values from evening peaks in business days)



Source: ERO, based on the data submitted by PSE Operator SA

Power losses at the morning and evening peaks were comparable (the biggest difference – 1% was observed over June and July). The biggest power loss in relation to the domestic capacity demand from business days was recorded in November 2011 at the evening peak and amounted to 8%.

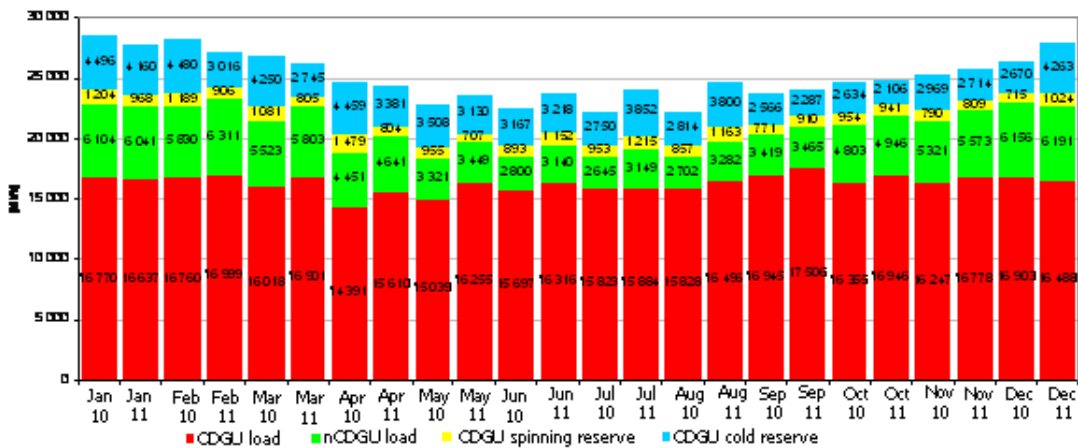
Figure 3.5. Power losses in relation to the available capacity at the morning and evening peaks of the domestic capacity demand in business days for subsequent months of 2011.



Source: ERO, based on the data submitted by PSE Operator SA

Notwithstanding any of the above, the average annual values for 2011 compared to 2010 show a decrease in capacity reserves in the utility power plants and an increase in power losses related to major, medium and emergency repairs. The figure below shows the available capacity and the capacity reserves at the domestic power plants in 2010–2011, indicating that the average load of the centrally dispatched generating units increased slightly in comparison to 2010. A similar difference was recorded in relation to change in the load of non-centrally dispatched generating units, which in 2011 rose on average by approximately 5.5%. A comparison of the average values for 2010 and 2011 as regards using cold and spinning reserves from the centrally dispatched generating units shows some minor drops, with the annual cold reserve amounting to approximately 5%, and the spinning reserve – approximately 3%.

Figure 3.6. Available capacity and the capacity reserves at domestic power plants available for the TSO in 2011 in relation to 2010 – average monthly values for the domestic daily peak demand



Source: ERO, based on the data submitted by PSE Operator SA

Monitoring time taken to connect and repair

Energy companies providing transmission or distribution services (network utilities TSO, DSO) are obliged to ensure that customers receive the adequate quality of electricity supply while minimising the outlays and costs. The regulatory authority, on the other hand, is required to monitor whether the network utilities comply with the quality standards of customer service and, at customer request, with the electrical power quality parameters in accordance with the Energy Law of 10 April 1997 (Journal of Laws of 2006, No. 89, item 625, as amended).

The evaluation of the quality of electricity supply, including the continuity of supply (indicators) and the effects of extremely bad weather conditions, allow assessing the quality of electricity supplied by the transmission system operator and the six largest distribution system operators whose operations cover the entire country. Focusing on the quality indicators which are fully measurable and can be influenced by the electricity undertakings, would enable the President of ERO to effectively control if the network companies meet the quality standards of electricity supplied to customers across the entire country.

Well defined and determined quality indicators may be used as a basis for comparative studies on the network companies and determination of the quality level of electricity supplied to domestic customers in comparison to the standards observed in other countries. In addition, the publication of reliable information on the quality of electricity supplied to customers by the network utilities is one of the tools of the quality regulation and may be used as an input for the application of more advanced methods.

Currently, in accordance with the applicable regulations, the transmission system operator and the distribution system operators are obliged to publish on their websites information on the continuity of supply using SAIDI, SAIFI index for longer lasting scheduled and unscheduled interruptions including extremely bad weather conditions, and MAIFI index for short interruptions.

However, the initial review of the data published by the network undertakings on the quality of electricity supply shows the need for further harmonisation of the calculation methodology, manner of collecting quality data by different network companies, and the way of reviewing such data. The quality regulation requires the provision of verified indicators which will be possible following the smart grid implementation. In 2011 the President of ERO published his position paper on the necessary requirements for the implementation of smart grid measuring and billing systems. Thus, at this stage the tying of quality levels with the level of tariffs approved by the regulator seems to be premature.

Monitoring technical cooperation between the EU and third-country TSOs

The National Electricity System is connected with two non-EU electricity systems – Belarusian and Ukrainian.

As far as the connection with Belarus is concerned, the poor technical condition of the cross-border connection has prevented its operation (the line has been deactivated).

As regards the connection with Ukraine, electricity supply was not completed over the first three quarters of 2011, with a transmission capacity allocation mechanism implemented in September 2011. The connection is a single-track 220 kV line between Zamość and Dobrotvir, connecting dedicated generation units at the Dobrotvir power plant with the NES. The auctions implemented by the Polish transmission system operator are unilateral. At the same time, it should be underlined that in February 2011 Ukraine concluded an agreement with the European Union under which it became a member of the Energy Community and committed itself to implement, among others, the provisions of Regulation 1228/2003/EC into its national law. The regulation determines the access to the network for cross-border transmission capacity and describes the scope of cooperation between electricity system operators.

As part of the process of monitoring how TSO carries out its duties, the President of ERO received information on the measures undertaken by PSE Operator SA in the area of cooperation between system operators, with an objective to implement congestion management methods compliant with Regulation 1228/2003/EC. Similar measures as regards cooperation between energy regulators were undertaken by the President of ERO (declaration of cooperation submitted to the Ukrainian Ambassador in Poland). Based on the information available to the regulatory authority, no actions

were undertaken by the Ukrainian partner regarding further cooperation between the TSOs and the energy regulators.

The principles of technical cooperation between the national transmission system operator and non-EU operators have not been provided for in the Transmission Grid Code. However, certain provisions should be agreed at the level of ENTSO-E (in connection with Article 8 section 3 letter c of Regulation 714/2009/EC) and, as such, these principles are not subject to a direct and exclusive monitoring by the President of ERO.

Monitoring safeguard measures

The principles governing the application of safeguard measures by the system operators in circumstances of threats to the security of supply, including restrictions in the consumption and supply of electricity have been set forth in detail in the relevant grid codes developed by the system operators. Prior to their entry into force, these principles are subject to approval by the President of ERO.

Whenever a security threat occurs requiring the application of safeguard measures, the transmission system operator is obliged to draft a report on detailed measures undertaken as well as their consequences. The report is submitted to the President of ERO for review; the last step is the submission of the report to the Minister of Economy. Pursuant to the provisions of the Energy Law, the body responsible for the submission of information on the undertaken safeguard measures to the European Commission is the Minister of Economy. There were not any safeguard measures undertaken in 2011.

3.1.3. Network tariff for connection and access

The tariffs for the transmission or distribution of electricity are set by the electricity undertakings that hold the licence for operation on energy market. The tariffs are set in accordance with the provisions set forth in the Energy Law of 10 April 1997 (Journal of Laws of 2006, No. 89, item 625, as amended), hereinafter the "Act", and the Regulation of the Minister of Economy on the specific principles for setting and calculating tariffs and financial settlements in electricity trade, hereinafter the "Tariff Regulation". Over 2011 the regulations concerning the setting and calculation of tariffs and charges in electricity were amended (Regulation of the Minister of Economy of 18 August 2011 on the specific principles for setting and calculating tariffs and financial settlements in electricity trade).

Electricity undertakings are required to submit to the President of ERO their respective tariffs for approval without a prior call or whenever requested by the President of ERO.

The regulatory authority approves and reviews the application of electricity tariffs taking into account their compliance with the principles set forth in Articles 44, 45 and 46 of the Energy Law. Regulator also further reviews and analyses the costs assumed as reasonable in the prices and rates calculation.

Whenever a change in external circumstances takes place, the regulatory authority may establish, through an official decision, specific correction factors. These factors result solely from change in external environment and the energy company is required to apply them in relation to the prices and rates set forth in the tariff until a new tariff comes into force.

If the period when approved tariff is applicable expires, until a new tariff comes into force electricity undertakings are required to continue applying the current tariff if a relevant decision of the President of ERO has not been issued or if appeals procedure against such decision is ongoing.

Decisions on electricity tariff approval are issued pursuant to Article 104 of the Code of Administrative Procedure of 14 June 1960 (Journal of Laws of 2000, No. 98, item 1071, as amended). The decisions may be appealed against to the District Court in Warsaw – Court of Competition and Consumer Protection through the President of ERO and within two weeks of the date of decision delivery (Article 30, sections 2 and 3 of the Act, and Article 479⁴⁶ item 1 and Article 479⁴⁷ paragraph 1 of the Code of Civil Procedure).

Each year the tariff approval process for the distribution system operators is preceded by the publication of the "Tariff Calculation Methodology for DSOs" by the regulator. The document contains the general guidelines for tariff calculation, and is often used for determination of the fair level of the regulated revenue of energy companies. The methodology is published at a time that allows the DSOs to submit

tariffs calculated in accordance with the guidelines and to provide the regulatory authority with time required to approve and publish the tariffs, to be in force as of the beginning of a calendar year.

In 2011 the President of ERO approved electricity tariffs for the following entities:

- 1) the transmission system operator (TSO) – for entities receiving the transmission service under a transmission agreement,
- 2) distribution system operators (DSOs) unbundled as of 1 July 2007 – for customers connected to distribution networks at all voltage levels, i.e. for industrial customers, small and medium enterprises, and households,
- 3) electricity trading companies – for household consumers (tariff group G) connected to the network of any given distribution system operator and who did not exercise their right to switch supplier,
- 4) other electricity undertakings, i.e. so-called industrial sector companies, for electricity trading (group G) and distribution to customers connected to their networks.

In 2010 the President of ERO initiated a process aimed at beginning new regulatory period, as of 2011, for the DSOs unbundled as of 1 July 2007. The key condition for it was to develop a new model for the assessment of DSO efficiency in terms of operating costs and costs of network losses. However, due to the lack of possibility to assess the improvement of DSO performance throughout regulatory period (2008–2010), as well as due to the concerns related to the initial results of the new model, the President of ERO decided to extend the application of the current model by one year. It allowed to evaluate the 3-year regulatory period and enabled the DSOs to participate (in the form of comments, opinions, presentations) in the new model implementation.

In 2011 works on the new model were continued and were completed with the development and implementation of the new model for DSO efficiency evaluation in the scope of operating costs and the costs of network losses. As a result of the works a justified level of operating expenses and a volume of balance difference were established for each DSO over 2012–2015. Thus, the year 2012 was the first year of a new four-year regulatory period.

As far as the transmission system operator (TSO) is concerned, the tariff procedure carried out in 2011 was based on the cost of service regulation. The use of comparative methods in this case is hardly possible as there are no other entities of similar operational conditions – there is only one TSO in Poland. During the tariff approval process for 2012 parallel works were underway to set the principles for determining the costs that are the basis for transmission fees calculation over 2012–2015. In consequence, per the request submitted by the TSO, 2012 marked the beginning of a four-year regulatory period for that company.

Bearing in mind a need to secure a return on the capital employed in the network operation for TSO and DSOs, in the subsequent tariffs the President of ERO determines a justified level of the return based on the Regulatory Asset Value (RAV) and the cost of capital, considering estimated investment levels. In 2009, for the 14 (and currently 6 – as a result of the continued consolidation) largest DSOs a new consistent method for rewarding network assets was introduced, applying the criterion of regulatory efficiency and maintaining the adequate level of the security of supply in the National Electricity System. 2010 was the first year of the application of the new rules for RAV determination.

In the 2011 tariffication process for the DSOs, the method of calculating the weighted average cost of capital was applied, the method was introduced in the tariff approval process for 2010. As it was earlier announced, selected parameters used to determine the weighted average cost of capital were updated, including the level of the risk-free rate.

In 2011, in cooperation with DSO representatives the method was amended due to some concerns related to the interpretation and application of the new method of RAV rewarding. The questionable provisions were specified and circumstances affecting RAV unforeseen at the method development stage was also taken into account (including, among others, the application of aid funds from non-repayable sources of financing).

The network companies responsible for transmission or distribution of electricity are required to set up development plans for meeting the current and future demand for electricity. These plans are subject to agreement with the President of ERO. They must contain information on foreseen modernisation, extension or development of the network, as well as the estimated revenues necessary to finance the realization of those plans. Thus, the tariffs set by the companies must take into account the costs of planned investment projects, in the amounts presented in the development plans.

In April 2011 the transmission system operator requested the President of ERO to review the updated development plan for meeting the current and future demand for electricity over 2010–2025

for the years 2012-2016 (a detailed schedule of works and expenditures was submitted for the specific period).

In June 2011 the President of ERO declared the updated development plan for the requested period as agreed and secured the necessary funds in the transmission tariff for 2012 to enable the realization of agreed plan.

Preventing cross-subsidies

Pursuant to the guidelines set out in Directive 2003/54/EC concerning common rules for the internal market in electricity and the provisions of the Energy Law, as of 1 July 2007 14 DSOs were unbundled from vertically integrated undertakings, which meant that the activities of electricity trading and distribution were separated.

In consequence, apart from 14 DSOs, 14 electricity trading companies started operation on the market. Currently, following the consolidation process, there are 6 DSOs and 6 trading companies acting as incumbent suppliers. They are independent business entities.

As far as other energy enterprises are concerned (so-called industrial sector companies), the electricity tariffs for those enterprises comprise their entire network activity (all customers connected to the company network) as well as electricity trading in relation to consumers from G tariff group only (in relation to consumers from other tariff groups, the companies were released from the obligation to submit the tariffs for the President of ERO approval). Tariff calculations for these undertakings are based on transparent principles which prohibit cross subsidisation between the distribution and trading activity.

3.1.4. Cross-border issues

Access to the cross-border infrastructure, including procedures for the capacity allocation and congestion management

In view of the current regulations in force (and due to incomplete process of Third Energy Package implementation), only the principles for congestion management are subject to approval by the President of ERO in the Transmission Grid Code. These principles include, among others, rules for cross-border transmission capacity allocation, the general terms and conditions of using the cross-border transmission networks for electricity transmission services, as well as other tools and measures undertaken by the transmission system operator to manage network congestions, including the cross-border exchange of electricity.

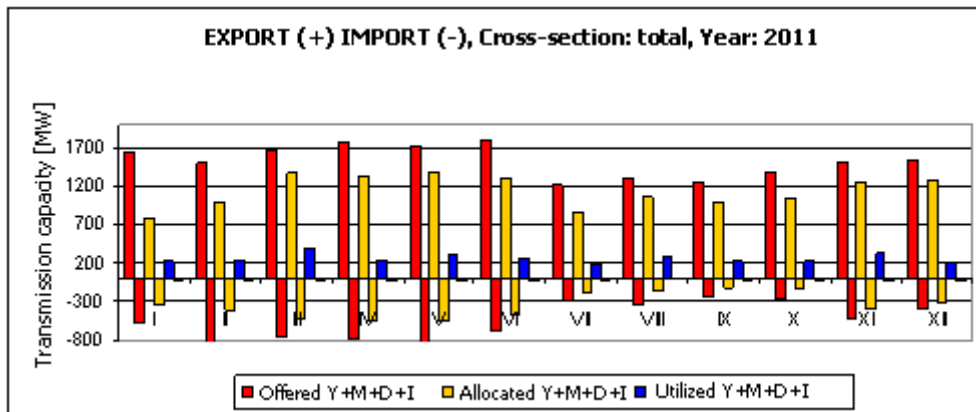
At this time the President of ERO does not have any powers to approve the principles of transmission capacity allocation prior to their entry into force. However, according to praxis, the President of ERO reviews the principle before they enter into force in the light of their compliance with national and European law.

As far as the congestion management monitoring is concerned, the President of ERO has been equipped with the relevant competences under the Energy Law. The current rules concerning the allocation of capacity between Poland, Germany, the Czech Republic and Slovakia did not change in 2011. The transmission capacity allocation was performed under coordinated explicit auctions between the eight transmission system operators from seven CEE countries. The transmission capacity auctions were organised and managed by the Central Allocation Office (CAO) with its seat in Freising (Germany), established by all CEE transmission system operators. The transmission capacity volumes made available through the auctions are calculated by relevant transmission system operators and are subject to specific regulations. The Polish transmission system operator, PSE Operator SA, applies a mechanism of interconnection capacity calculation that was set forth in the Transmission Grid Code and approved by the President of ERO.

Due to high demand for transmission capacity at the synchronous interconnections of the NES, exceeding the actual technical capacity, the nature of the congestion has a structural nature. PSE Operator SA provided the export interconnection capacity during annual, monthly and daily auctions, as well as on the supply delivery date, whereas the import interconnection capacity – during daily auctions and on the

supply delivery date (the transmission capacity offered during the annual and monthly auctions were equal to 0 MW). The export capacity provided by the operator under the annual auctions reached 200 MW; under the monthly auctions they did not exceed 213 MW (with the annual average of 96 MW) and under the daily auctions the capacity amounted to 1,421 MW (on average of 1,103 MW in a year). As regards import capacity, on the other hand, capacity of up to 614 MW was provided under the daily auctions (on average of 363 MW in a year). In 2011 market participants had similar interest in the export and import auctions, what is confirmed by the amount of reserved transmission capacities in both directions, in relation to the capacity provided by the Operator. This situation has been shown in Figure 3.7.

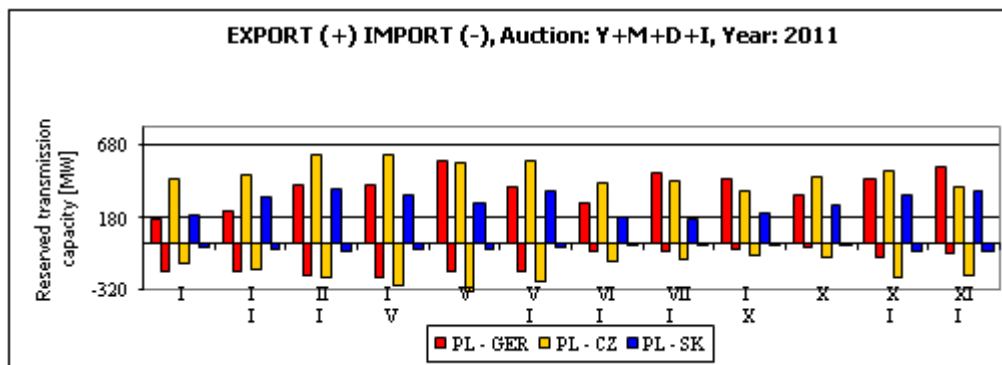
Figure 3.7. Offered, reserved and utilized transmission capacity



Source: ERO, based on the data submitted by PSE Operator SA

The largest amount of transmission capacity was reserved by the market participants at the German and Czech borders. This situation is shown in Figure 3.8.

Figure 3.8. Reserved transmission capacities



Source: ERO, based on the data submitted by PSE Operator SA

The mechanism of transmission capacity determination was agreed with ETSO and UCTE (currently ENTSO-E) and is applied by all European operators. The technical volumes of transmission capacity are determined separately for the exports and imports of electricity.

In relation to the volumes of transmission capacity allocated among market participants no excessive concentration was recorded in 2011. The shares of the capacity allocated for the individual market participants during the annual auctions remained within the range of 2.5–35%. Maximum market share for one entity under a monthly auction amounted to approximately 27%, whereas under the daily auctions the share was approximately 23%.

The number of NES connections with neighbouring power systems and the nature of existing interconnections did not change in 2011. The 2011 investments in the NES did not directly contribute to the increase in cross-border transmission capacity exchange.

In 2011, there were no cases of limitation of allocated transmission capacity during the provision of services involving cross-border capacity exchange due to capacity shortages or grid breakdowns.

In 2011 the cross-border exchange balance amounted to 5,250 GWh. Thus, similarly to previous years, Poland was a net exporter in 2011. The biggest volume of actual transmission was directed from the NES to the Czech Republic and Slovakia, while the most of the physical flows came from Germany.

Table 3.3. Cross-border electricity exchange*

Item	2007	2008	2009	2010	2011	Growth 2011/2010
	[GWh]					[2010=100]
Balance of trade	5,356	688	2,199	1,354	5,250	387.7
Exports	8,497	4,110	5,038	3,097	7,234	233.6
Imports	3,140	3,422	2,839	1,743	1,984	113.8
Actual transmissions						
Dispatched from Poland	13,110	9,704	9,595	7,665	12,023	156.9
to:						
Czech Republic	9,232	6,912	6,870	5,504	8,262	150.1
Germany	48	95	134	167	432	258.7
Slovakia	3,600	2,551	2,337	1,499	3,052	203.6
Sweden	230	146	254	494	278	56.2
Received in Poland	7,752	9,020	7,400	6,310	6,779	107.4
from:						
Belarus	0	554	0	0	0	0.0
Czech Republic	20	28	128	136	44	32.4
Germany	4,889	5,576	5,616	5,331	5,136	96.3
Slovakia	0	31	62	82	27	32.4
Sweden	2,211	2,065	1,394	760	1,514	199.2
Ukraine	631	765	199	0	60	-

* The data presented in the table shows also the cross-border exchange on 110 kV lines: Wólka Dobryńska-Brest, Mnisztwo-Trzyniec-Ustroń, Boguszów-Porici, Kudowa-Nachod, Pogwizdów-Darkov.

Source: ERO, based on the data submitted by PSE Operator SA.

In September 2011 a mechanism of capacity allocation was established at the interconnection between the Polish and Ukrainian systems. The interconnection is a single-track 220 kV line between Zamość and Dobrotvir, synchronously connecting the dedicated Dobrotvir Power Station's generation units with the NES.

The available transmission capacities are allocated between market participants under quarterly explicit auctions which are uncoordinated (unilateral). The transmission capacity is available from Ukraine to Poland only.

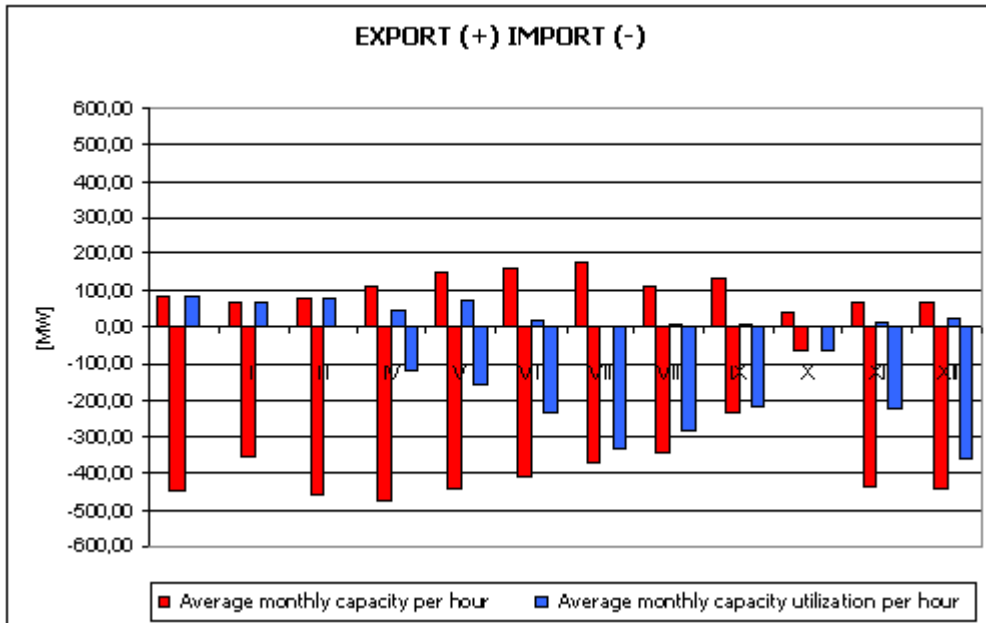
Over the period between 27 September 2011 – 7 October 2011 PSE Operator SA held a unilateral quarterly auction for interconnection transmission capacity for period from 15 October 2011 to 31 December 2011. During the auctions transmission capacity was allocated for the UKRENERGO -> PSEO direction, with the volume of 215 MW in the quarterly period of time. The auction was bid by two market participants. As a result of the auction, PSE Operator SA allocated the transmission capacity in the UKRENERGO -> PSEO direction with the volume of 215 MW over the entire reserve period, at a reserve price of 0.22 PLN/MWh.

The congestion management on the high-voltage direct current link between Poland and Sweden – SwePol Link – is solved through the market coupling mechanism (implicit auctions). The transmission capacity on the link has been allocated on market-based rules as of 16 December 2010. The capacity is allocated by the power exchanges (POLPX and Nord Pool Spot AS) to the individual hours one day ahead. The market coupling mechanism allows for the more effective use of interconnectors as energy tends to flow from lower price area to higher price area.

In 2011 the average hourly capacity allocated to export from Poland amounted to 103.6 MW, whereas for imports – 372.6 MW. The average hourly transmission flows from Poland to Sweden amounted to 32.8 MW, and from Sweden to Poland – 164.7 MW.

The information on monthly available capacity and transmissions is shown in Figure 3.9.

Figure 3.9. Available transmission capacity and electricity flows on the SwePol Link in 2011



Source: ERO, based on the data submitted by PSE Operator SA

The presented data indicate that larger part of capacity was allocated in the import direction to Poland than in exports. This was due to the fact that TSO was obliged to ensure the security of supply, mainly in northern Poland. Thus, the possibility to provide market participants with transmission capacity available for exports was limited. The available export capacity of the connection was 17% of the total interconnection capacity, and the import capacity was 62%.

As far as power flows are concerned, in Q1 2011 electricity went only from Poland to Sweden, however the trend reverted in the following months of the year. This was due to the fact that as of April 2011 the average hourly electricity prices in Sweden were lower than the prices in Poland. The total 2011 electricity exports from Poland to Sweden amounted to 303.3 GWh, while the total imports – 1,467 GWh.

In 2011 the works on implementation of the intraday mechanism on SwePol Link have begun. However, as it turned out, the implementation of intraday solution was impossible as the project was not profitable. Due to that the works have been suspended

Monitoring the use of revenues resulting from interconnection capacity allocation

Under section 6.5. of the Guidelines on the Management and Allocation of Available Transfer Capacity of Interconnections Between National Systems (hereinafter: "Guidelines"), which are the annex to Regulation No. 714/2009, on an annual basis, and by 31 July each year, the regulatory authorities shall publish a report setting out the amount of revenue collected for the 12-month period up to 30 June of the same year and presenting the way revenues in question were spent. The report should also verify if the way complies with the Regulation and the Guidelines, and that the total amount of congestion income is devoted to one or more of the three purposes prescribed in Article 16 section 6 of the Regulation.

On 2 August 2011 the President of ERO published on the ERO website Information No. 23/2011 on the use of the revenue collected by the transmission system operator as a result of interconnection

capacity allocation in the period of 1 July 2010 and 30 June 2011. The data from the published Information (January – June 2011) was completed with information covering the period between July and December 2011.

The revenue from transmission capacity allocation collected in 2011 by PSE Operator SA amounted to 50,923,200 PLN (20,476.05 PLN for the period from January to June 2011, and 30,447,150 PLN for the period from July to December 2011). These amounts do not include the revenue from the capacity allocation on the SwePol Link. Though the decision of 31 December 2010, PSE Operator SA was designated the transmission system operator over the Polish section of the high-voltage direct current link between Sweden and Poland. The revenues from the allocation of transmission capacity on the link are transferred to the owners of the cable – SwePol Link AB and SwePol Link Poland Sp. z o.o., and are fully allocated for maintenance of the transmission capacity on the link. In December 2011 PSE Operator SA refunded a part of the revenue to the participants of cross-border exchange. A decrease of the revenue by 1,003.68 PLN was associated with the fact that some of the transmission rights acquired by the participants under the annual and monthly auctions were transferred to the daily auction process. Due to that, the actual TSO revenue from the allocation of interconnection capacity over the period from January to December 2011 amounted to 50,922,200 PLN.

Until 3 March 2011, the Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (hereinafter "Regulation 1228/2003") was in force. Pursuant to the Regulation, revenues generated from the allocation of interconnection transmission capacities should be devoted to one or more of the following purposes:

- guaranteeing the actual availability of the allocated capacity;
- network investments maintaining or increasing interconnection capacities;
- as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

On 3 March 2011 Regulation (EC) No. 714/2009 came into effect under which revenues generated from the allocation of interconnection capacities should be devoted to the following purposes:

- guaranteeing the actual availability of the allocated capacity, and/or
- maintaining or increasing interconnection capacities through network investments.

If the revenues cannot be efficiently used for the purposes set out above, they may be used, subject to approval by the regulatory authorities, up to a maximum amount to be decided by those regulatory authorities, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs or fixing network tariffs.

Taking into account the above-mentioned, a part of the revenue collected over the period January-December 2011 from the allocation of interconnection capacities was recognised by PSE Operator SA as income taken into account by the regulatory authority when approving the methodology for calculating network tariffs and/or in assessing whether tariffs should be modified. This is consistent with the rules for the calculation of the transmission charges adopted in the 2011 PSE Operator SA tariff. Pursuant to those rules a part of the justified costs related to transmission activity and connected with interconnection capacity allocation was not taken into account in the calculation of charges in the 2011 tariff. These costs are covered by the company with revenue generated from the interconnection capacity allocation auctions. These include the following:

- a) costs of organising coordinated auctions,
- b) costs of cross-border balancing,
- c) the part of the costs connected with the participation of PSE Operator SA in the Inter-Transmission System Operator Compensation (ITC) mechanism which is not covered with revenue from the participation in the ITC mechanism or the market charge revenue.

In view of the above, the justified costs of the transmission activity connected with the allocation of interconnection capacity (that was mentioned in sections a and b above) which were not accounted for in the calculation of charges in the said PSE Operator SA tariff for 2011, were partially covered with the revenue as set out in section c above, and partially with the revenue from the capacity allocation on synchronous connections.

The revenue collected over the period from 1 January 2011 to 31 December 2011 resulting from the allocation of interconnection capacity, calculated in accordance with the applicable accounting rules, will be allocated to the earmarked fund created through a resolution of the Board of PSE Operator SA of 25 May 2006 on the Earmarked Fund Rules. The revenue will be devoted, through a

decision of the executive authorities of the company, to the purpose set forth in Article 16 section 6 letter b) of Regulation (EC) No. 714/2009.

The total revenue of PSE Operator SA from the transmission capacity reservation in Q4 2011 on the interconnection between Poland and Ukraine (Zamość-Dobrotvir) amounted to 88,592.90 PLN.

Monitoring TSO investment plans and their consistency with the TYNDP

Monitoring investment plans is based on the reports on the investment plans implementation which the transmission and distribution companies are required to submit annually to the President of ERO, by 1 March of each year.

During the consultation process for the updated PSE Operator SA development plan for the period 2010–2025, as regards the years 2012–2016, the compliance of the plan with Community-wide development plan (prepared by ENTSO-E in 2010) was assessed. The assessment showed that the national plan lacked several projects that were identified in the Ten-Year Network Development Plan (TYNDP). This is due to the fact that those projects will be implemented in distant future, while national development plan cover only specific investment plans until 2016.

Cooperation with the other regulatory authorities from European countries and ACER

The President of ERO cooperates with the regulatory authorities of other Member States primarily within the Agency for the Cooperation of Energy Regulators (ACER) and through the regional markets (Electricity Regional Initiative – ERI). The Regional Initiatives were launched in spring 2006 and are composed of representatives of EU Member States, regulators, transmission system operators and system users.

As regards ERI, seven regional electricity markets were created in Europe. Poland is part of the Northern Regional Electricity Market (NE) and the Central-East Regional Electricity Market (CEE). The works of the groups are actively supported by representatives nominated by the President of ERO.

The Central-East Regional Electricity Market

In 2011 in CEE region works undertaken in the previous years were continued, with a special focus on the development and implementation by CEE TSOs joint coordinated methods and procedures for congestion management across the entire region. These works were conducted by the Implementation Group composed of representatives of the regulatory authorities, TSOs and other market players. Only one meeting of the group was held in 2011. The works of the group were overseen by the regional regulators, associated in Regional Coordination Committee (RCC). Three meetings of the RCC were held in 2011. The representatives of the President of ERO participated both in IG and RCC meetings.

Ultimately, the calculation and allocation of transmission capacities to system users should be based on the actual flow of electricity in networks managed by transmission system operators (Flow Based Allocation – FBA). Under the model, transmission capacities will be provided and allocated irrespective of the border sections, i.e. between the various price areas represented by the countries of the region, e.g. from Poland to Slovenia (the so-called *source-sink bidding*). The algorithm used for allocation of transmission capacity will be based on the maximisation of social welfare.

During the 2011, participants of the Central-East Regional Electricity Market, and in particular representatives of the regulatory authorities, monitored works on the common procedure for congestion management that was carried out mainly by transmission system operators and the CAO (*Central Allocation Office GmbH*) – a company responsible for the organisation and management of transmission capacity auctions. Over 2011 intensive works were carried out to make most solid and fair evaluation of the FBA method.

Despite the efforts of transmission system operators, CAO and regulators, an explicit evaluation of the analysed FBA model could not be reached and parties could not arrive at a joint position on the next steps which should be taken in relation to the congestion management project in the CEE region.

In the meantime, three other countries (the Czech Republic, Slovakia and Hungary) put forward a project on implementation of coordinated rules for the cross-border capacity allocation on the basis of market coupling mechanism (Hungary would join the market coupling mechanism already in place between the Czech Republic and Slovakia). Regulators of these three countries proposed a change in the current approach regarding tasks which are needed for the implementation of coordinated methods of congestion management across the entire CEE region.

As a first step, the implementation of market coupling (implicit auctions) was proposed, based on the NTC mechanism. Then, the FBA method for capacity allocation mechanism should be introduced. The other regulators supported the current approach, i.e. the implementation of FBA explicit auctions, followed by the introduction flow-based market coupling.

At the meeting of the CEE regulators, attended by a representative of ACER which took place on 5 December 2011, it was agreed that the regulators would develop a document presenting the options of further implementation of target model for electricity market in CEE (the Strategic Paper). The document identified the current and potential problems which need to be resolved in view of the future market integration. Three potential options were presented in the Strategic Paper, including:

- option A – implementation of a broader sub-regional market coupling (involving the Czech Republic, Slovakia and Hungary + other interested CEE countries), based on the NTC mechanism, along with the harmonisation of FBA mechanism in the CEE and CWE (Central-Western European) regions,
- option B – implementation of NTC market coupling mechanism between Slovakia, the Czech Republic and Hungary (which was announced to start in July 2012) and parallel implementation of the FBA mechanism at the other borders of the CEE region,
- option C – implementation of FBA explicit auctions, along with the harmonisation of the rules between the CEE and the CWE regions, followed by the implementation of a regional FBA market coupling.

The Strategic Paper was submitted to the European Commission and ACER on 23 December 2011. The initiatives leading to the development of a joint position are continued in 2012 under coordination of ACER.

Within the CEE a broader cooperation with CWE region was initiated, with a goal of harmonising the flow-based methods. The harmonisation is aimed at future integration of the regions.

In addition, under the Regional Initiative, in November 2011 CEE regulators developed a working plan for the CEE region (a Roadmap – *Central East Region Electricity Regional Initiative Work Plan 2011–2014*) in which priority tasks to be completed between 2011–2014 were specified.

The implementation of the target model for capacity allocation and congestion management was identified as priority task for CEE region as it is a key issue in the integration process. The implementation of the model will improve competition, sustainable prices and security of supply resulting from appropriate market-based mechanism.

In order to achieve the above priorities specific actions have been identified to be taken, including a decision on the way of implementation of Financial Transmission Rights (FTR), and continuing works on the harmonisation of auction rules, in particular at the inter-regional level. Furthermore, the works on the day-ahead market should be continued, with an aim to introduce market coupling mechanism (taking into account the joint market coupling project of the Czech Republic, Slovakia and Hungary, that was described as open to other Member States). There should be also further works on FBA method, especially through the continued cooperation with CWE region and having in mind that the solution is part of the European target market model. From the point of view of Poland, the very important task is the correct definition of price zones, especially in view of increasing unplanned power flows that threaten the security of Polish grid system. As far as the intraday market is concerned, as a temporary solution the CEE region should adopt the NWE market rules, with the target model covering the capacity calculation coordinated by the transmission operators, in accordance with the Framework Guidelines on Capacity Allocation and Congestion Management for Electricity – FG CACM.

The other priorities listed by CEE region are:

- development of European-wide electricity investment plan for the transmission infrastructure and monitoring the actions taken,
- improvement of the transparency and access to published information,
- report on the management and use of interconnections.

The Northern Regional Electricity Market

As regards ERI NE region, there were organised three meetings of the Regional Coordination Committee for Northern Europe (RCC NE) in 2011, attended also by a representative of the President of ERO. The key area of RCC NE interests was the harmonization of rules for following issues:

- allocation of long-term transmission rights and the introduction of hedging instruments to protect the interconnection participants from the congestion costs and fluctuations of electricity prices (physical transmission rights /PTR/ offered under the Use-It-Or-Sell-It (UIOSI) model/, financial transmission rights /FTR/ or, in highly liquid electricity markets, other financial instruments used for financial hedging for market participants, e.g. the Nordic Contracts for Differences /CfDs/),
- network losses on DC links, including on the Polish-Swedish SwePol Link, and considering those losses in the algorithm used for setting the price and volume of electricity that can be transmitted; the application of so-called "deadband" and "ramping" was also a subject to interest,
- price limits.

The works identified in section 1 focus primarily on the selection of hedging instruments (PTRs, FTRs or other financial instruments, such as CfDs) which will be introduced at the borders of price zones across Scandinavia and at the interconnections between Nordic countries and continental Europe. Decisions for each connection will be made separately through bilateral agreements (including the Polish-Swedish SwePol Link). As a first step, the selection criteria will be defined. In order to do this, energy regulators established two work streams: one dealing with the selection of the instruments within Scandinavia and the second one dealing with the selection of instruments on the interconnections between the Nordic countries and continental Europe. A representative of the President of ERO is a member of one of this work streams. During their works energy regulators will also take into account the expectations of market participants (through public consultations). It was agreed that the recommendations for the selection of hedging instruments to be applied at the various interconnections should be presented in Q2 2012.

In 2011, representatives of the regulatory authorities and stakeholders from Poland and Sweden (TSOs and the power exchange) continued works on the introduction of intraday mechanism on the DC SwePol Link. Upon review of the current situation it was agreed that the implementation of the intraday mechanism on the SwePol Link should be suspended, due to excessive costs, until a different solution is found which will not require the system users to incur such high costs.

In November 2011, ERI NE RCC developed a roadmap for the Northern Europe Region for the period 2011–2014. The document sets out the actions to be taken in the region to implement the target model for joint coordinated methods of capacity allocation and congestion management. In particular, the roadmap sets out the actions that must be taken in the following areas:

- 1) long-term transmission rights – recommendations on the choice of hedging instruments at the various interconnections, including the DC link between Poland and Sweden – SwePol Link, presented in Q2 2012,
- 2) day-ahead market – the integration of the day-ahead markets of the regions of Northern Europe and Central West Europe through market coupling was planned to take place by the end of 2012 – the roadmap indicated that Poland implemented market coupling on its interconnector with Sweden,
- 3) intraday market – the implementation of the intraday market on the SwePol Link was postponed until a more feasible solution is found.

In addition, the roadmap covers the issues of cross-regional balancing (implemented in Nordic countries) and the methods of capacity allocation (the Scandinavian countries use the Available Transfer Capacity (ATC) method, which is compliant with ACER's Framework Guidelines (FG CACM).

The 2011 cooperation between the NE and CWE regions brought about the beginning of the implementation of the Day-Ahead Market Coupling Project and the Intraday Project between the regions. Supervision over the implementation of the Day-Ahead Market Coupling Project was assigned to the Cross Regional Coordination Committee (CRCC), composed of representatives of NWE regulators (including a representative of the President of ERO). The lead regulators from other regions and representatives of the Czech Republic, Slovakia and Hungary were assigned observer status on the Committee.

Cooperation with ACER

2011 was the first year of operation of the Agency for the Cooperation of Energy Regulators (ACER) and the cooperation between ERO with ACER. Pursuant to Regulation (EC) No. 713/2009, the Agency is required to provide a framework within which national regulatory authorities can cooperate, with the main objective being to provide assistance to regulatory authorities in exercising, at Community level, their regulatory tasks and, where necessary, to coordinate their actions.

Over 2011 the President of ERO was actively involved in ACER's works at the early stage of its functioning, and following the Agency became fully operational – also in its current works. The cooperation with ACER focuses mainly on the integration of the national markets into a single European electricity market. According to the conclusions of Council this goal should be reached by 2014.

ERO works with ACER mainly through the Board of Regulators – a consultative body and a platform of cooperation for the regulators. In 2011 the President of ERO hosted one of the BoR ACER meetings, held in Krakow, along with a conference on the "Competitive and Integrated Market as a Guarantee of the EU Energy Security". These two events were organised during the Polish Presidency of the Council of the EU. During the conference the President of ERO chaired a panel devoted to the first six months of the Agency activity. This high level event co-organized by ERO was attended by the Director of the Administrative Board, the President of BoR and the Director of ACER.

In 2011, in order to reinforce the cooperation between European regulators at the European level, two working groups (for electricity and gas) were established. The working groups are composed of experts from national regulatory authorities. The groups were set up to support the Agency and actively participate in its works leading to the creation of the internal energy market.

Pursuant to the provisions of the Third Energy Package, regulators should closely consult and cooperate with each other as well as provide each other and ACER with information necessary for the fulfilment of their tasks. In order to meet this obligation, the President of ERO provided ACER with information on the specifics and nature of Polish energy market and informed on the status of works on market integration at the regional level, and thereby supported actions undertaken by the Agency in order to harmonize energy market rules at the European level.

3.1.5. Compliance and implementation of EU legislation

Pursuant to Article 37 section 1 letter (d) of Directive 2009/72/EC, the regulatory authorities shall comply with, and implement, any relevant legally binding decisions of the Agency and of the Commission.

However, over the past year these regulations were not transposed into the Polish law. There were not any respective situations as well. Thus, the issue will be applicable in the later years of the regulator's activity. For similar reasons, in 2011 the President of ERO did not request the Agency to issue an opinion whether the decision made by the President of ERO was compliant with the Agency guidelines. The compliance of the President of ERO decision with the guidelines was not subject to a review by the European Commission as well.

Carrying out investigation, imposing measures to promote effective competition and requiring information from electricity undertakings

In 2011, in relation to the electricity market, the President of ERO has some powers to carry out investigations and to impose measures to promote effective competition and ensure the proper functioning of the market. These specific powers to settle disputes are specified in Article 8 of the Energy Law. According to that Article, the President of ERO has a right to resolve disputes – at a request of one of the parties – only over specific cases, i.e. refusal to conclude a grid connection agreement, electricity sale agreement, fuel or electricity transmission or distribution agreements, natural gas transport agreements, gas fuel storage agreements, natural gas liquefaction agreements and common service agreements, as well as in the case of unreasonable disconnection from the supply of gaseous fuels or electricity.

Within its competences the President of ERO may issue decisions on the terms and conditions of an agreement binding the two parties to the procedure. Regulator may also issue resolutions setting forth the conditions under which supplies should be resumed or continued until to the time the dispute is finally settled.

As regards performing its statutory obligations, including those connected to countering monopolistic practices and promotion of the competition, the President of ERO, pursuant to Article 28, has a right to inspect accounting books of an electricity undertaking and call energy enterprise to provide regulator with any information regarding its activity, including specific information on any investment plans, in compliance with rules for protecting classified information and other information protected by law.

In addition, pursuant to Article 56 of the Energy Law, the President of ERO may impose penalties both on electricity undertakings and their relevant managers.

The powers available under Article 28 and Article 56 of the Energy Law support the effective performing of the President of ERO statutory obligations. Concluding investigation, the President of ERO may, pursuant to Article 28 of the Energy Law, gain access to all information relating to electricity undertakings, what allows regulator to precisely state which cases require regulator's intervention. The sanctions, on the other hand, with the maximum penalty up to 10% of the energy undertaking's annual revenue from the regulated activity have deterrent effect. They prevent energy companies from breaking applicable law.

An analysis of above-mentioned powers granted to the regulator under the Energy Law proves the need to introduce tools for developing competition and influencing market structure¹²⁾.

In view of the above, with regard to legislative works on draft Energy Law that were carried out in 2011, the President of ERO was involved in the process of development of new regulatory tools to be included in the draft. The proposal submitted by the President of ERO was compliant with the interpretative note on Directives 2009/72/EC and 2009/73/EC of 22 January 2010 concerning regulatory authorities. It covers granting the President of ERO with rights to initiate *ex officio* proceedings and to oblige energy enterprises (through administrative decision) to sell specific part of active electrical energy or generation capacities on the terms determined by the President of ERO. This right could be exercised when the results of the monitoring would show an insufficient degree of competition in the market.

Further specification of the competences of the President of ERO that are determined in the Energy Law as well as introduction of additional tools (as referred to above) will allow, to certain extent, to influence on generators and to improve competition.

Therefore, the competences of the President of ERO should be specified in the law, in order to enable regulator to perform its tasks as described in the Third Energy Package. Moreover, cooperation with the President of UOKiK (Office of Competition and Consumer Protection) to promote competition in the energy market should be continued. These two factors are of key importance to meeting the obligations resulting from EU regulations and to ensuring competition in the energy market.

Compliance of energy companies with relevant European legislation

Pursuant to Article 23 section 2 item 11 of the Energy Law, the President of ERO is responsible for monitoring if the transmission system operator and other market participants comply with the obligations resulting from Regulation (EC) 714/2009. The President of ERO is also responsible for performing other regulatory obligations under the Regulation. In addition, in accordance with Article 56 section 1 item 1d of the Energy Law, parties which fail to comply with the obligations set out in Regulation (EC) 714/2009 are subject to a financial penalty.

In August 2010 proceedings were initiated to impose a financial penalty due to non-compliance with the Regulation by the transmission system operator. The proceedings concerned the obligations to establish the intraday congestion management mechanisms on the connections between Polish transmission system with the transmission systems of Germany, Slovakia and the Czech Republic (intraday market), to determine the relevant structure for the allocation of transmission capacities for the subsequent time periods; to apply the common coordinated methods of congestion management and capacity allocation procedures in the CEE and NE regions (every day, every month and one day ahead) as well as the obligation to publish information on the expected demand and production in the intraday mode.

¹²⁾ Cf. tools available to the European Commission under Regulation (EC) No. 1/2003/EC of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Official Journal of the EC L 001 of 4 January 2003, p. 1). The Regulation gave the Commission the power to impose any remedy, whether behavioural or structural, in case of an infringement of Article 81 and Article 82 of the Treaty. Some of the Member States have decided to grant similar powers as regards electricity and gas to their national regulatory authorities.

While the proceedings were underway, the transmission system operator developed and, following consultations with system users, submitted for approval the Transmission Grid Code amended in the part concerning system balancing and congestion management. The amended grid code implemented the mechanisms of intraday congestion management that allow for cross-border trade (intraday market). The amendment was approved through the decision dated 20 September 2010. The approved rules were implemented on the interconnections of the Polish transmission system with the transmission systems of Germany, Slovakia and the Czech Republic on 1 December 2010. In addition, PSE Operator SA, together with other TSOs from CEE, developed common coordinated rules for transmission capacity allocation across the entire CEE region ("*Rules for Coordinated Auctions of Transmission Capacity in the CEE-Region*", dated 22 November 2010). The document was published on the website of the *Central Allocation Office GmbH* that is responsible for organising and managing transmission capacity auctions. The rules came into effect across the entire region on 1 January 2011.

In view of the above, the President of ERO withdrew from penalizing operator with regard to fulfilment TSO obligations to establish the intraday congestion management mechanisms on the interconnections with Germany, Slovakia and the Czech Republic; applying the common coordinated methods of congestion management and capacity allocation procedure in CEE and NE regions as well as the obligation to publish information on the expected demand and production in the intraday mode. With regard to other issues the proceedings were discontinued.

The grid codes implementation monitoring, developed by ENTSO-E in accordance with Regulation (EC) 714/2009, will be initiated once the grid codes are adopted (to date no grid codes have been adopted).

Imposing penalties

The provisions of Chapter 7 of the Energy Law implement Article 37 section 4 item d of Directive 72/2009. In order to ensure that energy enterprises fulfil their obligations specified in the Energy Law, the Polish legislator introduced legal provisions according to which public administration has powers to apply and enforce sanctions for violating of the Law.

Actions which are subject to financial penalties were enumerated in the Law. Furthermore, the act provides an extensive presentation of the rules for fines application.

Fines are imposed following an administrative proceeding which is initiated *ex officio*. Setting the amount of the penalty, the President of ERO is required to take into consideration four factors: degree of harm, degree of culpability, the way the company has behaved to date, and its financial capacity. Pursuant to Article 56 of the act, in principle, the amount of the fine may not exceed 15% of the offender's revenue earned during preceding fiscal year. If the fine is associated with a licensed activity of the energy enterprise, the amount of penalty may not exceed 15% of the revenue related to licensed activity that was earned during the preceding fiscal year. However, under specific circumstances derogation from this rule is possible, and so in case of non-compliance with the obligation related to system independence of the operator the amount of the imposed fine may not be smaller than 1% and may not exceed 15% of the turnover. In case of failure to issue grid connection conditions within a specified timeframe, the amount of the fine may not be lower than 3000 PLN for each day of delay in issuing the connection conditions. Moreover, in case when specific obligations associated with obtaining and redeeming certificates of origin are not met, and in case of failure to submit or submission misleading declarations to commodity brokerage house or brokerage house, the amount of the penalty is calculated according to a predefined formula.

The fine is imposed on entities that are obliged to comply with the provisions set forth in Article 56 section 1 items 1-33 of the act. In principle, these entities are legal persons which operate as electricity undertakings. Notwithstanding any of the fines imposed on energy undertakings, the President of ERO may also fine the managing director of the entity. The maximum amount of such fine may be equivalent to 300% of the managing director's monthly pay.

The Energy Law also provides for the non-application of the fines. The President of ERO may decide not to apply a fine if two specific factors are present at the same time, namely when the degree of harm is minimal and when the entity refrains from violating the law or meets its obligation.

Over the course of the regulatory activity in 2011 the President of ERO imposed fines on energy undertakings which totally amounted to over 70 million PLN. However, it should be underlined that

the fines apply to all of the regulated sub-sectors (electricity, gas, heating and liquid fuel trading) as well as to all types of offences – from the failure to meet administrative obligations, through the failure to meet the obligations under licenses or the failure to comply with the supplier switching procedure, to cases of applying prices other than the ones specified in the approved tariff. The amount of the imposed fines may be subject to change as a result of appeals against the decisions issued by the President of ERO.

3.1.6. Dispute settlement

Pursuant to Article 8 of the Energy Law the President of ERO is empowered to resolve disputes in some specific cases.

The dispute concerning the refusal to conclude an electricity transmission service agreement that was initiated in December 2010 was not completed in 2011. Due to the many points of dispute the proceeding is of a particularly complex nature. The key element of the dispute is the amendment of the current contractual provisions regarding the payment of discounts for each unsupplied unit of electricity, due to the amendment of Regulation of the Minister of Economy on the specific principles for setting and calculating tariffs and financial settlements in electricity trade. As the current agreement terminated on 31 December 2011 and the proceedings were not finalized by that date, the President of ERO, at the request of both parties, issued a resolution and requested to continue supplies until the dispute is finally resolved. In 2011 the parties undertook negotiations which led to the resolution of many of the disputable items, technical in nature.

3.2. Promoting Competition

3.2.1 Wholesale Market

3.2.1.1. Price monitoring

The monitoring the energy market covers the area of wholesale prices. The regulatory authority collects and analyses market data regarding bilateral contracts concluded on the OTC wholesale market and on the exchange (Polish Power Exchange, POLPX). Based on surveys submitted by generators and trading companies the following information is calculated and published:

- by 31 March of each year for the preceding calendar year on:
 - average price of electricity generated in high-efficiency cogeneration (calculated separately for electricity generated in cogeneration units fired by gas or with total installed capacity of below 1 MW, and separately for electricity generated in cogeneration units fired by methane released and captured during underground mining works or gas obtained from biomass processing);
 - average electricity prices on the competitive market along with explanations on how the prices were calculated;
 - average prices of heat generated by the generating units belonging to licensed undertakings which are not cogeneration units;
- average quarterly electricity price that is not subject to the obligation set forth in Article 49a sections 1 and 2 of the Energy Law, published by the 15th day of each month following the quarter for which it is calculated;
- indicators and indicatory prices of material importance for the tariff setting process;
- information used to improve the usage of energy and fuel.

In addition, each year the President of ERO publishes the report on its activity which provides a comprehensive presentation of, among others, the electricity market as regards the wholesale and retail electricity markets.

The report shows that the average 2011 prices adopted by generators and trading companies in respective segments of electricity sale remained similar to the 2010 prices. The average electricity price on the competitive market amounted to 198.90 PLN/MWh. The average price at which

generators sold electricity in 2011 amounted to 199.11 PLN/MWh. The average price of electricity sold by trading companies amounted to 227.42 PLN/MWh. On average, prices in those two groups rose by 4.3% over 2010, which is consistent with the consumer price index for the same period.

The market monitoring conducted by the President of ERO and the publication of electricity prices are offered both for informative purposes and are used as benchmarks for decisions made by electricity undertakings.

3.2.1.2. Monitoring the level of transparency, including compliance with transparency obligation and the level of effectiveness of market freedom and competition

As far as transparency rules are concerned (including the publication of information on the available generation capacities, time from placing order to its realisation, and the expected level of generation capacity and demand), no significant changes were recorded in relation to 2010. These specific obligations are met through power demand forecasts as well as the projected generation capacities and the available generation capacity. The power demand forecast for the domestic market is developed as part of the coordination plan. The coordination plans are published on the website of PSE Operator SA (transmission system operator). The coordination plans:

- annual, are published for a term of three consecutive years – until 30 November of the preceding year,
- monthly – for March, is published by 23 February, and the plans for the other months are published by the 25th day of the preceding month for an upcoming month.

The preliminary daily coordination plan is published by 4pm on the day preceding the date of electricity supply, whereas the daily coordination plan is published by 5pm on the day preceding the date of electricity supply. The first update to the preliminary daily coordination plan is carried out by 7pm (on the day preceding the date of electricity supply) and is applied to all 15-minute periods of the supply day. Following updates are performed if necessary, on the day before the date of supply and during operation on the day of supply.

In order to improve the wholesale market transparency the President of ERO proposed regulations which were introduced into the Energy Law in 2010. These regulations obliged electricity generation companies to sell not less than 15% of their total annual output on power exchanges or on the regulated market (obligation to sell on exchange). On the other hand generators involved in the long-term power purchase contracts, entitled to receive financing to cover their stranded costs in accordance with the provisions of the Act regulating Coverage of generators' costs resulting from of the Early Termination of Long-Term Power and Electricity Contracts of 29 June 2007 (Journal of Laws No. 130, item 905, as amended) are obliged to sell all generated electricity through the public market.

Following the implementation of the above mentioned obligation in 2011 approximately half of the wholesale electricity sales were made through the exchange, what is significant improvement over the past years when the share of wholesale electricity sold through the exchange fell below 1%.

The transparency of the price setting mechanism on the wholesale market is of major importance for electricity undertakings. Setting the reasonable wholesale electricity prices requires a liquid market, i.e. market where a lot of buyers and sellers operate, where the trading volume permits to conclude transactions at prices close to the actual market rates. This is consistent with the European Commission guidance for reaching a single European energy market by 2014.

The details of information to be published by transmission system operators have been identified in the guidelines on the management of available transfer capacity, annexed to Regulation (EC) No. 714/2009.

The Polish transmission system operator releases information on the cross-border exchange on its website (www.PSE-Operator.pl) as well as on the website of the Central Allocation Office in Freising (www.central-ao.com). The information covers in particular the following:

- principles governing organisation of coordinated auctions,
- estimates of the annual, monthly and daily total transmission capacity (TTC), net transmission capacity (NTC), and the available transmission capacity (ATC),

- annual forecast for the transmission capacities, including information on the causes of congestions, i.e. specific network elements disconnection,
- offered and allocated transmission capacity,
- prices of transmission capacity,
- number of auctions participants,
- number of bids submitted by participants of the auctions by their commercial profile,
- price curves for the annual auction.

In addition, on its website PSE Operator releases also information on the methods adopted to set the total transmission capacity (TTC) which is allocated to market participants, as well as the transmission reliability margin (TRM).

Notwithstanding any of the above, the market participants received access to transmission capacity on interconnection between Poland and Ukraine. Since Q4 2011, PSE Operator has published the rules of transmission capacity allocation, as well as the number of auctions participants, the demand for transmission capacity, the information on awarded capacity, the auction price and the number of winning participants.

In addition, PSE Operator SA has been publishing information on the generation resources of the National Electricity System, including the following:

- information on scheduled maintenance or outages of specific generating units,
- network congestion, in the form of data on the minimum required capacity (number of generating units) and the maximum capacity allowed (number of generating units) across the generation nodes in a network,
- capacity shortages in generation units,
- balancing bids including the prices and volumes of electricity offers that were adopted on the balancing market for the generation units.

PSE Operator SA is also required to publish information on investment projects contained in the development plan that is agreed with the President of ERO.

In relation to the operation of the NES, the transmission system operator develops and submits Annual Coordination Plans (ACS), Monthly Coordination Plans (MCS), Daily Coordination Plans (BTHD, PDCS, DCS), as well as information on the planned cross-border exchange on synchronous interconnection exchange. Afterwards, monthly and annual NES operation reports are published and daily reports on power balance across showing the morning and evening peaks and the capacity demand in NES. Moreover, the TSO also publishes information on the cross-border exchange with Sweden and on the synchronous interconnections. In addition, the PSE Operator SA publishes rules for the participation in the balancing market, contract standards and information on the balancing market operation, including settlement prices for unbalancing, electricity volumes (in daily and hourly cycles), as well as the costs of balancing market operation. Commercial information between the TSO and market participants is exchanged through the operator's website and using the *Electricity Market Information Exchange* (Wymiana Informacji o Rynku Energii – WIRE) system. Technical information with the generators to enable the operation of the National Electricity System is exchanged through the *Power Plant Cooperation System* (System Operatywnej Współpracy z Elektrowniami – SOWE).

3.2.2. Retail Market

3.2.2.1. Price monitoring

The President of ERO did not exempt electricity suppliers from the obligation to submit for annual approval tariffs for consumers from group G (mostly household consumers), connected to the distribution system operator and who did not switch suppliers. Electricity prices for other consumer groups are set on market-based rules.

Since 2010 the law requires the publication of sales offers. Pursuant to Article 4j section 5 of Energy Law all suppliers selling electricity to end users are obliged to publish on their websites or make publicly available within their premises information on the prices of gaseous fuels or electricity, along with the terms and conditions of their use. The prices and the terms of the offers are presented in detail and published on websites (or are available in the undertakings' premises).

For large industrial/commercial consumers the suppliers usually present their offer on individual basis. The prices and other contractual terms are subject to negotiations with the client and they depend on the term and volume of supplies, as well as the consumer profile.

The President of ERO launched a web electricity price comparison tool (a tariff calculator) and obliged energy undertakings selling electricity to households which decided to switch suppliers to submit their offers not later than two days prior to becoming effective. The prices are to be shown in a transparent manner, presenting also other components unrelated to the price (e.g. charges for concluding insurance contract or charges associated with other potential benefits).

The President of ERO quarterly monitors the average electricity prices offered to end consumers according to the breakdown by consumption volume (i.e. consumption up to 50 MWh, between 50 and 2000 MWh, and above 2000 MWh). Through *ad hoc* studies, depending on needs, the President of ERO monitors the prices offered to end users using the publicly available statistics.

Consumer groups by consumption volume [MWh]	Total number of consumers	Sale volume to end consumers (5 largest undertakings) [MWh]	Average price [PLN/MWh]
< 50 MWh	18,690,615	47,961,426	281.04
50-2000 MWh	53,606	26,774,165	270.59
> 2000 MWh	1,816	31,351,563	246.52
TOTAL	18,746,038	106,087,154	268.20

In relation to consumers from G group who did not switch suppliers, electricity prices are shown in the tariffs set by the trading companies and approved by the President of ERO and published in the "Industry Bulletin of the Energy Regulatory Office – Electricity".

Monitoring the level of transparency and effectiveness of market opening and competition on the retail market, including household consumers

Prepayment system

The regulations concerning the installation of pre-paid electricity meters are laid down in Article 6a section 1 of the Energy Law. The tariffs approved by the President of ERO provide for a reduction of the subscription fee for consumers with installed pre-paid meters. The mode of payment is set out in the contract. The prepayment metering system is not subject to monitoring.

Frequency of supplier switching

The President of ERO monitors the supplier switching process, reviewing the monthly data submitted by the DSOs. The monitoring indicates that over 2011 more consumers decided to switch suppliers, both among commercial buyers and households. The reasons for the improved numbers of household consumers who decide to switch supplier was, among others, the increased personal selling conducted by some of the suppliers. The implementation of the TPA rule in 2011 uncovered specific defects associated with practical application of TPA rule. Although the procedure for supplier switching is relatively easy, there were some irregularities in its application as regards the electricity undertakings. 2011, compared to 2010, brought about an increase in the number of consumer complaints and inquiries concerning the supplier switching process. The cases were predominantly connected with the actions taken by suppliers and distribution system operators. Some distribution system operators prevented consumers from exercising their right to switch suppliers by unreasonable extension of the supplier switching procedure or demanding the unreasonable requirements to be

met. There were also cases when undertakings provided consumers with misinformation (e.g. on the number of available/free switches of suppliers) and threatened to suspend electricity supplies if consumers will not conclude new agreements with electricity supplier from a particular energy group.

Frequency of network disconnections

DSOs are required to submit to the President of ERO information on the number of consumers who, at a request of electricity supplier or on the basis of DSO decision, were disconnected from the network due to the late payment for electricity bills or other services.

Year	Electricity		
	Number of disconnections	Total number of consumers	[%]
2004	236,012	15,661,600	1.5
2005	239,289	15,761,619	1.5
2006	190,936	15,817,289	1.2
2007	160,860	16,064,750	1.0
2008	173,940	16,201,598	1.1
2009	224,961	16,363,511	1.4
2010	264,031	16,487,877	1.6
2011	251,093	16,616,916	1.5

Source: ERO.

Charges for maintenance services

The DSO tariffs include charges for services offered at a consumer's request. These charges concern primarily services such as disconnection and activation of electricity supplies, checking the accuracy of the metering and billing equipment operation, laboratory inspection of the accuracy of metering and billing system operation, provision of an additional inspection of a previously tested metering and billing equipment, movement of the meter or meter and control equipment (clock for zone meters) to a different location within the same premises.

The information on the turnover generated from additional services offered at the consumer request is submitted each year by the DSOs in DTA-1 reports.

Prices for household consumers

The table below shows the increase in price and rates approved in 2012 tariffs of the 4 largest energy companies supplying electricity to consumers from G group:

	Distribution price increase for households	Electricity price increase for households	Total price increase for households
Average increase in the approved tariffs	6.2%	5.1%	5.7%

In June 2011 on the ERO website an electricity price comparison tool was launched, known as the Internet Electricity Price Calculator (Cenowy ENergetyczny Kalkulator Internetowy – CENKI). The tool was designed to assist consumers with comparing the offers of all entities supplying electricity to households. The calculator is an auxiliary tool for those consumers who would like to switch supplier. The service is also used by the President of ERO to monitor the offers (prices) for households who decided to change their default supplier and switch to a different one.

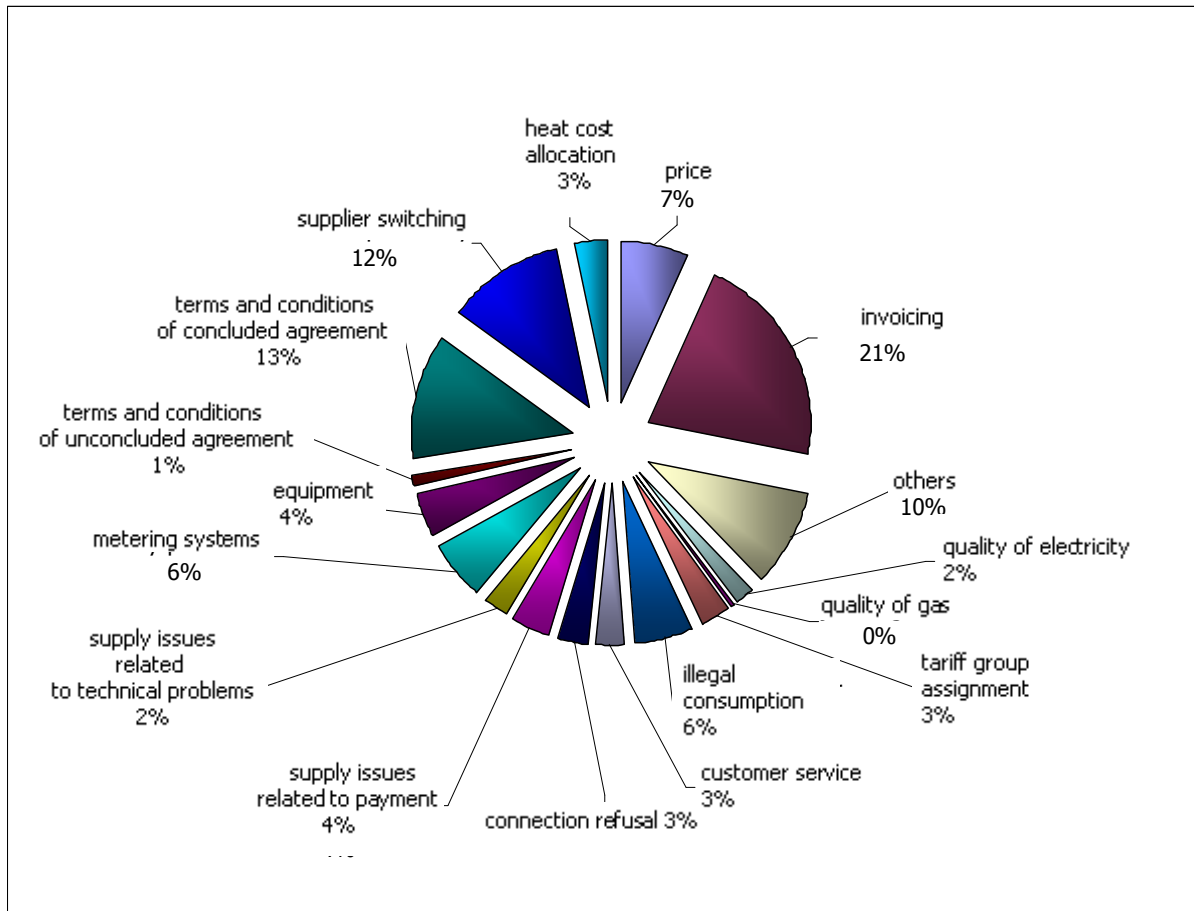
On average, in 2011 the calculator provided information on the household electricity prices offered by 6 suppliers (PGE Obrót SA, Energetyczne Centrum SA, ENERGA-Obrót SA, PKP Energetyka SA, Vattenfall Sales Poland Sp. z o.o. and RWE Polska SA). The remaining offerings were submitted as alternative suppliers' offers. The limited number of price offers submitted by suppliers for use in the

calculator is to a large extent the effect of the obligation to submit household's tariffs for the President of ERO approval.

Household consumers complaints

In case of complaints submitted by households, consumers were concerned mainly with issues related to: billing (all cases related to the bill and the information provided therein) – 21%; various aspects of concluded agreements or ones to be concluded with electricity undertakings – 14%; supplier switching – 12%. By combining the related issues such as billing and price it appeared that consumers were predominantly interested in economic matters. This fact confirms that consumers faced many difficulties as regards understanding the content and of electricity bills (specific electricity price components).

Figure 3.10. Consumer issues in 2011



Source: ERO.

Distortion or restriction of competition, including providing any relevant information and bringing any relevant cases to the relevant competition authorities

In 2011 the increased activity of alternative suppliers (new trading companies) on the market was observed. It had a positive impact on the development of the retail market and the increase in the number of consumers deciding to switch suppliers. However, this activity of new suppliers had also some negative aspects. In 2011 the President of ERO received notifications from concerned consumers from all parts of the country that some electricity suppliers had used an aggressive sales and marketing techniques during the presentation of their offers and conclusion of new sales agreements. This development only confirmed the need to continue the informative and educational campaigns aimed at raising the consumer's awareness. However, as more and more consumers

decided to switch supplier, specific irregularities were also observed on the electricity market, mostly connected with the application of the supplier switching procedure and actions undertaken by specific market participants.

Active suppliers of electricity tend to use new methods and channels to reach the consumer and present him their commercial offers. For this purpose they use the services of brokers or direct sales solicitors who attempt to enter the consumer residences. The Energy Regulatory Office received information on the potential use of unfair practices by the undertakings, including, among others, providing consumers with misinformation, presenting inaccurate information on the benefits resulting from concluding new agreements (such as the option to suspend the payment of electricity bills for 3 months without consequences), or making it difficult to reach the undertaking once the agreement was concluded. Similar information was also received by the municipal and district consumer ombudsman (with which ERO is in permanent direct contact) as well as the Office of Competition and Consumer Protection (UOKiK). Victims of these negative practices are mostly household consumers, usually older people, rather than commercial or corporate consumers who are usually better informed and more aware. Some of the irregularities in the supplier switching process concerned applying the agreement templates or unfair commercial practices which, due to the lack of competence and adequate regulatory tools, cannot be influenced directly by the President of ERO. Numerous telephone complaints and 30 written complaints were received over 2011 in relation to one of the alternative suppliers. As the complaints may be associated with violation of the collective interests of consumers and the use of unfair market practices, the relevant information was submitted to the Office of the Competition and Consumer Protection, in accordance with the relevant scope of competences.

In 2011 the President of ERO prepared an analytical review for the President of UOKiK regarding the impact of the planned consolidation of TAURON Polska Energia SA and GZE SA on the level of competition in electricity sector. The paper provided specific insights concerning the impact of the merger on the wholesale and retail electricity markets in Poland and presented the negative effects as well as the available measures to limit the market power of the undertaking, to be considered by the President of UOKiK when issue non-objection to the concentration.

3.2.2.2. Monitoring the level of transparency, including compliance with transparency obligations, and the level and effectiveness of market opening and competition

The actual freedom of supplier switching is measured by the number of active consumers on the market and the number of supplier switching cases completed over a period of time. This is an effect of many factors, including customer awareness, their motivation to switch suppliers, as well as the easiness of switching procedure or the availability of competitive offers on the market. Still a relatively small part of consumers decided to switch suppliers in Poland (approximately 0.23%). Despite low level of consumers' activity in this area, it should be analyzed across the various fields to capture the positive and the negative effects and define the potential barriers. It is also important to monitor how the use of the right to switch suppliers changes across time and according to geographical boundaries or whether all customers, from different tariff groups, behave in similar way or not. The status of TPA rule application within various DSOs was shown in Table. 3.4.

In 2011 64 DSOs were subject to monitoring; six of them were established as a result of the unbundling process, and 58 so-called industrial DSOs operating as vertically integrated undertakings, i.e. conducting both as network and trading activity. The cases of supplier switching were observed within 11 of all monitored operators.

Table 3.4. The right to switch suppliers over 2010–2011

No.	Distribution system operator	Number of TPA user*		Volume of electricity supplied under TPA [MWh]		Share of electricity supplied under TPA in relation to the total supply of electricity [%]	
		2010	2011	2010	2011	2010	2011
1	PGE Dystrybucja SA	1,897	9,708	4,180,807	6,022,428	13.75	19,35
2	ENERGA-OPERATOR SA	1,353	9,466	2,130,397	2,796,369	11.03	14,26
3	TAURON Dystrybucja SA	4,041	11,519	10,069,075	12,731,255	58.90	37,72
4	ENEA Operator Sp. z o.o.	751	3,727	2,806,482	4,481,261	16.52	26,20
5	Vattenfall Distribution Poland SA	457	1,158	4,644,573	5,495,842	42.15	48,43
6	RWE Stoen Operator Sp. z o.o.	421	2,168	838,675	1,451,380	11.89	19,98
7	PKP Energetyka SA	30	80	24,837	44,910	0.75	4,58
8	Polenergia Dystrybucja Sp. z o.o.	1	65	662	43,054	0.41	20,26
9	Dalkia Poznań Zespół Elektrociepłowni SA	0	18	0	146,627	0.00	100,00
10	ENESTA Sp. z o.o.	0	4	0	89,006	0.00	23,90
11	Anwil SA	0	1	0	115,852	0.00	68,99
TOTAL		8,951	37,914	24,695,508	33,417,982	20.13	26.81

* Users are understood as natural or legal persons with whom distribution companies concluded one or more network connection agreements and distribution agreements.

Source: ERO, based on the data submitted by DSOs.

The table below presents the data on supplier switching on the area of distribution system operators, with household consumers shown separately.

Table 3.5. The right to switch suppliers according to industrial/commercial and household consumers (2011)

No.	Distribution system operator	Number of TPA users		Volume of electricity supplied under TPA [MWh]	
		A, B, C	G	A, B, C	G
1	PGE Dystrybucja SA	4,965	4,743	6,018,220	4,208
2	ENERGA-OPERATOR SA	4,600	4,866	2,782,623	13,745
3	TAURON Dystrybucja SA	8,085	3,434	12,724,467	6,788
4	ENEA Operator Sp. z o.o.	2,893	834	4,479,209	2,052
5	Vattenfall Distribution Poland SA	676	482	5,492,125	3,717
6	RWE Stoen Operator Sp. z o.o.	1,044	1,124	1,445,333	6,047
7	PKP Energetyka SA	80	0	44,910	0
8	Polenergia Dystrybucja Sp. z o.o.	65	0	43,054	0
9	Dalkia Poznań Zespół Elektrociepłowni SA	18	0	146,627	0
10	ENESTA Sp. z o.o.	4	0	89,006	0
11	Anwil SA	1	0	115,852	0
TOTAL		22 431	15,483	33,381,425	36,557

* Users are understood as natural or legal persons with whom distribution companies concluded one or more network connection agreements and distribution agreements.

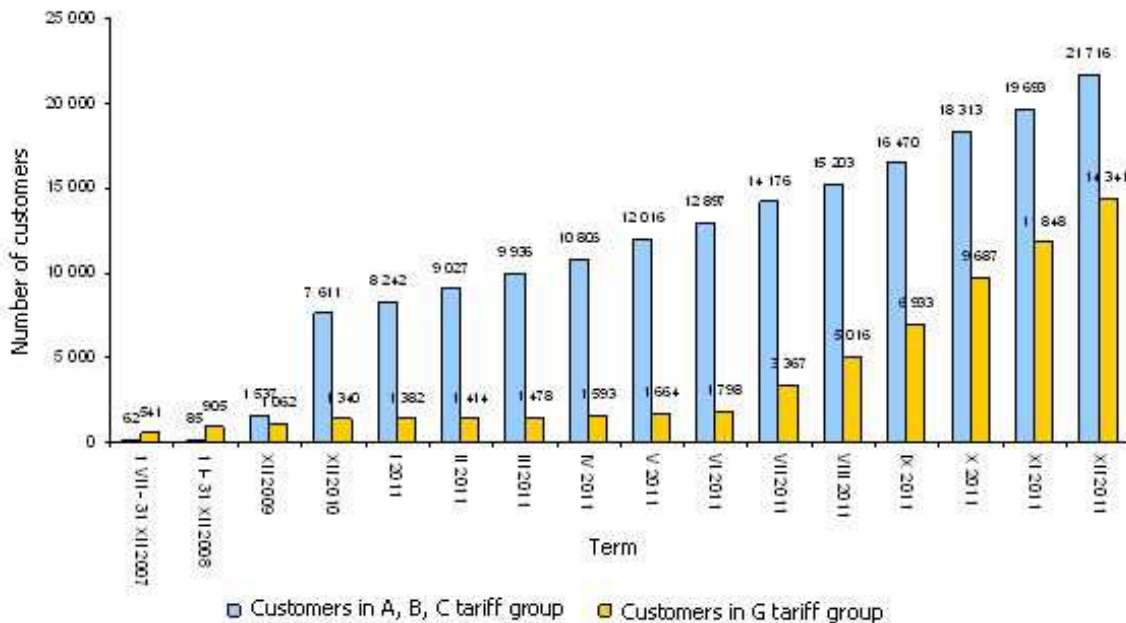
Source: ERO, based on the data submitted by DSOs.

The consumers from A, B and C group demonstrated an almost triple growth in the number of consumers who switched supplier in 2011. However, the recorded growth was smaller than in 2010, which could indicate the relative saturation within this segment which results from current stability of the market.

The change recorded in the household consumer segment is, on the other hand, quite interesting, with the number of customers who switched supplier in 2011 being almost ten times the number for the previous year. Thus, a clear rising tendency for the TPA indicator is observed in the household segment which could be affected by the 2010-2011 educational campaign carried out by ERO under the working title "You Can Switch Your Electricity Supplier, Too", that was targeted mostly to

households. Another reason for such change was the increased soliciting activity of the trading companies and the high activity of new alternative suppliers (new distribution companies). There is still relatively low switching rate on the market (approximately 0.23%), however, it should be noted that the 2011 growth was significantly higher than the one recorded for 2010 (0.05%).

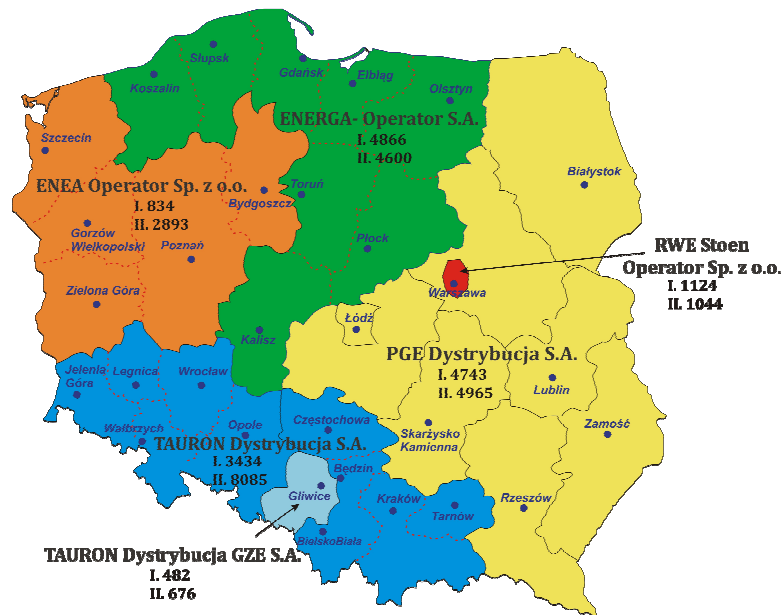
Figure 3.11. Application of the TPA rule, 2007–2011



Source: ERO.

Application of the supplier switching procedure was not consistent across the country, which is further confirmed by the data provided by the operators (Table 3.5.). The largest group of consumers from A, B and C tariff group who decided to switch supplier came from the areas served by TAURON Dystrybcja SA. For households, on the other hand, the highest switching rate was recorded in the areas served by ENERGA-OPERATOR SA. In 2011 the biggest volume of electricity supplied under TPA rule was purchased by TAURON Dystrybcja SA customers. In relative terms, the largest share of electricity supplied to consumers exercising the right to switch supplier in relation to the total electricity supplies was recorded for Vattenfall Distribution Poland SA, with the value reaching 48.43%. This is due to the large proportion of big industrial consumers connected to the network of this DSO. It is worth to note that in December 2011 TAURON Polska Energia SA, the owner of TAURON Dystrybcja SA, acquired Vattenfall Distribution Poland SA. Currently the company operates as TAURON Dystrybcja GZE SA, but it is expected that it will be consolidated with TAURON Dystrybcja SA.

Figure 3.12. Supplier's switching cases according to operating areas of individual distribution system operators



Number of TPA customers across the areas of the 6 DSOs

I - tariff group G customers

II - tariff group A, B, C customers

Source: ERO.

Total 2011 volume of electricity supplied to customers directly connected to the transmission network amounted to 2,228.8 GWh. All customers purchased electricity from suppliers they chosen. To summarise, total volume of electricity sold to end users on market terms, i.e. after they applied the TPA rule (supplied through the distribution and transmission networks) amounted to 35,607.5 GWh, representing 28.6% of total electricity supplied to end users. However, customers from groups A, B and C (industrial and commercial consumers) are defined as end users who purchase electricity at high, medium and low voltages for other than residential purposes. For these customers prices are not subject to approval by the President of ERO. Consumers in G group, on the other hand, are supplied in electricity on low voltage for residential purposes. Tariffs for electricity sales to consumers from this group are still subject to approval by the President of ERO.

Monitoring the occurrence of restrictive contractual practices and informing the national competition authorities of such practices

Together with growing activity of electricity suppliers, the contracts with certain potentially abusive clauses appeared on the market. One of the companies targeting it offers to households proposed a template of the contract containing clauses that give the company right to charge additional fees if the consumer is late with the payment for the services provided. Moreover, consumers were not provided with template of withdrawal from the contract statement. In accordance with the applicable law consumers which conclude agreements for electricity supplies outside of the undertaking premises are entitled to withdraw from such contracts within 10 days. The notifications submitted by the President of ERO as well as consumers complaints led to the initiation of a procedure against the company in April 2012 by the Office of Competition and Consumer Protection. The procedure concerned the use of practices that violated the collective interests of consumers in relation to the terms and conditions of contracts (abusive contractual clauses).

In relation to the use of practices involving the application of exclusive clauses for large customers any cases were referred to the President of ERO in 2011.

3.2.3. Recommendations on supply prices

As tariffs for household consumers are still subject to approval, the prices and rates for this group of customers continue to be approved by the President of ERO for 1-year terms.

3.2.4. Carry out investigations and imposing measures to promote effective competition

In May 2011 the President of ERO initiated proceedings to fine EnergiaPro SA in connection with the discovery of circumstances indicating the potential infringement of the provisions of the Distribution Grid Code regarding balancing of the distribution system and congestion management. Following the administrative procedure in August 2011 the President of ERO issued a decision which stated that EnergiaPro SA has violated the rules set in distribution grid code. However, as the delay in the realization of the supplier switching procedure did not significantly affect the customer's activity, it was stated that the degree of harm was insignificant, and the analysed case of supplier switching procedure was the only case when the procedure was completed after a deadline. Thus, the President of ERO withdrew from imposing a penalty on the operator.

December 2011 marked the completion of the administrative procedure to fine PGE Dystrybcja SA based in Lublin, in connection with the violation of section B.2.3 of the Distribution Grid Code – Balancing. In December 2011 The President of ERO issued a decision and stated that PGE Dystrybcja SA is guilty of the infringement of the Distribution Grid Code obligation to notify, within specified timeframes, the contractual parties to an electricity agreement on the inability to enforce the agreement and not indicating the reasons for rejecting the notifications. The procedure was concluded with a decision imposing a fine on the undertaking.

In 2011 the President of ERO received letters with requests for interventions regarding energy enterprises' actions which, as suggested by customers, infringed their interests. This in particular concerned cases of obstructing the supplier switching procedure. The President of ERO took the required measures to investigate the individual situations – in the majority of cases measures undertaken by regulator were sufficient to ensure that customers completed the supplier switching process.

In mid-February 2011, the President of ERO received a complaint of electricity trading company accusing a network company. According to the complainant, due to the actions of network company aimed at obstructing the supplier switching procedure, the complainant was not able to enforce an agreement concluded with a customer connected to the grid. In the course of the investigation it was ascertained that the limitation resulting in the obstruction of exercising the right to switch supplier by the customer was caused by the DSO connected to the very high-voltage network. The operator argued that it will not be able to conclude a contract with the network company for cooperation in the scope of submission of measurement information for settlements in the balancing market as the company was not formally designated a distribution system operator. Due to the lack of above-mentioned contract, the network company was unable to share the measurement data related to the customer who wished to switch supplier to the balancing market, what resulted in suspension of the supplier switching process. In the course of the proceeding the said contract between the DSO connected to the transmission network and the network company was concluded, with the effective date of early September 2011. Once the contract was concluded, all formal and legal obstacles to the procedure of supplier switching were removed and the customer connected to the distribution network of the network company was able to switch supplier. The complainant received relevant notification of the fact in October 2011.

In addition, since November 2011 an investigation has been carried out in connection with the letter from another electricity supplier that was sent to the President of ERO. The letter concerns the refusal to conclude a General Distribution Agreement (GDA) by a network company. Due to the refusal it was not able to enforce an electricity sale agreement concluded between the Seller and the RMP (Retail Market Participant) whose facility is connected to the DSO network. As a result of settlement between the customer and the network company, the parties agreed on the terms and conditions for a supplier switching procedure.

Over 2011 a number of regulator interventions concerned problems with supplier switching procedure among customers connected to the industrial distribution network. An example of this is the case of an electricity supplier who in May 2011 faced some difficulties in concluding a distribution service agreement with a network company. The supplier intended to start offering services covering

the supply and sale of electricity to customers connected to the distribution network. However, the network company argued that a company involved in electricity distribution which was not designated as a distribution system operator could not complete the supplier switching process for customers connected to the network company. The regulatory authority took actions aimed at amicable resolution of the dispute. In accordance with the applicable regulations (Article 4 section 2 of the Energy Law), an electricity involved in transmission or distribution of electricity is obliged to provide all customers and electricity trading companies with equal access to the transmission or distribution services. Following regulator's intervention the network company took actions to meet its statutory obligations and allow customers connected to its distribution network to switch a supplier.

The President of ERO cooperates with other authorities, such as the President of the Office of Competition and Consumer Protection (UOKiK) as regards preventing and counteracting the practices which hinder competition on the market. The responsibilities of the President of UOKiK include, in particular, the development of antitrust and consumer protection policies. The competences of the President of UOKiK related to protection of the competition cover primarily antitrust proceedings for practices which hinder competition, such as the abuse of dominant position and illegal agreements (cartels). These proceedings can be concluded with order to stop such actions or imposing fines. The President of UOKiK is also entitled to control mergers in order to prevent the creation of a dominant position in the market.

The President of ERO, on the other hand, is the central government authority responsible for the regulation of fuels and electricity, and promotion of the competition. The responsibilities and powers of the President of ERO are closely connected with the national energy policy, i.e. the economic conditions of energy companies operation, the model of market functioning, and the requirements to ensure compliance of the Polish regulations with the European law. Measures taken by the independent regulatory authority are focused on accomplishing the objective set by the legislative authorities, consisting in the provision of conditions for the sustainable growth of the country, ensuring energy security of the country, economical and rational consumption of fuels and electricity, promotion of the competition, counteracting the negative effects of natural monopolies, meeting the requirements of environmental protection, meeting the national obligations under international agreements, and balancing the interests of electricity undertakings and consumers of fuels and electricity.

With regard to the competences of the President of UOKiK related to competition and consumer protection which follow from the provisions of the Competition and Consumer Protection Act of 16 February 2007¹³⁾, in 2011 the President of ERO submitted to the President of UOKiK a number of letters from household consumers who complained about one of electricity sellers actions related to the supplier switching process, i.e. consumers signed unfavourable contracts. Such contracts usually required consumers to take out compulsory medical insurance, but the consumers had not been informed about this fact when concluded their contracts. Thus, these practices could be recognized as cases of violating the collective interests of consumers as a result of breaking the obligation to provide consumers with fair, true and full information. They could be also recognized as cases of unfair market practices or acts of unfair competition, which falls under the competence of the President of UOKiK.

In January 2011 the President of ERO submitted to the President of UOKiK specific information on the delivery of objectives listed in the "Competition Policy for 2008–2011", as well as actions planned for 2011–2013, focusing mainly on actions which need to be taken to implement the Third Energy Package provisions into the Polish legal system.

In March 2011 the President of ERO submitted its comments on the draft of the "Competition Policy 2011–2013" and welcomed the draft document as consistent with the evaluation of the actions to be taken in order to improve competition on the market.

In 2011 the President of ERO continued cooperation with the President of UOKiK on the PGE SA request to access the acquisition of Energa SA. The President of ERO developed an analytical review of the case which presented arguments against the approval of the requested concentration. The analytical review showed the negative effects of a potential approval, including slowing down retail market development; drop in the number of offers and significant increase in electricity price for household consumers when the market is deregulated. The conclusions submitted by the President of

¹³⁾ Journal of Laws of 2007, No. 50, item 331, as amended.

ERO were taken into account in the decision issued by the President of UOKiK, prohibiting the above concentration.

In 2011 the President of ERO prepared an analytical review for the President of UOKiK regarding the impact of the planned consolidation of TAURON Polska Energia SA and GZE SA on the level of competition in electricity sector. The paper provided specific insights concerning the impact of the merger on the wholesale and retail electricity markets in Poland and presented the negative effects as well as the available measures to limit the market power of the undertaking to be considered by the President of UOKiK when issue non-objection to the concentration.

In addition, within its competence, the President of UOKiK initiated a number of proceedings concerning concentration and practices restricting market competition. The procedures have been presented in detail below¹⁴⁾.

Proceedings concerning practices restricting market competition

1. On 30 December 2011 the Branch Office of UOKiK in Gdansk, following a proceeding, issued a decision (ref. RGD-36/2011) involving ENERGA-Operator S.A., based in Gdansk. The President of UOKiK stated that there was an anticompetitive practice violating the ban referred to in Article 9 section 2 of the Competition and Consumer Protection Act, which consisted in an abuse dominance by ENERGA-Operator S.A. on the local market of street lighting facilities located within the territory of the Bytów Municipality by preventing the county authorities from the free choice of electricity supplier for the lighting equipment owned by ENERGA-Operator S.A. and used to provide lighting in public places. Pursuant to the decision, such practice should be discontinued. The decision is not legally binding and appeals procedure was initiated for the case;
2. On 21 September 2011 the Branch Office of UOKiK in Lodz, following a proceeding, issued a decision (ref. RŁO 27/2011) involving PGE Dystrybucja S.A., based in Lublin. The President of UOKiK ruled that there was an anticompetitive practice violating the ban referred to in Article 9 section 2 of the Competition and Consumer Protection Act, which consisted in an abuse dominance by PGE Dystrybucja S.A. Branch Office in Skarżysko-Kamienna on the regional electricity distribution market within the territory of the Świętokrzyskie voivodeship and parts of the following voivodeships (i.e. Mazowieckie, Małopolskie and Łódzkie) enforcing in power connection contracts with a three-phase supply system the minimum value of connection capacity at the level of 6 kW, despite the presence of technical and legal conditions allowing connection with lower capacity. Such practise may be a demonstration of onerous contract terms bringing the company unfair advantage. The decision is not legally binding and appeals procedure was initiated for the case;
3. On 21 June 2011 the Branch Office of UOKiK in Poznan, following a proceeding, issued a decision (ref. RPZ-8/2011) involving ENEA Operator Sp. z o.o., based in Poznan. The President of UOKiK decided to discontinue the proceeding against ENEA Operator Sp. z o.o. which was suspected in violation of Article 9 section 2 point 5 of the Competition and Consumer Protection Act. The company was accused of abuse of dominance on local electricity distribution market by anticompetitive behaviour on national electricity trade market. Enea, allegedly, made it difficult for users to exercise their right to switch supplier. The practice in question consisted in charging the users supplied through cable or overhead lines which were not owned by ENEA Operator Sp. z o.o. in electricity distribution contracts (concluded in connection with supplier switch decision), with additional or increased costs of network losses on those lines in the case when the old contract did not include such provisions or included them to a lesser extent and, at the same time, there were no technical modifications in electricity supply conditions that would justify such a change.
4. On 26 August 2011 the Branch Office of UOKiK in Poznan, following a proceeding, issued a decision (ref. RPZ-16/2011) which discontinued the proceeding against ENEA SA, based in Poznań, which was suspected of violation of Article 9 section 1 and 2 point 6 of the Competition and Consumer Protection Act. The company was suspected of abusing a dominant position on regional market of maintenance of road and public area lightning services, covering the area of western and north-western part of Poland (i.e. the following regions or sections thereof: Wielkopolskie, Lubuskie, Zachodniopomorskie, Kujawsko-Pomorskie). In this proceeding, the office examined whether ENEA imposed onerous contract terms leading to unfair advantage in contracts involving road and public area maintenance services on the facilities owned by ENEA SA, by

¹⁴⁾ This section was developed based on the information obtained from UOKiK.

imposing the obligation to incur the cost of work not related to the construction and maintenance of lightning elements;

5. On 28 December 2011 the Branch Office of UOKiK in Warsaw, following an proceeding, issued a decision (ref. RWA-26/2011) which found that RWE Polska S.A., based in Warsaw, abused its dominant market position on the local electricity distribution market within the territory of the RWE Polska S.A. network by not allowing electricity trade companies other than RWE Polska SA to create combine schedules for users who use TPA rule while allowing RWE Polska S.A. to apply collective billing in its relations with the transmission system operator. The President of UOKiK found that the practice hindered the development and promotion of competition on domestic electricity trade market and thus constitute the violation of Article 8 section 1 and 2 point 5 of Competition and Consumer Protection Law of Act of 15 December 2000, while providing RWE Polska S.A. with unreasonable benefits, which is a violation of Article 8 sections 1 and 2 item 6 of the same Act. During the proceedings the President of UOKiK found that the company discontinued such practices as of 1 January 2007. The decision is not legally binding and appeals procedure was initiated for the case.

Proceedings concerning concentration

In 2011 the President of UOKiK conducted a number of proceedings concerning concentration of electricity undertakings which were completed with the following decisions:

1. On 13 January 2011 the President of UOKiK, following a proceeding initiated upon the request from PGE Polska Grupa Energetyczna SA, based in Warsaw (hereinafter: "PGE"), issued a decision (ref.: DKK-1/2011) pursuant to Article 20 section 1 in connection with Article 13 section 1 items 1 and 2 and section 2 item 2 of the Competition and Consumer Protection Act, prohibiting the concentration consisting in the acquisition of Energa S.A., based in Gdansk (hereinafter: "Energa") by PGE. The antitrust body found that the planned concentration would result in a substantial restriction of competition in the electricity market. The substantial restriction of competition would develop as a result of horizontal links which are between the parties to the concentration on the domestic retail electricity market level. PGE would reach a market share which, under the provisions of the Competition and Consumer Protection Act, is defined as dominant. In addition, substantial restriction of competition would also take place in connection with the vertical links between the concentration parties in the domestic electricity generation and trading market, the domestic wholesale electricity market and the domestic retail electricity market. The newly established group would achieve the biggest market share in the electricity generation and trading markets as well as in the retail market;
2. Through the decision dated 22 March 2011 (ref.: DKK-34/11) the President of UOKiK issued non-objection to the concentration involving the acquisition of AEI Poland Investment B.V., based in Rotterdam (the Netherlands) by KI Energy S.à.r.l., based in Luxembourg;
3. Through the decision dated 26 May 2011 (ref. DKK- 59/11) the President of UOKiK issued non-objection to the concentration involving the acquisition of Elektrociepłownia Białystok S.A., based in Białystok, by ENEA S.A., based in Poznan;
4. Through the decision dated 7 December 2011 (ref.: DKK-155/11) the President of UOKiK issued non-objection to the concentration involving the acquisition of Przedsiębiorstwo Energetyki Ciepłej S.A., based in Jastrzębie-Zdroj, by Spółka Energetyczna "Jastrzębie" S.A., based in Jastrzębie-Zdrój;
5. Through the decision dated 30 November 2011 (ref.: DKK-149/11) the President of UOKiK issued non-objection to the concentration involving the acquisition of Górnośląski Zakład Elektroenergetyczny S.A., based in Gliwice, by TAURON Polska Energia S.A., based in Katowice;
6. Through the decision dated 22 November 2011 (ref. DKK-147/11) the President of UOKiK issued non-objection to the concentration involving the acquisition of Vattenfall Heat Poland S.A., based in Warsaw, by Polskie Górnictwo Naftowe i Gazownictwo S.A., based in Warsaw;
7. Through the decision dated 8 March 2011 (ref.: DKK-30/11) the President of UOKiK issued non-objection to the concentration involving the establishment by Mitsui & Co. Ltd., based in Tokyo (Japan) and Electric Power Development Co. Ltd., based in Tokyo (Japan) and EWG Elektrownie Wiatrowe sp. z o.o. – sp. k., based in Legnica, of a joint venture named EWG Energia sp. z o.o. based in Legnica.

Explanatory proceedings:

1. On 30 December 2011 the President of UOKiK closed a proceeding initiated on 3 August 2010 (ref.: DOK1-400-18/10/MGa) in order to provide a preliminary explanation if the actions conducted by Polskie Sieci Elektroenergetyczne Operator S.A., based in Konstancin-Jeziorna, related to the procedure of connecting wind farms to the National Electricity System, violated the provisions of the Competition and Consumer Protection Act. The President of UOKiK found that the information collected throughout the explanatory proceeding did not provide a basis to ascertain that PSE Operator S.A. actions violated the provisions of the said Act which would justify the initiation of an antimonopoly proceeding;
2. In 2011 a proceeding initiated on 18 December 2010 (ref.: DOK1-400-20/10/MGa) was carried out in order to provide a preliminary explanation if the sale of electricity by PGE Polska Grupa Energetyczna S.A., based in Warsaw, violated the provisions of the Competition and Consumer Protection Act which give rise to antimonopoly proceedings, and whether the case was in fact an antimonopoly case. The explanatory proceeding was closed on 26 March 2012. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which did not give rise to an antimonopoly proceeding;
3. On 22 August 2011 the Branch Office of UOKiK in Bydgoszcz initiated a proceeding (ref.: RBG-400-27/11/JM) to provide a preliminary explanation if the companies of ENERGA Operator S.A., based in Gdansk, and ENERGA Obrót S.A., based in Gdansk, conducting business operations in the field of distribution and supply of electricity, violated the provisions of the Competition and Consumer Protection Act through encouraging customers of the companies of Energetyczne Centrum S.A. and Energia dla Firm Sp. z o.o. to terminate their electricity supply agreements in exercising the right set forth in Article 4j of the Energy Law of 10 April 1997 (Journal of Laws No. 89, item 625, as amended), what would justify the initiation of an antimonopoly proceeding. The explanatory proceeding was closed on 7 March 2012. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred what would justify the initiation of an antimonopoly proceeding;
4. On 30 November 2011 the Branch Office of UOKiK in Bydgoszcz initiated a proceeding (ref.: RBG-400-33/11/JM) to provide a preliminary explanation if the companies of ENERGA Obrót S.A., based in Gdansk, ENEA Operator Sp. z o.o., based in Poznan, and ENEA S.A., based in Poznan, that conduct business operations in the field of distribution and sale of electricity, violated the provisions of the Competition and Consumer Protection Act as a result of concluding an illicit agreement and extending the term of supplier switching process. The proceeding in this case has not yet been completed;
5. On 27 April 2011 the Branch Office of UOKiK in Bydgoszcz initiated a proceeding (ref.: RBG-400-13/11/PD) to provide a preliminary explanation if the actions conducted by ENERGA Operator S.A., based in Gdansk, Branch in Elbląg, related to the supply of electricity and charging this service violated the provisions of the Competition and Consumer Protection Act, what would give rise to antimonopoly proceedings, and whether the case was in fact an antimonopoly case. The explanatory proceeding was closed on 7 March 2012. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would give rise to an antimonopoly proceeding;
6. On 24 October 2011 the Branch Office of UOKiK in Gdansk closed the proceeding initiated on 27 April 2011 (ref.: RGD-400/19/11/IW) to provide a preliminary explanation if actions conducted by ENERGA Oświetlenie Sp. z o.o., based in Sopot, and related to rules for financing the costs of electricity supplies consumed to provide lighting over public areas and roads by the Municipality of Kowal on the facilities owned by ENERGA Oświetlenie Sp. z o.o. represented an abuse of the dominant position as a result of restricting the Municipality in its freedom to choose the electricity supplier, and whether the case was in fact an antimonopoly case.
7. On 17 February 2011 the Branch Office of UOKiK in Gdansk initiated a proceeding (ref.: RGD-400/7/11/IW) to provide a preliminary explanation on whether the conduct of ENERGA Oświetlenie Sp. z o.o. based in Sopot in the area of setting the terms and conditions of selecting a supplier for electricity used for providing lighting over public areas and roads within the territory of the Municipality of Malbork, and developing the billing plan for the Municipality of Malbork for the costs

of servicing and maintenance of the lighting equipment used for providing lighting to the said areas within its territory represented a violation of the dominant position, and whether the case was in fact an antimonopoly case.

8. On 28 January 2011 the Branch Office of UOKiK in Gdansk initiated a proceeding (ref.: RGD-400/3/11/12/IW) to provide a preliminary explanation on whether the conduct of ENERGA Oświetlenie Sp. z o.o. based in Sopot in the area of developing the billing plan for the Municipality and Commune of Prabuty for the costs of servicing and maintenance of the lighting equipment used for providing lighting over public areas and roads within the territory of the Commune represented a violation of the dominant position, and whether the case was in fact an antimonopoly case;
9. On 9 August 2011 the Branch Office of UOKiK in Katowice closed the proceeding initiated on 16 March 2011 (ref.: RKT-400-19/11/AW) to provide a preliminary explanation on whether the conduct of EnergiaPro based in Wroclaw, and ENION S.A. based in Krakow, consisting in the provision of lighting services for streets, squares and public roads violated the provisions of the Competition and Consumer Protection Act warranting the initiation of antimonopoly proceedings. The proceedings were initiated based on the notification submitted by 22 communes within the territory of Śląsk Opolski (Opole Silesia) on the alleged application of practices restricting competition by EnergiaPro S.A. and ENION S.A., consisting in imposing unconscionable terms and conditions of agreements for the operation and maintenance of street lighting leading to unfair benefits for the electricity undertakings resulting from the attempts to charge the 22 communes for the servicing of street lighting installations not connected with its breakdowns. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
10. On 19 May 2011 the Branch Office of UOKiK in Katowice closed the proceeding initiated on 24 February 2011 (ref.: RKT-400-13/11/AW) to provide a preliminary explanation on whether the conduct of Elektrociepłownia EC Nowa Sp. z o.o. based in Dąbrowa Górnicza associated with the sale of electricity violated the provisions of the Competition and Consumer Protection Act warranting the initiation of antitrust proceedings. The enquiry was initiated in connection with a complaint filed by Benteler Distribution Poland S.A. based in Dąbrowa Górnicza, on the conduct of Elektrociepłownia EC Nowa Sp. z o.o. in relation to the charges billed by Elektrociepłownia for ordered capacity which had not been previously billed to electricity customers. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
11. On 14 July 2011 the Branch Office of UOKiK in Lodz closed the proceeding initiated on 28 October 2011 (ref.: RŁU-400-22/11/AK) to provide a preliminary explanation on whether the conduct of PGE Dystrybucja S.A. in Lublin, Field Office in Lodz, in the electricity market consisting in imposing unconscionable contractual terms and conditions resulting in unfair benefits by imposing the obligation to waive the right to provide land, against a fee, for the purpose of building an electricity network warrant the initiation of antimonopoly proceedings, and whether the case was in fact an antimonopoly case. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
12. In 2011 the Branch Office of UOKiK in Poznan conducted a proceeding initiated on 18 August 2010 (ref.: RPZ-400-00035/10/ŁD) on the conduct of ENEA Operator Sp. z o.o. based in Poznan in connection with considering wind farm connection applications. The proceeding in this case has not yet been completed;
13. On 23 May 2011 the Branch Office of UOKiK in Poznan initiated a proceeding (ref.: RPZ-400-28/11/ŁD/DW) on the supplier switching rules adopted by electricity undertakings from within ENEA capital group. The enquiry was closed on 13 February 2012. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
14. On 22 July 2011 the Branch Office of UOKiK in Poznan closed the proceeding initiated on 25 May 2011 (ref.: RPZ-400-29/11/ŁD) on the refusal by ENEA Operator Sp. z o.o. to switch tariffs offered to certain local government authorities to C11o. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the

- Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
15. On 12 October 2011 the Branch Office of UOKiK in Poznan initiated a proceeding (ref.: RPZ-400-42/11/MT) to provide a preliminary explanation on whether the provisions of the Competition and Consumer Protection Act were violated by imposing on the electricity customers of ENEA Operator Sp. z o.o. based in Poznan, the obligation to adapt the electricity equipment to the modified conditions of electricity network operation, consisting in requiring the connected customers to apply for new network connection terms, which could justify the initiation of antimonopoly proceedings. The proceeding in this case has not yet been completed;
 16. On 22 November 2011 the Branch Office of UOKiK in Lublin initiated a proceeding (ref.: RLU-400-25/11/RD) to provide a preliminary explanation on whether the conduct of PGE Obrót S.A. based in Rzeszow, in the area of billing household consumers for electricity supplies represented competition restricting practices. The proceeding was concluded on 15 March 2012. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
 17. In 2011 the Branch Office of UOKiK in Lublin conducted a proceeding initiated on 29 October 2010 (ref.: RLU-400-29/10/IM) to provide a preliminary explanation on whether the conduct of PGE Dystrybcja S.A. based in Lublin, in relation to the supplier switching procedure represented competition restricting practices. The proceeding in this case has not yet been completed;
 18. On 18 October 2011 the Branch Office of UOKiK in Lublin initiated an proceeding (ref.: RLU-400-22/11/IM) to provide a preliminary explanation on whether the conduct of PGE Dystrybcja S.A. based in Lublin, in relation to the supplier switching procedure represented competition restricting practices. The proceeding in this case has not yet been completed;
 19. On 25 February 2011 the Branch Office of UOKiK in Lublin closed the proceeding initiated on 1 July 2010 (ref.: RLU-400-19/10/PM) to provide a preliminary explanation on whether the conduct of PGE Dystrybcja Białystok Sp. z o. o. consisting in issuing invoices showing charges both for the disconnection of electrical substations and individual circuits, which led to the billing of a double charge for the same operation, represented a violation of the Competition and Consumer Protection Act. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
 20. On 20 December 2011 the Branch Office of UOKiK in Lublin initiated a proceeding (ref.: RLU-400-28/11/MW) on the methods adopted by PGE Dystrybcja S.A. based in Lublin, of agreeing the planned site development network with construction project investors and charging fees for the process;
 21. On 14 June 2011 the Branch Office of UOKiK in Warsaw initiated a proceeding (ref.: RWA-400-11/11/AT) to provide a preliminary explanation on whether the conduct of PGE Dystrybcja S.A. in relation to the operation, maintenance and servicing of the distribution network represented an abuse of the dominant position, and whether the case was in fact an antimonopoly case. The proceeding in this case has not yet been completed;
 22. On 10 August 2011 the Branch Office of UOKiK in Warsaw initiated a proceeding (ref.: RWA-400-18/11/AT) to provide a preliminary explanation on whether the contractual templates adopted by PGE Dystrybcja S.A. and the network connection procedures for various types of customers (both for wind farm electricity generators and household consumers) represented an abuse of the dominant position, and whether the case was in fact an antimonopoly case. In addition, the proceeding was initiated to provide an explanation on whether in connection with the above PGE Dystrybcja S.A. complied with the requirement to offer equal treatment to entities requesting grid connection. The proceeding in this case has not yet been completed;
 23. On 9 November 2011 the Branch Office of UOKiK in Warsaw initiated a proceeding (ref.: RWA-400-23/11/AT) to provide a preliminary explanation on whether the contractual templates adopted by PGE Obrót S.A. for comprehensive services offered by the company covering the sale and distribution services by the Distribution System Operator to household consumers as well as the procedures adopted by PGE Obrót S.A. represented a violation of the Competition and Consumer Protection Act, and whether the case was in fact an antimonopoly case. The proceeding in this case has not yet been completed;
 24. On 15 September 2011 the Branch Office of UOKiK in Warsaw initiated a proceeding (ref.: RWA-400-20/11/AT) to provide a preliminary explanation on whether the contractual templates adopted

by RWE Stoen Operator Sp. z o.o. for the grid connection of various types of customers in the areas determined by the company and relating to i) the timeframe and manner of charging connection fees by entities requesting network connection and the consequences of the failure to make the timely payment of charges; ii) the timeframe for the connection (actual agreement enforcement date) and any modifications thereto during the term of the agreement, and iii) the liability for the untimely connection, represented an abuse of the dominant position, and whether the case was in fact an antimonopoly case. The proceeding in this case has not yet been completed;

25. On 11 March 2011 the Branch Office of UOKiK in Warsaw initiated a proceeding (ref.: RWA-400-8/11/AT) to provide a preliminary explanation on whether the procedures adopted by RWE Polska S.A. in relation to i) taking readings of meters and other devices of the measuring and billing system, ii) the manner of computing projected electricity usage values over upcoming periods for household consumers, iii) settling overpayments resulting from adjusted billing statements, represented an abuse of the dominant position, and whether the case was in fact an antimonopoly case. The proceeding in this case has not yet been completed.

3.3. Consumer protection

Helping to ensure, together with other relevant authorities, that the consumer protection measures are effective and enforced

As the time for the implementation of the Third Energy Package directives to the national legal system expired on 3 March 2011, including the consumer protection measures, any provisions which have not been implemented by that time and which are of technical, precise and unconditional nature are to be applied directly. An example of such regulations is the consumer right to switch supplier within 3 weeks from reporting such intention, or the right to receive the final bill from the current supplier within 6 weeks from the day of supplier switching.

Consumer's right to contracts ensuring fair conditions, well-known in advance, with specified compensation and refund arrangements, consumer's right to submit complaints and dispute settlement

Under the Energy Law energy undertakings are liable for ensuring the continuity, security and quality of electricity supply.

Among the various obligations, the President of ERO is required to control the quality standards of customer service and compliance of the supplied electricity with the quality parameters. This is intended to protect customers from the effects of supplying electricity that does not meet the relevant parameters by the energy companies, or from the consequences of applying practices departing from the customer service standards set by the law.

However, in practice there is no system enabling the Polish regulatory authority to control the energy undertakings compliance with the standards and quality parameters.

Pursuant to the provisions of Article 23 section 2 item 10 of the Energy Law, control over the energy undertakings compliance with the quality standards is carried out at the customer request, thus a potential intervention of the President of ERO is a follow-up measure. The regulatory activity of the President of ERO in control of the standards is also manifested, albeit indirectly, in the electricity tariff approval process. An undertaking submitting its tariff for approval guarantees to supply electricity while meeting specific quality parameters as set forth in the regulation. Electricity tariffs also include provisions advising customers on the discounts available if standards are not maintained. Taking the above-mentioned into account, in the tariff procedure the President of ERO ensures that customers are provided with remedies necessary to claim their rights if quality standards of electricity supply or customer service fall below specific indicators.

Consumer's right to information on the applicable prices and tariffs, and a right to transparent and comprehensible notifications if such charges are amended

In accordance with the provisions of the Energy Law (Article 4j section 5), energy undertakings supplying electricity to end customers connected to a distribution network are required to publish their current electricity rates and terms of their application on their websites, and to make this information available to the public at their registered offices.

Whenever distribution charges are amended for all end customers, and in the case of households – also the electricity prices (subject to tariffs approval), energy undertakings are required to notify customers of such planned changes. The tariff constitutes a part of the contract between the electricity supplier and the customer, approved by the President of ERO. The tariff amendment procedure has been set forth, among others, in Article 47 of the Energy Law of 10 April 1997 (Journal of Laws of 2006, No. 89, item 625, as amended). The regulation states clearly that the tariff may not be amended arbitrarily. Tariffs may only be applied by energy undertakings following their approval by the President of ERO and publication in the ERO bulletin. A new tariff may not come into effect earlier than after 14 days from its publication, and not later than within 45 days. Energy undertakings are obliged to notify customers of a modified tariff. Customers do not have to accept the new contractual terms set out in the tariff (usually electricity price-ups), and under Article 3841 of the Civil Procedure Code are free to terminate their contracts. If they do not, the contractual relationship under the new tariff is deemed to be effective. Similar procedures apply to situations when energy companies amend their contract templates or terms of service – customers need to be notified and if they do not terminate their contracts within the applicable notice periods, they are deemed to have accepted the proposed amendments.

Consumer's right to choose a preferred payment method. Use of estimation methods by energy undertakings which adequately reflect likely consumption (for billing based on forecasts)

Although no legal regulations are in place which would apply to the selection of a preferred method of payment, the President of ERO issued a recommendation addressed to the electricity sector (a collection of Good Practices) to enable customers to choose their preferred method of payment. In practice customers are free to choose between the following payment methods: direct debit, bank transfer (including online bank transfer), cash payments at post offices and other designated locations (e.g. selected stores), and the ability to pay cash at the customer service points of energy companies.

The issues connected with application of forecast-based settlements are regulated by the tariff ordinance:

- The billing period for connection groups I-IV should not exceed two months, and for connection group V (households) it should not exceed 12 months. The billing periods determined in the tariff of undertakings offering comprehensive services are correlated with the billing periods of the company providing the distribution service to its customers.
- If the billing period is longer than one month, charges for electricity and transmission or distribution services may be billed in the amount determined through the forecast consumption over the period, determined on the basis of consumption set according to the actual readings of the measuring and billing instruments completed for the same period of the previous calendar year, however, the customer can raise objection to the forecasted charges if substantial changes to electricity consumption are envisaged.

Consumer's right to benefit from transparent, simple and inexpensive procedures for dealing with their complaints and dispute settlement, resolution procedures, along with the out-of-court procedures. Energy ombudsman as a support to customers and an alternative dispute settlement mechanism

The Energy Arbitration Court has operated since April 2010 at the Chamber of Industrial Energy and Energy Customers in Warsaw. The Court rules on disputes relating to property rights connected with the operation of energy undertakings, including, in particular, issues resulting from or arising out of grid connection agreements; gas, heating and electricity sales agreements; the terms and conditions of gas, heating and electricity supplies; the quality standards of gas, heating and electricity supplies; metering of gas, heating and electricity supply and consumption; development of renewable

energy sources; location and exploitation of generation and transmission infrastructure; ownership of the energy infrastructure dating back to the 1960s and 1970s; CO₂, SO₂ and NO₂ emission standards; third party access to the transmission and distribution network; interruptions in the supply of energy and liability for such interruptions and the associated effects thereof. The Court procedure permits the parties to be represented by attorneys. Parties may reach a settlement at any time during the procedure. Whenever petitioned by the parties, the Arbitration Court will issue the settlement in the form of a sentence. When ruling on a case the Arbitration Court will issue a written sentence which is final and binding for the parties. The sentence shall be delivered to the parties after all court fees have been paid, and is binding for either party as of delivery. Sentences are issued within 30 days from the closing of a hearing. Theoretically, the procedure before the Arbitration Court is open to all energy customers, including household consumers, but the administrative fees set for the proceedings may represent an obstacle to small consumers (the administrative fee is 1500 PLN, and for cases with the value of dispute not exceeding 15,000 PLN – 700 PLN, whereas the arbitration fee for cases with the value of dispute not exceeding 15,000 PLN is 2000 PLN).

Apart from that, Polish consumers are entitled to use the services of municipal and district consumer ombudsmen (approximately 360) who will consider complaints from customers on individual cases, including energy related issues. In addition to offering free consumer advice and legal information in relation to consumer rights protection, they are also authorised to protect consumer interests, liaise with businesses in cases associated with the protection of consumer rights and interests, work with the competent branch offices of the Office of Competition and Consumer Protection, agencies of the Trade Inspection and consumer organisations, initiate cases on behalf of consumers and join, on consent, open consumer protection proceedings. In cases of breaches to the consumer interests, the consumer ombudsman is a public prosecutor in the understanding of the provisions of the Petty Offences Procedure Code, but is not, however, authorised to rule on disputes.

Household consumers are also entitled to take advantage of the network of conciliation consumer courts which offer reasonable initiation fees. However, due to the complex nature of many energy-related cases it may be necessary to appoint an expert in the field – their charges will be borne by the party losing the case and thus presenting an additional risk for consumers, contributing to the small number of cases heard by the conciliation courts.

Pursuant to Article 8 section 1 of the Energy Law, the President of ERO settles the disputes relating to refusal to conclude grid connection agreement, sales agreements, fuel or energy transmission or distribution service agreements, natural gas transport service agreements, gaseous fuel storage service agreements, natural gas liquefaction service agreements and common service agreements, as well as unreasonable interruptions of gaseous fuel or energy supplies. However, this competence does not meet the requirements necessary to name it one of the alternative dispute resolution methods. The range of cases considered is an enumerative list relating to agreements. It concerns solely future contractual relationships between energy undertakings and customers.

Moreover, the President of ERO is not authorised to settle disputes concerning previously concluded agreements. A large number of disputes between customers and energy undertakings are related to agreements already concluded, which are subject to the competence of common courts. Notwithstanding any of the above, disputes arising out of the provisions of Article 8 are resolved through an administrative procedure which is not entirely an alternative dispute resolution mechanism. Decisions issued by the President of ERO are subject to the Court of Competition and Consumer Protection control.

Customer's right to change supplier within three weeks and receive the final closure account from the current supplier within six weeks

As the transposition period for implementation of the Third Energy Package directives to the national legal system has expired, the provisions of a technical, precise and unconditional nature are to be applied directly, despite the missing implementation. Distribution system operators are thus obliged to ensure that the supplier switching procedure takes place within a period of three weeks from the customer notification and the current supplier is required to provide the final closure account to customer no later than six weeks after the change of supplier has taken place.

Customer's right to receive information on the actual electricity consumption and costs frequently enough to enable them to regulate their own electricity consumption

This right is primarily intended to raise customer awareness in the area of savings and rational energy use, contributing indirectly to the accomplishment of the major objectives of the EU policy. The two basic instruments used for exercising the right to receive information on the actual consumption and costs of energy at the right frequency are:

a) Implementation of smart metering

In 2011 the President of ERO developed and published on the ERO website the "Position of the President of ERO on the necessary requirements with respect to smart metering systems implemented by DSO E, taking into consideration the function of the objective and proposed support mechanism in context of the proposed market model". The document is designed for DSOs, the TSO and electricity trading companies. Its objective is to prepare the implementation process for the smart metering solutions in Poland consistent with the "Smart Metering Smart Grid Ready" formula, dedicated predominantly to consumers dispersed in groups G and C1X (households and small enterprises) and – if applicable – to other customers with an option to use the system by the operators and suppliers of other utilities, or even non-energy related services. The system is one of the pillars of smart grid development.

In 2011 the President of ERO started works on documents related to the said position. As of the end of 2011 the most advanced document was the paper entitled "The concept of the metering market model in Poland, with special emphasis on the requirements for the Independent Operator of Measurements".

In addition, the President of ERO commenced works on the updated method of computing the regulatory asset value and the return on the capital employed in the AMI assets, and was actively involved in drafting of a new energy law, in accordance with the prerogatives of the office.

b) Access to transparent and easy to understand electricity bills

Bills which are not transparent and easy to understand for customers are a major problem. According to the available statistical information relating to consumer complaints, 21% of all cases concerned issues related to billing and invoicing. The biggest issue for consumers is to understand the items/elements of the bill, especially those relating to distribution charges (several types of rates). Consumers also have problems with understanding the forecasted invoice values and the associated settlement methods. The Customer Guide available at the ERO website provides a detailed explanation on the various items shown on electricity bills. Consumers are also able to turn to the Information Point for Electricity and Gas Customers operated by ERO where they can obtain detailed information on their bills.

Ensuring access to consumption data

In 2011 there was no legal obligation for electricity suppliers to provide customers with information on the consumed volumes of electricity.

However, on 1 January 2012 the Energy Law was amended to include Article 5 section 6 pursuant to which electricity suppliers are obliged to inform customers on the volumes of electricity consumed over the preceding calendar year and on the place where information on the average electricity consumption for any given consumer group, as well as measures to improve energy efficiency are available.

Public service obligations

As of 1 July 2007 energy undertakings engaged exclusively in electricity distribution, unbundled from the fourteen largest incumbents active in the area of electricity distribution and trade started activities on the electricity market. They were designated distribution system operators under administrative decisions issued by the President of ERO. Currently, following consolidation, the number of legally unbundled DSOs has reduced to 6.

As a result of these changes the electricity market was opened to suppliers which are parties to common service agreements. They are the default suppliers to household consumers who did not decide to change supplier. Electricity customers are bound with the default suppliers by the so-called common service agreements which include provisions both for the sale of electricity and transmission or distribution services. Default suppliers are also required to provide the comprehensive service and to conclude common service agreements on equal terms with household consumers who are not exercising their right to switch supplier and are connected to the network of the electricity undertaking identified in default supplier's licence. A household consumer terminating its common service agreement within the specified contractual notice period may not be charged with any additional fees or costs.

There are also other suppliers in the market of which approximately 200 are vertically integrated industrial energy undertakings, providing sale and distribution services.

In accordance with the Energy Law default suppliers are selected by tender. Until such tender is announced, the function is performed by the incumbent suppliers. No tenders were organised in 2011.

Vulnerable customer definition

The definition of a vulnerable customer is not in use in Poland, and there is not a separate system supporting this type of customers. Customers facing difficulties in paying electricity bills due to their economic situation may be offered support in the form of aid paid by social welfare (the deciding factor is the level of income combined with the degree of family dysfunction), but the aid will only be provided if additional funding is available (electricity supplies are not subject to protection under social welfare). Customers are also entitled to request assistance from electricity undertakings in order to take advantage of corporate social responsibility (CSR) programmes.

On 22 December 2011 the Ministry of Economy presented a package of three acts, including the new Energy Law. The draft of the new Energy Law provides for legal solutions which are intended to help the so-called socially vulnerable customers in avoiding the suspension of electricity supply. Apart from the above, it should be noted that in 2011 the President of ERO initiated a range of works to the benefit of socially vulnerable customers through the establishment of the Coordination Team for Works on the Corporate Social Responsibility of Energy Undertakings to Customers – the "Customer Zone" project.

3.4. Security of Supply

Implementation of the safeguard measures

In accordance with the Energy Law, the detailed conditions and procedure for implementing limitations to the sale of solid fuels and the electricity and heat supply and take-off are set forth by the Council of Ministers in a relevant ordinance. The Council of Ministers, at the request of the Minister of Economy, may implement for a limited period of time, through an ordinance, limitations on the sale of solid fuels and the supply and take-off of electricity and heat within the territory of Poland or parts thereof, when faced with: a threat to the energy security of Poland consisting in the long-term imbalance in the fuel and energy markets, threat to the security of electricity supply, threat to the safety of persons, threats of substantial material losses.

The President of ERO is not authorised to implement the safeguard measures identified in Article 42 of Directive 2009/72/EC.

3.4.1. Monitoring balance of supply and demand

The responsibilities of the President of ERO include monitoring the electricity system functioning, with special emphasis on the security of electricity supply¹⁵⁾. The task was generally formulated and does not cover all measures referred to in Article 4 of Directive 2009/72/EC.

Within this competence the President of ERO assesses the potential of meeting the electricity and capacity demand in the electricity system, as well as the level of the required capacity reserves in the system. These conducts are carried out *ex post* and relate to the evaluation of operational security of the electricity system in the context of performance of the electricity system operators' duties and is submitted annually to the Minister of Economy. An assessment of the security of the system has been presented in section 3.1.2 hereof.

The competences of the President of ERO do not cover, directly, development of forecasts in reference to balancing the supply and demand of electricity. However, this task is carried out on the basis of the investment project information submitted to the President of ERO by generation companies with a total installed capacity of not less than 50 MW, as well as information on the existing, under construction or planned electricity infrastructure – a subject of interest of the European Union. The information is collected by the President of ERO and submitted to the Minister of Economy. Realisation of this task has been presented in section 3.4.2 hereof.

3.4.2. Monitoring investment in generation capacities in relation to SoS

In accordance with the provisions of the Energy Law, electricity transmission system operators are required to develop forecasts of electricity and capacity demand in the electricity system, and identify the needs for the transmission network and interconnectors development as well as for the construction of new sources of electricity generation.

Table 3.6. Investment projects associated with cross-border interconnectors listed in the PSE Operator SA development plan, related to meeting the current and future demand for electricity in 2010–2025

Construction of a 400/220/110 kV Ołtarzew substation
Installation of TR 400/220 kV 500 MVA in Ołtarzew substation
Installation of TR 400/220 kV 500 MVA in Ołtarzew substation
Installation of TR 400/110 kV 330 MVA in Ołtarzew substation
Construction of a 400 kV Narew – Łomża – Ostrołęka line
Construction of a 400kV switchboard at the 220/110kV Ostrołęka substation
Installation of TR 400/220 kV 500 MVA in Ostrołęka substation
Installation of TR 400/110 kV 450 MVA in Ostrołęka substation
Construction of a 2-track 400 kV Elk – Łomża line
Construction of a 400kV switchboard at the 220/110kV Elk substation
Installation of TR 400/110 kV 330 MVA in Elk substation
Construction of a 400 kV Siedlce Ujrzanów – Miłosna line
Construction of a 400/110 kV Siedlce Ujrzanów substation – phase I
Construction of a 400kV switchboard at the 400/110kV Narew substation
Construction of a 400 kV Płock – Olsztyn Małki line
Re-commissioning of the 750 kV Rzeszów – Khmelnitsky (Ukraine) interconnector
Construction of a 400 kV Łomża substation
Construction of a 2-track 400 kV Ostrołęka – Stanisławów line with the partial use of the existing 220 kV Ostrołęka – Miłosna line
Construction of a 400 kV or 400/110 kV Stanisławów substation
Construction of a 1-track 400 kV Kozienice – Siedlce Ujrzanów line
Construction of the line between Elk and the border of Poland
Installation of phase shifters on the Krajnik – Vierraden line
Installation of phase shifters on the Mikułowa – Hagenwerder line
Construction of the line between Plewiska and the border of Poland towards Eisenhuettenstadt – preparatory works

¹⁵⁾ The definition of electricity supply in this case is not consistent with the definition of electricity supply in the context of the security of electricity supplies. The assessment of the security of electricity supply is performed by the President of ERO in his report submitted annually to the Minister of Economy, but it relates solely to the range of measures undertaken by the President of ERO in accordance with the provisions of the Energy Law. This range does not cover the forecast of the balance of electricity supply and demand over the next five years and the ability to balance the supply over a period between 5 to at least 15 years as of the date of the report (pursuant to the provisions of Article 4 of Directive 2009/72/EC). That forecast is to be submitted by the Minister of Economy in a report published and forwarded to the European Commission every two years.

Upgrade and extension of the 400/220 kV Krajnik substation
Extension of the 400/220/110 kV Kozienice substation
Upgrade and extension of the 400/220/110 kV Mikołowa substation

It should be noted that the report outlining the findings resulting from the monitoring of the security of supply, as set out in Article 4 of Directive 2009/72/EC, is published and submitted to the European Commission by the Minister of Economy. Also, in accordance with the provisions of the Energy Law, the Minister of Economy is responsible for supervising the security of electricity supply and the functioning of the national electricity systems as set out in the Energy Law.

When considering the range of competences assigned to the President of ERO under the provisions of the Energy Law, it needs to be stated that they do not cover the publication of forecasts for balancing electricity supply and demand. However, the President of ERO publishes periodic reports on the possibility of balancing electricity supply and demand based on the following:

- investment plans covering period of 15 years submitted to the President of ERO every 3 years (in accordance with the provisions of the Energy Law) or more frequently (whenever requested by the President of ERO) by generation companies with sources of a total installed capacity not smaller than 50 MW,
- existing, under construction or planned electricity infrastructure being a subject of interest of the European Union, collected by the President of ERO and submitted to the Minister of Economy by 15 July of each reporting year, as set forth in Council Regulation (EU, EURATOM) No. 617/2010 within the scope set out in sections 2-4 of the Annex to the Regulation.

In the area of monitoring the security of electricity supply the President of ERO conducted a survey based on the investment plans of generation companies meeting the obligation of publishing 15-year forecasts, pursuant to Article 16 sections 11 and 12 of the Energy Law. In order to simplify and standardise the meeting of the obligation, the President of ERO developed a survey sent to energy undertakings performing the function of generation.

On 1 March 2011 the President of ERO published Information on the reporting obligation concerning electricity generators, referred to in Article 16 section 11 of the Energy Law. As only 26 entities fulfilled the obligation within the statutory timeframe (i.e. by 11 March 2011), on 6 April 2011 the President of ERO called the remaining 26 undertakings generating electricity based on fossil fuels and 9 undertakings generating electricity from renewable sources to submit the required information.

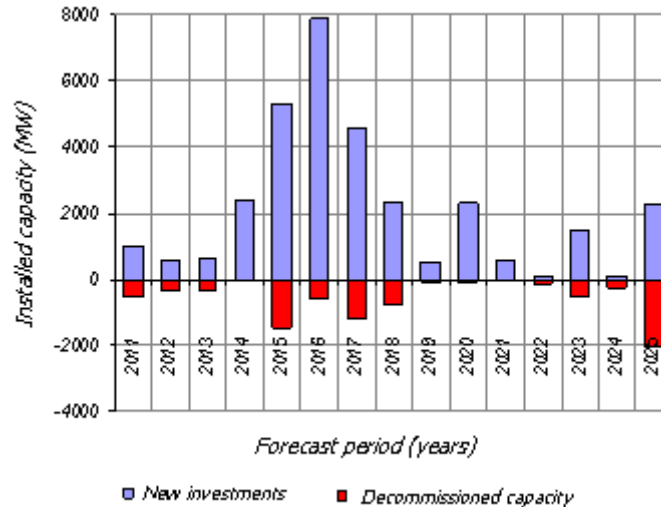
Regardless of the obligation resulting from the provisions of Article 16 sections 11 and 12 of the Energy Law, the President of ERO collected information on the planned investments in new generation capacity to the extent of the survey from four energy groups established in a result of the consolidation of the sector resulting from the government "Programme for Electric Power Sector".

The information obtained from electricity undertakings required to meet the obligation¹⁶⁾ were analysed in order to assess the potential of meeting the future peak demand for capacity over the period from 2011 to 2025. Based on the collected information the range of the planned investments in new generation capacity was analysed, including advanced investments. The analysis considered also the planned decommissioning of existing generation units, and the collected information was used to determine the technological structure of the planned investments by fuel source.

The undertakings which took part in the survey projected a much greater commissioning of new generation units than decommissioning of existing generating units (projected incremental capacity), as shown in Figure 3.13.

¹⁶⁾ The investments were reported as of 31 December 2010.

Figure 3.13. Generation capacity planned for 2011–2025, including new investments and decommissioned capacity



As far as new investments are concerned, investors tend to favour hard coal as the base fuel for electricity generation, although a falling trend has been recorded for this fuel in the national structure of installed capacity as undertakings tend to be more and more interested in generating electricity from gas, nuclear or wind sources.

In view of the major objective of the study consisting in the assessment of the potential to meet the future electricity demand, the President of ERO acknowledged that a key factor of the assessment will be the ability to cover the peak demand for capacity. As such, considering the responsibilities of the electricity transmission system operator, the President of ERO requested PSE Operator SA to submit a forecast of the peak demand for capacity in the NES over 2011–2025 which was used as a reference point in the security of electricity supply study conducted by the President of ERO.

The results of the analysis (with provision for the degree of investment progress and identification of investments which, at a minimum, are in the fundraising stage) demonstrated that by the end of 2014 generating units connected to the NES should be able to cover the peak demand for capacity. Potential shortfalls of available power in the domestic power plants in relation to the demand may occur as of 2015.

Although the analysis did not provide for the information on import potential, information on the granted conditions for connection to the distribution networks, the potential of obtaining access to emergency reserves by the transmission system operator and the potential active participation of customers in the process of decreasing the demand, the results of the analysis indicate a potential threat to the security of electricity supply. The risk of electricity supply interruptions may occur especially when the import potential becomes limited and extreme weather conditions coincide with the repairs of generating units and the network infrastructure. This shows that the scheduled delivery of the planned investments may be one of the critical factors affecting the security of electricity supply over the mid-term horizon.

Notwithstanding any of the above, as Council Regulation (EU, EURATOM) No. 617/2010 of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No. 736/96¹⁷⁾ as well as Commission Regulation (EU, EURATOM) No. 833/2010 of 21 September 2010 implementing Council Regulation (EU, EURATOM) No. 617/2010¹⁸⁾ entered into force, being legal acts applied directly in full without the need to implement their provisions into the national legal framework, undertakings are required to notify data and information on existing, planned or under construction investment projects in energy infrastructure concerning production, storage and transport of oil, natural gas, electricity, including

¹⁷⁾ Official Journal of the European Union L 180/7 of 15 July 2010.

¹⁸⁾ Official Journal of the European Union, L 248/36 of 22 September 2010.

electricity from renewable sources, bio-fuels and the capture and storage of carbon dioxide emitted by the sectors, being an area of interest for the EU.

In 2011, for the first time the Commission was provided with data and information on such investment projects in energy infrastructure, in accordance with the content layout set out in Council Regulation (EU, EURATOM) No. 617/2010.

In the notice of 26 May 2011 the President of ERO informed that, for the duration of meeting the first reporting obligation in 2011, the national regulatory authority was authorised to collect data on energy infrastructure in the following sectors:

- 1) natural gas and electricity, including electricity from renewable sources, excluding the infrastructure to produce electricity from agricultural biogas,
- 2) liquid bio-fuels, as referred to in the Bio-fuels Act – within the scope set out in sections 2–4 of the Annex to Council Regulation No. 617/2010.

The authority responsible for collecting information on the energy infrastructure used for production of electricity from agricultural biogas and bio-components, as referred to in the Bio-fuels Act, was the President of the Agricultural Market Agency.

In relation to information concerning energy infrastructure in the oil sector, within the scope set out in section 1 of the Annex to Council Regulation No. 617/2010 and the infrastructure for the capture and storage of carbon dioxide emitted by the sectors of oil, natural gas, electricity and bio-fuels, within the scope set out in section 5 of the Annex to the Council Regulation No. 617/2010, the responsible authority was the Minister of Economy.

With reference to the power generation infrastructure (sources other than renewable), in response to the Information published by the President of ERO, sixteen undertakings submitted data on the existing or planned infrastructure. In order to assess the collected information on the sources of electricity generation based on fossil fuels, on 20 May 2011 the President of ERO sent letters to the transmission system operator and the distribution system operators requesting data on the issued grid connection conditions for specific generating units and the existing infrastructure in accordance with the scope set out in the Annex to Council Regulation No. 617/2010.

Following a review of the collected information, data obtained from the Minister of Economy and the President of the Agricultural Market Agency, on 31 July 2011 the President of ERO submitted the required data to the European Commission. The information also included data on the energy transmission infrastructure.

In carrying out the verification process of the information submitted by the Member States, the EC commissioned Ecorys to prepare a "Study on Investment Projects in Energy Infrastructure within the European Union", which was intended to be a presentation of the preliminary analyses and discussion on the data on energy infrastructure submitted by the Member States. The initial version of the report, published on 29 December 2011, indicated that Poland needed to supplement or review some of the submitted data. Additional guidelines for supplementing and reviewing the accuracy of the collected data were submitted directly by the European Commission and authors of the report during a meeting of Member State experts held on 10 January 2012 in Brussels. Following an additional review of the data collected in accordance with the provisions of Council Regulation No. 617/2010 and Commission Regulation No. 833/2010 as indicated in the preliminary report commissioned by the EC, on 23 January 2012 the President of ERO submitted to the European Commission the reviewed and supplemented data on the existing and planned energy infrastructure.

3.4.3. Measures to cover peak demand and shortfalls of suppliers

The responsibilities of the President of ERO within this area include the publication and organisation of bidding procedures for the construction of new electricity generation units or initiatives leading to the reduction of electricity demand. It should be underlined that these actions may be undertaken when faced with the long-term threat to security of supply, following a statement by the Minister of Economy based on the report published and submitted to the European Commission every two years, that the existing electricity generation capacity and those under construction as well as initiatives for rational electricity consumption cannot guarantee the long-term security of electricity supply. Prior to publishing a bid the President of ERO agrees and consult with the minister competent over public finances and other competent national authorities the types of economic and financial instruments enabling the construction of new generation capacity or the delivery of initiatives leading

to the reduction of electricity demand on preferential terms. The President of ERO concludes an agreement with the winning tenderer, specifying in particular the responsibilities of the party, types of financial and economic instruments, and the manner of settling the financial aid resulting from the instruments. The detailed requirements for the content of the bidding documentation and the conditions and procedure for organising and conducting the tender are set forth by the Minister of Economy in a relevant ordinance.

No circumstances justifying the announcement of such tenders have occurred to date.

Other than that, the measures to cover peak demand and to manage insufficient supply from one or more suppliers are set forth by the Minister of Economy as the authority responsible for monitoring the security of supply of gaseous fuels and electricity and monitoring the operation of the national electricity systems as set forth in the Energy Law. In particular, such measures are set out in the energy policy, the draft of which is prepared by the minister responsible for economy. The current document in force is the "Energy Policy of Poland until 2030", adopted through a resolution of the Council of Ministers on 10 November 2010.

4. THE GAS MARKET

4.1. Network regulation

4.1.1. Unbundling

Designation and certification of transmission system operators

Similarly to the electricity market, in 2011 the President of ERO did not conduct any certification proceedings for transmission system operators (TSOs) as the implementation of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Official Journal of the European Union L.2009.211.94) to the Polish legal system was not completed. No owner of a transmission network applied to the President of ERO and requested for the certification of a transmission system operator.

The regulations concerning the designation and functioning of gas transmission system operators are the same as the ones concerning electricity TSOs. Gas TSOs are required to operate as public companies with the State Treasury as its sole shareholder. Only the owner of a transmission network or an entity with which the owner of a transmission network concluded an agreement authorising it to perform the function of an operator using its proprietary network or installations, may be a gas TSO.

In 2011 there was a one gas transmission system operator in Poland, Operator Gazociągów Przesyłowych Gaz-System SA (hereinafter: OGP Gaz-System SA). The company has operated as the gas transmission system operator since 2006, under the decision issued by the President of ERO. OGP Gaz-System SA is a company wholly owned by the State Treasury and the owner of transmission assets used for transmitting gaseous fuels under a licence issued by the President of ERO.

Since 17 November 2010, under the decision issued by the President of ERO, OGP Gaz-System SA has also operated as the TSO on the Polish section of the Yamal-Western Europe pipeline. This section of the pipeline is owned by the energy undertaking SGT EuRoPol Gaz SA, holder of a license for transmission of gaseous fuels, controlled, among others, by a party from a third country.

An initial assessment of the situation would indicate that the unbundling of OGP Gaz-System SA (in reference to operating on proprietary networks) would, under certain conditions, meet the requirements of the Ownership Unbundling model, as laid down in Article 9 of Directive 2009/73/EC in the area of operatorship on proprietary networks. An outstanding issue is the ownership control, i.e. the transfer of supervision from the Ministry of State Treasury which currently holds control over other undertakings operating on the gas market involved in the production (extraction) or trade of gaseous fuels, as well as electricity. This issue should be regulated in the Gas Law, a draft of which is currently being developed by the Ministry of Economy.

In relation to operatorship on networks which are not owned by OGP Gaz-System SA, an initial review leads to a conclusion that OGP Gaz-System SA currently acts as the TSO in accordance with the formula of an Independent System Operator (ISO) on the Polish section of the Yamal pipeline. However, the assessment of the TSO in this area will be dependent on the solutions chosen by Poland in the final implementation of the provisions concerning transmission system operators set forth in Directive 2009/73/EC.

Monitoring the independence of the TSO and realisation of compliance programmes

Pursuant to Article 9d section 5 of the Energy Law, the TSO is obliged to submit to the President of ERO a report setting out the details of measures taken in the preceding year to realise the programmes identifying the initiatives which must be taken to ensure the non-discriminatory treatment of system users, including in particular specifications of personnel responsibilities under the programmes. According to the obligation imposed by the Energy Law, the reports were published in the Industry Bulletin of ERO and on the ERO website.

Based on the information submitted by the TSO, no breaches of the Programme were found for OGP Gaz-System SA. In particular, no cases of discrimination of system users and potential system

users were recorded. No complaints were received which would indicate violations of the Programme or unequal treatment of system users.

Unbundling of distribution system operators

The legal regulations setting out the requirements for the DSOs unbundling were presented in detail in the electricity section – they also apply to the gas DSOs. However, the criterion of legal and organisational unbundling of gas distribution system operators which are a part of vertically integrated undertaking (which became effective on 1 July 2007), was additionally complemented with the parameter showing the volume of sales of gaseous fuels. The obligation of legal and organisational unbundling of gas DSOs does not concern distribution system operators if the number of customers connected to its network is not greater than 100,000 and the annual volume of gaseous fuel sales does not exceed 100 million cubic metres.

In 2011 distribution activity was performed by 18 distribution system operators (DSOs) designated under decisions issued by the President of ERO, including 6 undertakings legally unbundled from former distribution companies.

The DSO unbundling process was completed by 6 DSOs owned by the PGNiG capital group. Under a decision issued by the President of ERO, all companies were designated DSOs for the term of the gaseous fuel distribution licence. As mentioned above, the national law provides for the application of the unbundling obligation also when the sale of gaseous fuels exceeded the threshold of 100 million cubic metres. Therefore, over 2011 the process of unbundling DSOs from two vertically integrated undertakings which sales in 2010 exceeded the 100 million cubic metres of gaseous fuels was continued.

Table 4.1. Unbundling status as of 31 December 2011

Item	Number
TSO	1
TSO – ownership unbundling – following the certification procedure	0
TSO – independent system operator – following the certification procedure	0
TSO – independent transmission system operator – following the certification procedure	0
DSO	18
DSO – ownership unbundling	0
DSO – legal unbundling	6
DSO – legal unbundling, ownership of assets (network)	6
DSO – legal unbundling, no assets (network)	0
DSO – less than 100,000 customers	12

Approving distribution system operators' compliance programmes

In 2011 the President of ERO approved compliance programmes for six gas distribution system operators. As in the case of electricity distribution system operators, the approved programmes were harmonised in terms of their content, implementation and realisation, as well as programme monitoring and reporting. Detailed information concerning the programmes was published on the website of the regulatory authority (www.ure.gov.pl).

In 2012 all six distribution system operators which are statutorily required to submit reports on the realisation of compliance programmes to the President of ERO met their obligation for 2011 within the stipulated timeframe. Under the obligation laid down in the Energy Law, the reports were published in the Industry Bulletin of ERO and on the ERO website. As the approval process of the compliance programmes for DSOs started in late December 2010 and concluded in September 2011, the programmes became effective following a period of 3 to 6 months of the respective programme approval date. Hence, the submitted DSOs reports for 2011 concern only the "old" compliance programmes which were not approved by the President of ERO.

The information presented in the reports indicates that none of the DSOs violated the compliance programmes, and in particular neither any conflict of interests was recorded, nor any discriminatory conduct towards system users or potential system users was observed. No cases of breaches of confidentiality of sensitive commercial information were recorded, either. DSO personnel - subject to

the provisions of the compliance programmes, as well as new hires were acquainted with the specific regulations of the programmes during internal training. No DSO reported any queries from personnel on the interpretation of the programmes, and no related complaints or motions were recorded, either.

4.1.2. Technical functioning

Balancing services and congestion management

In the natural gas market, as in case of electricity, the rules of system balancing and congestion management are developed according to the provisions of Article 9 section 1 of the Energy Law by the transmission system operator and distribution system operators, and are subject to approval by the President of ERO in the relevant transmission grid code.

Transmission Grid Code Approval

In 2011 the transmission system operator submitted to the President of ERO for approval a new Transmission Grid Code setting out the general terms and conditions for transmission system use as well as the rules of system balancing and managing congestions. The solutions adopted in the Code significantly affect gas market functioning, and in particular they implement the following: as of 1 July 2012, the gas day compliant with the standards of CBP EASEE-gas, starting at 6am; as of 1 July 2012, the balancing of the transmission system in kWh units; reverse flow services; non-discriminatory and transparent *Open Season* procedures for newly built or extended entry or exit interconnection points; leaving the *first come, first served* rule for more market-based principles of transmission capacity allocation; extended obligations of the TSO in the area of providing shippers with information on the imbalance status, and the improvement and clarification of procedures of data exchange and access. The provisions of the new Code entered into force on 1 October 2011.

Approval of the Transmission Grid Code in the part relating to the Polish Section of Yamal-Europe pipeline

Under the decision of the President of ERO dated 17 November 2010, OGP Gaz-System SA was designated the gas transmission system operator on the assets owned by SGT EuRoPol Gaz SA. In order to ensure the meeting of obligations under Article 9g sections 1 and 2 of the Energy Law, the operator prepared a draft of the Code and carried out the statutorily required consultations, which was followed by an application to approve the Code submitted to the President of ERO on 27 June 2011. Following an administrative procedure the President of ERO, under the decision dated 31 August 2011, approved the Transmission Grid Code in the part relating to the Polish section of the Yamal-Europe Natural Gas Pipeline Transit System. As petitioned by the TSO, the effective date of the Code was agreed to be 31 August 2011.

Pursuant to Article 9g section 6 of the Energy Law, the Code submitted by the operator contains a separate section dedicated to the system balancing and managing congestions. In accordance with the provisions of the Code the operator will offer the following:

- long- and short-term uninterruptible transmission services,
- long- and short-term interruptible transmission services, and long- and short-term reverse flow transmission services – as an interruptible service at level 4 of supply reliability.

The approval of the Code enabled the operator to start providing the transmission services under agreements concluded with new users of the Polish section of the Gas Pipeline Transit System Yamal-Europe, introducing more market players to the Polish gas market. The virtual reverse flow enabled transmission of gas from the western direction, from new suppliers. It helps to diversify gas supplies and, in consequence, improve the energy security of Poland.

Monitoring the functioning of the gas system in reference to the security of gas supplies

In 2011 the President of ERO carried out tasks resulting from Regulation (EU) No. 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, which entered into force on 2 December 2010.

In view of the measures foreseen by the Regulation, the President of ERO participated in drafting of the document "Assessment of Risks Associated with the Security of Gas Supply" prepared by the Ministry of Economy in connection with the obligations set forth in Article 9 section 1 of the Regulation. The document presented the situation on the natural gas market in Poland and identified the major threats to the security of gas supply. An analysis of various potential interruption scenarios of gas supplies was undertaken, including both political and market risks as well as infrastructural risks. The N-1 factor was determined for the different scenarios, allowing to decide whether the transmission system meets the infrastructural standards.

Monitoring quality standards of customer service and quality parameters

The monitoring of the quality standards of customer service and quality parameters of gaseous fuels covers a set of measures to protect customers from the deterioration of the quality of supplied fuels (their heat of combustion), level of service (interruptions in supplies), and customer service standards, which may occur as a result of gas undertakings operating in a monopolistic market.

Inspections of the quality of gaseous fuels take place whenever requested by customers. To date, complaints were reported by households, and the related interventions by the President of ERO involved requesting companies to submit reports on the quality of gas (including the monthly average heat of combustion) in the part of the gas network to which complainant installation is connected. The President of ERO does not have a laboratory or access to specialist apparatus allowing for independent tests of the quality of gaseous fuels.

The regulatory measures of the President of ERO in relation to monitoring the service standards are also applied in the process of approving tariffs for gaseous fuels. The prices and charges provided for in the tariffs are only approved by the President of ERO when they are calculated in respect of the quality standards set forth in the ordinance on the tariffs for gaseous fuels¹⁹⁾. Failure to meet the quality standards of the gaseous fuels specified in the ordinance gives customers the right to claim price reductions, with the specific preconditions of such reductions set out in the tariff. In addition, the tariff provides for discounts in the gas charges for failure to meet the quality standards of customer service. Customers are usually unaware of their rights, turning to the President of ERO with complaints against the actions of gas undertakings. In such cases, explanations and information on the available rights and obligations are provided, in accordance with the applicable law.

Monitoring time taken to connect and repair

Monitoring of the functioning of the gas system in reference to rules and realisation of network connections and repairs is a regular activity carried out by the regulatory authority, completed i.a. through reviewing and analysing information submitted by undertakings, their customers and other stakeholders. The interruptions and limitations of gas supplies have been shown in the table below.

Table 4.2. Interruptions and limitations of gas supplies

	Occurrences	Interruptions and limitations			
		Duration [min.]	Number of customers affected	Average time [min./cust.]	Volume of unsupplied fuel [millions of cubic metres]
Downtimes	8	285	1	285	0.07125

¹⁹⁾ Ordinance of the Minister of Economy, Labour and Social Policy of 6 April 2004 (Journal of Laws No. 105, item 1113)

The performance of the task laid down in the directive is carried out in particular through the monitoring of fulfilling the obligation to notify the President of ERO each case of gas network connection refusal, during the resolution of disputes concerning connection refusals and consideration of customer complaints regarding the undertakings activities related to the terms and conditions of connecting to the network, the actual connection, as well as network repairs submitted to the regulatory authority, by undertakings performing the functions of transmission and distribution of gaseous fuels.

The monitoring is also carried out by the regulatory authority in the licensing procedure (also for licence amendments) and during the approval of tariffs for corporate customers.

In 2011 the regulatory authority received notifications on gas network connection refusals from gas undertakings. Pursuant to amending act, as of 10 March 2010 the President of ERO has not been authorised to raise objections to connection refusals. Licensed energy undertakings, on the other hand, are still required to submit reports on the number of grid connection refusals issued. Administrative proceedings were initiated at customer requests concerning connection refusals.

Monitoring access to storage, linepack and other ancillary services, monitoring correct application of criteria that determine model of access to storage

In 2011 the storage system operator for natural gas in Poland – PGNiG SA – applied to the President of ERO requesting confidentiality of the information referred to in paragraph 1 of Article 19 section 4 of Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No. 1775/2005 (Official Journal of the European Union, L 211/36) (hereinafter: Regulation 715/2009) for storage installations that are a part of the following storage facilities: UGS "Husów", UGS "Wierzchowice", and UGS "Mogilno". Following an administrative procedure the President of ERO rejected the petition. Therefore, the storage system operator is required to make public all information in accordance with the applicable regulations.

While monitoring the conditions of providing storage services for gaseous fuels, the President of ERO indicated to the owner of the storage facilities the elements perceived by the regulator as essential to conduct effective unbundling process. It appears that the consideration of the proposals put forward by the President of ERO may facilitate access to storage services and contribute to the improvement of competition rules in the market.

In addition, the President of ERO published information on ongoing consultations concerning the new Rules for Storage Services of PGNiG SA, encouraging market participants to submit feedback to better reflect their needs in the Rules.

In 2011 the President of ERO did not monitor the proper application of the criteria setting out whether a storage facility is subject to the provisions of Article 33 section 3 or 4 of Directive 73/2009/EC.

Monitoring safeguard measures

In 2011 the President of ERO monitored implementation of safeguard measures in the event of crisis situations by reviewing emergency plans for restrictions in natural gas consumption submitted by the transmission system operator, distribution system operators and combined system operators.

No threats to the security of natural gas supply were recorded in 2011 which would require the implementation of restrictions in natural gas consumption. However, the suspension of gas supplies at the receipt and delivery point at Zosin by Hrubieszów which took place as of 1 January 2011, supplied under the natural gas supply agreement of 26 October 2004 with NAK "Naftogaz Ukraine", should not be forgotten. The suspension of supplies by NAK "Naftogaz Ukraine" was, as it was argued, caused by a change of the internal Ukrainian regulations according to which all natural gas produced in Ukraine should be allocated solely for domestic use, which prevented the Ukrainian party from supplying it to Poland.

4.1.3. Network and LNG tariffs for connection and access

Gas undertakings holding a license for transmission, distribution and store of gaseous fuels, natural gas liquefaction or regasification of the liquefied natural gas, perform these functions under relevant tariffs, set by the companies and approved by the President of ERO.

Tariffs for the distribution of gaseous fuels or the regasification of liquefied natural gas are calculated according to the provisions of the Ordinance by the Minister of Economy dated 6 February 2008 on the specific provisions for setting and calculating tariffs and charges in trading gaseous fuels (Journal of Laws No. 28, item 165), hereinafter the "tariff ordinance". The tariffs for transmission and storage of gaseous fuels, on the other hand, in addition to the provisions of the tariff ordinance, consider also the stipulations of Regulation No. 715/2009 which – under Article 288 of the Treaty on the Functioning of the European Union (Official Journal of the European Union, C 115/47) – apply to energy undertakings performing these functions in the Member States.

In the tariffs for transmission services approved in 2011 transmission rates were set as entry-exit rates for the first time. In addition, the tariffs contained methods of calculating charges for services offered under short-term contracts (including single-day contracts), the terms and conditions of service and the methods of calculating charges for interruptible transmission services, as well as the methods of calculating charges for reverse flow services. The storage services tariff enabled the settlements of firm and interruptible services, short- and long-term services, services offered as bundled products (including the flexible bundle), and those offered separately.

In 2011, in relation to distribution system operators serving more than 100,000 customers operating within the PGNiG SA capital group, for the first time the tariff approval process was carried out in accordance with the multi-year regulatory model. The model will be in force over the next three full tariff years, beginning on 15 July 2011 and extending until 30 June 2014.

For the above-mentioned regulatory period the following were determined:

- 1) methodology of calculating the weighted average cost of capital employed in the distribution business (WACC),
- 2) individual paths leading to the full reward of the regulatory asset value (RAV) resulting from the DSO account books and determined according to the International Financial Reporting Standards (IFRS) for each year of the regulatory period,
- 3) baseline for operating costs dependent on the DSO ($OPEX_0$)²⁰⁾, used as the basis for calculating these costs for the next years of the regulatory period,
- 4) cost efficiency improvement factors for each DSO,
- 5) change of scale of operation factors over any given tariff year, determined on a basis of the planned change of key parameters over any tariff year in relation to performance of the parameters in the year preceding the tariff year, covering the following: length of the network along with its connections, number of customers, number of compressor and metering stations, and volume of gas supply,
- 6) sector efficiency factors.

The methods of calculating a return on the employed capital for gas undertakings are set out in Paragraph 6 section 3 of the tariff ordinance under which reward is given – according to the rate of return (WACC), as determined through a formula presented in section 4 of Paragraph 6 – to the sum of the net value of capital employed in the licensed operation (RAV) and working capital (WC).

As far as the planned operating expenses are concerned (OPEX), in relation to:

- 1) transmission system operator and distribution system operators other than DSOs of the PGNiG capital group – until the application of the regulatory model that can occur only when the undertakings present multi-year statistical data – these will be reviewed annually, with the costs incurred in the year preceding the year of submitting the tariff application as a benchmark,
- 2) DSOs within the PGNiG capital group, these costs over the following years of the regulatory period will be determined with consideration given to:
 - the value of OPEX recognised for the calculation of tariffs in the preceding tariff year²¹⁾,
 - DSO change of scale factor.

The methods of calculating regulated income by undertakings performing the function of storage – as in case of the undertakings transporting gaseous fuels – are set forth in the tariff ordinance.

²⁰⁾ I.e. the costs of contracted services, raw materials and energy (excluding costs of the balance difference), wages, social insurance and other benefits, as well as other primary costs.

²¹⁾ For the tariff year 2011/2012 OPEX costs were determined on the basis of the actual OPEX costs for 2010, adjusted by an individual efficiency improvement factor, sector efficiency factor, and change of scale factor for each DSO.

Throughout the tariff approval procedure the President of ERO carried out a detailed review of the costs which are used as a basis for rates calculation while ensuring that cross subsidising is not present between the licensed and unlicensed activities, as well as between the various types of licensed activities.

The tariffs set by gas undertakings and approved by the President of ERO are published in the Industry Bulletin of ERO within 14 days of approval. Gas undertakings adopt the tariffs for use within a period not shorter than 14 days and not longer than 45 days from the publication date.

The decision approving or rejecting the tariff approval issued by the President of ERO may be appealed against through the District Court in Warsaw – Court of Competition and Consumer Protection – via the President of ERO within two weeks from the date of its delivery.

4.1.4. Cross-border issues

Access to cross-border infrastructure, including allocation and congestion management

Pursuant to Article 23 section 2 item 20a of the Energy Law, the responsibilities of the President of ERO include monitoring the gas system functioning in reference to interconnection capacity allocation mechanisms, in cooperation with the competent authorities of the EU Member States or member states of the European Free Trade Association (EFTA) – parties to the Agreement on the European Economic Area.

In 2011 the President of ERO monitored cooperation of the transmission system operator OGP Gaz-System SA with the transmission system operators from neighbouring countries: German Ontras-VNG Gastransport GmbH and Czech NET4GAS realised under inter-operator agreements. Procedures for monitoring the allocation of transmission capacities at all interconnectors (including the eastern ones) were put in place. The measures to ensure the actual performance of operator responsibilities on the interconnection with the German transmission system operator Gascade GmbH (former Wingas GmbH), i.e. on the Yamal pipeline at the Mallnow entry point were also subject to monitoring. This was due to the designation of OGP Gaz-System SA as the gas transmission system operator for the Polish section of the Yamal-Western Europe pipeline for the term ending on 31 December 2025, under decision of the President of ERO dated 17 November 2010.

The table below shows information concerning transmission capacity at the interconnectors of the national transmission system, managed by OGP Gaz-System SA.

Table 4.3. 2011 transmission capacity allocation at interconnectors with other system operators/owners

System operator	Country	Interconnection	Direction of supply	Type of nominations	Total transmission capacity*	Reserved transmission capacity – firm	Unreserved transmission capacity	Reserved transmission capacity – interruptible	Completed transmission
					[millions of cubic metres/year]	[millions of cubic metres/year]	[millions of cubic metres/year]	[millions of cubic metres/year]	[millions of cubic metres/year]
ONTRAS	Germany	Lasow	Poland	day/hour	1,013.7	1,013.7	0.0	8.1	986.9
ONTRAS	Germany	Gubin	Poland	day/hour	17.5	17.5	0.0	0.0	4.2
Severomoravske plynarenska	Czech Republic	Branice	Poland	day/hour	1.4	0.6	0.8	0.8	0.2
Severomoravske plynarenska	Czech Republic	Cieszyn	Poland	day/hour	241.0	230.3	10.8	3.5	212.0
Ukrtransgaz	Ukraine	Drozdowicze	Poland	day/hour	5,588.1	4,204.8	1,383.3	1,383.3	3,742.4
Beltransgaz	Belarus	Teterovka	Poland	day/hour	236.5	236.5	0.0	0.0	73.4
Beltransgaz	Belarus	Vysokoye	Poland	day/hour	5,475.0	3,255.1	2,219.9	2,219.9	3,068.7
SGT EuRoPol Gaz SA and as of 17 Nov 2010 OGP Gaz-System SA	Poland	Lwowek	Poland	day/hour	2,365.2	1,208.2	1,157.0	1,157.0	1,102.9
SGT EuRoPol Gaz SA, and as	Poland	Wloclawek	Poland	day/hour	3,066.0	1,740.7	1,325.3	1,325.3	1,719.6

of 17 Nov 2010 – OGP Gaz-System SA									
ONTRAS	Germany	Kamminke	Germany	day/ hour	129.8	108.7	21.1	5.9	27.6

* Maximum firm capacity offered by the transmission system operator to network users, while providing for system integrity and the operational requirements of the transmission network.

Source: OGP Gaz-System SA.

Data presented in the table above indicate that the total 2011 transmission capacity at interconnections with other transmission systems amounted to 18,134,200,000 cubic metres per year, and the proportion of the reserved transmission capacity (both firm and interruptible) at all points of entry to the national transmission system was almost 100%. Total transmission capacity of three interconnections with the German operator amounted to 1161 million cubic metres per year. The majority of the capacity at entry points is held by PGNiG SA.

In addition, the import transmission capacity was utilised in about 60%, which means that there is potential for new market participants to offer gas imports. However, the transmission of additional gas volumes may be offered as an interruptible service.

In order to obtain information on the potential demand for transmission capacity and the associated completion of investment projects in new gas transmission lines, in 2011 OGP Gaz-System SA continued its works using the *Open Season* procedure. This non-discriminatory procedure was open to all entities wishing to have transmission capacities reserved and interested in offering the imported gas in the domestic market.

In 2011 the transmission system operator, OGP Gaz-System SA, completed two procedures: the additional capacity allocation procedure at the Lasów entry point and the Market Screening for further increase of capacity at this entry point.

The procedure of additional capacity allocation at Lasów was connected with development and modernisation of the transmission system in Lower Silesia in the Lasów area, enabling an increase of capacity at the interconnector with Germany, rising from 0.9 billion cubic metres per year to a total of 1.5 billion cubic metres per year (i.e. from 128,000 cubic metres per hour to 180,000 cubic metres per hour).

On 10 June 2011 the Polish transmission system operators OGP Gaz-System SA and German Ontras-VNG Gastransport GmbH concluded an agreement setting out rules of cooperation in the scope of additional capacity allocation at Lasow in the direction from Germany to Poland. During the negotiations it was agreed that due to differences in the sector law in the Polish and German systems (implementation of the auction mechanism planned in Germany as of 1 October 2011), the best solution would be to apply independent procedures (agreed product, with different procedure schedules) by the two operators at each side of the border.

Following the agreement of the Rules of procedure for allocation of additional transmission capacity at the Lasow entry point with the President of ERO, on 4 July 2011 the Polish TSO OGP Gaz-System SA initiated this procedure in the same month. As a result of the procedure, applied for by 28 undertakings from Poland, Germany, the Czech Republic, Slovakia, Hungary, France, United Kingdom, Switzerland and Austria, the available capacity was allocated on a *pro rata* basis. Contracts for the transmission of gaseous fuels were signed in October 2011 with 27 participants of the procedure.

Parallel to the capacity allocation procedure OGP Gaz-System SA completed the procedure of Market Screening for further increase of capacity at the Lasów entry point. The research covered the period from 2016 to 2025. By 30 September 2011 OGP Gaz-System SA received a number of applications concerning further increase of capacity at this entry point. The applications served as a proof of significant interest in the further extension of the Lasow interconnector.

In the latter half of 2010 a new virtual exit point was established, the so-called Lasów reverse. The point offers interruptible virtual transmission of gaseous fuels. The service was subscribed to by several customers, though with only one transmission service agreement concluded.

Demand was also reported in relation to the Lasów reverse, but only at approximately 50,000 cubic metres per hour, representing a value below 10% of the basic flow direction. The potential system extension was analysed in 2011, and the actual investment in transmission system in the Lasów area was subject of preliminary discussions between ERO, BNetzA, Ontras and OGP Gaz-System SA. The discussions and the works concerning needs for the extension of the transmission system have not

been completed yet. However, the initial results of the Market Screening procedure give a basis to a statement that there is no interest in transmitting gas in the western direction in volumes equivalent to the import capacity at the moment. As the transmission system in the Lasów area constitutes an interconnector with the Gaspool balancing zone in Germany, the same to which gas from the Polish direction is transmitted through the transmission pipeline system; it was considered whether market expectations could be met by the system itself.

In addition, in September 2011 construction of a new interconnector was completed at the Polish and Czech border by Cieszyn. The newly built pipeline has a capacity of approximately 500 million cubic metres of gas per year. The interconnector was built by Polish and Czech TSOs: OGP Gaz-System SA and NET4GAS s.r.o. (former RWE Transgas Net). It is 32 km long and runs from Skoczów region in Poland through Cieszyn to Tranovice in the Czech Republic. During the procedure OGP Gaz-System SA and RWE Transgas Net concluded a Cooperation Agreement concerning realisation of the project, and the three companies which applied for the procedure, i.e. PGNiG SA, Handen Sp. z o.o. and KRI SA, signed gas transmission service agreements.

As the project continues, the transmission capacity between the systems will increase to over 2.5 billion cubic metres per year. The range of measures to be taken will be jointly analysed by the parties. In early 2011 OGP Gaz-System SA and NET4GAS, s.r.o. jointly applied to the European Commission requesting financial aid for the analysis. The European Commission approved the application on argument that the connection would contribute to the progressing gas market integration in Europe.

Also of note is the signing of an agreement of April 5, 2011 between OGP Gaz-System SA, the Lithuanian gas company AB Lietuvos Dujos, and the winner of the tender, Ernst & Young Business Advisory, on the analysis of the conditions for realisation of gas interconnection project between Poland and Lithuania²². The review of the results will provide information on the potential and perspective of building a gas connection between Poland and Lithuania that will be used by the parties as a basis for decision on any further actions relating to the project. The connection between Poland and Lithuania may be one of the elements of the strategy for Baltic energy markets integration known as the Baltic Energy Market Interconnection Plan (BEMIP).

In 2011 the President of ERO monitored the principles of capacity allocation applied on the Polish section of the Yamal-Western Europe pipeline. Over 2011 the undertaking carried out its operator obligations under the decision of the President of ERO dated 17 November 2010 designating OGP Gaz-System SA the gas transmission system operator on the Yamal-Western Europe pipeline for a term extending until 31 December 2025. On 25 October 2010 the contract of entrustment by EuRoPol Gaz SA (pipeline owner) of the function of operator to the Gaz-System SA company was signed. The agreement, in force until the end of 2019, sets out the respective obligations of OGP Gaz-System SA, the operator of the Polish section of the Yamal pipeline, and SGT EuRoPol Gaz SA, the owner of the assets.

The table below shows the transmission capacity on the Polish section of the Yamal-Western Europe pipeline.

Table 4.4. 2011 transmission capacity on the Polish section of the Yamal-Western Europe pipeline

a)

Total transmission capacity at the point of entry [millions of cubic metres per hour]	Total transmission capacity at the point of exit at the Polish-German border [millions of cubic metres per hour]	Total transmission capacity at the OGP Gaz-System SA points of exit [millions of cubic metres per hour]	Unreserved transmission capacity at the point of entry [millions of cubic metres per hour]
4.134	3.758	0.665	0.165

²² In July 2011 the European Commission decided to award €425,000 financial aid to projects of joint interest for OGP Gaz-System SA and the Lithuanian Lietuvos Dujos under the Trans-European Networks–Energy (TEN-E) programme, intended to integrate the energy networks. The financial award will be dedicated to an economic analysis and a feasibility study for the gas interconnection between Poland and Lithuania.

b)

Transmission capacity [billions of cubic metres per year]			
Reserved at the point of entry	Reserved for transit	Reserved for domestic needs	Unreserved
31.640	28.760	2.880	1.320

* The data are presented in GOST. The agreements and the published data are shown in relation to the following conditions: p=101.325 kPa and t=293.15 K.

Source: OGP Gaz-System SA.

As part of the capacity allocation principles monitoring carried out by the President of ERO, the performance of the virtual reverse flow service on the Yamal-Western Europe pipeline was reviewed. In 2011 the reverse flow (at the Mallnow point) was provided as an interruptible service, at level IV of gas supply reliability (pursuant to section 9.2 of the transmission Tariff). The capacity in the virtual reverse flow at Mallnow was equal to the sum of the technical transmission capacity of the receipt points to the Polish system at Włocławek and Lwówek, and amounted to 15,965,000 cubic metres per day.

In accordance with the Transmission Grid Code for the Polish Section of the Yamal-Europe Natural Gas Pipeline Transit System approved by the President of ERO on 31 August 2011, OGP Gaz-System SA carried out application process for transmission services for the years 2012, 2013, 2014 and 2015. Five applications were received for the virtual reverse flow service. Four of them concerned long-term service, whereas one was a short-term application covering the period from 1 November to 31 December 2011. However, the volumes and powers applied for exceeded the available capacity. Following a transmission capacity allocation process conducted by OGP Gaz-System SA one agreement for a short-term reverse flow service and three long-term reverse flow agreements were signed.

In addition, on 18 October 2011 OGP Gaz-System SA informed market participants that with regard to SGT EuRoPol Gaz SA offering firm transmission capacities as of 1 January 2012, OGP Gaz-System SA, in agreement with the President of the Energy Regulatory Office, started collecting applications for long-term transmission services, covering the transmission of gaseous fuels in the next gas years, i.e. 2012, 2013, 2014 and 2015. The transmission service applications were received from 18 October 2011 to 4 November 2011 and were considered in accordance with the provisions of the Transmission Grid Code for the Polish Section of the Yamal-Europe Natural Gas Pipeline Transit System.

Cooperation with the Regulatory Authorities of other countries and ACER

One of the main priorities of the President of ERO was the performance of regulatory responsibilities concerning the cooperation on cross-border issues, resulting from the national and EU legislation. In connection with the measures aimed at increasing transmission capacity at interconnectors, undertaken by the transmission system operator OGP Gaz-System SA, i.e. the extension and modernisation of the transmission system in Lower Silesia by Lasów, and the need to ensure coordination of transmission capacity allocation at both sides of the border, i.e. by Gaz-System SA and ONTRAS/VNG Gastransport GMBH (the German operator), as well as to review the possibility of harmonising the allocation principles, including the offering of bundled products, the President of the Energy Regulatory Office took measures to review the legislation, obtain information on the German legal framework including any mechanisms which could affect further agreements and decisions concerning cross-border cooperation from the German regulatory authority (Bundesnetzagentur). As part of the activities carried out in 2011, a meeting of four parties (regulatory authorities and operators) took place on 28 October 2011 which brought about the following:

- a) a working group composed of the representatives of Gaz-System and ONTRAS was established; the tasks of the group include development of a draft of a joint procedure for the allocation of transmission capacity for bundled products and submission of the draft document to the regulatory authorities for approval,

- b) it was decided that TSOs would prepare a memorandum of understanding, to be signed by the two operators,
- c) concept works along with the way for their realization were presented, in order to enable offering of bundled products in accordance with the Grid Code governing the transmission capacity allocation mechanism. The objectives provide for the following: the offered bundled products concern the Lasów interconnection, sales will be carried out through the Gaspool trading platform (or a newly developed platform, e.g. by Gaz-System), firm/long-term transmission capacity will be offered annually and quarterly, bundled products could be offered as of 2014, with the first auction conducted in 2013,
- d) major threats affecting the delivery of the project were identified, including the following:
 - legal differences in the two countries concerning the offering of bundled products and auctions,
 - lack of possibility to offer transmission capacity under auctions in the Polish law, including the generation of the so-called auction premium.

These cooperation activities are continued in 2012.

In 2011 the President of ERO informed the Agency for the Cooperation of Energy Regulators (ACER) of the details of additional transmission capacity allocation procedure on the Polish-German interconnector at Lasów, and the effects of the meetings between Polish and German regulatory authorities and TSOs concerning the transmission capacity allocation on this interconnector.

Cooperation with ACER

Concerning cooperation between the President of ERO and ACER, as in the case of electricity segment, the Polish regulatory authority was actively involved in the activities of the Agency, both in the Board of Regulators and the Agency working groups. Representatives of the President of ERO were also involved in activities undertaken at the regional level. The newly established Agency took over a part of the ERGEG competences, including monitoring of the Regional Initiatives. They are intended to be an intermediary stage in the creation of the internal energy market in Europe – from the integration of national markets at the regional level to the common EU electricity and gas market. According to the adopted division, Poland is a full member of the South-South East (SSE) Gas Regional Initiative.

Over 2011 the activities carried out under the Regional Initiatives were a continuation of works undertaken in the preceding years. In particular they concerned development of the Framework Guidelines and Grid Codes, as well as the continued development of the network, transmission capacity allocation mechanism and congestion management procedures, transparency (publication of information), security and access to gas as a commodity, as well as communication between market participants, harmonisation of the interconnections and the regulatory regime, including balancing and access to transmission capacity. In addition, while providing for the regional differences in the degree of market development, works were carried out on the harmonisation of rules and further development of the energy market across the whole EU. In relation to the SSE region these works included in particular the following:

- security of gas supply as a priority for the region, including the development of Preventive Action Plans and Emergency Plans;
- the GATRAC (*Gas Transport Cooperation*) pilot project for offering bundled products on a single platform, i.e. transmission capacity at interconnectors between the Czech Republic, Slovakia, Austria and Germany;
- a project of a virtual exchange platform for Austria, which the Central European Gas Hub (CEGH) is to become from 2013;
- procedures for day-ahead transmission capacity offering on the interconnector between Austria and Italy.

Also, in connection with the mandate awarded to the European Commission during the Madrid Forum of 21 and 22 March 2011 in relation to drafting, agreeing and submitting Action Plans for 2011–2014, works on the Action Plan for the SSE region were initiated. According to the objectives of the Plan, the South-South East Market will continue realisation of the following projects: transmission capacity and bundled products allocation, market integration, cooperation between operators, infrastructure and investments, as well as the security of gas supply.

In addition to the current cooperation with ACER in the Board of Regulators, working groups and Regional Initiatives, the President of ERO had also provided ACER with information on the nature of the Polish gas market, including information on the compliance of some specific solutions with the Third Energy Package provisions.

Monitoring investment plans and assessment of consistency with Community-wide network development plan

Monitoring investment plans is performed on the basis of investment plan reports which the energy undertakings involved in transmission and distribution of gaseous fuels are required to submit to the President of ERO annually, by 1 March of each year.

In 2011 Gaz-System SA, the Transmission System Operator, realised investment projects based on the development plan approved in 2009 for the period between 1 May 2010 and 30 April 2014. In 2009 the DSOs development plans for the period 2009–2013 were also agreed.

Over 2011 DSOs and the TSO realised investments based on the above-mentioned plans. However, while the 2009 estimation of DSO investment outlays concerned the entire term of the plan, i.e. from 2009 to 2013, the investment levels were only agreed for the period until 2011.

Table 4.5. Summary of investment outlays (total for the 6 DSOs and the TSO) in current prices

Year	Investment outlays	
	Planned ['000s PLN]	Actual ['000s PLN]
2007	1,209,658	1,033,143
2008	1,276,197	1,224,561
2009	1,705,464	1,430,122
2010	1,907,838	1,454,936
2011	2,264,962	1,773,655

The total 2011 investment outlays incurred by the DSOs amounted to 1,293,770,000 PLN.

Table 4.6. Length of distribution and transmission networks

Year	Length of network [km]
2007	135,487.8
2008	137,749.2
2009	152,604.9
2010	174,568.6
2011	180,680.8

In 2011 the total length of the methane rich natural gas transmission and distribution network was 171,539.4 km, of which the length of the transmission network was 9,883.7 km and the length of distribution network was 161,655.7 km. The length of transmission and distribution networks for other gaseous fuels was 9,141.4 km.

Role of the President of ERO in the process of assessing the efficiency of network functioning did not change and covers the following issues:

- approval, in the tariff process, of relevant undertaking revenue to ensure the security of supply and improve the efficiency of network operation, measured by the average interruption time, improved network capacity and decreased gas consumption to cover the balance difference;
- assessment of the network operation during the approval process of draft development plans for the coming years, where validity of the planned outlays covered with tariff incomes is analysed in the context of network development and security of supply;
- requirement to include provisions concerning the amount of discount in relation to the quality of service, including decreases in the contractual capacity amount and failures to meet quality standards of customer service, in the tariffs established by network undertakings.

Table 4.7. Interruptions to the supply of gaseous fuels

Year	Interruptions					
	Downtimes			Maintenance		
	Duration [min.]	Disconnected customers [no.]	Average time [min./cust.]	Duration [min.]	Disconnected customers [no.]	Average time [min./cust.]
2005	43,341,809.10	109,571	395.56	79,411,583.60	194,219	408.88
2006	89,518,594.80	123,361	725.66	76,721,978.40	153,386	500.19
2007	46,707,750.34	89,218	523.52	78,061,416.00	153,083	509.93
2008	110,416,057.40	104,108	1,060.62	131,395,059.60	130,673	1,005.53
2009	81,563,843.00	102,763	793.71	130,628,780.40	151,273	863.53
2010	27,236,695.80	117,616	231.60	55,470,326.40	162,637	341.07
2011	134,906,106.96	136,308	989.72	163,282,369.80	183,623	889.23

Table 4.8. Customer disconnections (suspension of supply due to outstanding bills)

Year	GAS		
	Disconnections	Total customers	[%]
2004	46,451	6,337,536	0.73
2005	44,957	6,386,160	0.70
2006	33,815	6,396,234	0.53
2007	31,006	6,493,775	0.48
2008	43,319	6,594,867	0.66
2009	53,236	6,641,066	0.80
2010	46,080	6,682,227	0.69
2011	73,570	6,718,681	1.10

4.1.5. Compliance

Compliance of transmission and distribution companies, system owners and gas undertakings with relevant Community legislation, including cross-border issues

In 2011 the monitoring of transmission and distribution system operators by the President of ERO focused on the fulfilling of obligations imposed on these entities directly under Regulation (EC) No. 715/2009 and the Energy Law, and specifically in relation to transparency, including the obligation to provide information on the terms and conditions of offering transmission and distribution services to system users and other gas systems operators. In addition, in 2011 the President of ERO monitored, under Article 9d of the Energy Law, performance of the responsibilities of transmission and distribution system operators in relation to their corporate structure, including their legal and organisational form, independence of the performed function, non-discriminatory treatment of system users, and realisation of the reporting obligations.

Monitoring of the transmission operator functions, performed by OGP Gaz-System SA, covered the following areas:

- review of the data which the company was required to submit following the approval of the Transmission Grid Code,
- periodic analysis of the information which the company was required to publish under the applicable regulations and the associated decisions issued by the President of ERO,
- verification of information connected with letters or applications sent by other energy undertakings, including those seeking the conclusion of transmission agreements,
- assessment of the company operations in terms of meeting the provisions of the Transmission Grid Code.

In addition, while monitoring activities of the transmission and distribution system operators, the President of ERO was actively involved in the monitoring studies carried out by ACER.

Monitoring the fulfilment of obligations imposed under Regulation (EC) No. 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks

Article 9 of the Energy Law of 10 April 1997 imposes on undertakings designated transmission or distribution system operators specific information obligations, concerning, in particular, provision of information on the terms and conditions of transmission and distribution services to system users and other system operators.

Pursuant to Article 23 section 2 item 11a, responsibilities of the President of ERO include monitoring the obligations resulting from Regulation (EC) No. 1775/2005. As the Third Energy Package entered into force as of 3 March 2011, the new Regulation (EC) No. 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks became effective.

Over 2011 the President of ERO carried out periodic studies to monitor the way transmission system operator OGP Gaz-System SA, fulfils the obligation to publish above-mentioned information. The studies showed that the TSO fully met the obligations resulting from the Regulation. All information disclosed by the operator was in addition made available in the English language.

On 9 May 2011 the TSO launched a customer service system, the so-called Information Exchange System (System Wymiany Informacji – SWI) which is continuously updated with information on the services offered by the company. The system is an information exchange platform between the TSO and gas market participants for commercial and technical issues and a tool used by the TSO to realise obligations imposed under Regulation (EC) No. 715/2009.

In addition, the TSO published technical information on the characteristics of the transmission system, necessary to obtain effective access to the system, and in particular covering the following:

- specification of the transmission system in a form of network diagram along with information on the entry and exit points, including the interconnections with other operator's systems,
- data on gas quality, pressure standards, as well as information concerning:
- the daily firm and interruptible capacity, maximum technical transmission capacity, technical transmission capacity considering congestion, total contracted and available transmission capacity for the relevant points along with the available transmission capacity factor,
- capacity of gas stations,
- 18-month and long-term forecasts of the available transmission capacity for the relevant points,
- nominations and re-nominations for the relevant points by day of the week,
- actual quantities of gas transmitted to the relevant points,
- scheduled maintenance and downtime which could affect the transmission of gaseous fuels,
- historic data on the average annual transmission capacity nominated and the maximum and minimum monthly factors of the nominated transmission capacity since 2007.

All data submitted to the operator are treated as confidential information, and are stored and processed in accordance with the applicable regulations while exercising adequate security measures, as guaranteed by the operator on its website.

In addition, in order to meet the obligations imposed on transmission system operators under Article 6 of Regulation (EC) No. 1775/2005, on 17 December 2010 OGP Gaz-System SA applied to the President of ERO for approval of the relevant points²³⁾ of the transmission system, i.e. the Transmission Pipeline System and the Gas Pipeline Transit System. Prior to issuing the relevant decision the President of ERO was required to consult with system users. Results of the consultations were published on the ERO website. On 23 February 2011 the President of ERO approved the relevant points of the transmission systems as indicated by OGP Gaz-System SA, as follows:

- the relevant points of the transmission systems and the transit system established after the issuance of the decision are subject to approval by the President of ERO,
- the entry points to the transmission pipeline system for domestic production and the exit points from the transmission pipeline system established after the issuance of the decision may be aggregated by the Operator to the existing relevant points (zones) approved under the decision.

The approval of the relevant points for which the TSO is required to publish data significantly facilitated access to the required information and improved the transparency of measures taken by the TSO, not only for the existing users, but predominantly for all potential users of the system. The decision by the President of ERO to approve the relevant points concerned not only the national transmission system, but also the transit system and became the basis for publication of the

²³⁾ The relevant points were identified in Annex I to Regulation (EC) No. 715/2009 and refer mostly to all points of entry to and exit from the network managed by the transmission system operator.

information concerning Yamal gas pipeline. Also, it was one of the factors that affected the launch of virtual reverse flow services by the TSO.

As OGP Gaz-System SA was designated the transmission system operator for the Polish section of the Yamal gas pipeline, it also became obliged to publish specific data under the provisions of Regulation (EC) No. 715/2009. The President of ERO carried out a study which found that OGP Gaz-System SA met the requirements of the Regulation. The operator provides regular and continued standardised information on the relevant points of the system (including for the reverse flow service at the Mallnow reverse point) in a form which is concurrent to the presentation of data on the national gas system, covering in particular the following:

- transit pipeline system diagram with the points of entry and exit,
- daily firm and interruptible capacity,
- quality parameters of the transmitted gas,
- scheduled maintenance which could change the terms of the transit gas system operation and affect congestions in the transmission of gaseous fuels,
- 18-month and long-term forecasts of the available transmission capacity for the relevant points,
- available day-ahead interruptible capacity, and
- historic data on the average annual transmission nominated at the points of entry/exit and the monthly maximum and minimum factors of the nominated transmission capacity since 2008.

Moreover, on its website OGP Gaz-System SA publishes the required information on the charges and methods of calculation, as well as the structure of tariffs for the transmission of gaseous fuels, providing also the relevant charge calculators for transmission and other services.

Power to carry out investigations and impose measures to promote competition, and to require any information from gas undertakings

In 2011 the President of ERO took actions to promote competition while complying with the requirement, under Article 23 section 1 of the Energy Law, to balance the interests of energy undertakings and fuel and energy customers. In order to effectively carry out the regulatory responsibilities the President of ERO is equipped, under Article 28 section 1 of the Act, with a right to access to accounting books of the energy undertakings, request the details of company's business, including specific information on its investment plans, while complying with regulations governing classified information and other information protected by law. Furthermore, the President of ERO has a right to access any documents and call for submission of documents or information which may affect the evaluation of the licensed operations or help to assess compliance.

Furthermore, to ensure effective performance of its responsibilities, the regulatory authority may impose penalties, as set forth in Article 56 section 1 of the Energy Law. The Article lays down the structure, categories, amounts and rules of applying penalties. When imposing penalties the President of ERO is required to take into consideration: degree of harm, degree of culpability, the way energy company behave to the date and its financial capability.

In the gas sector six administrative proceedings to impose financial penalties were conducted over 2011. The majority of the proceedings concerned the failure to submit to the President of ERO reports on the delivery of development plans for 2010, thus breaching the obligation as referred to in Article 16 section 7 of the Energy Law (Article 56 section 1 item 31). Under Article 16 section 7 of the Energy Law, added through the amending act of 8 January 2010²⁴⁾, energy undertakings are required to submit to the President of ERO (not later than by 1 March) annual reports on the realisation of development plans in the area of meeting the current and future demand for gaseous fuels. The obligation to prepare and submit the reports to the President of ERO was imposed on all undertakings performing transmission or distribution activity, which also includes those which are not required to agree the drafts of such plans with the President of ERO. As some of the undertakings failed to submit the required reports, explanatory procedures were initiated to identify the reasons for such failure. As a consequence of that, the majority of the undertakings submitted the overdue reports arguing failure to register the amendment of the Energy Law as the reason of their non-submission. It needs to be stressed that Article 56 section 6a of the Energy Law leaves a possibility to renounce from inflicting a penalty if the degree of harm is insignificant and the entity ended the

²⁴⁾ The Act amending the Energy Law and certain other acts of 8 January 2010 (Journal of Laws of 2010, No. 21, item 104). The Act entered into force on 11 March 2010.

infringement or met the obligation. In the procedures in question these two conditions were jointly met, and therefore the President of ERO renounced from penalizing the companies as the degree of harm was low and the undertakings submitted the reports forthwith after being informed of their violations.

In 2011 the President of ERO (acting under Article 56 section 6a in connection with Article 56 section 1 item 5 of the Energy Law) ruled against one of the gas sector undertakings, stating that the company violated the Article 47 section 1 of the Energy Law, consisting in applying prices and tariffs over the period from 14 June 2011 to 2 September 2011 without submitting them for approval to the President of ERO, and at the same time regulator renounced from penalizing. In the course of the procedure it was ascertained that conditions were met for the President of ERO to withdraw from imposing the penalty.

In the reporting year one procedure, concerning the failure to diversify natural gas supplies in 2009, initiated in 2010 was continued. The decision on the case was not issued until the end of 2011.

4.1.6. Dispute settlement

The President of ERO is authorised to resolve disputes concerning access to the gas system. Two such proceedings were conducted in 2011, with the first concerning access to the network of the distribution system operator. The procedure concluded with a settlement and the signing of a distribution agreement. The other dispute concerned the refusal to conclude a transmission service agreement with an entity which, under the supplier switching procedure, sought to obtain firm access to the transmission capacity at the transmission system entry and exit points. The President of ERO ruled in favour of the seller. OGP Gaz-System SA did not agree with the decision issued by the President of ERO and appealed against it to the court. No final resolution on the case has been reached to date.

4.2. Promoting Competition

4.2.1. Wholesale Markets

4.2.1.1. Price monitoring

The wholesale gas market in Poland in 2011 was, in practice, a single entity segment. The wholesale natural gas trade in Poland, understood as the sale of natural gas to other entities for resale, continued to be dominated by PGNiG SA, and functioned solely within the PGNiG capital group.

Natural gas sales in 2011 were completed exclusively under bilateral contracts. The prices of gaseous fuels, approved by the President of ERO, are not differentiated depending on whether the commodity is used for internal purposes or for resale. The price is determined on the basis of the contracted power, considered separately for each receipt point. The volume of sales is not a factor directly differentiating the prices.

The above-mentioned facts indicate insufficient wholesale market development, which is an effect of historical conditioning. For this reason, the monitoring of wholesale gas prices was performed to a limited degree only, and covered the correct application of the approved tariffs.

4.2.1.2. Monitoring the level of transparency, including compliance with the transparency obligations, and the level of effectiveness of market opening and competition

In addition to the actions undertaken by the President of ERO connected with the monitoring of transparency in the wholesale market, described in section 4.1.5. above, last year the regulatory authority took also other initiatives to promote and enhance competition in the domestic natural gas market.

One of such actions, intended to affect the gas market was the initiation of works on the road map for gas price release in Poland. To that end the President of ERO published a survey on the ERO

website which was designed to receive feedback on the needs of market participants in terms of the scope and methods of implementing a faster deregulation of the natural gas market in Poland. The survey, published in the Polish and English languages, was addressed to all legal and natural persons, both domestic and foreign – 24 entities took part in the survey.

Based on the results of the survey, a draft road map for gas price release in Poland was developed in December 2011 with the primary objective of creating the conditions for application of the Gas Release Programme (GRP) by PGNiG SA. The Gas Release Programme aims to create a sufficient liquidity in the wholesale market to enable a withdrawal from the administrative approval of gas prices for all groups of customers.

In addition to the GRP, the road map provides for legislative measures to ensure an effective implementation of the principles of the European gas market and development of the related infrastructure, as well as measures to strengthen household consumers' position in the gas market. The document was a subject of consultation, including with the EC. Further works on the programme are continued in 2012.

4.2.2. Retail Markets

The dominant position in the sector over 2011, including in the retail gas market, was held by the PGNiG capital group. The PGNiG group includes, among others, PGNiG SA company that trades natural gas, as well as six distribution system operators responsible for providing gas to households, industrial and commercial consumers. DSOs are also responsible for the operation, repairs and development of the pipeline infrastructure.

The high degree of concentration in the Polish gas market, resulting from the dominant position of the PGNiG capital group, has for years affected the structure of retail market and the pace of associated changes. Still 96.38% of all gas sales continue to be carried out by PGNiG SA, with the remaining 3.62% held by several dozen entities trying to develop and strengthen their market positions.

The biggest undertakings in relation to volume of gas sold in 2011, except for the PGNiG capital group, include the following: EWE Energia Sp. z o.o., HANDEN Sp. z o.o., G.E.N Gaz Energia SA, ENESTA SA, and KRI SA. These undertakings resell the natural gas purchased from PGNiG SA to end customers. Most of the companies sell gas purchased from PGNiG SA through their local distribution networks. The existence of these entities is important for the functioning of the gas market as they usually operate in areas not served by PGNiG SA, i.e. through their own distribution networks – by filling in the market niche they offer the combined distribution and trading functions.

4.2.2.1. Price monitoring

The monitoring of natural gas prices in Poland is performed in accordance with Article 23 section 2 of the Energy Law through the monitoring of the gas market functioning, including through the approval and monitoring of the application of tariffs for gaseous fuels by undertakings involved in trading activity.

Over 2011 the Energy Regulatory Office conducted 57 approval procedures for tariffs fixed by gas undertakings and amendment procedures for tariffs or their effective terms. In 2011 49 of the procedures were completed.

As regards tariff procedures initiated and conducted in 2011, 29 of them concerned tariff approval, 12 – amendments to the current tariffs, 2 – amendments to the tariff and the tariff term, and 14 concerned extensions of the tariff term. Two of the procedures were discontinued.

From the customer's point of view, the PGNiG SA tariff is a key issue, as the undertaking continues to supply gaseous fuels to over 90% of customers in Poland under common service agreements. In its tariff PGNiG SA, in addition to the prices of gaseous fuels and subscription rates, calculates network rates determined on the basis of the costs of purchasing transmission and distribution services and the costs of storage at proprietary facilities for seasonal supply – all these components combined affect the average price of gas supplied to consumers.

In 2011 the PGNiG SA tariff was amended only once, on 15 July. The petitioned timeframe for a new tariff approval – by 30 September 2011 – was extended by the President of ERO until

31 December 2011. The undertaking requested that the prices of gaseous fuels be amended as of 15 November, but the associated procedure was not completed by the end of 2011.

Table 4.9. Prices for customers connected to the transmission network (generally understood as wholesale prices), before and after 15 July 2011

Type of gas	Price effective				Growth in % Column 3/Column 2 –1 * 100
	Until 14 July	As of 15 July	Until 14 July	As of 15 July	
	[PLN/1000 cubic metres]		[PLN/kWh]		
Methane rich gas GZ-50	982.7	1,107.30	0.0895	0.1009	12.7
Nitrogen gas GZ-41.5	774.5	871.50	0.0850	0.0957	12.5
Nitrogen gas GZ-35	660.3	743.00	0.0825	0.0929	12.5

The key reason for the increase in price of methane rich gas was the increased cost of import purchases completed under one primary and five auxiliary purchase contracts. This cost is equally affected by the import prices²⁵⁾ applied when buying the gas abroad and the currency exchange rates (USD and EUR). The projected drop in the currency exchange rates over the 2nd and 3rd quarter of 2011 (although it did not occur) was accompanied by a significant scheduled increase in import prices, which led to the higher cost of acquiring the commodity, by approximately 23% in relation to the cost provided for the tariff effective until 15 July 2011.

The prices of nitrogen gas obtained from domestic sources (subgroups GZ-41.5 and GZ-35) were determined in relation to the price of methane rich gas so that units of heat obtained from the combustion of these gases were similar to the unit of heat (1 GJ) obtained from the combustion of methane rich gas.

In a consequence of the new PGNiG SA tariff approval, the average price²⁶⁾ of methane rich gas rose by approximately 8.9%, nitrogen gas GZ-41.5 (Lw) by 7.6%, and nitrogen gas GZ-35 (Ls) by 6.3%.

These price-ups resulted from the following factors:

- increase of the average gaseous fuel prices²⁷⁾ by: 12.2% for methane rich gas; 11.9% for nitrogen gas GZ-41.5, and 11.7% for nitrogen gas GZ-35, and
- decrease of the average network rates²⁸⁾ by: (-) 0.6% for methane rich gas, (-) 5.4% for nitrogen gas (GZ-41.5), and (-) 4.9% for nitrogen gas (GZ-35).

The growth of the average supply prices for each type of gas is different for various areas served by the distribution companies and tariff groups, but for each of the tariff groups the average supply prices were not greater than 3 percentage points, in relation to average for respective type of gas and area.

Methane rich gas consumers, who used the least quantities of the commodity, i.e. customers from groups indexed from 1 to 3 (who experienced the following respective price-ups: 5.4%, 6.3%, and 7.3%) were least affected of the new tariff. The variance from the national average in the individual areas served by the gas companies did not exceed 1%.

4.2.2.2. Monitoring the level of transparency, including compliance with transparency obligations, and the level of effectiveness of market opening and competition

As of 1 July 2007 all gas consumers, similarly to electricity consumers, acquired the right to freely choose and switch their supplier. However, in practice this right has been executed to a small extent.

In order to monitor the gas supplier switching process in the market, in 2011 quarterly surveys were developed. The surveys were distributed to DSOs and the transmission system operator in January 2012. The findings and conclusions from the monitoring are applied in the current works. The monitoring indicates that as of the end of Q1 2012 only 10 consumers changed their supplier

²⁵⁾ These prices change quarterly with the calculation based on the rolling average prices for two oil products over a period of nine months proceeding each quarter.

²⁶⁾ The prices are set as the quotient of the charges made by customers (for gas as a commodity, for sales services compensated by the subscription rates, for network services compensating the costs of purchasing transmission, distribution and storage services) in relation to the supplied gas volume.

²⁷⁾ The prices take into account both gas prices and subscription rates.

²⁸⁾ The rates are calculated based on the costs of purchasing transmission, distribution and storage services.

(including 4 from tariff group W 1-4). All of these switches were recorded in the area served by Mazowiecka Spółka Gazownictwa Sp. z o.o.

In relation to agreements concluded with gas sellers or customers it should be indicated that Gaz-System SA had concluded agreements for the transmission of gaseous fuels with 16 entities (29 agreements), Górnośląska Spółka Gazownictwa Sp. z o.o. concluded 4 of such agreements, Wielkopolska Spółka Gazownictwa Sp. z o.o. – 3, Mazowiecka Spółka Gazownictwa Sp. z o.o. – 2, whereas Pomorska Spółka Gazownictwa Sp. z o.o. and Dolnośląska Spółka Gazownictwa Sp. z o.o. – 1 each.

In order to provide customers with a real possibility of supplier switching, in 2011 the Transmission Grid Code submitted for approval to the President of ERO was amended. It was essential to indicate the implementation method of Article 4j of the Energy Law rule, which provided for the allocation of contractual capacity to a gas buyer (the right of the buyer to retain the allocated contractual capacity).

Following the approval of the Transmission Grid Code by the President of ERO on 27 September 2011, DSOs were obliged to submit for approval the Distribution Grid Codes providing for the switching procedure in compliance with the rules set forth in the Transmission Grid Code. Consequently, the amended Distribution Grid Codes (setting forth the details of the switching procedure) would be approved by the President of ERO in 2012.

4.2.3. Recommendations on supply prices

As it was in the previous years, in the 2011 gas prices were subject to regulation by the President of ERO in accordance with the Energy Law provisions, and were part of the approved tariffs which, under Article 47 of the Act, are required to be published in the ERO Bulletin. Furthermore, the national legislation in force in 2011 did not provide for measures protecting vulnerable consumers through the specific regulation of natural gas prices.

4.2.4. Carry out investigations and imposing measures to promote effective competition

The President of ERO lacks competences to rule and impose all necessary and proportionate measures to promote effective competition and ensure the functioning of the market. Certain competences in the area are held by the competition authority – the President of the Office of Competition and Consumer Protection (UOKiK) – with which the regulatory authority cooperates to promote competition in the gas market in Poland (among others during the GRP preparatory works).

The measures taken in 2011 by the President of UOKiK in relation to gas undertakings have been set forth below²⁹⁾.

Proceedings concerning practices restricting market competition

In 2011 the President of UOKiK investigated two cases related to the abuse of the dominant position by PGNiG SA:

1. With decision of 4 July 2011 (ref.: DOK1-411/1/11/MF/PK), the President of UOKiK initiated an *ex officio* procedure to investigate the abuse of the dominant position by PGNiG SA in the domestic market of retail sales of gaseous fuels, consisting in counteracting the development of conditions necessary to create or develop competition in the retail and wholesale market of gas sale by creating possibilities to terminate, upon notice, common service agreements for the supply of gaseous fuels in such manner that the submission of the termination notice after 30 September of each year would lead to the termination of the agreement as of the end of the year following the year in which such termination notice was submitted, which could violate the provisions of Article 9 section 2 item 5 of the Competition and Consumer Protection Act (Journal of Laws No. 50, item 331, as amended) and Article 102 of the Treaty on the Functioning of the European Union (Official Journal of the European Union C no. 115, 9.05, 2008, page 47). On 27 September 2011 PGNiG expressed its intention to commit to undertake measures eliminating the challenged provisions.

²⁹⁾ This section was based on the information obtained from UOKiK.

As of the end of 2011 the case was still open. The procedure was concluded in 2012 with a decision of the President of UOKiK requiring PGNiG SA to fulfil the commitment as laid down in the sentence of the decision.

2. With a decision of 28 December 2010 the President of UOKiK initiated a procedure (ref.: DOK1-411/1/10/PK) on the abuse of the dominant position by PGNiG SA based in Warsaw, in the domestic wholesale natural gas market, consisting in the following:
 - a) restricting sales that cause a harm to contractors or consumers by refusing to sell gaseous fuels under the terms and conditions of the common service agreement to an undertaking intending to sell natural gas to end users, i.e. NowyGaz sp. z o.o. based in Warsaw, which could be a practice specified in Article 9 section 2 item 2 of the Competition and Consumer Protection Act,
 - b) counteracting the development of conditions necessary to create or develop competition in the market by refusing to sell gaseous fuels under terms and conditions of the common service agreement to an undertaking intending to sell natural gas to end users, i.e. NowyGaz sp. z o.o. based in Warsaw, which could be a practice specified in Article 9 section 2 item 5 of the Competition and Consumer Protection Act.

The procedure has not been concluded and is currently in progress.

Proceedings in concentration cases

In 2011 the President of UOKiK conducted a number of antimonopoly proceedings in cases of concentration of gas undertakings which concluded through the decision dated 22 November 2011 (ref.: DKK-147/11). With this decision the President of UOKiK issued non-objection to the concentration consisting in the acquisition of Vattenfall Heat Poland S.A. based in Warsaw, by Polskie Górnictwo Naftowe i Gazownictwo S.A., based in Warsaw.

Explanatory proceedings:

1. On 4 July the President of UOKiK closed a proceeding initiated on 17 December 2009 (ref.: DOK1-400/11/09/MF) to provide a preliminary explanation on whether the terms and conditions of supplying natural gas to customers by PGNiG S.A., based in Warsaw, constitute a breach of the Competition and Consumer Protection Act;
2. On 6 May 2011 the Branch Office of UOKiK in Bydgoszcz closed the proceeding initiated on 10 January 2011 (ref.: RBG-400-32/10/BD) as a result of a notification concerning the conduct of PGNiG S.A. in Warsaw – Pomorski Oddział Obrotu Gazem, Gazownia Bydgoska and Pomorska Spółka Gazownictwa Sp. z o.o. Oddział Gazowniczy in Bydgoszcz. In the course of the proceeding it was ascertained that the public interests were not breached, and the conduct of the undertaking did not violate the provisions of the Competition and Consumer Protection Act;
3. On 11 February 2011 the Branch Office of UOKiK in Poznan closed the proceeding initiated on 27 December 2010 (ref.: RPZ-400-00041/10/DW) in connection with a complaint which called into question the terms and conditions of a connection agreement and the practices of Wielkopolska Spółka Gazownictwa Sp. z o.o. consisting in offering the conclusion of another gas network connection agreement when the connection deadline identified in the initial agreement was not met. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
4. On 17 November 2011 the Branch Office of UOKiK in Poznan initiated a proceeding (ref.: RPZ-400-47/11/JM) in connection with a consumer complaint concerning the conduct of Wielkopolska Spółka Gazownictwa Sp. z o.o., based in Poznan, in relation to the connection to the gas network. The consumer claimed that all persons wishing to be connected to the gas network were required to acquire a construction design for gas connection from the personnel of Rejon Dystrybucji Gazu Gryfice-Goleniów. The complaint further indicated that following the acquisition of the gas network from the County of Rewal in 2006 Wielkopolska Spółka Gazownictwa Sp. z o.o. imposed connection charges on customers despite such charges had been collected before by the County of Rewal. The explanatory proceeding was completed on 9 February 2012. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a

- violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
5. On 30 September 2011 the Branch Office of UOKiK in Lublin concluded the proceeding initiated on 28 June 2011 (ref.: RLU-400-21/11/RD) to provide an explanation whether the conduct of Gaspol S.A. Warszawa – Region Wschodni, based in Lubartów, in relation to the distribution of bottled liquefied gas was a competition restricting practice. The President of UOKiK found that the information collected throughout the proceeding did not provide a basis to ascertain that a violation of the Competition and Consumer Protection Act occurred which would justify the initiation of an antimonopoly proceeding;
 6. In 2011 the Branch Office of UOKiK in Warsaw carried out the proceeding initiated on 18 October 2010 (ref.: RWA-403-22/10/AT) to provide a preliminary explanation on whether the procedures connected with the conclusion and updates of gas supply agreements concluded with consumers by PGNiG S.A. in relation to gas trade violated the Competition and Consumer Protection Act rules, and whether the case was in fact an antimonopoly case. The proceeding in this case has not yet been concluded;
 7. On 8 August 2011 the Branch Office of UOKiK in Warsaw initiated a proceeding (ref.: RWA-403-28/11/AT) to provide a preliminary explanation on whether the procedures adopted by PGNiG S.A. concerning the determination of receivable debts represented a violation of the Competition and Consumer Protection Act, and whether the case was in fact an antimonopoly case. The proceeding in this case has not yet been concluded;
 8. On 21 November 2011 the Branch Office of UOKiK in Warsaw initiated a proceeding (ref.: RWA-400-26/1/JZ) to provide a preliminary explanation on whether the procedure for the qualification of products recommended for use during installation and maintenance works within the territory served by Mazowiecka Spółka Gazownictwa Sp. z o.o., based in Warsaw (company operating in the scope of the PGNiG SA capital group), represented a case of abuse of the dominant position consisting in counteracting the development of conditions necessary to create or develop competition in the market. The proceeding in this case has not yet been concluded.

4.3. Consumer protection

Public service obligations

The basic objectives of the public service obligations include assurance of the security of supply, network reliability, adequate quality and price of services, as well as respect for the environment protection commitments, and improvement of the undertakings energy efficiency. The obligations resulting from these objectives imposed on the participants of the gas market in Poland have been set forth both in the applicable legislation (the Energy Law and the associated secondary legislation) as well as in the terms and conditions of licences. Energy undertakings which fail to comply with the terms and conditions of their licences are, pursuant to Article 56 section 1 item 12 of the Act, subject to financial penalties imposed by the President of ERO. In addition, in relation to undertakings which are in serious breach of the terms and conditions of their licences or other conditions of performing their licensed activity, as specified in the applicable law, the President of ERO may revoke their licences pursuant to Article 41 section 3 of the Act.

Vulnerable customer definition

The need to protect vulnerable customers facing the threat of energy poverty was presented in Activity 5.5 of the Executive Action Programme 2009–2012 for the “Energy Policy of Poland until 2030”, adopted on 10 November 2009. The document indicates the Minister of Economy and the Minister of Labour and Social Policy as the authorities responsible for the development and implementation of adequate national welfare solutions affecting the most economically weak groups of household consumers; the President of ERO was not awarded a special role in this context.

The issues of protecting “socially vulnerable” customers have not been provided for in statutory acts, even though the growth of gas prices has become a social problem leading to poverty, including energy poverty. However, on 22 December 2011 the Ministry of Economy presented a package of

three acts including the new Energy Law and the new Gas Law. The drafts of the new Energy Law and Gas Law provide for legal solutions to assist the so-called protected customers from being disconnected from electricity or gas supplies.

Notwithstanding any of the above, over 2011 the President of ERO took initiatives to help socially vulnerable customers through the activities of the Coordination Team for Works on the Corporate Responsibility of Energy Undertakings.

4.4. Security of supply

In accordance with the Energy Law, the public authority competent over the matters of energy policy, including issues connected with energy security, and in particular covering monitoring the security of gas supply is the Minister of Economy. However, the security of natural gas supply defined as providing customers with access to energy of a specific quality and at transparent prices is the area of energy security continuously monitored by the President of ERO, with application of tools available to regulator.

4.4.1. Monitoring balance of supply and demand

Considering the natural gas balance for Poland it should be indicated that foreign gas supplies (amounting to 10,915.28 million cubic metres) were supplemented with domestic gas (amounting to 4,329.42 million cubic metres), which accounted for almost 30% of the total natural gas supplies. The total foreign gas supplies in 2011 covered imports from the eastern direction as well as supplies from European Union, i.e. Germany and the Czech Republic. However, imports from the eastern direction provided under the long-term 1996 contract between PGNiG SA and OOO "Gazprom Export" were a major part of gas imports to Poland. Under the contract 9,335.54 million cubic metres of natural gas were purchased, which accounted for approximately 85% of the total gas imports to Poland. The imports were supplemented with additional contractual supplies from Germany and the Czech Republic with a total of 1,579.74 million cubic metres, which accounted for approximately 14% of the total gas imports to Poland.

The 2011 structure of gas supplies to Poland and the domestic production are shown in the Tables below.

Table 4.10. 2011 structure of gas supplies

Sources	Volume [millions of cubic metres]
Imports, including:	10,915.28
– "Yamal" contract	9,335.54
Intra-Community purchases / Country of origin	1,579.74
a) Germany	1,579.52
b) Czech Republic	0.22
Domestic production	4,329.42
Storage (change of reserves)*	-761.30*
Purchase from domestic sources (PGNiG SA purchases from domestic suppliers)	110.67

* „+“ – increase of reserves, „-“ – decrease of reserves

Source: PGNiG SA

Table 4.11. 2011 total natural gas supplies

Supplies		Production	
Total supplies* [billions of cubic metres]	Peak** [millions of cubic metres/day]	Total [billions of cubic metres]	Daily production capacity [millions of cubic metres/day]
14.6	66.4	4.33	11.9/13.0
Average annual production/peak production			

* Extraction + imports + other domestic sources – exports + change of reserves (note: domestic purchases are also accounted for in order to show the total gas supplies).

** Maximum daily gas supplies in a year.

Source: PGNiG SA

Table 4.12. 2011 domestic extraction capacity*

Extraction capacity [billions of cubic metres/year]	Production capacity [millions of cubic metres/day]
4.6	13.3

* The extraction capacity was determined based on 90% of the maximum daily extraction capacity for 365 days which provide for the scheduled stoppages of extraction centres. The difference between the production capacity and the production of natural gas is associated with the seasonal variances in demand for nitrogen gas over the summer and winter seasons. Over the peak demand periods for nitrogen gas (significant drops of temperatures over the winter season) the production capacity is utilised in full, whereas over the summer season the demand decreases substantially. The extraction capacity of pits extracting methane rich gas is fully utilised throughout the entire year.

Source: PGNiG SA

4.4.2. Expected future demand and available supplies as well as envisaged additional capacity

The 2011 total natural gas consumption in Poland amounted to 14,380.99 million cubic metres. It is expected that the share of gas in the national balance of energy will continue to grow, along with its use in generation of electricity, expected development of high efficiency combined heat and power technologies, and in connection with the continued growth of gas consumption among end users. The projected demand for natural gas until 2019 is shown in the table below.

Table 4.13. Projected natural gas demand for 2011–2019

Year	Projected natural gas demand	
	[billions of cubic metres]	[MToe]
2011	14.594	12.692
2015	17.876	15.546
2019	18.100	15.740

Source: PGNiG SA.

In 2011 the transmission system operator, OGP Gaz-System transmitted 13.01 billion cubic metres (12.08 Mtoe) of methane rich gas and 1.10 billion cubic metres (0.83 Mtoe) of nitrogen gas. The table below shows the TSO forecast for the growth in gas transmission volumes over 2012–2020³⁰⁾.

Table 4.14. Projected gas transmission volumes over 2012–2020

Methane rich natural gas

	Year	[MToe]	[billions cubic metres]
Volume of transmitted gas (completed)	2011	12.08	13.01
	2012	13.59	14.64
Expected demand (forecast)	2013	14.07	15.15
	2020	22.02	23.71

Nitrogen gas

	Year	[MToe]	[billion cubic metres]
Volume of transmitted gas (completed)	2010	0.83	1.10
	2011	0.83	1.10
Expected demand (forecast)	2012	0.83	1.10
	2019	0.52	0.68

Source: Gaz-System SA

³⁰⁾ The volume of gas transmitted in 2011 and the forecast covering the coming years do not provide for the volumes of gas transmitted to and from the underground storage facilities. The expected volumes are shown in accordance with the forecast prepared for the TSO development plan. The split is proportional to the 2011 transmissions.

According to the TSO, the projected growth of the supplied gas volumes may take place in connection with the continued process of connecting new customers to the network - in particular, small enterprises to distribution networks, as well as large corporate customers to the transmission network. By the end of 2014 the expected growth in the transmission of gaseous fuels in the system will be covered mainly with import supplies from the existing entry points.

4.4.3. Measures to cover peak demand or shortfalls of suppliers

The 2011 monitoring of the security of supply of gaseous fuels was focused on the areas of the market covering actions described below, and in particular:

- **licences**

In relation to licence for foreign trade in natural gas (hereinafter: OGZ licence), ability to hold mandatory reserves by the undertaking, affecting the security of supply was taken into consideration. An entity applying for such licence must own storage capacity or have a concluded preliminary agreement covering the storage of mandatory reserves within the territory of Poland (Article 25 of the Reserves Act). In addition, when issuing a licence the President of ERO must notify the applicant of the obligation to ensure the required degree of supply diversification, in accordance with the provisions of the Ordinance of the Council of Ministers of 24 October 2000 on the minimum level of diversification of foreign natural gas supplies. The OGZ licences include the obligation to ensure natural gas supply diversification. In 2011 twenty two entities granted a licence for foreign trade in natural gas.

- **tariffs**

The application of the tariff for infrastructural undertakings is an indirect method of monitoring the security of gas supply. The tariff process provides for the extent of financing the assets (transmission, distribution and storage) required to supply fuels to consumers. The investment outlays spent on the network assets and the amounts spent on repairs and modernisation of the assets have a direct impact on their physical condition, and thus operational security. A review of the annual and quarterly reports submitted by PGNiG and OGP Gaz-System SA indicates that the approved tariffs ensured adequate financial standing for the undertakings, and offered them an opportunity to continue with their scheduled investment projects, modernisation and repairs.

- **approval of gas limitation schemes prepared by the operators**

Transmission, distribution and combined system operators are required to submit for approval to the President of ERO, by 15 November of each year, plans of restrictions in natural gas consumption in case of emergency situation. These plans are intended to ensure the security of natural gas supply when faced with threats to the national security in connection with fuel supply, unforeseen rise of natural gas consumption by customers, disruptions in the import of natural gas, downtimes of networks operated by gas system operators, threats to the security of network operation, threats to the safety of persons, threats of substantial material losses, and the need to meet the international obligations by Poland (cf. Article 54 section 1 of the Reserves Act).

- **agreement of draft development plans for gas network undertakings**

Agreeing the drafts development plans with the President of ERO allows for monitoring the initiatives necessary to maintain the required reliability and quality of network services. As a result of agreeing drafts of development plans, infrastructural undertakings carry out investments and maintenance works to ensure the security of gas supply to customers.

- **setting mandatory reserves of gaseous fuels based on decisions and monitoring maintenance of such reserves**

For regulatory authority, this is another source of information which is important in terms of assessing the security of gas supply. In 2011 the mandatory gas reserves were stored at three underground storage facilities: UGS Husów, UGS Wierzchowice and salt cavern UGS Mogilno. Between 1 October 2010 and 30 September 2011 PGNiG SA created a mandatory reserve of 530.1 million cubic metres, whereas between 1 October 2011 and 30 September 2012 of 555.8 million cubic metres (the results of monitoring gas reserves have been presented in section 2.4.6.).

- **monitoring the congestion management**

Obstacles limiting the use of network were identified as part of the monitoring process of congestion management mechanisms. This allowed to start further works on the evaluation of the proposed solutions and decisions impact on the development of competition in the gas market, and facilitated optimal decision making with regard to above-mentioned.

- **monitoring safeguard measures**

Over 2011 safeguard measures were monitored in accordance with the provisions of the Energy Law and the Reserves Act, as well as Regulation (EU) No. 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC, which entered into force on 2 December 2010.

Under the Act on Stocks, gas undertakings involved in foreign trade in natural gas, or entities importing natural gas, are obliged to maintain mandatory natural gas reserves, as specified by the President of ERO, equivalent in volume to at least 30-day average daily imports. An audit of the reserves did not show any violations of the applicable law.

In terms of ensuring the security of natural gas supply for Poland, and in the context of provisions of the new Regulation No. 994/2010/EC, special emphasis should be put on the system ability to ensure the continuity of natural gas supplies under the circumstances of limited supply, including on ensuring adequate capacity of the pipelines which would enable the change of direction of gas supply to areas affected by supply restrictions. The expected growth in the demand for natural gas in Poland (resulting from, among others, the implementation of the policy promoting the increased use of ecological fuels in the national balance of primary fuels, as well as from the projected economic growth of the country) indicates the need to ensure security by diversification of gas supply sources. On the other hand, the Poland dependence on gas supply from one direction and the recent problems of suppliers to ensure continuity create the need to take actions to limit the impact of such occurrences on the national gas market.

From the President of ERO point of view, the measures applied over 2011 to promote infrastructural developments are positive. These were, in particular, the extension and modernization of the interconnector between Poland and Germany in the Lasów region which enhanced transmission capacity at the German border to 1.5 billion cubic metres per year as well as commissioning of the interconnection between Poland and the Czech Republic by Cieszyn which enable the transmission of approximately 500 million cubic metres per year. As far as other investments are concerned, i.e. construction of the LNG terminal or the extension of underground gas storage facilities, the potential effects of these long-term projects will be noticeable in the coming years. However, a completion of those projects will have a highly positive impact on the security of gas supply to Poland. Access to new sources of natural gas and the ability to store it will facilitate the physical diversification of supply directions.

Having regard for the restrictions in natural gas supply to Poland taking place over the recent years, the President of ERO monitored the security of gas supply in 2011 by performing detailed reviews of daily reports submitted by OGP Gaz-System SA, providing information on the operation of the transmission system, including any interruptions or limitations in supply to the Polish gas system. The monitoring activity also included a review of the regulation in terms of gas system operation in case of emergency. The crisis procedures in place are fully operational. The legal background was developed, comprising regulations and operating procedures to be implemented in case of restrictions of supply as well as decisions of the President of ERO including the following: plans of introducing restrictions, volumes of mandatory gas reserves, the Transmission Grid Code, the Distribution Grid Codes, and tariffs which provide for cooperation and operation under limited supplies³¹⁾. In addition, suppliers implemented procedures covering the mechanism of contractual limits.

Moreover, having regard for the need to ensure coverage for the peak demand of natural gas, especially throughout the winter months, it is important to be able to use underground storage facilities with a total active capacity of approximately 1.83 billion cubic metres. Underground storage facilities for gas are essential for balancing the seasonal variances between gas supply and demand, for ensuring the reliability and security of supply to customers, enabling the rational and economical exploration of gas sources, and enabling the creation of economic and strategic natural gas reserves. The current capacity of the underground storage facilities operated by PGNiG SA is equivalent (depending on the season) to approximately 30-60 days of the national gas demand. The capacity is used to cover large short-term irregularities in the gas consumption, enable continuity of supply during downtimes and short-term interruptions in import supply (cavern UGS Mogilno), and to cover the long-term increased demand over the autumn and winter months (UGS Wierzchowice and UGS Husów). The demand variances are also managed under the flexibility clauses in the import contracts.

³¹⁾ Ordinance of the Council of Ministers of 19 September 2007 on the manner and methods of implementing restrictions to natural gas release (Journal of Laws of 2007 No. 178, item 1252), and the Reserves Act.

In 2011 storage activity was carried out by the gas storage system operator, Operator Systemu Magazynowania Sp. z o.o., owned by PGNiG SA. These activities included ensuring the operation of storage installations, enforcing contracts with users, as well as operating, maintaining and repairing the storage installations and facilities. PGNiG SA owned 100% of the underground storage facilities capacity. In 2011 the undertaking allocated 50 million cubic metres of gas to the transmission system operator, OGP Gaz-System SA, in connection with its TSO function. The remaining capacity was used for the internal needs of PGNiG SA.

In 2011 there were works under way to extend the existing storage facilities of methane rich gas at Mogilno, Wierzchowice, Kosakowo and Brzeźnica, as well as to construct the methane rich gas facility at Strachocina, with its commissioning planned for 2012. While the works did not contribute to an increase in the physical capacity, the strategy adopted by the storage system operator aiming to enhance the active capacity of the underground gas storage facilities indicates that the completion of the investment projects according to the scheduled deadlines will result in the increase of storage capacity. The general characteristics of the storage facilities under construction or in extension are shown in the table below.

Table 4.15. Natural gas storage

No.	Name of storage facility	Type of investment	Active capacity [millions of cubic metres]	Target capacity [millions of cubic metres]	Investment completion	Investment outlays in 2011 [000' PLN]
Methane rich gas (group E)						
1	Kosakowo	Construction	–	250	2021	19,224.9
2	Mogilno	Extension	377.89	841	2021	31,230.9
3	Wierzchowice	Extension	575.00	1,200	2012	429,192.3
4	Husów	Extension	350.00	500	2014	38.4
5	Strachocina	Extension	150.00	330	2012	86,211.5
6	Brzeźnica	Extension	65.00	100	2014	4,917.4

Source: PGNiG SA

The works devoted to increasing the domestic production of natural gas also deserve a positive evaluation, as the production capacity over the recent years has not changed significantly. It seems that this situation could improve along with the growing number of licences for search, exploration and extraction of the natural gas issued by the Minister of the Environment over the last year. The results of search for natural gas from unconventional sources may have a significant influence on the increase in domestic production. Several dozen entities are currently searching for shale gas sources in Poland, including Polish and foreign companies, such as PGNiG SA, Orlen, Conoco Philips, Chevron, or Marathon Oil. However, the current estimates of gas resources need to be reviewed and confirmed with data based on the analysis of samples obtained from the drillings. Considering the current estimated potential for gas resources and companies' involvement, the search and exploration activities for unconventional gas sources should have, in the near term, a significant impact on the Polish gas market functioning, including the security of gas supply. The introduction of additional volumes of inexpensive natural gas into the market could also be an important factor driving the economy, and give new impetus to the gas infrastructure investments in Poland.