

# **National Report**

*The President  
of the Energy Regulatory Office  
in Poland  
2013*



## Acronyms and Abbreviations

ACER	Agency for the Cooperation of Energy Regulators
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
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
UOKiK	Office of Competition and Consumer Protection



## 1. FOREWORD

The 8th National Report of the President of the Energy Regulatory Office presents the general situation on the gas and electricity markets in Poland and the main changes in comparison with the previous years. The report includes also a description of initiatives and actions which have been undertaken by the Polish regulator in order to support the development of a free and competitive energy market in Poland as well as its integration with the markets of other EU Member States.

The year 2012 was devoted to works aimed at implementing the third energy package into the Polish regulatory system and, thus, creating legal basis for a further development of energy market in Poland. The process has not been completed yet and is still being continued in the year 2013.

Simultaneously with the legislative works, the regulator was undertaking further actions as to facilitate further liberalization of the electricity market and opening the gas market to competition. The works aimed at deregulating the electricity prices for household consumers were still in progress. They included consultations with the distribution systems operators and suppliers to develop a model of a general distribution agreement for consumers who decide to switch the supplier – that is an agreement that combines the provisions of buy-sale and distribution agreements.

In 2012 the process of liberalization of the Polish gas market was initiated. In order to deregulate gas prices, actions directed at creating proper conditions for development of competition on the Polish gas market were undertaken, including the creation of a virtual gas trading point and, at the end of the year, launching a gas exchange. Those initiatives contributed to the elimination of a part of market barriers and, hence, at the beginning of 2013 the regulator made a decision to deregulate also the prices on the wholesale gas market.

Bearing in mind the 2014 target, the President of ERO was undertaking actions for an integration of the Polish energy market with the markets of the neighbouring countries. The works within ACER and Regional Initiatives were continued and, moreover, some new initiatives for the markets integration were started, including those within the Visegrad Group. All of these activities are described below in detail in the report presented to the European Commission and ACER. Thus, the President of the Energy Regulatory Office fulfils his reporting obligation set forth in the Polish and European law.

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

## 2. MAIN DEVELOPMENTS IN THE ELECTRICITY AND GAS MARKETS

### Legal and regulatory changes

The basic document defining the prerogatives and responsibilities of the President of ERO is the act – Energy Law<sup>1)</sup>, regulating the functioning of the natural gas and electricity markets. Moreover, the regulatory body exercises competences determined by the provisions of six separate acts<sup>2)</sup>.

In 2012 the legislative works aimed at introducing significant changes to the Energy Law (that had begun in the previous year) were continued in order to implement the directives included in the third EU energy package<sup>3)</sup> into the Polish law. The draft amendments envisage excluding the gas and renewable energy laws into separate acts. Due to the protracted legislative process caused by difficulties in reaching a consensus concerning some solutions (for example the preferred level of support for renewable sources), in October 2012 a proceeding on a draft parliamentary bill amending the Energy Law Act has been officially started. This draft includes amendments that result from the necessity of adjusting the Polish law to the provisions of the above mentioned directives at least on the minimum required level. It introduces also an obligation that requires the entities trading in gas to sell a set part of the fuel through the gas exchange: 30% to the end of 2013, 50% in the first half of 2014, but since 1 July 2014 – as much as 70%.

Besides fulfilling its statutory obligations, the President of ERO undertakes also actions aimed at active promotion of effective free-market mechanisms in the natural gas and electricity sectors. In this respect, the President of ERO focused on priorities such as completing the process of deregulation of the electricity market and initiating the process of the gas market deregulation.

The activities undertaken in 2012 to achieve the first of the above-mentioned goals were focused on fulfilling the postulates of the "Roadmap of Prices Liberalisation for All Electricity Consumers", prepared by the President of ERO in 2008. In this context, the President of ERO continued the actions directed at promoting common service agreements (combining the terms and conditions of buy-sell electricity agreements and distribution agreements) in the offers of alternative suppliers. Entering into distribution agreements with the suppliers, the operators specify the rules of using the network, and in fact open suppliers a way for operating in a given area. Due to that fact, the agreements are necessary to ensure that the consumers have a factual possibility of benefitting from the TPA rule.

In the scope of the gas market liberalization process, in 2012 the works on the preparation of the "Roadmap of Natural Gas Prices Liberalisation" were completed. The document was published on 5 February 2013. Moreover, in July 2012 a new Transmission Grid Code (IRiESP) was agreed and approved. The grid code accounts for the provisions of the third energy package as well as system operating rules developed by the ENTSO-G. The new Transmission Grid Code changed the organisation of the domestic gas market, especially by introducing a virtual trading point which enabled the operator to cooperate with the commodity exchange. It formed a basis for launching a gas exchange in December 2012 and arriving by the President of ERO at a decision to exempt

<sup>1)</sup> The Act of 10 April 1997 – Energy Law Act, Journal of Laws of 2012, item 1059, as amended (later referred to as the "Energy Law").

<sup>2)</sup> The Act of 25 August 2006 on Biocomponents and Liquid Biofuels, Journal of Laws of 2006, No. 169, item 1199, as amended (later referred to as the "Act on Biofuels"); the Act of 16 February 2007 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 2007, No. 52, item 343, as amended (later referred to as the "Act on Stocks"); the Act of 29 June 2007 on regulating Coverage of generator's costs resulting from the Early Termination of Long-Term Power and Electricity Contracts, Journal of Laws of 2007, No. 130, item 905, as amended (later referred to as the "Act on Termination of Long-Term Contracts"); the Act of 29 January 2004 – The Public Procurement Law, Journal of Laws, No. 113, item 759, as amended (later referred to as the "Act on Public Procurements"); the Act of 29 June 1995 on Public Statistics, Journal of Laws, No. 88, item 439, as amended (later referred to as the "Act on Statistics"), the Act of 15 April 2011 on Energy Efficiency, Journal of Laws of 2011, No. 94, item 551, as amended (later referred to as the "Act on Energy Efficiency").

<sup>3)</sup> That is the Directive of the European Parliament and of the Council 2009/72/EC 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 211/55, 2009), later referred to as the "Directive 2009/72/EC", and the Directive of the European Parliament and of the Council 2009/73/EC of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211/94, 2009), later referred to as the "Directive 2009/73/EC".

the trade in natural gas on the commodity exchange from the obligation of applying the approved tariffs. The next step was the liberalisation of prices on the wholesale market at the beginning of 2013.

With every year, the number of responsibilities of the President of ERO grows, both due to the national regulations and decisions made on the EU level. Taking into consideration the number of tasks put on the regulatory authority and the necessity of adjusting the office structure to them, in 2012 the works have begun in order to optimise the internal organisational structure of the Office, processes used for accomplishment of individual tasks and procedures that support their realisation. The effect of those actions was a thorough ERO restructuring, according to the new statute granted to the Office by the Minister of Economy in February 2013.

## **Electricity market**

In 2012 a further development of the wholesale electricity market in Poland was taking place, which was evidenced both by the growth in number of completed commercial transactions as well as in turnovers. The economic situation caused a fall of prices on the wholesale market. Due to that the independent suppliers got an access to electricity at prices that allowed them to offer the households commodity at more competitive price, in comparison with the default suppliers offers (whose tariffs are subject to the approval of the President of ERO). On the retail electricity market a further increase in the number of consumers to which the energy was supplied on the basis of the free-market rules could be observed. The total number of consumers, who in 2012 switched the supplier, increased fourfold in comparison to 2011. However, it should be noted that similarly to 2011, the share of households exercising their right to switch the supplier grew to a much bigger extent than in the case of industrial and commercial consumers.

### ***Wholesale market***

The share in the market of the individual energy groups, as well as the structure of those entities, did not change significantly in 2012. The biggest share in the production subsector was maintained by the capital group PGE Polska Grupa Energetyczna SA, and in the supply to the end-users – by TAURON Polska Energia SA. The markets of electricity generation and trade remain highly-centralised due to the existence of vertically integrated capital groups.

The state of competition on the electricity market is illustrated by the indexes measuring the level of concentration. The index of market share, measured with the power fed into the network (accounting for the amount of energy delivered directly to the end-users by the suppliers) remained in 2012 on a high level and amounted to 64.3%. Compared to 2011, it diminished slightly by over 1%. The three biggest generation companies are the power generators operating within the following capital groups: PGE Polska Grupa Energetyczna SA, TAURON Polska Energia SA and EDF. They kept more than a half of the installed capacity and were responsible for almost two-thirds of electricity production in the country. The HHI index, measured with the installed capacity and volume of power fed into the network (accounting for the amount of electricity delivered directly to the end-users by the generators), diminished in 2012 in comparison to 2011. A decidedly bigger decline – by more than 5% – is observed for the HHI index measured with the installed capacity.

In 2012, similarly to the previous year, the number of commercial transactions carried out through the power exchange increased – they constituted as much as 61.8% share of the volume of electricity sold by the generation companies in comparison with 58.0% in 2011. Simultaneously, the significance of bilateral contracts has diminished as they constituted in the previous year almost 33% of all forms of wholesale trade, whereas in 2010 this index amounted to 89.8%. The remaining share of the sale was conducted mainly on a balancing market (including the part which is supposed to ensure the operational security of the National Electricity System) and, in a small degree, electricity was sold abroad. The dynamic development of the power exchange has begun in 2010, after introducing the obligation to sale the generated power in a public forms of sale – the so-called “exchange obligation”. This obligation concerns at least 15% of electricity generated by a power generator in a given year, and

in case of companies entitled to receive funds for covering stranded costs incurred in connection with the early termination of long-term power and electricity contracts<sup>4)</sup> – 100% of generated electricity.

Similarly to the power generators, in 2012 important changes in terms of forms of electricity sale were observed in the group of trading companies, especially within the vertically integrated capital groups. The bilateral contracts remained to be the main form of trade in 2012. However, their significance diminished considerably to the benefit of the trade through the power exchange (a smaller share by around 3% in comparison to 2011).

Up to 2010, the trading companies remained to be main purchasers of electricity on the wholesale market, however, since the beginning of 2011, the major role has been taken over by the power exchange. That trend became established in 2012: the sale by trading companies diminished clearly to the benefit of sale through the power exchange – a decrease by 11.6% and an increase by 2.7% respectively, in comparison to 2011. The share of electricity sold by power generators to the end-users amounted to 1.3% in 2012. The change in preferences regarding the direction of electricity sales occurred also in the group of the trading companies. In 2011 they were selling the same amount of electricity to the end-users and other trade entities, in 2012 the amount of energy sold to the trading companies and through the power exchange grew significantly (by 17.5% and 78% respectively). The sale to the end-users remained on a level comparable to the one from 2011.

In 2012 the average prices of electricity produced in that year remained on similar level in each market segment or they sometimes differed slightly in comparison to 2011 – both in the case of the generators and trading companies. The average price at which the generation companies were selling the electricity amounted to 203.44 PLN/MWh and was higher by 2.1% than the price in 2011. The price of electricity sold by the trade entities amounted to 210.08 PLN/MWh and was lower by 7.6% than the price in 2011. Both in the case of generation and trading companies, the prices in the balancing market segment fell the most (by 7.2% for power generators and by around 10% for trading companies). The balancing market is a spot market and thus reflects the newest price tendencies on the wholesale market. In the other segments, the average sale prices in 2012 oscillated on the level similar to the one from 2011.

In 2012 power exchange trading was conducted on the Polish Power Exchange (POLPX) and Warsaw Stock Exchange Platform for Trading Electricity (POEE GPW SA). In 2012 the trading volume of all four markets dedicated to electricity on the POLPX amounted to 131.997 TWh in total, which constituted 82.6% of the domestic electricity production in 2012 and over 84.1% of its total consumption. In comparison to 2011, the trade on the POLPX increased by 4.2%. The biggest volume of trade (112.874 TWh) is realized on the Commodity Forward Instruments Market with Physical Delivery (CFIM) which sells power with a delivery in a set period in the future. Moreover, the total trade on the Day-Ahead Market (DAM) in 2012 amounted to 19.104 TWh. The two other markets functioning within the POLPX: the Intra-Day Market and Electricity Auctions had a small significance with the trade reaching 19.291 GWh and 1.267 TWh respectively.

In 2012 POEEW GPW SA was running two markets for the sale of electricity: Daily-Hourly Electricity Market (WSE ELM) and Electricity Futures Market (WSE EFM). In 2012 the volume of electricity traded on all POEE GPW SA markets amounted to 7.4 TWh in total, what constituted 4.6% of national electricity production in 2012 and over 4.7% of total electricity consumption. The biggest volume of trade (5.2 TWh) was noted by the market where power with a delivery in a set period in the future is sold, that is WSE EFM. The total trade in 2012 on WSE ELM reached 2.2 TWh.

In 2012, generation and trading companies were dominant participants of electricity trading through the power exchange. However, one case of participation of an end-user was also noted – the party conducted transactions on the WSE ELM through a brokerage house. The end-user purchased electricity in the total amount of 10.9 GWh.

The previously applied rules of cross-border capacity allocation between Poland, Germany, the Czech Republic and Slovakia did not change in 2012. The transmission capacity was allocated between eight transmission system operators from seven countries of the CEE region in the form of coordinated explicit auctions. The auctions for transmission capacities were organised and conducted by the Central Allocation Office (CAO) in Freising. In 2012 the transmission system operator provided the export transmission capacity during annual, monthly, daily and on the delivery date auctions. The import capacity was offered in the delivery date auctions while the transmission capacity offered in annual and monthly auctions equalled 0 MW. The export capacity provided by the operator under

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<sup>4)</sup> Under the Act on the Termination of Long-Term Power and Electricity Contracts.



annual actions amounted to 100 to 400 MW, under monthly auctions – maximum to 304 MW (on average 116 MW in a year), and under daily auctions – maximum to 1,368 MW (on annual average 1,226 MW). On the other hand, for the import the available capacity at up to 425 MW (on average 118 MW annually) was provided under daily auctions. The market participants booked the biggest transmission capacity at borders with Germany and the Czech Republic. The shares of allocated capacity for individual market participants during the annual auction amounted to 10-53.75% in 2012.

The congestion management on a high-voltage direct current Swe-Pol Link is conducted in an implicit auction through a market coupling mechanism. The transmission capacities of the link are made available on the basis of free market rules since 16 December 2010 and the capacity is allocated through the power exchanges (POLPX and Nord Pool Spot) in a day-ahead mechanisms. In 2012 the average daily capacity available for export from Poland amounted to 110.5 MW and for import to 394.9 MW. The average hourly flow from Poland to Sweden was at the level of 14.3 MW and from Sweden to Poland at the level of 304.3 MW.

At the interconnection of the Polish and Ukrainian systems in September 2011 a mechanism for the transmission capacity allocation was introduced. The capacity is provided in a direction from Ukraine to Poland and allocated to the market participants by means of explicit monthly auctions. These are uncoordinated (unilateral) auctions.

### ***Retail market***

In 2012 the regulation of electricity prices for households who did not decide to switch the electricity supplier was sustained. The prices for this group of consumers are set in the tariffs calculated by the energy companies and approved by the President of ERO.

Similarly to the previous years, the biggest share in sale of electricity to the end-users in 2012 was held by the “incumbent” suppliers who remained a party to the common service agreements after the distribution network operators unbundling. They perform the functions of the default suppliers for the household consumers who did not decide to switch to a new supplier. In 2012 82 active suppliers were operating on the electricity market. The total number of entities licensed to trade in electricity amounted to around 360, but these were mainly the vertically integrated industrial power companies, conducting, in addition to the sale, also the distribution services. To the end of September 2012, there were six “big DSOs” operating on the market, formed as a result of unbundling process. On 1 October 2012 a consolidation of two companies performing the functions of the DSO took place – TAURON Dystrybucja SA with a seat in Cracow and the company TAURON Dystrybucja GZE SA with a seat in Gliwice. In consequence, the number of the DSOs decreased to five operators. Additionally, around 177 entities led an activity in electricity distribution and in this group 148 entities were appointed distribution system operators by the President of ERO. On the demand side of the retail electricity market there are consumers – the end-users. Their number amounts to around 16.7 million, out of which around 90% are the household consumers. The volume of electricity supplied to this group amounts to around 24% of the total electricity supply.

Since 1 July 2007 all groups of consumers have a right to switch their supplier, however a situation of consumers being “attached” to the current suppliers is still observed and the scale of switching is very small. Nonetheless, in 2012 four times more consumers exercised the TPA rule than in 2011. It is also worth noting that as far as the supplier switching process is concerned, not only a high dynamics but also a decidedly higher level of switching is observed among households (G group) than in a group of industrial and commercial consumers (A, B, and C tariff groups). In total, in A, B, and C tariff groups, the number of consumers who switched the supplier increased from 21,716 at the end of 2011 to 66,019 in 2012. Around the same time, the number of switching within households group increased more than fivefold – from 14,341 to 77,284 consumers. It was partially caused by an increased advertising activity of the suppliers, resulting probably from the decrease in electricity demand in the business consumers segment. The electricity surplus on the market, caused by a slowdown in the economy, resulted in the increased interest of suppliers in the household consumers. A significant increase in the number of the TPA consumers in this group resulted in an increase in a number of inquiries and complaints addressed to the regulator. In cases when some suppliers were suspected of using unfair market practices, the President of ERO, similarly to the previous years, cooperated with the Office of Competition and Consumer Protection (UOKiK).

In terms of electricity charges for consumers who did not switch their supplier, between the Q4 of 2011 and the Q4 of 2012 an upward trend could be observed. In case of the household consumers, the dynamics of the growth of the electricity prices in this period amounted to 5.8% and the dynamics of the growth of the distribution charge – 6.3%.

## Gas market

In 2012 the gas market in Poland remained to be a fully regulated. Activities aiming at its liberalisation, undertaken by the President of ERO, have brought notable effects in the form of the new Transmission Grid Code and Distribution Grid Codes' approval. The changes introduced in the grid codes facilitated launching a gas exchange at the end of the year and undertaking further steps for the liberalisation of the gas market in 2013.

### Wholesale market

The wholesale segment of the natural gas market in Poland was still dominated in 2012 by one entity – PGNiG SA. However, it should be noted that the segment is developing successively. In 2012 97 entities were entitled to trading in gas. Trading companies from outside of the PGNiG Capital Group acquired around 50% of natural gas from PGNiG SA, while the remaining part of their demand was met by import. The volume of their gas sale constituted in 2012 more than 5% of the total sale and amounted to 707.47 million cubic metres. Similarly to the previous years, also in 2012 the trade in natural gas was conducted solely within bilateral contracts. The prices of gaseous fuel were determined in the tariff and were not differentiated in respect of the purpose for which the gas was bought: whether to meet own demand or to further resale. A part of the trading companies was buying gas directly from the mines – in this case the price was not a subject to the tariffication process and was set within the bilateral contracts.

In 2012 the works in order to introduce a new gas market model were in progress. The detailed conditions of using the transmission and distribution systems users were described in Transmission Grid Code and Distribution Grid Codes which came into force on 1 January 2013. The new grid codes comply with the requirements of law, especially those related to the functioning of the regulated part of the gas system and tariffs calculation as well as the rules included in the draft EU CAM NC. They introduced also necessary changes that are supposed to ensure the trade in natural gas according to the market-based rules (virtual reverse point, gas exchange) and on the basis of bilateral contracts (OTC). All these changes enabled launching of the gas market on the POLPX in December 2012.

In 2012 the total cross-border transmission capacity reached 17,847.49 mcm/year, in comparison with 18,134 mcm/year in 2011. In 2012 the transmission system operator Gaz-System SA cooperated on the basis of the concluded inter-operator agreements with the TSOs of the neighbouring countries, that is the Byelorussian OAO Biełtransgaz, Ukrainian Ukrtransgaz NAK Naftogaz, German Ontras-VNG Gastransport GmbH and Czech NET4GAS. These agreements concern cooperation in reference to controlling the gas flows at interconnection points at Drozdowicze (Ukraine), Wysokoje and Tietierowka (Byelorussia), Lasów, Gubin and Kamminke (Germany) and Cieszyn (the Czech Republic). On all interconnectors (also on the Eastern ones) procedures of monitoring the transmission capacity allocation were ensured.

Since October 2012 the TSO has offered a possibility of transmitting gas towards Ukraine. The physical flow to Ukraine can be offered in the volume of 4.8 mcm/day. It is a interruptible service at IV level of the supply reliability.

In 2012 the TSO led intensive works in order to introduce the bundled capacity at the Lasów interconnection point, within the roadmap for an early implementation of CAM NC. During the works, the operators agreed with the national regulators on launching a pilot project on offering the bundled capacity in the middle of 2013. Simultaneously, the operators agreed upon that the earliest possible date when the bundled product can be offered is 1 January 2014, and the bundled capacity will reach maximally 5,200 cubic metres per hour. It was decided that the access to the bundled capacity will be provided on the basis of CAM NC provisions. In March 2013, the President of ERO issued a decision recognizing Gaz-System's *Rules for the Auction of the Bundled Product at IP Lasów* as agreed upon

and the first auction was held on 3 June 2013, according to the schedule described in the above-mentioned Rules.

In 2012 at a Polish-Czech interconnector in Cieszyn, the transmission capacity was provided on a day-ahead basis. Since 2013 transmission services are offered on a firm basis. The volume of capacity to be offered is set in a dynamic way on the basis of the flows in both systems, monitored in cooperation with the Czech operator NET4GAS. The information on available day-ahead capacity is published on the operator's website.

In 2012 the President of ERO monitored also the rules of managing and allocating capacity on the Polish section of Yamal-West Europe pipeline.

### **Retail market**

A high level of concentration on the Polish gas market, resulting from the dominant position of the PGNiG Capital Group, has been affecting the structure of the retail market for many years.

In 2012, around 94.64% of the natural gas sale was conducted by PGNiG SA, while the remaining 5.36% – by several dozen other entities striving for strengthening their position on the market. In 2012 the households constituted most numerous group among all PGNiG Capital Group's consumers. They formed 96.9% of the total number of consumers and their share in the volume of gas sale amounted to 26.1% in 2012. The biggest share in the sale of natural gas – 60.2% – was held by industrial consumers such as chemical utilities, electricity and combined heat and power plants. Moreover, PGNiG SA sells gas to the TSO and DSOs from within its capital group – for their current consumption and in order to balance the system. In 2012 their demand resulted from losses and current consumption amounted to 240.06 mcm. On the market there are also companies from outside the PGNiG Capital Group which lead business activities basing on the resale of natural gas acquired through intra-Community purchases or from PGNiG SA. The total size of supply delivered by these companies amounted to around 51 mcm of gas in 2012. The gas sold by these companies is mainly supplied to end-users through their own local distribution networks. The total length of such networks amounts to around 4,773 km.

The gas retail market is subject to slow changes. Since 2011 there has been a constant growth in the number of the trading companies which sell gas to the end-users. In 2012 thirteen biggest trading companies, independent from PGNiG SA, sold in total around 1,336.52 mcm of gas to 141,240 consumers. Despite such positive changes, the lack of competition on the Polish gas market creates a situation in which the gas prices for all groups of consumers are still subject to regulation.

### **Consumer protection**

2012 was the first full year of functioning of the Information Point for Electricity and Gas Consumers which was established on 26 September 2011 as a result of organisational changes in the ERO. The main task of the Information Point was to inform the consumers about their rights and obligations in their relations with energy companies. Moreover, the Information Point spread information addressed to a wide circle of consumers, i.e. by published answers to the most frequently asked questions on the ERO website in the "Consumer Guide" section. In 2012 consumers raised 2,636 cases to the Information Point. The questions were dominated by problems related to the electricity subsector (77%) and more rarely – gas subsector (7%). Similarly to the previous years, the problems and questions reported by the consumers were focused mainly on the possibility of switching the electricity supplier and the settlements with power and gas suppliers. The problems with the timely completion of grid connection agreement were also reported. One can also observe a significant growth in the number of inquiries and complaints related to the activity of electricity trading companies whose offers are mainly directed to the households. The consumers complained about the practices of salesmen employed by the power companies who did not inform the consumers about all the elements of the offer (for example, about an additional medical insurance or financial penalty for early termination of an agreement). Although the President of ERO is not a proper body to address the cases related to salesmen's activities and practices, regulator informed about the possibility of switching the supplier and drew the consumer's attention to the necessity of a thorough examination

of a presented offer as well as reading all agreements before signing them. In many cases the consumers were too rash in signing the documents and then they had problems with withdrawing from the agreement. Almost a half of the cases reported to the Information Point in 2012 concerned the supplier switching procedure. The next most frequent category of issues were questions regarding the conditions of concluded agreements as well as broadly-understood financial issues. In case of gas consumers the most frequent problems were related to the settlements (in individual tariff groups and on the basis of the forecasts) as well as to changes in gaseous fuel prices and invoicing. Similarly to the case of electricity consumers, the questions connected with the fulfilment of the concluded agreements were also reported very often.

In 2012 within the informational and educational activity, the ERO organized a nationwide campaign promoting an effective and economical management of electricity. The campaign was financed with the means obtained from the National Fund for Environmental Protection and Water Management (NFEP&WM). It was an educational campaign concerning the energy efficiency, rules and methods of saving natural resources as well as promotion of a conscious and responsible electricity consumption to the benefit of natural environment and household budgets. A TV campaign titled "Release your energy! Protect the environment" addressed to the household consumers, was a very important part of the project. The right to switch the supplier was a leading motive of this campaign. A low level of knowledge and lack of activity among this group of consumers as well as an insufficient competition of suppliers on the market can still be observed. Thus, the need to protect household consumers by regulator persists. In the face of the above mentioned facts, the main goal of the regulator's campaign was to inform the consumers about their rights and benefits which they could obtain by being conscious and active participants of the energy market. During the whole campaign, an educational and information spot had been seen by more than 15 million viewers and during its broadcasting the number of visits to the regulator's website dedicated to supplier switching has increased by ten times.

## Security of supply

In 2012 the national gross electricity consumption amounted to 157,013 GWh and was almost 0.6% smaller than in 2011. This fall was caused mainly by a downturn in the economy, evidenced by a fall in the GDP growth which amounted to 2% in 2012 (in comparison with 4.3% in 2011). As a result of the decrease in the demand, the volume of national gross electricity production amounted to 159,853 GWh in 2012 and was over 2% smaller than in the previous year. The surplus of the electricity production over its national consumption is a result of an upturn in the cross-border electricity trade. The surplus of export over import amounted to 2,840 GWh in 2012 but this value was lower than in 2011 (5,243 GWh).

Similarly to 2011, the volume of installed capacity was maintained in 2012 on a relatively high level exceeding 37 GW. Moreover, its growth by over 1.8% could be observed in 2012. The available capacity and power reserves in the National Electricity System (NES) remained in 2012 on a adequate level from the point of view of its current operational security. The average annual demand for power amounted to 21,814 MW with a maximum demand of 25,845 MW, which means a growth by 0.3% and 4.2% respectively in comparison to 2011. The relation between available and total generation capacity in 2012 slightly fall down in comparison to the indexes from 2011 – from 73.45% to 71.68%. Additionally, in 2012 a slight increase (by 0.25%) in the levels of capacity reserves available for the TSO was noted. It should be underlined that in the previous years the level of the available reserves of capacity had been systematically falling.

The structure of electricity generation did not changed significantly. The two fuels – hard coal and lignite – were dominant sources for electricity production and their share in generation amounted to 88.6% in 2012. However, in the previous year the share of lignite in the electricity production increased as a result of decreased profitability of hard coal-based electricity generation. There was also a notable rise (by almost 35%) of the installed and available generation capacity of renewable energy sources in comparison with 2011.

In 2012 the number of NES interconnections with the neighbouring electricity systems and the nature of their operation did not change. The investments in the NES completed in 2012 did not have a direct influence on the increase of transmission capacity for cross-border exchange. In 2012 there were no cases of limiting the available cross-border transmission capacity due to the lack of capacities

or network failures. Similarly to the previous years, Poland was a net exporter in 2012. The biggest volume of actual flows was directed from the NES to the Czech Republic and Slovakia, while most of the physical flows came from Germany.

In 2012 the total consumption of natural gas in Poland amounted to 15,436.22 mcm. Gas produced in domestic sources, in the amount of 4,317.27 mcm, constituted almost 27% of the total national gas supply. The majority of the consumed gas came from abroad – the supply volume amounted in 2012 to 11,265.84 mcm. All foreign gas supplies in 2012 comprised the import from the Eastern direction as well as intra-Community supplies from Germany and the Czech Republic. The import from the Eastern direction was conducted under a long-term contract concluded between PGNiG and OOO Gazprom Eksport in 1996. The amount of gas imports amounted to 9,017.32 mcm, what constituted around 82% of the total gas supply to Poland. The remaining 18% of the total supply volume came from Germany and the Czech Republic. Total volume of these supplies amounted in 2012 to 1,982.63 mcm.

At the end of 2012, the active gas storage capacity in Poland amounted to 1.8 bcm for high-methane gas and 0.230 bcm for nitrogen gas. The majority of underground storage facilities in Poland is situated in the old gas deposits, characterized by a small withdrawal capacity (compared to active capacity). The only gas storage facility with a big withdrawal capacity is CUGS Mogilno, constructed in salt caverns. In 2012 the works over the expansion of UGS Strachocina were completed, increasing the active gas storage capacities from 150 mcm to 330 mcm. The expansion of UGS Wierzchowice from the capacity of 575 mcm to 1,200 mcm has not been completed and should be commissioned in 2013. According to the PGNiG SA plans for the period up to 2015, the active gas storage capacity in terms of high-methane gas should increase to around 2.8 billion cubic metres.

With respect to the extension of cross-border gas infrastructure, in 2012 the TSO was undertaking actions aimed at ensuring physical reverse flow on the Yamal-Europe pipeline at Mallnow IP. Moreover, in 2012 an intense activities related to the transmission system expansion and diversification of the Polish gas supply routes were conducted. Within this activities the TSO, in cooperation with the TSOs of the neighbouring countries, was undertaking the following steps:

1. In December 2012 a business analysis on the PL-CZ interconnection was approved and in March 2013 a agreement on cooperation was concluded;
2. In October 2012 a business analysis of PL-SK interconnection was approved and in March 2013 a feasibility study was completed;
3. In May 2012 a feasibility study on the PL-LT interconnection was completed;
4. The discussions on the expansion of transmission infrastructure in the north-western Poland have begun.

The diversification of gas supply to Poland will be also improved by the commissioning of LNG terminal in Świnoujście, scheduled for 2014.

Moreover, in September 2012, the Gaz-System SA signed a declaration of cooperation with a Croatian transmission system operator PLINACRO d.o.o., in the field of supporting the gas market development in the middle-east Europe. The aim of the agreement is to enhance the cooperation between the partners in projects for LNG market development, expansion of underground gas storage facilities and completion of gas connections within the North-South gas corridor. The actions of both companies are conducted within the EU policy aimed at integration of gas transmission systems in Europe and ensuring a free gas flow through the extended cross-border infrastructure.

According to the Act on Stocks, the obligatory reserves of imported natural gas have to correspond, in the period between 1 October 2012 and 30 September 2013, to at least 30-day average daily gas supply provided by a company that obtains gas for its further resale to consumers. In 2012 the President of ERO controlled if this obligation was met by the relevant entities. As regards the PGNiG SA control, it was showed that the company did not violate the provisions of the Act on Stocks in the considered period. The obligatory reserves were launched according to the decision of 2 February 2012, granted to the company for the period of two months by the Minister responsible for the economy. The necessity of launching the reserves was justified by a significant increase in consumer demand for natural gas connected with the rapid fall of air temperature at the end of January 2012. As a result of the above-mentioned factors, deficiency of gas reserves occurred (according to the state as of 31 May 2012), in relation to the level required by the decision of the President of ERO, i.e. 555.8 million cubic metres. However, till 20 June 2012 PGNiG SA has refilled the obligatory reserves to the amount defined in the decision of the President of ERO.



## 3. THE ELECTRICITY MARKET

### 3.1. Network regulation

#### 3.1.1. Unbundling

##### *Designation and certification of transmission system operators*

In 2012 the President of ERO did not conduct any certification proceedings for transmission system operators because the implementation of Directive 2009/72/EC in a part applicable to the TSOs certification has not been completed. Moreover, none of the transmission network owners applied to the President of ERO for certification of the transmission system operator.

The Energy Law states that only one electricity transmission system operator shall operate on the Polish territory and the operator shall act in a form of a joint-stock company whose only stakeholder is the State Treasury. Furthermore, the function of the TSO can be performed by a transmission network owner or an entity which concluded an agreement with the owner on performing the tasks of the operator using the owners' network or installations (that is a formula similar to the Independent System Operator – ISO).

According to the above mentioned regulations, at the end of 2012 there was a single TSO on the Polish territory - PSE Operator SA (since 9 January 2013 under a changed name: PSE SA). PSE Operator SA is a company wholly owned by the State Treasury and the owner of transmission assets on which it conducts a business activity consisting in electricity transmission on the basis of a licence issued by the President of ERO. The company was designated the transmission system operator through the decision of the President of ERO of 24 December 2007. The ownership supervision over PSE Operator SA is executed by the Minister of Economy. In a period between January 2011 and September 2012, PSE Operator SA performed also the function of the TSO on the Polish section of the Polish-Swedish interconnector owned by SwePol Link Poland Sp. z o.o., on the basis of an entrustment agreement. On 31 August 2012 PSE Operator SA purchased assets of the Polish section of the high-voltage direct current link between Poland and Sweden, and due to that the decision assigning PSE Operator SA as the transmission system operator has been revoked.

At the end of 2012 on the Polish territory there was only one fully unbundled TSO, as provided for in Article 9(1) of Directive 2009/72/EC.

##### *Unbundling of distribution system operators*

The operational conditions and obligations of system operators are determined in the Energy Law. Electricity distribution system operators (DSOs) acting within vertically integrated energy groups and serving more than 100,000 customers are required to be independent in terms of legal structure, organisation and decision making. Moreover, the DSO should be fully unbundled from other types of activity which are not related to transmission or distribution of electricity. Analysis of these provisions leads to a conclusion that a company engaged in a network activity is not allowed to have shares in companies involved in supply or generation. Holding such shares by a network undertaking means that it has a direct financial interest in the results of the supply sector and, as a consequence, the board of the company loses the ability to "act independently". The above mentioned operators cannot lead a business activity related to production or trade of gaseous fuels or electricity and are not allowed to perform such functions on the basis of agreements for the benefit of other energy undertakings.

It should be mentioned that a consolidation of two companies performing the functions of DSOs took place on 1 October 2012, i.e. TAURON Dystrybucja SA seated in Cracow and the company TAURON Dystrybucja GZE SA seated in Gliwice. At the moment, the company operates under the name of TAURON Dystrybucja SA with a seat in Cracow. Due to this fact, the number of legally unbundled DSOs was reduced from 6 to 5 entities. At the end of 2012, 148 DSOs (designated by the decisions of the President of ERO) conducted distribution activity, including 5 legally unbundled distribution companies, and 143 DSOs which were not subject to the legal unbundling obligation

(in some cases the companies started performing the role of operator between 1 January 2013 and 1 March 2013).

The above mentioned legally unbundled DSOs operate within capital groups which are vertically integrated energy undertakings. The ownership supervision over these groups is performed generally by the State Treasury, while over 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 main stakeholders are not connected with the State Treasury.

**Table 1.** Unbundling status as of 31 December 2012

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	148
DSO – ownership unbundling	0
DSO – legal unbundling	5
DSO – legal unbundling, ownership of assets (network)	5
DSO – legal unbundling, no assets (network)	0
DSO – less than 100,000 customers	143

Source: ERO.

A major impediment to the supervision of independence of legally unbundled DSOs is the fact that operators remain in the structures of the vertically integrated energy undertakings and well-developed structures of capital groups. However, such situation is allowed under Directive 2009/72/EC and the Energy Law.

If not complying with the conditions and criteria of independence, the TSO and DSOs are subject to fines. The fines shall be imposed also on an entity which is the owner of the network and which does not ensure that the entity designated as an operator on its assets comply with the conditions and criteria of independence. The fines in the above mentioned cases cannot be smaller than 1% and greater than 15% of the revenue of the relevant undertaking for the preceding year. The fines are imposed by the President of ERO. Regardless of the above mentioned fines, the President of ERO can impose a fine on a person managing an energy undertaking in an amount not greater than 300% of the person's monthly remuneration.

### **Compliance programmes**

One of the tasks of the President of ERO is the approval of the so-called Compliance Programmes. Within these Programmes the distribution system operators specify measures which should be undertaken to ensure non-discriminatory treatment of system users, including specific responsibilities of the DSO's personnel resulting from these Programmes. This tool allowed the regulator to have influence, to a certain extent, on the content, method of implementation and execution of the Programmes. In 2012 the process of approval of the submitted Programmes was finalised.

Moreover, the operators are required to present to the President of ERO the reports on execution of the Programmes. The Programmes, as well as the reports on their execution for 2012, are the first ones prepared on the basis of the "Framework Guidelines for the Contents of Compliance Programmes Developed by Distribution System Operators (DSOs) and Transmission System Operators (TSOs)", published by the regulator on its website.

According to the guidelines, the annual report on the Programme execution should take into account the data from monitoring conducted on an on-going basis, including:

- a list of violations of the Compliance Programme,
- information on complaints and proposals regarding the Programme,
- actions undertaken within the Programme execution,
- measures applied to protect sensitive data.

All DSOs, which are legally obliged to submit their reports on the Compliance Programmes execution to the President of ERO, fulfilled their obligation for the year 2012 and met the statutory

deadline (the end of Q1 2013). Moreover, the TSO also presented its report. The reports were published in the Industry Bulletin of the ERO and on the regulator's website.

There is no evidence in the submitted reports that there were any deliberate violations of the Compliance Programmes. In the case of three companies, incidents which constituted unintentional violations of the Programmes occurred. However, due to immediate reparatory actions the negative impact of these violations was minimised. The first of the violations concerned the IT error at one of the DSOs which resulted in a situation when for a short period of time some of the data on the TPA customers was accessible to energy undertakings which at this time were not operating as suppliers for the relevant customers. In the case of second violation, a TSO employee sent accidentally a report on the settlement of a system rebuilding service to the wrong contractor. In the third case, a complaint with regard to one DSO was issued by a supplier, which accused the operator of maintaining informal contacts with an incumbent supplier from the same capital group. In 2012 the President of ERO initiated an explanatory proceeding to address this issue. It disclosed a single, unintentional violation of one of the Compliance Programme's provisions, regarding the obligations of the DSO employees in terms of ensuring the equal treatment of all distribution system users. After collecting additional evidence in 2013, the regulator initiated a proceeding for punishing the operator on account of transmitting by the employee a piece of information which put a default supplier belonging to the same capital group in a privileged position. In connection with this situation, the DSO organised a major information campaign reminding of the issues included in the Programme.

In order to implement, comply with, monitor and interpret the Programme, the operators created a position of a Compliance Officer. The Officer should be provided with a full independence and be distinguished from other positions in a company. In practice, only in the case of one operator the position of the Officer was separated from other positions. In other cases, the position was combined with non-executive or even managerial position, what was negatively assessed by the regulator.

The Officers instructed all operators' employees that they have to unconditionally comply with provisions of the Programmes.

All operators are constantly improving the standards of procedures and templates of agreements and applications related to the distribution service, connection to the grid and supplier switching. These changes should be assessed positively as the standardisation aims at a non-discriminatory treatment of system users. Moreover, all operators published the Programmes on their websites what should be also recognized as a positive sign. The Compliance Programmes should be available not only to the operator employees but also to every interested participant of the electricity market. Thanks to this, the market participant will be able to check if the operators comply with the rules of non-discriminatory treatment of all users of distribution and transmission systems.

Moreover, the submitted reports show that the DSOs apply a similar policy of protecting sensitive data by providing an adequate access to particular IT systems. The employees are granted with individual access rights to the above mentioned data, determined depending on his/her responsibilities.

### **3.1.2. Technical functioning**

#### ***Balancing services***

The rules of balancing the electricity system in Poland are specified in the Transmission Grid Code (IRiESP) of the PSE Operator SA in section "System balancing and congestion management" and in the Distribution Grid Codes (IRiESD). Grid codes are approved by the President of ERO. The rules of balancing the distribution systems must be consistent with the rules given in the Transmission Grid Code. The regulator, in the scope of its competences, monitors the activity of the operators including the balancing rules.

In 2012 the balancing rules, defined in the Transmission Grid Code, were subject to the following changes and modifications:

1. The catalogue of system services was extended to the interventional cold reserve which is used by the TSO when it is justified by the technical and balancing conditions of the NES (National Electricity System) operation. It also includes the units that will be temporally exempted from compliance with the emission limit values under Article 33(1) of Directive 2010/75/EU<sup>5</sup>. The units

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<sup>5</sup> Directive of the European Parliament and of the Council 2010/75/EU of 24 November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 133/17.

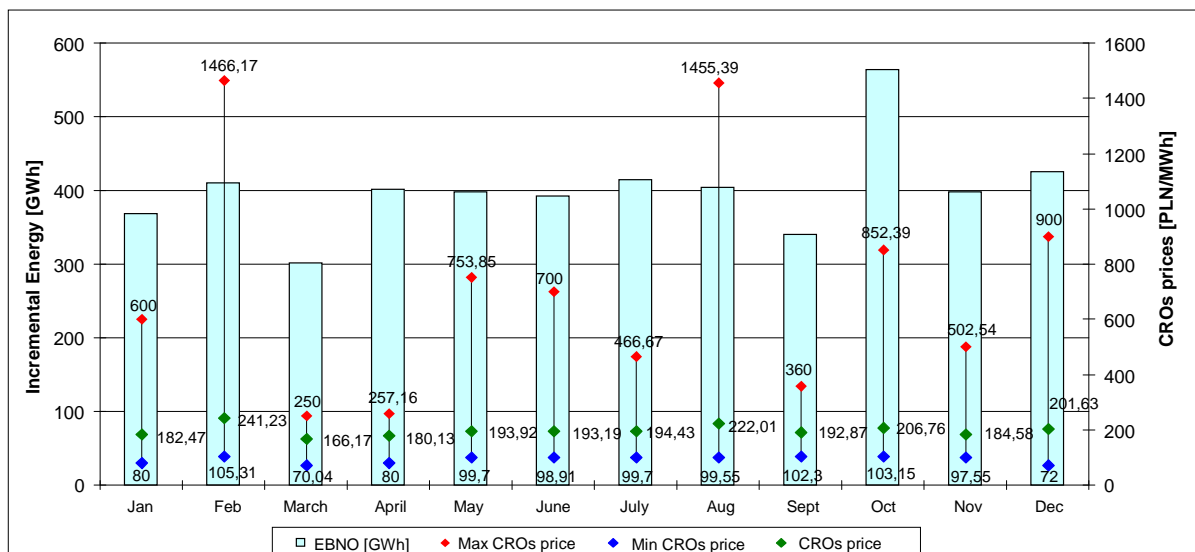


taking advantage of the service are supposed to operate with a view to cover peak demand. They are permanently excluded from the competitive mechanisms and the costs of their activity are covered by the TSO (they are included in a quality charge that is a component of the TSO tariff). The service will be applied as of 1 January 2016.

2. There was a modification of balancing rules through a change in determining a price for correction of a contract position applied to scheduled wind generation units. This should encourage wind farms to sell energy on the competitive market instead of on the balancing one.
3. Setting of the maximum clearing price for an operating reserve (the price cap).
4. Introduction to the balancing market of a mechanism for compensating the generators for the additional costs of electricity generation, resulting from reallocation of Electricity Sale Agreement (ESA) in Centrally Dispatched Generation Units (CDGUs) in the scope of financial settlements on the balancing market. After introducing the change, that is as of 1 February 2013, in case when execution of ESA is transferred from cheaper units to the more expensive ones in order to meet the requirements of NES operation security, the generators holding CDGUs receive a return of generation cost surplus over the electricity market price.
5. In connection with introducing by the TSO a Load Frequency Control (LFC) to conduct automatic adjustment of frequency and load, the appropriate change in the Grid Code was approved by the regulator.

Except for these mentioned above, no other changes were introduced to the balancing rules in Poland in 2012. On the domestic market, market participants submit their commercial schedules to the TSO between 9.00 a.m. and 2.30 p.m. of the day before the supply delivery date. The schedules cannot be corrected later than an hour before the supply delivery date within the intraday market. As regards cross-border exchange, the transmission capacity for the annual and monthly auctions is nominated between 12 noon and 5.00 p.m. two days prior to the supply delivery date, and for daily auctions - between 10.30 a.m. and 1.30 p.m. one day prior to the supply delivery date. In case of the cross-border exchange between the Polish electricity system and the German, Czech and Slovak systems, a mechanism for intraday congestion management has been introduced. Reservation of transmission capacity under this mechanism is equivalent to its nomination. The sale contracts are notified between 3.30 p.m. on the day preceding the supply delivery date and 10.00 p.m. on the day when the contract is executed, assuming that the notifications are made at least one hour before the supply. The cross-border exchange on the SwePol Link is carried out according to the market coupling mechanism. The market participants submit the electricity purchase and sale bids on the POLPX until 11.30 a.m., and the clearing price is published once it is determined in cooperation with the Scandinavian power exchange Nord Pool Spot AS but not later than prior to the gate closure for sales contracts on the balancing market. Contracts are carried out after submitting them to the TSO.

**Figure 1.** 2012 trade volume (EBNO) and electricity prices in the balancing market (CROs)



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

While comparing the level of trade volume on the balancing market (EBNO) in 2012 to the previous year, it should be noted that the value increased from 4.48 TWh to 4,82 TWh, i.e. by 7.6%. The average electricity prices on the Balancing Market increased as well as its fluctuation range, which was the highest in February and August 2012, reaching almost the threshold limit (1,500 PLN/MWh) of the bidding prices, i.e. those that can be reported on the Balancing Market in Poland. As the price formula for the Balancing Market is based on the marginal prices from balancing bids submitted by the generators, it should be assumed that in certain hours the capacity reserves available in the system were low and the TSO had to accept the most expensive offers.

In terms of balancing the distribution systems, it should be stressed that the role of the DSO is limited mainly to the activities connected with managing the measurement data. The method of conducting these activities, influencing above all the execution of the TPA rule, is determined in the Distribution Grid Codes. Moreover, the DSOs are required to undertake actions by order of the TSO, according to the rules given by the operator in the Transmission Grid Code.

### ***Security and reliability standards, quality of service and supply***

The responsibilities of the President of ERO include monitoring the electricity system i.a. in reference to security of electricity supply<sup>6)</sup>. However, the task was set forth in a general manner and does not include all activities which are stipulated in Article 4 of Directive 2009/72/EC.

As far as the security and reliability of the network is concerned, the regulator controls the method of fulfilling the statutory responsibilities by the electricity system operators and assesses their actions in terms of ensuring a proper functioning of the network, according to the criteria described in the grid codes. Moreover, the possibilities of covering the demand for energy and peak capacity in the electricity system as well as the level of necessary capacity reserves are also assessed. These tasks are performed *ex post* and relate to the assessment of operational security of electricity system in the context of meeting the obligations by the electricity system operators. Annually the assessment is presented to the Minister of Economy.

The detailed analyses of electricity system functioning in terms of available capacity of domestic power plants, reserves and power losses in relation to the peak demand, are described in point 3.3.1 of this Report.

The standards regarding the quality of supply and consumer service were determined by the Ordinance of the Minister of Economy on the specific conditions of the functioning of the power system<sup>7)</sup>. Moreover, the standards of network security and reliability as well as the standards of quality of supply and consumer service are determined in the grid codes developed by the operators and approved by the President of ERO. It means that the standards are approved by the regulator before they can be applied by the electricity system operators.

### ***Monitoring time taken to connect and repair***

According to the Ordinance of the Minister of Economy of 2007 on the specific conditions of the functioning of the power system, the TSO and DSOs are required to publicise by 31 March of every year, by posting on their website, the indicators concerning the time of interruptions in electricity supply calculated for the preceding calendar year.

In 2012 regulator conducted the detailed analysis of the indexes related to distribution network reliability, published on the websites of the individual DSOs. It displayed a series of inconsistencies stemming from different interpretations of the provisions of the above mentioned Ordinance. The provisions ambiguously define the way in which the SAIDI and SAIFI indexes are determined, i.e.

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<sup>6)</sup> The definition of electricity supply in this context is not consistent with the definition of electricity supply in the context of security of electricity supply. The assessment of the security of electricity supply is presented by the President of ERO in a report prepared by the regulator and submitted annually to the Minister of Economy, and concerns the scope of activity of the President of ERO as set forth in the Energy Law. It should be stressed that this range does not include the forecast for balancing the electricity supply and demand for the next five years, and ability to balance the supply in a period from five to at least fifteen years, counting from the day of publishing the report (under the provisions of Article 4 of Directive 2009/72/EC). The forecast is presented in a report prepared by the Minister of Economy and submitted to the European Commission every two years.

<sup>7)</sup> Journal of Laws of 2007, No. 93, item 623, as amended.

separately for scheduled and unscheduled interruptions considering grid breakdowns due to disastrous events and without them, and also the MAIFI index which shows a number of customers that can be influenced by the effects of all short interruptions during a year, divided by a total number of all serviced customers.

After analysing the methods employed by the DSOs in the process of calculating the above mentioned indexes, in order to ensure their comparability and standardized methodological approach among all operators, uniform rules of calculating those indexes have been set. In June 2012 the President of ERO issued information to the DSOs, in which the number of customers to be taken into consideration in the process of calculating the above mentioned indexes was regulated.

### ***Monitoring safeguard measures***

The rules that describe the extraordinary actions and measures conducted by system operators in a situation of a threat to the electricity supply, such as introducing restrictions in the consumption and supply of electricity, have been described in detail in the relevant grid codes developed by the system operators. The rules are subject to approval of the President of ERO before they can enter into force.

At the same time, in case of a situation that justifies undertaking of extraordinary measures, the TSO is obliged to prepare a report describing the undertaken actions as well as their results. The report is subject to assessment of the President of ERO and then it is submitted to the Minister of Economy who, under the Energy Law, is a body responsible for notifying to the European Commission information on the undertaken extraordinary measures.

The restrictions in electricity consumption and supply can be introduced if the TSO, DSOs, or combined electricity system operator in cooperation with the interested entities have depleted all available means to ensure proper functioning of the electricity system and with exercising due diligence. The decision in this matter is made by the Council of Ministers, at the proposal of the minister in charge of economy, through an ordinance. The restrictions can be introduced for a fixed time on the territory of Poland or only on its part. In 2012 the actions which are described above were not undertaken.

### ***Renewable energy sources: connection, access, dispatching and balancing***

As regards RES connection to the grid, Under the Energy Law, in case of the units with installed capacity not higher than 5 MW a half of the connection fee (calculated on the basis of the actual costs of this connection) is charged. These types of units as well as cogeneration units with installed capacity below 1 MW are given preferential treatment as in the case of other generation sources the charged fee is determined on the basis of the total costs of the connection.

Furthermore, if a network undertaking refuses entering into a grid connection agreement, it is required to immediately inform about the fact both the regulator and interested entity in a written form, giving the reasons for the refusal. In a situation when the refusal stems from the lack of economic conditions for connecting to the grid, the network utility can agree the amount of the fee for connection with an entity that applies for the connection.

Moreover, the electricity system operator, within its operation area, is required to ensure preferential transmission and distribution of electricity generated in RES and high-efficiency cogeneration, while preserving the reliability and security of the national electricity system.

Additionally, the default supplier is obliged to purchase electricity generated from renewable energy sources offered by the electricity generators connected to the distribution or transmission grid situated on the territory that belongs to the supplier's operation area. The energy is bought at an average price for electricity on the competitive market in the preceding year, which is announced annually by the President of ERO.

In reference to balancing, depending on the influence of RES generation units, the following units are differentiated:

- 1) Active scheduled generation units, i.e. CDGUs (compulsorily) and Centrally Coordinated Generation Units (CCGUs) (voluntarily) for example based on co-combustion of biomass, pumped-storage hydroelectricity;

- 2) Passive scheduled generation units, i.e. non-CDGUs, for example power generation plants based on biogas, small hydroelectric power stations;
- 3) Scheduled wind generation units which are simultaneously passive scheduled generation units.

From the perspective of system balancing by the TSO, the units listed in points 1 and 2 do not differ from conventional plants, e.g. for the TSO there is no difference whether the CDGU is a conventional unit or is based on biomass co-combustion. For the TSO unpredictable sources (i.e. most of all, wind farms) are most problematic from the perspective of system balancing. As regards solar photovoltaic, the installed capacity of these sources is rather small and thus their negative impact on the TSO activity in terms of system balancing can be disregarded.

The installed capacity of wind farms amounting to around 2,500 MW represents a significant share in the total installed capacity in the NES. This may have an influence on the unreliability of the TSO actions related to system balancing. It should be noted that at the end of 2012 the investors were awaiting wind farms of additional 20,200 MW capacity to be connected to the transmission and distribution grids.

### 3.1.3. Network Tariffs for Connection and Access

The tariffs for transmission and distribution of electricity are set by the licensed electricity undertakings according to the provisions set forth by the Energy Law and the Regulation of the Minister of Economy on the specific principles for setting and calculating tariffs and financial settlements in electricity trade, hereinafter referred to as the "Tariff Regulation"<sup>8)</sup>. The electricity undertakings are obliged to submit the tariffs for the approval of the President of ERO on their own initiative or on the regulator's request.

The regulator approves and reviews the application of the electricity tariffs in respect to their compliance with the rules set forth in the Energy Law, including an analysis and verification of costs assumed by the energy undertakings as reasonable in calculation of prices and rates.

Whenever a documented change in external circumstances of conducting business activity by an electricity undertaking takes place, the regulator may set the correction factors with his decision issued ex officio. The factors result solely from the change of external conditions and the undertaking is required to apply them with regard to prices and rates of charges determined by the tariff until the new tariff comes into force.

When the application period of a tariff expires, until the time when the new tariff comes into force, the electricity undertaking is required to apply the hitherto tariff if the relevant decision of the President of ERO has not been issued yet, or an appeal procedure against such decision is ongoing.

The decisions approving electricity tariffs are issued pursuant to Article 104 of the Code of Administrative Procedure of 14 June 1960<sup>9)</sup>. The decisions may be appealed against to the District Court in Warsaw - Court of Competition and Consumer Protection through the President of ERO within two weeks from the day the decision is delivered.

Every year the process of approving tariffs for the distribution system operators is preceded with the "Tariff Calculation Methodology for DSOs" published by the regulator. The document contains general guidelines for tariff calculation which are used i.a. for determining the justified level of the regulated revenue of energy companies. The methodology is published in advance to allow the DSOs to submit tariffs calculated on its basis and provide the regulator with time required for approval and publication of the tariffs.

In 2012 the President of ERO approved the electricity tariffs for the following entities:

- 1) the transmission system operator (TSO) - with respect to entities receiving the transmission service under a transmission agreement,
- 2) distribution system operators (DSOs), unbundled as of 1 July 2007 - with respect to customers connected to the distribution networks on all voltage levels, that is for industrial consumers, small and medium businesses and households,
- 3) other energy companies, i.e. the industrial sector companies – with respect to trading (G tariff group) and distributing electricity to customers connected to the networks of these companies.

In case of electricity trading companies in relation to household consumers (G tariff groups), the period of tariffs application (for tariffs approved in 2011) was extended until 30 July 2013.

<sup>8)</sup> Journal of Laws of 2011, No. 189, item 1126, as amended.

<sup>9)</sup> Journal of Laws of 2013, item 267.

The works continued in 2011 ended with developing and implementing a new model of DSOs efficiency assessment in terms of the operating costs and level of the balancing margin (i.e. the difference between the power fed into and taken off the grid). As a result, a level of operating costs and balancing margin for the years 2012-2015 was determined for every DSO. Thereby, the tariffs approved for 2012, initiated a next four-year regulatory period in which the new assessment model for operating costs and balancing margin is applied. There were also some modifications in respect to the rules of determining other elements of regulated revenue. The tariffs in force in 2013 are the second tariffs that were approved within the 2012–2015 four-year regulatory period.

As it was announced during the 2011 tariff approval process, in 2012 the President of ERO issued decisions which set the correction factors determining the forecasted increase in the DSOs efficiency in the following years of the 2012–2015 regulatory period. The decisions took into account the results of the DSOs efficiency assessment with respect to operating costs, conducted in the years 2010–2011. Within the process of approving tariffs for 2013, the level of operating costs for every DSO was set, based on the above mentioned correction factors.

The results of the performed DSO efficiency assessment in this respect were also used while determining the fair level of balancing margin.

The method of determining other costs affecting the level of regulated revenue for every DSO was set forth in the document "DSO TARIFFS FOR 2013 (for DSOs unbundled as of 1 July 2007)".

In case of the transmission system operator, the tariffication process conducted in 2012 was as before based on the cost of service regulation. The use of comparative methods in this case is impossible due to lack of other enterprises acting under similar conditions (there is only one TSO in Poland). In the process of the TSO tariff approval for 2012, the method of multi-year tariff (with a four-year regulatory period) was taken into account only partially, i.e. in relation to the method of setting the operating costs. Therefore, at the beginning of 2012 actions aimed at developing rules for determining the other elements of enterprise revenue were undertaken. The method of the multi-year tariff was included into a document describing the rules for determining costs, that form the basis for the transmission fees calculation for 2012–2015. The document was approved later by the President of ERO. Simultaneously, the regulator issued a decision which set the correction factors determining the forecasted increase in the TSO efficiency in the following years of 2012–2015 regulatory period.

Having in mind the need to ensure the return on capital engaged in the network activity for the DSOs and the TSO, in the subsequent tariffs the President of ERO set the justified level of return based on the Regulatory Asset Value (RAV) and the cost of capital, taking account also of the estimated levels of investment expenditure. The method of determining the weighted average cost of capital (WACC) introduced within the process of approving tariffs in 2010 for the period between 2011–2015 was applied in the tariffication process conducted in 2012. According to the previous announcements, some of the parameters used for determining the WACC were updated, including the risk-free rate. In 2012, a method of remunerating the RAV was updated in cooperation with the DSO representatives. The new regulations regarding the rules of remunerating investments in smart metering and billing systems were introduced as well as the one-time electricity meters depreciation.

### ***Prevention of cross-subsidies***

On 1 July 2007 the distribution system operators were unbundled from the structures of 14 vertically integrated undertakings, and thus the electricity distribution was separated from the electricity trading.

Apart from 14 biggest DSOs, also 14 electricity trading companies started operating on the market. Currently, following the consolidation process, there are 5 DSOs and 6 trading companies that act as default suppliers. These are independent entities.

In case of other energy undertakings, the so-called industrial sector companies, the tariffs cover their whole network activity i.e. all customers connected to the enterprise grid. The tariffs for trade are applied only in case of the G tariff group customers because the electricity undertakings were exempted by the President of ERO from the obligation to submit the tariffs for approval with respect to industrial and commercial customers. The tariff calculation for these undertakings is based on the transparent rules which are intended to eliminate cross-subsidisation between the distribution and trading activities.



### 3.1.4. Cross-border issues

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

The previously applied rules of cross-border capacity allocation between Poland, Germany, the Czech Republic and Slovakia did not change in 2012. The transmission capacity was allocated via coordinated explicit auctions between eight transmission system operators from seven countries of the CEE region. The auctions for transmission capacity were organised and conducted by the Central Allocation Office (CAO) in Freising. The volume of transmission capacity made available through auctions is calculated by the transmission system operators of individual countries, according to the specific rules. The Polish TSO applies a method of calculating cross-border capacity that was approved by the decision of the President of ERO of 23 July 2010.

Due to high demand for transmission capacity at the synchronous interconnections of the NES that exceeds the existing technical capacity, the congestion has a structural nature. PSE Operator SA offered export transmission capacity in yearly, monthly, daily auctions as well as on the supply delivery date auctions. The import capacity was offered in daily and on the supply delivery date auctions (the transmission capacity offered in yearly and monthly auctions equalled 0 MW). Transmission capacity for export offered by the TSO in yearly auctions ranged from 100 to 400 MW, in monthly auctions it amounted to maximum 304 MW (on average 116 MW in the year) and during daily auctions maximum to 1,368 MW (with an annual average of 1,226 MW). Transmission capacity for import offered by the TSO in daily auctions reached maximum 425 MW (on average 118 MW in the year).

In 2012 the number of the NES interconnections with the neighbouring electricity systems did not change and the character of these connections remained the same. The investments in the NES completed in 2012 did not have a direct influence on the increase of transmission capacity available for the cross-border exchange.

Cases of limiting the transmission capacity available for cross-border exchange due to the capacity shortages or grid breakdowns did not occur in 2012.

The balance of cross-border exchange amounted to 2,837 GWh in the preceding year. Similarly to the previous years, in 2012 Poland was a net exporter. The biggest volume of actual power flows was directed from the NES to the Czech Republic and Slovakia, while most of the physical flows came from Germany.

The congestion management on the high-voltage direct current SwePol Link is carried out through a market coupling mechanism (implicit auctions). The transmission capacity has been made available on the basis of market-based rules since 16 December 2010. The capacity of the interconnector is allocated through the power exchanges (POLPX and Nord Pool Spot) on the day-ahead basis. The market coupling mechanism allows for a more effective use of interconnectors because the energy flows from a lower price area to a higher price area. There was more transmission capacity available for import to Poland than for export as the TSO had to ensure the electricity supply in the country (mainly in the northern Poland). Hence, the possibility to provide market participants with available capacity was limited. The interconnector capacity available for export amounted to 18% of whole interconnector capacity, while for import – 66% of its capacity. With respect to the flows, it should be noted that the electricity flows were directed almost solely from Sweden to Poland. The total electricity exports from Poland to Sweden amounted in 2012 to 187.8 GWh, while the total imports amounted to 1,686.1 GWh.

As far as the interconnections with the third countries' systems are concerned, there is one active interconnection between the Polish and the Ukrainian systems. It is a single-track 220 kV line between Zamość and Dobrotvir, synchronously connecting the NES with the dedicated generation units of the Dobrotvir Power Station. The available transmission capacity is allocated to the market participants through explicit monthly auctions. These are uncoordinated (unilateral) auctions. The capacity is available only from Ukraine to Poland. The transmission capacity allocation mechanism is described in the document "The rules for auctions of transmission capacity on the PSE Operator SA and NEK Ukrenergo cross-border interconnection organized unilaterally by PSE Operator SA". The rules were subject to the regulator's assessment. The regulator decided that they are not inconsistent with the provisions of the ordinance on the specific conditions of the functioning of the power system. Under this regulation the TSO ensures access to the available transmission

capacity of the interconnector, on the conditions agreed with neighbouring TSOs, in compliance with requirements of non-discrimination and transparency. Therefore, the President of ERO did not oppose the application of these rules in the transitory period until new capacity allocation procedure is developed and implemented, complying with the requirements described in the Regulation 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. Every change in allocation procedures is consulted with the President of ERO.

### **Monitoring the use of revenues for interconnectors**

Under section 6.5. of the "Guidelines on the Management and Allocation of Available Transfer Capacity of Interconnections Between National Systems" which are the annex to Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No. 1228/2003 (hereinafter referred to as "Regulation 714/2009")<sup>10)</sup>, by 31 July each year the regulatory authorities publish a report setting out the amount of revenue collected during 12-month period up to 30 June of the same year. The report shall present also the way the revenue was spent, along with a verification that its use complies with the above mentioned Regulation and Guidelines and that the total sum of congestion income was devoted to one or more of three prescribed purposes, which are described in Article 16(6) of the Regulation.

In 2012 the PSE Operator SA allocated and offered transmission capacity:

- 1) on the interconnections with the countries of the Central-Eastern Europe
  - within the mechanism of coordinated explicit auctions organised for three time intervals: yearly, monthly and daily (the day-ahead market);
  - within the intraday mechanism – on the conditions agreed upon with the other operators from the region; the mechanism is based on the *first comes first served* rule,
- 2) on the high-voltage direct current link with Sweden - the SwePol Link
  - within day-ahead market coupling mechanism (implicit auctions).

In 2012, the revenue of PSE Operator SA resulting from the capacity allocation amounted to 62,430,070 PLN (between January and June 2012 – 31,436,560 PLN, between July and December 2011 – 31,512,150 PLN) whereas this sums do not include the revenues from allocating capacity on the SwePol Link interconnector.

Until 31 August 2012, the HVDC link with Sweden was owned by two companies: SwePol Link Poland Sp. z o.o. and SwePol Link AB. The congestion revenue obtained from this interconnection was collected directly by the enterprises. On 31 August 2012 at 1.00 p.m. the assets of the HVDC link were purchased by PSE Operator SA and the Swedish TSO Svenska Kraftnat. After the acquisition of the interconnector by the TSOs, the transmission capacity is still allocated to market participants on the basis of the market coupling mechanism under implicit auctions conducted by the POLPX and Nord Pool Spot AS. Each operator receives 50% of the income obtained from cross-border capacity allocation. The revenue of PSE Operator SA from this link amounted to 16,027,520 PLN in 2012.

According to Regulation 714/2009, the revenue from the allocation of interconnection capacity shall be used for guaranteeing the actual availability of the allocated capacity and/or for network investments maintaining or increasing the interconnection capacity. If the revenues cannot be used efficiently for the above mentioned purposes, they can be used, after approval by the regulatory authority and up to the maximum amount determined by this authority, as income to be taken into account by the NRA when approving the methodology for calculating and/or fixing network tariffs. The rest of the revenues should be placed on a separate internal account until such time when it can be spent for the above mentioned purposes.

According to the rules of transmission fees calculation described in the 2012 PSE Operator SA tariff, approved with the decision of the President of ERO on 16 December 2011, a part of justified costs of the TSO activity related to cross-border exchange was not taken into account in the calculation of the fee rates in the above mentioned tariff. According to the summon of the President of ERO, a part of these costs is covered by the company with the revenue obtained from the cross-border capacity auctions. These are the following costs:

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<sup>10)</sup> OJ L 211/15 of 14.8.2009.

- costs of organising coordinated auctions of interconnection capacity,
- costs of balancing the cross-border exchange,
- costs connected with the PSE Operator SA participation in the Inter-Transmission System Operator Compensation (ITC) mechanism, which are not covered with revenue from participating in this mechanism and market charge revenues.

In connection with the above, the amount of the revenue from the interconnection capacity allocation (calculated on the basis of the revenue obtained from the transmission capacity allocation on the synchronous connections and on the HVDC link between Poland and Sweden, according to the currently binding accounting rules) obtained in the period between 1 January 2012 and 31 December 2012, will be used in total for the purposes described in the Article 16(6)(b) of Regulation 714/2009, i.e. for maintaining or increasing interconnection capacity through network investments.

In order to ensure most efficient use of the revenue, it will be used as one of the basic sources for financing the construction of the asynchronous interconnector between Poland and Lithuania. Taking into account the scale and time-span of the above mentioned investment, these resources will be launched successively and, to the moment of their efficient spending, they will be kept on a separate internal bank account (the Earmarked Fund), according to the provisions of Regulation 714/2009.

### ***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, it should be pointed out that a poor technical condition of the interconnection prevents from its operation (the line has been deactivated). As regards the connection with Ukraine, the electricity supply has been performed since 2011 and the transmission capacity is allocated through auctions. The auctions, introduced by the Polish TSO, have a unilateral character. As far as the cross-border exchange between Poland and Ukraine is concerned, capacity may be offered only on the monthly basis for which an auction is organised. The capacity can be allocated to one entity at a time, i.e. the one that wins the auction.

It should be underlined that in February 2011 Ukraine signed an agreement with the European Union and became a member of the Energy Community. Hence, it committed itself to implement to the national law i.a. the provisions of Regulation No. 1228/2003/EC. Within monitoring the fulfilling of its duties by the TSO, the President of ERO was informed about the actions undertaken by PSE Operator SA in terms of cooperation with Ukrainian TSO aimed at implementing the congestion management mechanisms compliant with Regulation 1228/2003/EC. According to the regulator's knowledge, Ukraine to this day has not started the implementation of *acquis communautaire* in reference to the energy sector. Moreover, it should be stressed that the rules of technical cooperation between the domestic TSO and the third country TSOs were not set forth in the Transmission Grid Code. However, according to the Regulation 714/2009 some of the rules should be set at the ENTSO-E level and in this respect they are neither directly nor exclusively monitored by the President of ERO.

### ***Monitoring TSO investment plans in view of TYNDP***

In 2012 transmission and distribution companies submitted to the President of ERO their reports on execution of development plans with respect to meeting the current and future demand for electricity.

The review of the reports revealed that the TSO's investment expenditures in 2012 exceeded level planned and arranged for that year. The reason for this situation was the purchase of a section of the HVDC link between Poland and Sweden which was not taken into account in the agreed plan.

In 2011, during consultation process for the updated 2010–2025 TSO development plan, with respect to the years 2012–2016, the plan was assessed for its consistency with TYNDP 2010–2020 in relation to individual projects identification. In 2012 the assessment of the consistency was repeated due to development of a new edition of the EU-wide development plan (TYNDP 2012).

In October 2012, the TSO submitted to the President of ERO a request for agreeing on the next draft updated development for the period between 2013–2017. In particular, the need for another update resulted from the accomplishment of tasks related to the connection to the transmission grid (both conventional units and RES) and new tasks related to the evaluation of the technical conditions



of network assets. However, the need for next update was not determined by the tasks directly related to the interconnections. The President of ERO agreed in 2013 the proposed draft update of the development plan which will be considered as an input in the process of the TYNDP 2014 development.

### ***Cooperation with regulatory authorities from other EU Member States***

In 2012 the President of ERO, PSE Operator SA and POLPX made a decision that Poland would join the Market Coupling project between the Czech Republic, Slovakia and Hungary (CZ-SK-HU MC), launched in September 2012. In December 2012, the President of ERO sent a letter expressing the intention of joining the above mentioned project to the regulators of these countries. In the opinion of the President of ERO, it is a significant step towards creating the Internal Energy Market. The Polish submission met with approval and support of the other parties to the CZ-SK-HU MC. Moreover, in December 2012 the common letter of intent was sent by Polish regulator, TSO and power exchange to all project participants, confirming their willingness to joint trilateral project. Currently, the implementing works are in progress.

### **3.1.5. Compliance**

#### ***Compliance of the regulatory authority with binding decisions of the Agency for the Cooperation of Energy Regulators and European Commission and with the ACER Guidelines***

Pursuant to Article 37(1)(d) of Directive 2009/72/EC, the regulatory authorities shall comply with and implement any legally binding decisions of the Agency and of the Commission. However, taking into consideration that the provisions of the above mentioned Directive have not been implemented into the Polish law yet, it is difficult in the present moment to discuss the compliance of regulatory authority's activity with the legally binding decisions of the Agency and of the European Commission. This issue will become more relevant in the next years of the regulator's activity.

Due to similar reasons in 2012 the President of ERO did not request the Agency to issue its opinion on the compliance of regulator's decisions with the Agency's Guidelines. Simultaneously, the compliance of the President of ERO decisions with the guidelines was not subject to the review of the European Commission.

#### ***Compliance of energy companies with relevant EU legislation***

The President of ERO supervises if and how TSO and other market participants fulfil their duties under Regulation 714/2009. No inconsistencies in fulfilling these duties by the TSO were detected in the previous year.

As far as monitoring the implementation of the network codes is concerned, it will be performed after the codes will enter into force.

#### ***Imposing penalties***

Under the Energy Law, an entity which does not follow the provisions described in the Regulation 714/2009 is subject to financial penalty. The rules of imposing financial penalties were described in detail in the Report for 2011.

In 2012 the President of ERO did not lead any proceedings for imposing a financial penalty for not complying by the TSO with the obligations resulting from the Regulation.

## 3.2. Promoting competition

### 3.2.1. Wholesale market

The participants of the wholesale electricity market sector are as follows:

- a) power plants and utility power plants,
- b) commercial power plants,
- c) energy generators from renewable sources (RES),
- d) default suppliers and entities, which were created as a result of unbundling the trading and distribution activity,
- e) other companies which conduct business activity in the form of electricity trading.

In 2012 the total production of electricity in Poland amounted to 159.853 TWh and was lower by around 2% than in 2011. In the same period, the national energy consumption amounted to 157.013 TWh and was lower by 0.6% than in 2011. The major reason for the fall in national electricity consumption was a downturn in the economy evidenced by a decrease in the GDP growth in 2012 which, according to the initial estimate prepared by the Central Statistical Office (GUS), amounted to 2% in 2012. In comparison, in 2011 the GDP growth was at the level of 4.3%.

The share of the individual energy groups in the market, as well as the structure of these entities, did not change significantly in 2012. The three biggest capital groups cover approximately 2/3 of the domestic electricity production. The share of the biggest generator PGE Polska Grupa Energetyczna SA in the electricity production amounted to around 38% in 2012. The share of TAURON Polska Energia SA was at 13% and EDF at 10%. The other significant generators are: ENEA SA, ZE PAK SA, GDF SUEZ, PGNiG, Dalkia, CEZ, Fortum, RWE.

The tendency of changing the form of electricity sale from bilateral agreements to sale through the power exchange strengthened in 2012. In the generation subsector, the sale to the trading companies reduced significantly for the benefit of sale through the power exchange (a decrease by 12.2% and increase by 2.7% in 2012 respectively, in comparison to 2011). The share of electricity sold by the generators to the end-users amounted to less than 1.3% in 2012. In the subsector of the trading companies, in 2012 a significant rise in sale to other trading companies (by 17.5%) and through the power exchange (by 78%) was noted, while the sale to the end-users was maintained on the same level as in 2011.

#### 3.2.1.1. Monitoring the level of prices, the level of transparency, the level and effectiveness of market opening and competition

Monitoring the functioning of the electricity market includes wholesale prices. Within the process of monitoring, the data regarding bilateral contracts concluded on the OTC market and through a power exchange (POLPX) is collected and analysed. On the basis of the data from the surveys submitted by the generation and trading companies as well as from the *G-10.1 k Reports on utility power plant activity* and the *10.4(Ob)k Reports of energy undertaking trading electricity*, following information is calculated and published:

- by 31 March of each year for the preceding calendar year:
  - average prices of electricity generated in high-efficiency cogeneration;
  - average prices of electricity on the competitive market together with the description of the calculation method;
  - average prices of heat generated in units belonging to the licensed undertakings that are not cogeneration units;
- average quarterly price of electricity which is not subject to an obligation set forth in Article 49a section 1 and 2 of the Energy Law, published by the 15th day of the each month following the quarter for which it is calculated,
- indicators and index prices important for the process of calculating tariffs,
- information aimed at improving the efficiency of fuels and energy consumption.

The monitoring conducted by the President of ERO as well as publication of prices have information functions and are points of reference for the decisions made by the energy undertakings.

In 2012 the average price of electricity on the competitive market amounted to 201.36 PLN/MWh. The price is calculated *a posteriori* and results from the prices of energy supplied in 2012. The part of electricity supplied in 2012 was contracted in the earlier years. In 2012 the prices of electricity sold on the spot market as well as through contracts concluded for 2013 and for the next years lowered significantly. The average electricity price weighted by volume of the most liquid contract on the POLPX (BASE\_Y-13) amounted to 197.76 PLN/MWh while the maximum price of 214.70 PLN/MWh was recorded at the beginning of 2012 and fell to 166.90 PLN/MWh at the end of 2012.

Since 2010 an electricity generation companies have been obliged to sell on commodity exchanges or on the regulated market not less than 15% of electricity generated in a relevant year (the "exchange obligation"). As regards the generators entitled to receive compensation covering their stranded costs, they are obliged to sell all generated electricity on the market organised by an entity leading regulated market on the Polish territory, or on the commodity exchanges.

The volume of electricity traded in all four markets within POLPX amounted to 131.997 TWh in total (counting on the basis of the delivery date in 2012), what constituted 82.6% of domestic electricity production in 2012 and over 84.1% of its total consumption.

In 2009 sale through the power exchange constituted almost 0.2% share of the volume of electricity sold by generators in this year, then it grew to 4.2% in 2010 and further to the level of 58.0% in 2011 and 61.8% in 2012. In the previous year the bilateral contracts constituted almost 33% of all types of wholesale trade whereas in 2010 this share amounted to 89.8%. The remaining share of the sale was conducted mainly on the balancing market (including the part which is supposed to ensure operational security of the National Electricity System) and, to a small degree, electricity was sold abroad.

The data confirms that the purpose of introducing the "exchange obligation" has been achieved through:

- ensuring an equal access to electricity for all market participants by providing equal conditions for their participation in trade on the power exchange,
- ensuring transparency in electricity trading by providing equal access to market information such as energy prices and conditions for participation in energy trading,
- making the electricity prices more realistic by conducting a big part of wholesale trade on the officially and legally organised market (the commodity exchange), supervised by the Polish Financial Supervision Authority; this supervision is supposed to eliminate the potential electricity price manipulation - especially on the market where entities with a considerable market strength concentrating a significant part of electricity supply are operating,
- liquidating the trade on the power exchange constitutes also an alternative form of purchasing electricity by the consumers which results in strengthening their position on the competitive energy market,
- ensuring the security of transaction settlements by the licensed Warsaw Commodity Clearing House.

### 3.2.2. Retail market

In the retail market a situation when the consumers are "attached" to the previous suppliers still exists and the scale of supplier switching is very small even though all customer groups have been entitled to the right of choosing their own supplier since 1 July 2007.

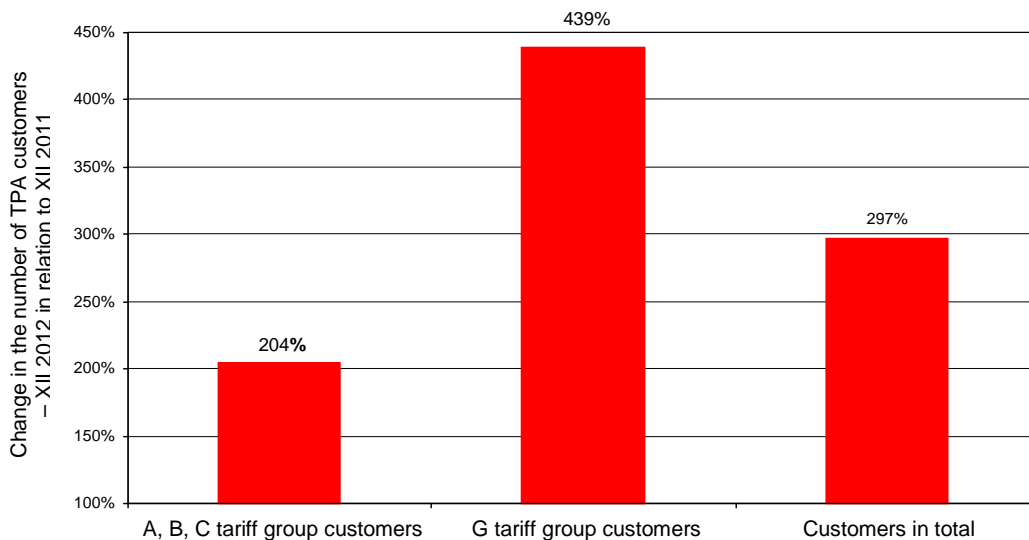
However, the number of consumers who decide to switch supplier is constantly growing. 2012 was another year of a dynamic and almost fourfold increase in the number of customers who switched supplier. Within commercial customer groups A, B, and C<sup>11)</sup> in 2012 a threefold increase in the number of consumers who used their right to switch supplier was observed. This increase remained on the similar level as in 2011 what may be the evidence that although this sector of the market has reached a certain level of saturation, the companies are still looking for a possibility to reduce costs of electricity purchase (fig. 2 and 3).

<sup>11)</sup> The customers from A, B, and C groups are those end-users who purchase electricity at high, medium, and low voltage for purposes different than residential. These are the customers for whom the electricity prices are not subject to regulation. The customers from the G tariff group are the customers who are supplied in electricity at low voltage for residential purposes. The tariffs for the electricity sale to these consumers are still subject to approval by the President of ERO.

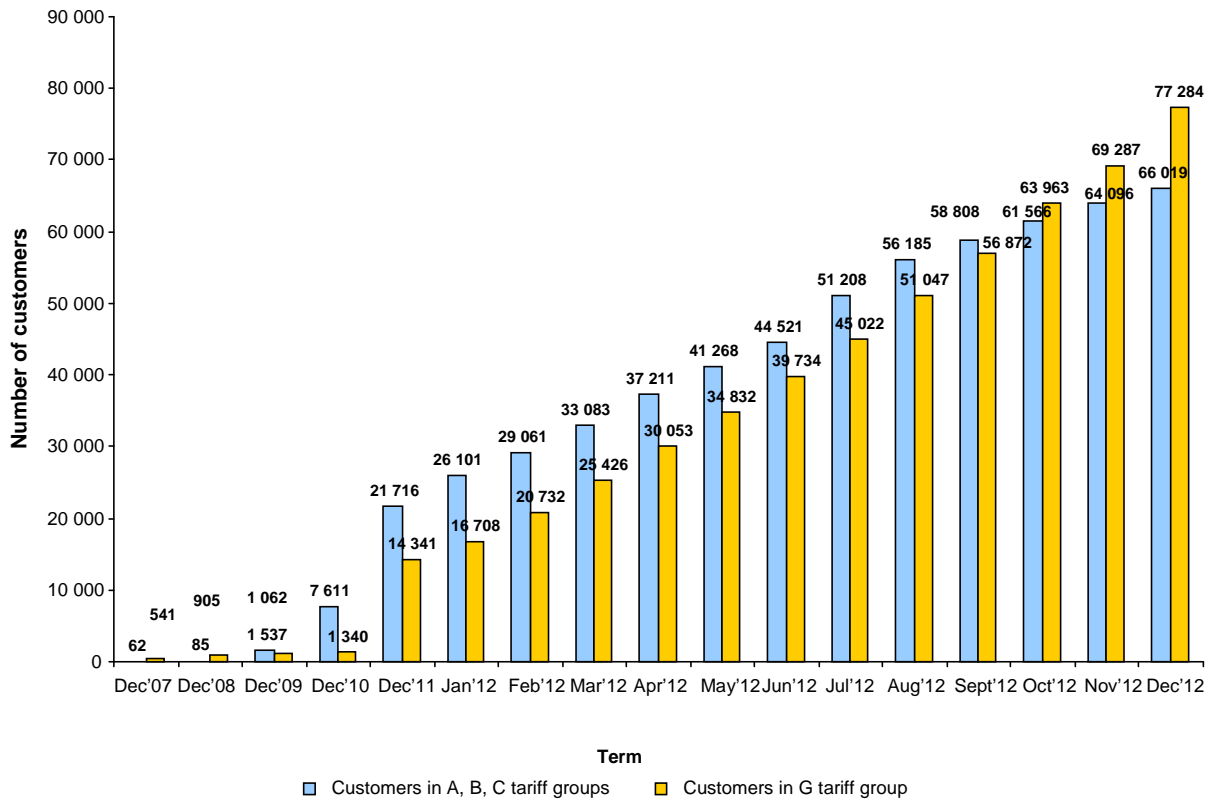
On the other hand, in the household consumers group an over fivefold increase in the number of customers who switched supplier was noted. Thus, one can observe significant pace of the TPA index increase within households, which can be a result of information campaigns organised by the President of ERO in the last years, cyclically organised fairs of consumer knowledge, as well as constantly improved price comparison tool, available on the ERO website. The second factor that influenced the current situation was the increase in electricity trading companies' activities aimed at acquiring new customers caused by a fall in demand for electricity in the domestic economy. 2012 was also the next year when an increased activity of alternative suppliers (new trading companies) was observed in the market. This activity is perceived as a positive sign for the retail market development; however it had also some negative aspects. In 2012, to a greater extent than a year before, ERO received signals - mainly from the household consumers - that some of the suppliers apply aggressive marketing and selling policies while presenting the offer and entering into new sale agreements. This situation confirmed the need to continue the educational and information activities aimed at improving the knowledge and awareness of small customers. Regardless of the facts mentioned above, along with the rise in the number of customers who decided to switch supplier, certain irregularities related to the supplier switching procedures and to the activities of individual market participants (suppliers, DSOs, middlemen and brokers) were observed in the electricity market. In 2012 there was also increased number of irregularities suggesting that the electricity undertakings performed activities restricting the competition with respect to their customers. According to the character of such cases, they were passed on to the President of the Office of Consumer and Competition Protection (UOKiK).

While assessing the growing TPA indexes, it should be remembered that in the general perspective still relatively small number of consumers (approximately 0.86%) exercised their right to switch supplier. However, it should be also stressed that in comparison to 2011 a considerable rise has been noted (in 2011 the index was at the level of 0.23%).

**Figure 2.** Percentage of TPA consumers in a particular tariff groups

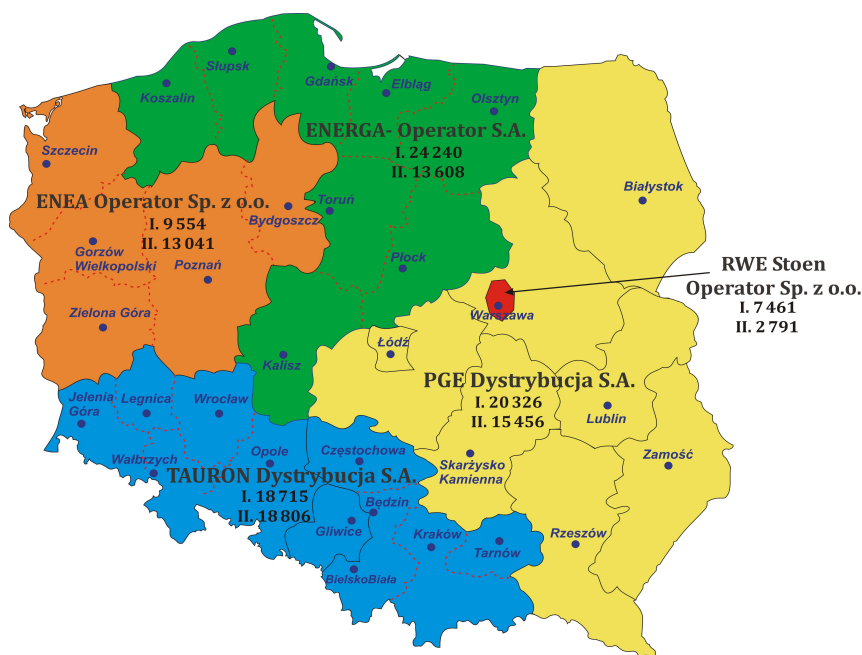


Source: ERO.

**Figure 3.** Application of the TPA rule, 2007–2012

Source: ERO.

The application of the TPA rule was uneven in different parts of the country what is illustrated by data provided by operators (fig. 4). The biggest number of consumers of A, B, and C groups, who decided to switch supplier is observed within the operating area of TAURON Dystrybcja SA. As regards households, the highest switching rate was recorded within the operating area of ENERGA-OPERATOR SA. In 2012 the highest volume of electricity supplied in accordance with the TPA rule was purchased by customers connected to the network of TAURON Dystrybcja SA. This DSO also had the biggest share in electricity supplied to customers under TPA rule in relation to the total volume of supplies – 49.56%. This was due to a large number of major industrial customers in the total number of customers connected to the network of this particular DSO. This situation was also affected by the consolidation of the companies TAURON Dystrybcja SA and TAURON Dystrybcja GZE SA in October 2012.

**Figure 4.** The application of the right to change the supplier within operating areas of individual distribution system operators

*Number of TPA customers across the areas of the 5 DSOs*

*I – Customers in G tariff group*

*II – Customers in A, B, C tariff groups*

*Source: ERO.*

In 2012 the electricity in the amount of 2,274.1 GWh was supplied to eight customers connected directly to the distribution network. All in all, the total volume of electricity sold in 2012 to the end-users exercising the TPA rule (supplied through the distribution and transmission networks), amounted to 44,798.6 GWh. It constituted 35.15% of electricity supplied to the end-users in total. It is worth noting that in 2011 end-users were supplied in electricity under TPA rule in the amount of 35,607.5 GWh, what constituted 28.6% of electricity supplied in total to the end-users in that year.

The data quoted above explicitly shows the high dynamics of competition development of the electricity market in Poland.

### **3.2.2.1. Monitoring the level of prices, the level of transparency, the level and effectiveness of market opening and competition**

In 2012 the President of ERO sustained the obligation to submit for his approval electricity tariffs for the customers qualified to the "G" tariff group (which includes mostly households), who are connected to the DSOs network and did not switch the supplier. The electricity prices for other groups of customers are set by the market.

Since 2010 the obligation to publish the supply offers has been provided for in the law. All suppliers who sell electricity to end-users are required to publish information on sale prices of gaseous fuels or electricity and the conditions for their application on their websites and grant access to it at their seats. The prices and conditions of offers are described and presented in detail on the websites or at the seats of the undertakings. In case of big industrial or commercial customers, the trading companies usually present them offers elaborated on an individual basis. The prices and other terms and conditions of agreements are negotiated every time with the contractor and differ depending on the duration of supply, its volume or reliability.

In 2012, similarly to the previous year, a price comparison tool for energy prices was available on the ERO website. The regulator obliged the suppliers selling electricity to the household consumers to

submit their offers not later than two days before the date they become effective. The prices are presented to the consumer in a transparent way, with a distinction of the components not related to the price e.g. commercial fees connected with entering into agreement or possibility of receiving additional benefits.

The President of ERO quarterly monitors the average electricity prices applied to the end-users, divided according to the consumption criteria (i.e. customers with an annual consumption of energy up to 50 MWh, between 50 and 2,000 MWh and above 2,000 MWh). Through *ad-hoc* testing – depending on the needs – the regulator monitors the level of electricity prices for the end-users, using the data from public statistics.

**Table 2.** Number of consumers, consumption volume, value and electricity average prices applied to end-users depending on the consumption volume

Consumer groups by consumption volume	Total number of consumers	Consumption volume [MWh]	Value [PLN]	Average price [PLN/MWh]
< 50 MWh	16,573,911	46,916,504.0	13,765,431.2	293.40
50 – 2000 MWh	38,475	28,871,074.5	7,935,722.3	274.87
> 2000 MWh	1,031	30,893,745.4	7,779,296.6	251.81
<b>TOTAL</b>	<b>16,613,417</b>	<b>106,681,323.9</b>	<b>29,480,450.1</b>	276.34

Source: based on the quarterly surveys from suppliers for 2012.

### 3.2.2.2. Recommendations on supply prices, investigations and measures to promote effective competition

#### Price regulation system

In 2012 the obligation to submit for approval the electricity tariffs regarding the consumers in the G tariff group was maintained. The tariffs are approved by the President of ERO and published in the "Industry Bulletin of the Energy Regulatory Office – Electricity".

Moreover, in 2012 the period for which the tariffs of electricity suppliers were binding with respect to the customers from G tariff groups connected to the network of the DSO for which the trading companies perform a complex service was extended until 30 June 2013.

Making the decision on prolongation of the currently-applied tariffs' period the regulator took into consideration:

- market situation (observed fluctuations of electricity wholesale prices and prices of the certificates of origin for electricity generated in RES),
- a new public law obligation to obtain and submit for redeeming by the President of ERO the certificates of energy efficiency or to pay the substitution fee, coming into force in 2013 (section 12 item 1 in relation to item 2 point 1 of the Energy Efficiency Act),
- increasing in 2013 the target for obtaining and submitting for redeeming the certificates of origin for electricity generated in the RES from the previous 10.9% to 12%,
- ongoing legislative process regarding the draft amendment to the Energy Law.

The electricity prices for the other groups of customers are set by the market.

#### Carrying out investigations and imposing measures to promote effective competition

In 2012 the President of ERO was addressed with many requests for intervention regarding the activities of the electricity undertakings, which, according to the customers, were violating their interests. The requests concerned in particular the cases of hindering the supplier switching process. The President of ERO undertook a series of steps aimed at solving the situation. These activities, which in most cases led to the change of supplier by the electricity consumers, are described below:

1. One of the companies encountered some difficulties in executing the electricity sale agreement concluded with a DSO. The customer had been cooperating with the operator since 2010. The company signed the latest sale agreement in January 2011 with the expiration date set for the end of 2012. Simultaneously the company gave the power of attorney for representing its interests in the contacts with the relevant DSO. During 2012 some problems with delivering VAT



invoices to the customer for the supplied electricity occurred and later the customer was informed by the operator about entering into electricity sale agreement with a supplier of last resort. After the intervention of the regulator, the operator admitted that due to the procedural improprieties the formalities for extending the sale agreement with the company for 2012 were not completed. Simultaneously, the trading company made a decision to compensate the sum overpaid by the company due to application of a supplier of last resort tariff by the supplier performing the role of default supplier.

2. The next intervention concerned a company which in September 2012 complained about an improper supplier switching procedure execution by a commercial representative of the previous supplier. The President of ERO turned to the DSO with a request for explaining how the supplier switching was carried out with respect to the customer. The operator explained that on 19 January 2012 the company responsible for customer service of previous supplier received from the new supplier a doubled supplier switching notice. The planned date of commencing the supplies was set on 1 March 2012. The notice was verified negatively due to the non-effective termination of a common service agreement and the new supplier was informed about that fact through the Information Exchange Platform. The next notice of 9 March 2012, with the planned date of commencing the supplies set on 1 June 2012, was also rejected due to the same reason. However, the DSO explanation did not answer the question why in the same time two sale agreements were executed on behalf of the customer, i.e. common service agreement with previous supplier and the electricity sale agreement with the new supplier. Thus, the President of ERO turned to both suppliers with a request for detailed explanations on this matter. Explanations provided by the new supplier showed that after receiving information from the company responsible for customer service of previous supplier about supplier switching process discontinuation, the new supplier informed the customer that the sale agreement for electricity had not come into force. Moreover, the new supplier notified that it did not impose any contractual penalty and returned the total amount of money paid for two electricity invoices to the customer. On the other hand, according to the explanations presented by the previous supplier the customer was still its client. Additionally, the previous supplier informed that it considered the customer complaint about the incorrect calculation of the penalty charge. On 13 June 2012 the new supplier filed a complaint on the previous supplier actions limiting the consumer right to switch supplier. The President of ERO called the previous supplier for continuing supplier switching procedure with regard to one customer and initiating procedure on account of another customer. In response, the previous supplier informed that it denied complying with the regulator's command. According to the supplier, it was entitled and even obliged to demand presenting the original or a certified copy of the power of attorney to represent the customer during the supplier switching procedure. In connection with the above, the previous supplier maintained its stand on suspension of the supplier switching procedure for one of the customers due to ineffective termination of the agreement. Moreover, the previous supplier once again refused to initiate the supplier switching procedure for the other customer claiming that its decision is motivated by failure to meet the deadline for submitting the supplier switching application by the new supplier. Therefore, the President of ERO for a second time called the supplier for discontinuation of practices that limit the customer right to switch supplier. In response to the regulator's calling, the previous supplier informed about resuming the supplier switching procedure with regard to one customers and its execution with regard to the second.
3. The next intervention was related to a consumer complaint of 30 August 2012 regarding hindering the supplier switching process. The company was complaining that the operator did not perform the legal obligation to enable the customer to change the electricity supplier. The company that issued the complaint informed the regulator that it many times asked the DSO for the identification numbers of the power delivery points and meter number, in accordance with the signed agreement and C21 tariff group. The company also requested DSO to stop financial settlements based on meter readings which are performed outside its building (in a situation when the shared parts are not metered) and bearing the costs of transmission losses by the customers. The presented explanations showed that the DSO informed the complaining company about the necessity of adjusting the metering and reading systems because of the lack of metering systems in the shared parts of the building managed by the company. It also informed that the individual rules of mutual financial settlements were set forth in the agreements for electricity sale and distribution service, signed and accepted by both parties. Moreover, the DSO informed that the complaining company is settled at low voltage, according to the rates of C21 tariff group,



and the energy volume adopted for financial settlements is the difference between the consumption showed by two meters measuring the supply and the sum of energy consumed by all tenants. To sum up, in the light of the obtained explanations it should be stated that at this moment there is no sign of violation of the customer right to switch supplier by this undertaking.

As a part of counteracting anti-competitive practices and promoting competition the President of ERO cooperates with relevant authorities such as the President of the Office of Competition and Consumer Protection (UOKiK). In particular, the responsibilities of the President of UOKiK include shaping the antitrust and consumer protection policies. The competences of the President of UOKiK in terms of competition protection include most of all initiating antitrust proceedings in cases of practices restricting the competition such as abuses of the dominant position on the market and prohibited agreements (cartels). Such proceedings may be concluded with an order to stop the unlawful activities or imposing a financial penalty. The President of UOKiK is also empowered to control mergers in order to prevent the situation when as a result of merging an entity with a dominant position on the market is established.

Having in mind the competences of the President of UOKiK in terms of competition and consumer protection stemming from the provisions of the Act of 16 February 2007 on Competition and Consumer Protection<sup>12)</sup>, the President of ERO directed a number of cases (around 35 letters from the G tariff group customers) concerning complaints on the energy companies' activities related to supplier switching. The listed actions may constitute practices violating the collective interest of consumers through violating the obligation to provide the consumer with reliable, true and complete information. They could be also recognised as cases of unfair market practices or acts of unfair competition. The customer complaints regarded mostly cases of being misled by the companies while signing unfavourable agreements - in most cases these were connected with the obligatory medical insurance that the customers were not informed about.

In 2012 the President of UOKiK was leading one antitrust proceeding and a number of explanatory proceedings, including<sup>13)</sup>:

1. an explanatory proceeding (ref.: RGD-400-6/12/WW) to provide a preliminary explanation whether the activities of Energa Operator in reference to rules of connecting individual customers (consumers) to electricity grid did not violate the provisions of the Competition and Consumer Protection Act. The proceeding has been initiated in connection with a complaint of a consumer who i.a. informed of being forced to sign an unfavourable contract. According to this complaint, the long period of waiting for connection to the electricity grid constituted burdensome term of the agreement as in the meantime, the customer is forced to use the electricity which price is higher by approximately 30%.

In the opinion of the President of UOKiK, the information collected during the proceeding did not provide a basis to ascertain that any violation to the provisions of the Competition and Consumer Protection Act occurred in connection with the activities of Energa Operator, what would justify initiation of an antimonopoly proceeding;

2. an explanatory proceeding (ref.: RWR 400-10/12/JB) to provide a preliminary explanation whether the provisions of the Competition and Consumer Protection Act, in particular of Article 9 of this Act, were violated by TAURON Dystrybucja S.A. based in Cracow (hereinafter referred to as "Tauron Dystrybucja") in reference to connecting entities to the electricity grid.

In the course of the above mentioned proceeding it was concluded that in this case no violation occurred that would justify initiation of an antimonopoly proceeding. The proceeding was closed;

3. an explanatory proceeding (ref.: RWR 400-12/12/JB) to provide a preliminary explanation whether in calculating the electricity consumption in case of damaging the electricity meter, Tauron Dystrybucja could commit a violation of the provisions of Competition and Consumer Protection Act, in particular of Article 9 of this Act.

In the course of the above mentioned proceeding it was concluded that in this case no violation occurred that would justify an initiation of an antimonopoly proceeding. The proceeding was closed;

4. an explanatory proceeding (ref.: RWR 400-35/12/JB) to provide a preliminary explanation whether Tauron Dystrybucja actions related to electricity meters replacement could violate the provisions of the Competition and Consumer Protection Act.

<sup>12)</sup> Journal of Laws of 2007, No. 50, item 331, as amended.

<sup>13)</sup> Fragment on the basis of the UOKiK information.

In the course of the above mentioned proceeding it was concluded that in this case no violation occurred that would justify starting an antimonopoly proceeding. The proceeding was closed;

5. an explanatory proceeding (ref.: RLU-400-28/11/MW) initiated in 2011 was continued to provide a preliminary explanation whether the actions of PGE Dystrybucja S.A. based in Lublin (hereinafter referred to as "PGE Dystrybucja") on setting the rules of arrangements with utility infrastructure investors and fees charged for those arrangements, constituted a practice restricting the competition in light of the Competition and Consumer Protection Act.

In the opinion of the President of UOKiK, the information collected during the proceeding did not give any basis to ascertain that any violation occurred in connection with the activities of PGE Dystrybucja, what could justify starting an antimonopoly proceeding. The proceeding was closed;

6. an explanatory proceeding (ref.: RLU-400-25/11/RD), initiated in 2011 was continued to provide a preliminary explanation whether the conduct of PGE Obrót S.A. based in Rzeszów (hereinafter referred to as "PGE Obrót") in reference to drawing bills for electricity supplies to individual customers, constituted a practice restricting the competition in light of the Competition and Consumer Protection Act.

In the opinion of the President of UOKiK, the information collected during the proceeding did not give any basis to ascertain that any violation occurred in connection with the activities of PGE Obrót, what would justify initiating an antimonopoly proceeding. The proceeding was closed;

7. an explanatory proceeding (ref.: RLU-400-29/10/IM), initiated in 2010 was continued to provide a preliminary explanation whether the actions of PGE Dystrybucja in reference to conditions of providing distribution service (possible discriminatory treatment of clients that switched supplier), constituted a practice restricting the competition in the light of the provisions of the Competition and Consumer Protection Act.

In the opinion of the President of UOKiK, the information collected during the proceeding did not give any basis to ascertain that any violation occurred in connection with the activities of PGE Dystrybucja, what could justify initiating an antimonopoly proceeding. The proceeding was closed;

8. an explanatory proceeding (ref.: RLU-400-22/11/IM), initiated in 2011 was continued to provide a preliminary explanation whether the actions of PGE Dystrybucja LUBZEL Sp. z o.o. in reference to conditions of providing distribution service, constituted a practice restricting the competition in the light of the provisions of the Competition and Consumer Protection Act (if the conditions vary depending on whether the customer switched supplier).

In the opinion of the President of UOKiK, the information collected during the proceeding did not give any basis to ascertain that any violation occurred in connection with the activities of PGE Dystrybucja LUBZEL Sp. z o.o., which would justify initiating an antimonopoly proceeding. The proceeding was closed;

9. an explanatory proceeding (ref.: RLU-400-13/11/PD), initiated in 2011 was continued to provide a preliminary explanation whether the activities of the Elbląg Division of Energa Operator connected with supplying electricity and calculating payments for its consumption, could in any way violate the provisions of the Competition and Consumer Protection Act which would justify starting an antimonopoly proceeding, and whether the case was in fact an antimonopoly case.

The proceeding had been closed and on 12 April 2012 an antimonopoly proceeding (ref.: RBG-411-02/12/PD) against Energa Operator was initiated on a basis of suspicions of employing by Energa Operator practices restricting the competition and abusing dominant position on the local electricity distribution market, covering the area where the distribution network of the entrepreneur is located. The practice consisted in threatening to stop electricity supplies in case when a customer is withholding to pay the electricity bills calculated on the basis of a wrongly-functioning meter or when the bill in principle or its amount was questioned, and the customer does not take any responsibility for erroneous functioning of a meter and, as a consequence, erroneous calculation of the bill, what could constitute a violation to Article 9 section 1 of the Competition and Consumer Protection Act. The proceeding was not closed in 2012;

10. an explanatory proceeding (ref.: RBG-400-27/11/JM), initiated in 2011 aimed at providing a preliminary explanation whether the companies Energa Operator and ENERGA-OBROT S.A. based in Gdańsk (hereinafter referred to as "Energa Obrót"), conducting an activity of distributing and supplying electricity tempted the clients of the companies Energetyczne Centrum S.A. and Energia dla Firm Sp. z o.o. (hereinafter referred to as "Energia dla Firm") to terminate their electricity sale agreements concluded under TPA rule and, thus, violated

the provisions of the Competition and Consumer Protection Act what would justify initiating an antimonopoly proceedings, and whether the case was in fact an antimonopoly case.

The explanatory proceeding did not lead to the initiation of the proceeding on practices restricting the competition and was closed;

11. an explanatory proceeding (ref.: RBG-400-33/11/JM), initiated in 2011, regarding possible anti-competitive activities of ENEA Operator Sp. z o.o. (hereinafter referred to as "Enea Operator") and ENEA S.A. (hereinafter referred to as "Enea") in case of switching the electricity supplier by Przedsiębiorstwo Komunalne w Kruszwicy Sp. z o.o.  
The information collected in course of this proceeding did not give any basis for initiating the antimonopoly proceeding. The proceeding was closed in 2013;
12. an explanatory proceeding (ref.: RGB-400-14/12) aimed at providing a preliminary explanation whether Energa Operator, through changing the conditions of the distribution agreement into less beneficial ones after switching by schools in Bratian and Gwiżdżiny (Nowe Miasto Lubawskie district) to the electricity supplier different than Energia Obrót, violated the provisions of the Competition and Consumer Protection Act what would justify starting an antimonopoly proceeding, and whether the case was in fact an antimonopoly case. The information collected in course of this proceeding did not give any basis to initiate the antimonopoly proceeding. The proceeding was closed;
13. an explanatory proceeding (ref.: RPZ-400-35/10/ŁD), initiated in 2010 aimed at providing a preliminary explanation whether the activities of Enea Operator, undertaken with relation to considering applications for wind farms connection, could violate the provisions of the Competition and Consumer Protection Act.  
The proceeding did not give any basis to initiate the antimonopoly proceeding and was closed;
14. an explanatory proceeding (ref.: RPZ-400-28/11/ŁD), initiated in 2011 in relation to rules adopted by the energy companies of the ENEA capital group concerning supplier switching. The proceeding was initiated in connection with a complaint of Energia dla Firm on the conduct of Enea Operator regarding impeding the customer right to switch the electricity supplier, delivered by the President of ERO.  
The proceeding did not give any basis for initiating the antimonopoly proceeding and was closed;
15. an explanatory proceeding (ref.: RPZ-400/9/12/DW) on finding whether the activities of Enea connected with calculating compensation in case of termination of the common service agreement within the "STAŁA CENA" offer could constitute a violation to the provisions of the Competition and Consumer Protection Act.  
The proceeding did not give any basis to initiate the antimonopoly proceeding and was closed;
16. an explanatory proceeding (ref.: RPZ-400-42/11/MT), initiated in 2011 in connection with a notice about anti-competitive actions of Enea Operator. The aim of the proceeding was to provide a preliminary explanation whether Enea Operator violated the provisions of the Competition and Consumer Protection Act. The company imposed on its customers an obligation to adjust electricity equipment to the changing conditions of electricity grid operation, including requiring from the entities connected to the grid to apply for a new connecting conditions and executing that obligation.  
The proceeding was closed in 2013 without giving any basis for initiating the antimonopoly proceeding;
17. an explanatory proceeding (ref.: RKR-400-7/11/WJ), initiated in 2011 to provide a preliminary explanation whether the activities of Enion S.A. in Cracow and Enion Energia Sp. z o.o. in Cracow (presently: Tauron Sprzedaż and Tauron Dystrybucja respectively) hinder the consumers from supplier switching and using electricity distribution services.  
In the opinion of the President of UOKiK, the information collected during the proceeding did not provide any basis to ascertain that any violation occurred to the provisions of the Competition and Consumer Protection Act, what would justify initiating an antimonopoly proceeding. The proceeding was closed;
18. an explanatory proceeding (ref.: RLU-400-15/12/MW) to provide a preliminary explanation whether the activities of PGE Dystrybucja in terms setting the content of its grid connection agreement constituted a practice restricting the competition.  
The proceeding regarding this case is still pending;
19. an explanatory proceeding (ref.: RBG-400-20/12/JM) aimed at providing a preliminary explanation whether the companies Energa Operator and Enea, conducting an activity of distributing and supplying electricity, through hindering the supplier switching by MEM Metro Group Energy

Production & Management Sp. z o.o. based in Warsaw, committed a violation to the provisions of the Competition and Consumer Protection Act which would justify initiating an antimonopoly proceeding and whether the case was in fact an antimonopoly case.

The proceeding regarding this case is still pending;

20. an explanatory proceeding (ref.: RWA-400-23/11/AT), initiated in 2011, aimed at providing a preliminary explanation whether the actions of PGE Obrót S.A. based in Rzeszów (hereinafter referred to as "PGE Obrót") in relation to providing complex supply service and ensuring distribution services for its individual clients, could violate the provisions of the Competition and Consumer Protection Act and whether the case was in fact an antimonopoly case. Within the scope of the above mentioned proceeding, a procedure applied by PGE Obrót is being explained in terms of conducting readings of meters and other items of the metering and billing system, controlling and replacing meters or their parts, as well as other metering equipment or metering and billing equipment (including installing seals); methods of calculating maintenance costs or replacement of meters and their parts, as well as other metering or metering and billing equipment (including installing seals); settling overpayments from settlements correction.  
The proceeding regarding this case is still pending;
21. an explanatory proceeding (ref.: RWA-400-11/11/AT), initiated in 2011, aimed at providing a preliminary explanation whether actions conducted by PGE Dystrybucja in relation to providing electricity distribution services to end-users at high, medium, and low voltage, violated the provisions of the Competition and Consumer Protection Act, and whether the case was in fact an antimonopoly case. Within the proceeding procedures applied by PGE Dystrybucja are explained i.e. in terms of: exploitation, maintenance and repairs of the distribution grid, planning the distribution grid development and its extension, receiving and investigating complaints filed by the property owners regarding the legitimacy of entering their properties by the employees of the company, and the method of executing the above mentioned works.  
The proceeding regarding this case is still pending;
22. an explanatory proceeding (ref.: RWA-400-18/11/AT/ZP), initiated in 2011, aimed at providing a preliminary explanation whether within the public service obligation related to ensuring access to the electricity market, PGE Dystrybucja violated the provisions of the Competition and Consumer Protection Act.  
The proceeding regarding this case is still pending;
23. an explanatory proceeding (ref.: RWA-400-20/11/AT/ZP), initiated in 2011, aimed at providing a preliminary explanation whether within the public service obligation related to ensuring access to the electricity market, RWE Stoen Operator sp. z o.o. based in Warsaw (hereinafter referred to as "RWE Stoen Operator") violated the provisions of the Competition and Consumer Protection Act and whether the case was in fact an antimonopoly case.  
The proceeding regarding this case is still pending;
24. an explanatory proceeding (ref.: RWA-400-9/10/DGB/MS), initiated in 2010, aimed at examining the rules of calculating the remuneration for RWE Stoen Operator and making financial settlements by RWE Stoen Operator with its clients in relation to removing interference of electricity grid elements resulting from reconstruction and modernisation of network equipment, including determining if the RWE Stoen Operator violated the Competition and Consumer Protection Act, and whether the case was in fact an antimonopoly case.  
The proceeding regarding this case is still pending.

As regards the other activities undertaken by the regulator in order to promote competition, in 2012 the President of ERO continued actions aimed at popularising the use of common service agreements in the offers of alternative suppliers. The common service agreements combine the terms and conditions of buy-sell electricity agreements and distribution agreements. Currently, after the switching, these two agreements become separated and as a result a customer receives two bills (from the supplier and distribution system operator). While benefitting from the supplier switching, the customer simultaneously bears the costs of paying two bills what partially eats up the savings. The situation may constitute a barrier in the process of supplier switching and put the previous supplier (the incumbent supplier offering common service agreement) in a privileged position. In order to be able to enter into common service agreements with the customers, the supplier first needs to settle this matter in a general distribution agreement with the distribution system operator (the general distribution agreement). This agreement defines the terms and conditions of supplier functioning on the operator's area and its cooperation with this operator.

In January 2012 the President of ERO was informed that the works aimed at developing a model of general distribution service agreement which would describe specific rules for providing complex service (the so-called "complex general distribution service agreement"), conducted by Association of Energy Trading (TOE) and Polskie Towarzystwo Przesyłu i Rozdziału Energii Elektrycznej (PTPiREE) from April 2011 were finalised. The President of ERO informed other market participants about the completion of this process. The regulator stressed that this model will enable entering into common service agreements with the household consumers what, in turn, gives households opportunity to conclude common service agreements with any electricity supplier – not only the default one. Additionally, the regulator recommended the five biggest Capital Groups (PGE, TAURON, ENERGA, ENEA, and RWE) to undertake all possible actions in order to popularise complex general distribution agreements in business transactions and thus popularise the model of complex sale among households switching the supplier. Simultaneously, the monitoring of the retail market conducted by ERO in the second half of 2012 was extended by collecting information on entering into complex general distribution agreements. The results of the retail market monitoring for 2012 showed that the model of the complex general distribution agreement elaborated by TOE and PTPiREE was not used in legal transactions. At the end of 2012, the supplier's interest in signing such agreements was insufficient – only eight suppliers turned to the operators to ask about possibility of signing the new complex general distribution service agreement. Moreover, the operators were not prepared to implement the model of the complex general distribution service agreement in practice. The obtained information showed that the operators were only at the stage of adjusting IT systems, including standardization of the processes and messages exchanged with the suppliers, necessary for the execution of the complex service.

Additionally, the works initiated by TOE in cooperation with ERO on the model of the common service agreement with households revealed weak points in the model of the complex general distribution agreement. The elimination of identified problems and improvement of the provisions of the agreement are subject to further works conducted by TOE and PTPiREE in cooperation with ERO in 2013.

### **3.3. Security of supply**

#### ***Implementation of safeguard measures***

In accordance with the Energy Law, the detailed conditions and procedures for implementing limitations to the sale of solid fuels as well as supply and consumption of electricity and heat were set forth by the Council of Ministers in a relevant ordinance. Simultaneously, the Council of Ministers, at the request of the minister in charge of economy, can introduce for a limited period of time, through an ordinance, limitations to the sale of solid fuels as well as supply and consumption of electricity and heat within the territory of Poland or its part, in case of a threat to: energy security of Poland (long-term imbalance on the fuel and energy market), security of electricity supply, safety of persons or threat of substantial material losses.

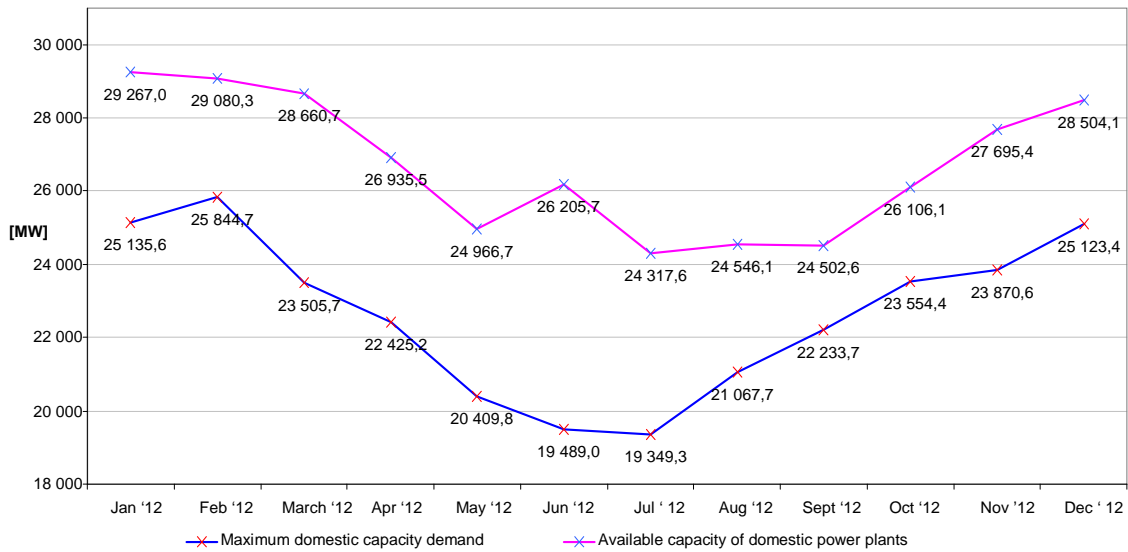
The President of ERO is not authorised to implement the safeguard measures as described in Article 42 of Directive 2009/72/EC.

#### **3.3.1. Monitoring balance of supply and demand**

As far as monitoring the network security and reliability of the is concerned, the President of ERO controls the activities undertaken in this field by the electricity system operators and assesses them in terms of ensuring the proper functioning of the network. In particular, the relation of available capacity of domestic power plants to the peak demand for capacity in the NES in individual months of 2012 is assessed by the regulator. The results of this assessment are presented on the figure below.



**Figure 5.** Available capacity of domestic power plants and the maximum domestic capacity demand at the evening peak, 2012 average values on working days in a month (MW)

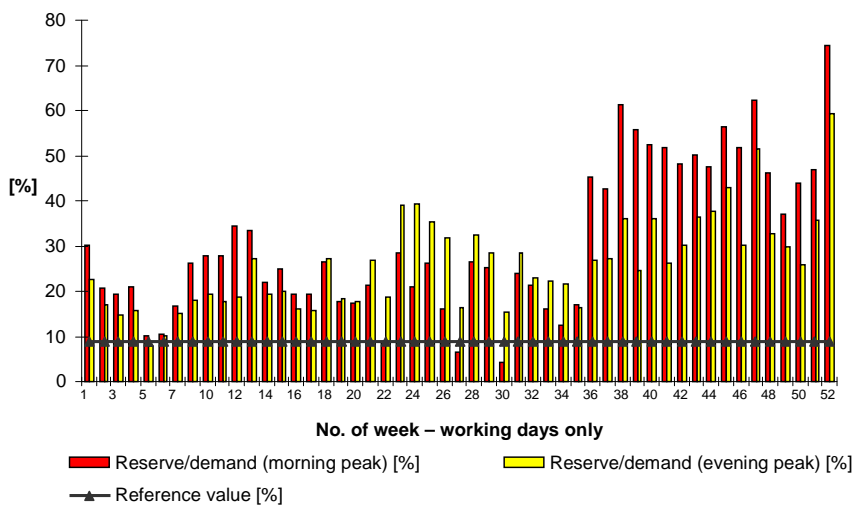


Source: ERO based on the data provided by the TSO.

In 2012 both in the morning and evening peaks, the average weekly ratio of capacity reserve to capacity demand in respective weeks on working days exceeded the reference value, set forth in the Transmission Grid Code at the level of 9% (the required level of operational reserve), with the exception of 4 weeks. The average level of reserves (below 9%) occurred during the following weeks: at the evening peak in the 30th week – 4%, at the morning peak in the 27th week – 7%, and also at the evening peak in the 5th week and at the morning peak in the 22nd week – 8%.

The data regarding the capacity reserves in the morning and evening peaks of capacity demand in 2012 is presented below.

**Figure 6.** 2012 capacity reserves in relation to capacity demand at the morning and evening peaks (based on the weekly reports of the PSE SA, including only the working days)



Source: ERO based on the data provided by the TSO.

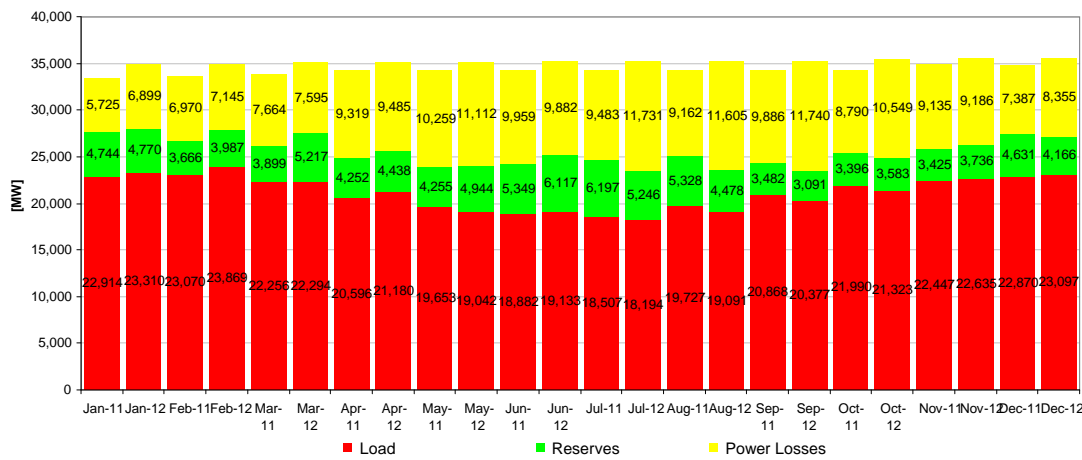
**Table 3.** 2012 minimum and maximum capacity reserves (based on the daily reports submitted by the PSE SA)

	Morning Peak		Evening Peak	
	Capacity Reserve [MW]	Reserve/Demand [%]	Capacity Reserve [MW]	Reserve/Demand [%]
Min	827	4	1,195	5
Max	14,245	96	12,869	76

Source: ERO based on the data provided by the TSO.

In the fig. 7 the average monthly values (of the evening peaks on working days) for loads, power losses, and reserves in the system for individual months in 2011 and 2012 were compared. The presented data shows that in 2012 the fall of reserves in relation to recorded load was at a similar level in comparison to the average value calculated for 2011. Similarly, basing on the average monthly values of evening peaks on working days showed in fig. 8, it can be observed that the average value of power losses increased slightly in comparison to the data given for 2011.

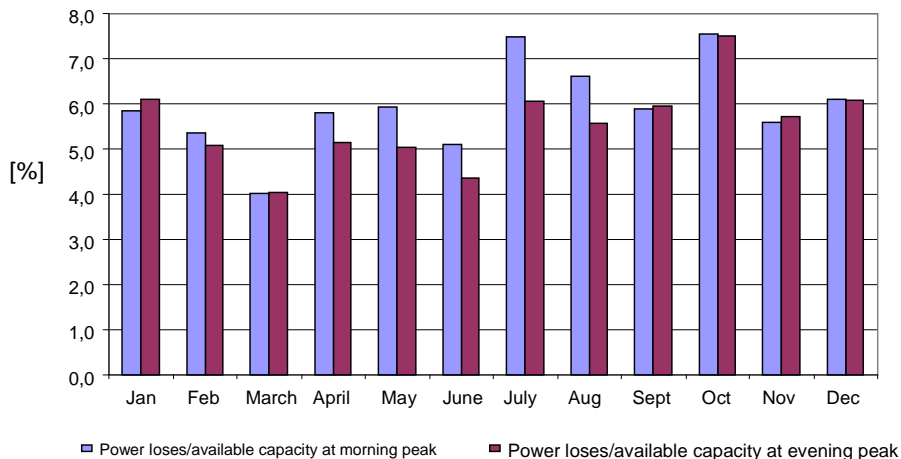
**Figure 7.** Utility power plants - a comparison of selected operational aspects for 2011 and 2012 (based on the average annual values from evening peaks on working days)



Source: ERO based on the data provided by the TSO.

The power losses in the morning and evening peaks were similar (the biggest difference: 1.4% occurred in July). The higher power losses in comparison with the domestic capacity demand on working days occurred in October 2012 in the morning and evening peaks and amounted to 7.5%.

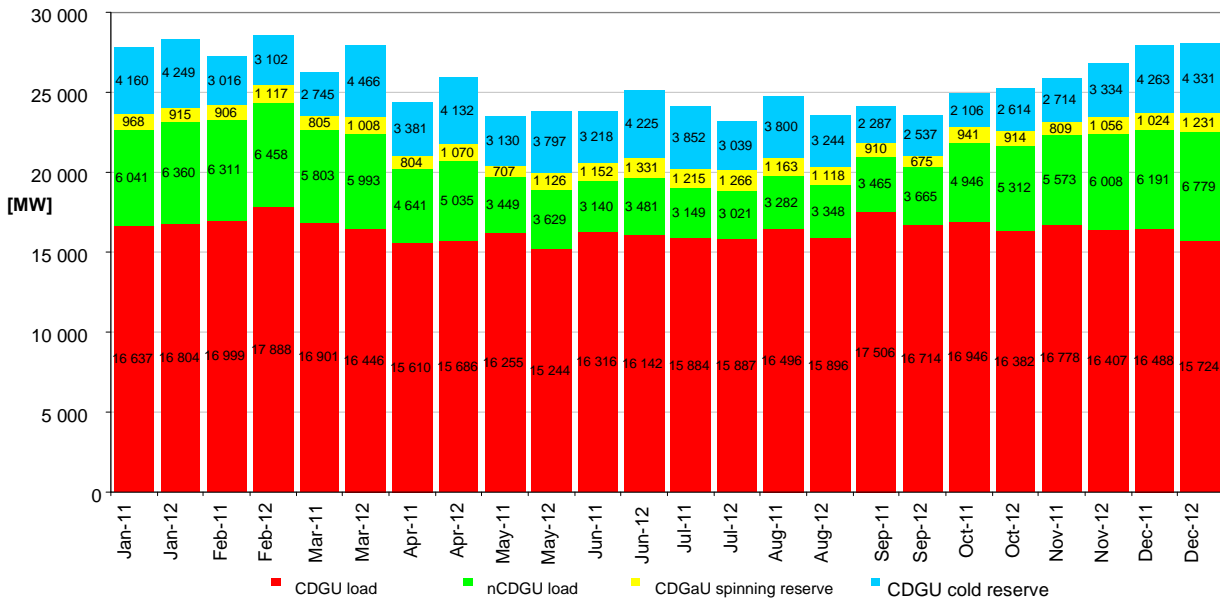
**Figure 8.** Power losses in relation to available capacity at the morning and evening peaks of the domestic capacity demand on working days for subsequent months of 2012



Source: ERO based on the data provided by the TSO.

Regardless of the above, in comparison to 2011, on average a decrease in capacity reserves in utility power plants and increase in power losses connected with major, medium and emergency repairs occurred in 2012. The figure presented below shows available capacity and capacity reserves at domestic power plants in the years 2011-2012. On the basis of this data it can be stated that the average load of centrally dispatched generation units (CDGUs) has risen slightly in relation to 2011. A similar situation occurred in relation to the change in load of CDGUs which in 2012 increased by approximately 5.5% on average in comparison with the previous year. While comparing the average 2011 and 2012 values of making use of cold and spinning reserve from CDGUs, some slight falls can be noticed in case of cold reserve – around 5% and in case of spinning reserve – about 3% during a year.

**Figure 9.** Available capacity and the capacity reserves at domestic power plants available for the TSO in 2012 in relation to 2011 - average monthly values for the domestic daily peak demand



Source: ERO based on the data provided by the TSO.

### 3.3.2. Monitoring investments in generation capacities in relation to SoS

Similarly to 2011, the installed capacity was maintained on a relatively high level exceeding 37 GW. Moreover, an increase by over 1.8% was noted in 2012. The available capacity and capacity reserves in the NES remained in 2012 on a level sufficient from the point of view of the current operational security. However, it should be also underlined that the maximum capacity demand in 2012 was close to the level of 2011 and lower than in the previous years, and this index influences greatly the security of electricity supplies.

The possibilities of balancing the electricity supply and demand are reviewed by the President of ERO. This review is based on the 15-year investment plans of electricity generators. The plans are submitted to the President of ERO every 3 years (under the provisions of the Energy Law) or more often (on the summon of the President of ERO) by generators producing electricity in units with total installed capacity not lower than 50 MW. The latest monitoring of the security of electricity supply was conducted by the regulator in 2011 and its results were described in detail in the National Report 2012. The next review will be performed in 2014.

In relation to the planned investments in the interconnectors, the required developments of the transmission system are defined by the TSO and included in the TSO development plan (that is subject to agreement with regulator) in terms of satisfying the current and future electricity demand as well as with the EU-wide development plan (TYNDP 2012) in section dedicated to interconnectors. The table below presents a list of projects related to the cross-border interconnectors included in the development plan of the PSE SA for the years 2010–2025.



**Table 4.** Investments in projects related to cross-border infrastructure development listed in the PSE Operator SA development plan with respect to meeting the current and future electricity demand for the years 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 220/110 kV 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 220/110 kV 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 – stage I
Extension of a 400 kV switchboard at the 400/110kV Narew substation
Construction of a 400 kV Płock – Olsztyn Małki line
Extension of a 400/110 kV Olsztyn Małki substation
Construction of a 400 kV Łomża substation
Construction of a 2-track 400 kV Ostrołęka – Stanisławów line with a partial use of the route 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
Construction of a Elk - Polish border line
Installation of phase shifters on Krajnik – Vierraden line
Installation of phase shifters on Mikułowa – Hagenwerder line
Construction of a line of relation Plewiska – Polish border towards Eisenhuettenstadt – executing preliminary works
Modernisation and extension of a 400/220 kV Krajnik substation
Construction of a 400/220/110 kV Kozienice substation
Modernisation and extension of a 400/220/110 kV Mikułowa substation
Extension of a 400/110 kV Płock substation

Source: PSE Operator SA development plan.

As a result of the completion of the above listed investment projects, the cross-border transmission capacity between Poland and Germany is expected to increase by 2,000 MW and between Poland and Lithuania by 1,000 MW<sup>14)</sup>.

### 3.3.3. Measures to cover peak demand and shortfalls of suppliers

The competences of the President of ERO in this field include announcing, organising and conducting tenders for building new electricity generation capacity or implementing initiatives aimed at reducing the demand for electricity. It should be stressed that such activities can be undertaken in case of a potential long-term threat to the security of electricity supply, following the statement issued by the minister in charge of economy on the basis of a report developed and presented to the European Commission every two years, that the existing and being under construction electricity generation capacity as well as actions aimed at rationalisation of electricity use do not ensure a long-term security of supply. Before announcing call for tenders, the President of ERO agrees with the minister in charge of public finance and other relevant public 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 agreement concluded by the President of ERO with the winning tenderer describes particularly the participant responsibilities, types of financial and economic instruments and rules of settling the financial support from those instruments. Specific requirements regarding the content of the bidding documentation as well as conditions and method of organising and conducting the tender are described by the minister in charge of economy in an ordinance.

So far, circumstances that would justify announcing the above mentioned tender have not occurred.

<sup>14)</sup> The estimated growth of transmission capacity is based on the information presented by the PSE Operator SA to the EC within the works on selection of PCI projects.

As regards other measures to cover peak demand and remedy the cases of supply shortfalls from one or more suppliers, these are determined by the minister in charge of economy as the authority responsible for supervision over security of gaseous fuels and electricity supply as well as over functioning of domestic energy systems, to the extent defined in the Energy Law. In particular, these activities are described in the energy policy prepared by the minister in charge of economy. Currently binding is the "Polish Energy Policy until 2030", adopted with a resolution of the Council of Ministers on 10 November 2009.

## 4. THE GAS MARKET

### 4.1. Network regulation

#### 4.1.1. Unbundling

##### *Designation and certification of transmission system operators*

In 2012 the President of ERO did not conduct any certification proceedings regarding transmission system operators because 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 to the Polish law order was not completed. Moreover, none of the transmission network owners applied to the President of ERO for the TSO certification.

In 2012, analogically to the previous years, there was only one gas transmission system operator – Operator Gazociągów Przesyłowych Gaz-System SA (hereinafter: OGP Gaz-System SA), which has been performing that role since 2006 under the decision of 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. Moreover, since 17 November 2010, under the decision of the President of ERO, OGP Gaz-System SA has also been operating as the TSO on the Polish section of the Yamal-Western Europe pipeline. The owner of this pipeline is SGT EuRoPol Gaz SA, an energy undertaking licensed to transmit gaseous fuels, controlled by a person from third country.

An initial assessment of OGP Gaz-System SA unbundling model (in terms of operating on its own networks) suggests that, under certain conditions, it would be compliant with the requirements of the Ownership Unbundling Model described in Article 9 of Directive 2009/73/EC in terms of operating on the proprietary networks. However, the issue of ownership supervision should be regulated – it should be transferred from the Ministry of State Treasury, which presently supervises also other entities in the natural gas market involved in production (extraction) or trade in gaseous fuels as well as electricity.

In relation to operatorship on networks which do not belong to OGP Gaz-System SA, the initial assessment leads to a conclusion that on the Polish section of Yamal pipeline OGP Gaz-System SA currently performs the function of the TSO in a form corresponding to the Independent System Operator (ISO). However, the assessment if the TSO complies with the respective regulation will be dependent on final solutions adopted by Poland while implementing the provisions of Directive 2009/73/EC.

##### *Unbundling of distribution system operators*

The operational conditions and obligations of the gas distribution system operators (DSOs) are determined in the Energy Law.

In light of the above mentioned Act, a gas DSO operating within a structure of a vertically integrated undertaking, has an obligation to be fully unbundled on the legal organisational and decision making level. Moreover, the DSO must be fully independent from other types of activity connected with:

- 1) transmission, distribution and storage of gaseous fuels, liquefaction of natural gas as well as its regasification in LNG installations or
- 2) transmission or distribution of electricity.

The operators which are mentioned above cannot conduct a business activity related to production or trading in gaseous fuels or electricity, and are not allowed to perform such functions on the basis of agreements for the benefit of other energy undertakings.

The obligation of legal and organisational unbundling of the gas DSOs functioning within vertically integrated undertakings is not applicable if the number of consumers connected to the DSO network is not greater than 100,000 and the annual volume of gaseous fuel sales does not exceed 100 million cubic metres.

Taking the above mentioned into account, one can conclude that particularly a company engaged in a network activity is not allowed to have rights and/or shares in companies involved in supply or generation activity. Holding such shares by a network undertaking means a direct financial interest in the results of the supply sector and, as a consequence, the board of the company loses the ability to “act independently”.

When the TSO or DSOs do not comply with the conditions and criteria of the independence, the operators are subject to fines. The conditions for imposing penalties by the President of ERO were described in point 3.1.1. of this Report.

In 2012 distribution activity was performed by 37 DSOs, designated through the decisions of the President of ERO, including 6 legally unbundled distribution companies and 31 operators that are not subject to the legal and organisational unbundling obligation.

With regard to 6 DSOs from the PGNiG SA capital group, the unbundling process has been completed. Under a decisions issued by the President of ERO, all companies were designated DSOs until the end of validity term of their distribution licences. Moreover, in 2011 two vertically integrated energy undertakings exceeded the threshold of 100 million cubic metres and therefore in 2012 the unbundling process of these companies was continued.

### ***Storage System Operator***

In 2012 the President of ERO appointed the company OSM Sp. z o.o. as the storage system operator (SSO) of gaseous fuels in the area defined under the licence for storage of gaseous fuels in storage facilities for the period between 1 June 2012 and 31 May 2022. The application for appointing the SSO was submitted to the regulator by the owner of underground gas storage facilities – PGNiG SA, which transferred to OSM Sp. z o.o. the exclusive right to use the storage installations in order to perform the service of storing gaseous fuels. As a consequence, the decision on appointing the company PGNiG SA as the storage system operator of gaseous fuels for the period from 1 January 2009 to 31 December 2025 was revoked. The reason for such decision was the fact that PGNiG SA permanently ceased the licensed activity in terms of storing gaseous fuels in storage installations, that was subject of the licence issued by the President of ERO.

### ***Natural Gas Liquefaction System Operator***

There were two natural gas liquefaction system operators in 2012. The activity related to the utilization of liquefied natural gas installations was conducted by entities which simultaneously acted as the DSOs. Such installations supply gas mainly to the distribution networks or to installations that are not connected to the domestic gas system.

### ***Compliance Programmes***

The legal basis of developing the Compliance Programmes by the operators as well as the guidelines regarding the content of the reports from their execution were described in section 3.1.1. All DSOs that are obliged to submit to the regulator their reports on execution of the Compliance Programmes, fulfilled their obligation for the year 2012 and met the statutory deadline (the end of Q1 2013). The TSO also submitted its report. In accordance with the obligation formulated in the Energy Law, the reports were published in the Industry Bulletin of ERO and on the regulator’s website.

The reports presented by the operators showed that in the controlled period no cases of violating the Compliance Programmes occurred. There were neither any complaints or requests related to the execution of the programmes.

In order to implement, comply with, monitor and interpret the Programmes, the operators created a position of a Compliance Officer which should be provided with a full independence and be distinguished from other positions in a given company. In practice, however, only one operator complied with this condition. In other cases, the position was combined with other non-executive or even managerial positions. The Officers instructed all employees of the operators that they are unconditionally obliged to obey the provisions of the Programmes.

The subsequent DSOs updated their instructions and standards for connecting to the gas network in order to adjust procedures to the new Distribution Grid Codes. The templates of documents (applications and agreements) which are necessary for performing gas distribution service were also updated. These changes should be assessed positively as the standardisation will lead to non-discriminatory treatment of system users.

In the opinion of the regulator, the Compliance Programmes should be available not only to the operator's staff but also to every interested gas market participant and thus they should be published on the websites of individual operators. In particular, the access to the Programmes should be provided for the shippers which will be then able to control if the operators comply with the rules of non-discriminatory treatment of all transmission and distribution systems users. The presented reports show that a half of controlled entities complied with this good practice.

The procedure of supplier switching is one of the most important information that should be made available to the market participants. All DSOs published on their websites and at their seats information regarding the procedures of supplier switching together with a set of documents necessary to conclude a network connection agreement and gas distribution service agreement. In order to facilitate the free choice of supplier, the DSOs publish also a list of the shippers with which distribution agreements were concluded.

In order to protect sensitive data, individual DSOs updated their security data management systems. A part of operators obtained certificates confirming the compliance of security data management system with the ISO norms; the rest of the DSOs are making efforts to obtain such certificates.

One of the important aspects which should be addressed within the Compliance Programmes are the rules for properly conducted unbundling process (i.e. issues regarding independence, separate brand, logo or seats). To ensure compliance with these rules the TSO reviewed the way of displaying the promotion and advertising materials of other energy undertakings in a series of controls conducted in the company rooms. In the ERO opinion such activity constitutes a good practice which is highly recommended to other operators.

#### **4.1.2. Technical functioning**

##### ***Balancing services***

The rules of gas system balancing and congestion management are developed by TSO and DSOs (in accordance with Article 9 section 1 of the Energy Law) and are subject to approval of the President of ERO in a relevant grid code.

In 2012 the rules of system balancing were described in the second part of the Transmission Grid Code approved by the President of ERO with the decision of 27 September 2011. The rules were based on the obligation to pay imbalance charges above the limits defined in the code.

Having in mind the adoption of the Framework Guidelines on Gas Balancing in Transmission Systems by ACER, in 2012 works aimed at implementing to the national system solutions enabling the TSO to apply the market mechanisms for balancing were conducted. The new balancing rules entered into force on 1 January 2013.

Apart from the works devoted to balancing rules development, in 2012 the President of ERO was also monitoring the charges for imbalancing, in accordance with a former Transmission Grid Code which was in force until the end of 2012.

##### ***Changes in the Transmission Grid Code***

On 24 July 2012 the President of ERO by an administrative decision approved the Transmission Grid Code and set its effective date on 1 January 2013. The document introduces important changes allowing for harmonisation of system operation rules with the standards developed by the ENTSO-G. Moreover, the grid code introduces operating tools for gas market development in Poland and implements solutions included in the third energy package.

The new provisions of the Code aim at promoting competition by facilitating access to the gas market for new entities and simplifying the rules of the transmission system use. Furthermore,

a virtual trading point was introduced that enables selling and purchasing the gaseous fuel from transmission network, irrespective of its physical location. Additionally, the introduction of such solution allows for trading gas on the gas exchange led by POLPX. Introduction of the virtual entry and exit points (the entry-exit model) facilitates also finalisation of transactions on the OTC and balancing markets. On such market transactions are concluded between transmission system users and Gaz-System SA as the transmission system operator.

In comparison to the previous solutions, the Code reduces the number of imbalances limits to one daily threshold set on the level of 5%. Additionally, the solutions adopted in the Transmission Grid Code will simplify the gas market functioning on the connections with distribution and storage systems. Therefore, the distribution areas were created and one entry and one exit point were set for the whole operating area of each DSO. The DSOs and SSO conclude with Gaz-System SA an inter-operator transmission contract (ITC), which includes the current operational arrangements and other issues related to capacity allocation. In accordance with the proposed rules, only the DSOs and SSO will be entitled to purchase capacity (contractual capacity) at the connection points with the transmission network. The capacity will be made available to other market participants in the form of capacity allocations in the transmission system adequate to the demand for distribution and storage services of gaseous fuel.

In order to enhance the development of the balancing market certain instruments were created, such as the information platform of OGP Gaz-System SA, and the gas exchange was launched allowing to implement market-based balancing mechanisms.

### *Changes in the Distribution Grid Codes*

In 2012 changes to the Distribution Grid Codes of the major DSOs were approved, due to the changes in the Transmission Grid Code. The changes introduced to the Distribution Grid Codes were aimed at adjusting the rules of gas distribution system functioning to the new market model described in the TSO Code, which came into force on 1 January 2013.

The new Distribution Grid Codes introduced the following changes:

- new rules of cooperation between operators ensuring the removal of congestions at the entry points to the distribution area,
- extension of the supplier switching procedure by a possibility of purchasing gas at the virtual point and ensuring contractual capacity for gas buyer in case of supplier switching in the networks of small DSOs,
- procedures for notifying the contracts for execution, taking into account the new market model with gas trading at the virtual point,
- new allocation rules of gaseous fuel at the entry point to the distribution network, taking account of the gas trading at the virtual point as well as estimations of gas volume based on temperature indexes,
- restricting actions related to balancing the nitrogen and propane-butane gas (according to the new Transmission Grid Code, the balancing services in the methane rich gas network will be performed by the TSO),
- providing opportunity to sell gas at the virtual point with regard to the units connected to the distribution network,
- improving the transparency of the network connection procedures.

### *Security and reliability standards, quality of service and supply*

According to the Energy Law the President of ERO is responsible for monitoring the gas system i.a. in terms of security of gas supply. This task has a general character as the law does not enumerate specific activities as it is in the case of Article 5 of Directive 2009/73/EC.

As far as the security and reliability of supply is concerned, the President of ERO controls how the gas system operators fulfil their legal obligations. Regulator also assesses their actions in terms of ensuring proper system operation, according to the criteria described in the grid codes. The control is also conducted within analysis of the development plan execution reports, including monitoring implementation of projects aimed at ensuring the continuity of transmission and distribution services at required level of security and reliability level, as well as creating conditions for market development.



While analyzing the execution of investment projects following criteria related to security of supply are taken into account:

- adjusting gas systems to the new operational conditions, resulting from connecting new gas sources and new customers to the network,
- possibility of diversification of gas supply sources and transmission routes to Poland,
- reconstruction or modernisation of existing gas infrastructure facilities,
- adjusting systems to the binding norms, legal and technical regulations,
- elimination of the bottlenecks in the networks.

The monitoring is based on the annual reports on the development plans execution and comparing them with the previously agreed development plan. Particular attention is paid to a list of planned and incurred expenditures and investments as well as quantity data such as the number of customers and the volume of planned and executed gas supplies. Additionally, the network security can be assessed on the basis of data on network assets age profile as well as the number of interruptions and breakdowns, displayed in the above mentioned reports. The conclusions from the monitoring are further considered, particularly while agreeing the development plans. Moreover, the control of security standards includes controlling if the relevant entities fulfil the obligation to maintain the obligatory natural gas reserves as well as reporting by the operators on the applied limitations in gas supply.

The controlling of the quality standards of customer service and quality parameters of gaseous fuels is supposed to protect the customers from lowering – by gas undertakings operating in the market – both the quality of supplied fuels (such as the combustion heat), standards of service (supply interruptions) and the standards of customers service.

The quality parameters of gaseous fuels and quality standards of customer service, including the method of filing a complaint, are regulated by the Ordinance of the Minister of Economy of 2 July 2010 on specified conditions of gas system operation<sup>15)</sup>. Under the Ordinance, the gaseous fuels supplied by the gas undertakings should meet certain quality parameters. Simultaneously, the legal act imposes on the TSO and DSOs the obligation to control quality parameters of gaseous fuels.

The controlling of gaseous fuels quality is held at a customer request. Moreover, in case of any objections concerning the quality of supplied gaseous fuels, the customer can ask for controlling if the metering system functions correctly. Such a control is carried out in an independent laboratory accredited by a certification unit in accordance with the rules and mode described in the Act of 30 August 2010 on the compliance assessment system<sup>16)</sup>. In case of detecting any irregularities, the energy undertaking covers the costs of inspection and makes a correct settlement for supplied gas on its own, in accordance with the rules and deadlines set forth in the tariff.

Up until now the complaints have been raised mainly by the household consumers and the intervention of the President of ERO consisted mainly in calling the TSO and DSOs for submitting the reports on gas quality (including the average monthly combustion heat) in the part of gas network to which the installation of the complaining was connected. In some cases, the results of analyses conducted by research institutes and scientific units were also used. The regulator does not have an access either to a laboratory or adequate equipment to conduct its own tests of the quality of gaseous fuels.

The regulatory activity of the President of ERO in terms of controlling the quality standard and gas quality parameters is also executed in the process of approving tariffs for gaseous fuels. The President of ERO accepts prices and charges provided for in the tariffs only when they are calculated in compliance with the quality parameters set forth in the tariff ordinance. If the quality parameters of supplied gaseous fuels do not meet the standards described in the above mentioned ordinance, a consumer is entitled to a discount which is calculated according to the method described in the tariff. The tariff provides also for discounts in gas supply charges if the quality standards of the customer service are not kept. These charges result directly from the above mentioned ordinance and are calculated on the basis of the tariff.

The customers, in general, are not aware of their rights while complaining to the regulator about the activities of gas undertakings. In such cases they are provided with explanation and information about their rights and responsibilities, according to the currently binding law.

The control of security and reliability of supply as well as quality standards was also conducted on the basis of information reported by the TSO with regard to revenues and costs resulting from

<sup>15)</sup> Journal of Laws, No. 133, item 891, as amended.

<sup>16)</sup> Journal of Laws, No. 204, item 2087, as amended.

the Transmission Grid Code. The relevant information about charges and discounts calculated by the TSO on the basis of the second part of the Transmission Grid Code is submitted quarterly to the President of ERO. The information allows for identification and assessment of cases when the quality parameters of gaseous fuels were not met, as well as the limitations to supply were introduced due to TSO reasons.

### Monitoring time necessary to connect and repair

Monitoring time necessary to connect entities to the network and to repair these networks is systematically conducted by ERO and includes i.e. verification and analysis of information from undertakings, their customers and other stakeholders.

The information about interruptions and limitations in gas supply conducted by the TSO are presented in table 6.

**Table 5.** Interruptions and limitations of gas supplies in the transmission network in 2012

	Occurrences	Interruptions and limitations			
		Duration [min]	Number of customers affected	Average time [min per consumer]	Volume of unsupplied fuel [million cubic metres]
Downtimes	49	135	1	135	0.010
Scheduled works in progress	310	-	-	-	-
Limitations	82	3,119,464	-	-	-

Source: ERO.

While comparing the data presented in the table above with the data from previous periods, a considerable increase in recorded downtimes in the transmission network can be noted as well as significant rise in limitations, resulting from the TSO scheduled works. In 2012 one can note 82 cases of limitations to gas supply, introduced generally in connection with the operator works on the transmission network. The investment works conducted by the TSO did not directly influence the decreased number of downtimes, what may be caused by extensive works on new projects implementation. Nevertheless, the current situation requires some improvement and the level of works on maintaining the existing network in the proper technical conditions needs to be evaluated.

The level of the transmission network development translates also into problems with ensuring supplies to the customers applying for connection to the distribution networks in periods of increased demand for gas. This, in turn, results in concluding interruptible supply contracts by TSO and refusing to connect to the network due to technical reasons. The needs for network investments are illustrated by the ratio of the average duration of interruptions in gas supplies per the number of customers connected to the transmission network, which amounted to 135 minutes per customer in 2012. However, it should be stressed that this time was over two times shorter than in 2011.

**Table 6.** Duration of Interruptions in gaseous fuel supply per number of customers connected to the transmission and distribution networks in 2012

Year	Interruptions					
	Downtimes			Scheduled works in progress		
	Duration	Number of customers affected	Average time	Duration	Number of customers affected	Average time
	[min]	[number]	[min per customer]	[min]	[number]	[min per customer]
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	134,905,821.96	136,307	989.72	162,790,249.80	183,548	886.91
2012	102,370,430.40	91,931	1 113.56	159,639,406.18	166,928	956.34

Source: ERO.

In 2012 the President of ERO monitored the time necessary for completing connection to the gas network by energy undertakings. Information on the number of connections to the networks of TSO and DSOs (being subject to the legal unbundling obligation) are presented in the table below.

**Table 7.** Completed connections to the gas network in 2012

	<b>Number of connections completed in 2012</b>	<b>Number of connections to the network not completed in 2012</b>	<b>Number of connections with exceeded execution time</b>	<b>Standard time of executing connections to the gas network</b>
OGP Gaz-System SA	14	1	1	33-months – for end-users group A  22-months – for end-users group C in terms of transmission and distribution
Distribution System Operators	40,320	4,685	6,639	5-9 months

Distribution system operators obliged to be legally unbundled.

Source: ERO.

The information presented in the table show a high number of connections to the gas network completed by the TSO and DSOs in 2012. At the same time, the number of connections to the distribution network which exceeded the scheduled execution time does not rise above 17%. The time of completing a connection to the network is also very important. In case of customers connected to the distribution network, the time span for the connection was between 5 and 9 months. The time was dependent on the technical conditions required for the completion of the connection in order to supply gaseous fuel to the connected object. The above data shows that the time of completion is decidedly shorter when only construction of gas connector is required. However, it may take more time when the works are related to the construction of a pipeline and connector or connector with gas station. It may indicate to a long and time-consuming procedures related to obtaining permits required for the network construction. Thus, the collected data confirm the need for legislative activities aimed at simplification of the investment process.

On the basis of information obtained during the ERO gas system monitoring in terms of conditions for network connection, the main reasons for missing the deadline for network connection were identified, i.e.:

- obtaining required administrative and legal decisions (that is difficulties in obtaining the permits from property owners for localisation and construction of a pipeline/connector and related necessity to obtain legal title to the estate on which the network or gas installation was supposed to be built; a long lasting administrative or court proceedings in terms of determining utility easement),
- customer's delays regarding meeting the deadlines set by the connection agreement,
- unfavourable weather conditions causing the delays in outdoor works.

Moreover, the President of ERO monitored if network companies fulfilled their obligation to notify regulator of every case of denying connection to the gas network. The regulator also settles disputes regarding refusals to conclude connection agreement and considers complaints regarding the conditions for connecting to the network and their execution, as well as conducting repairs of those networks. In 2012 ERO received notices from gas undertakings informing about issuing 6,322 refusals of connecting to the gas network. Such cases are subject to the regulator's monitoring.

**Table 8.** Number of refusals for connecting to gas network

Item	Name of undertaking	Number of refusals in 2012
1.	OGP Gaz-System SA	19
2.	Distribution System Operators of PGNiG SA Capital Group	6,296
3.	Distribution System Operators not required to be legally unbundled	7
TOTAL		6,322

Source: ERO.

The information presented in the table above show a relatively low number of refusals of the transmission network connections with a predominant number of refusals of connecting to the distribution network. This is caused by different technical conditions including the localisation of the applicant (distance from the network or localization on the area not covered by the development plan) and significantly higher number of consumers applying for connection to the distribution than to the transmission network. While notifying the cases of connection refusals, following reasons were indicated by gas network companies: the lack of economic conditions (over 70%) and lack of technical conditions (almost 30%). Moreover, the lack of technical conditions for connection was related to the insufficient network capacity in the given area (bottlenecks), where the lack of transmission network development determines the level of distribution infrastructure development and unable new customers connection. The current situation may be improved by further investments in gas infrastructure (in accordance with the development plans agreed with the President of ERO) which should contribute to transmission and distribution systems development in Poland, as well as their technical extension and optimization, including supplying gas to new directions.

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

In 2012 the President of ERO conducted monitoring of storage services performed by the SSO. The results of the survey showed that in 2012 the SSO operated the underground storage facilities of a total capacity amounting to 1,821.89 mcm, offering uninterruptible and interruptible long- and short-term services as bundled units, flexible bundles, unbundled offers and daily service. Under the long-term agreements the SSO made available 1,796 mcm of storage capacity, including 50 mcm for execution of the TSO tasks, while 25.5 mcm were made available in the form of short-term interruptible services. The information provided by the SSO during the monitoring process showed that in 2012 new storage capacity were made available by the SSO. In the storage installation of UGS Wierzchowiec 350 bundled units within the long-term interruptible services were offered. As the demand exceeded the volume of available service, the offered service was allocated proportionally. As a result, two agreements were concluded. In the storage facility CUGS Mogilno 51 bundled units offered within the short-term interruptible service were applied for by only one entity. Additionally, the SSO informed that a procedure of the released storage capacity allocation was conducted in order to create and maintain the obligatory reserve in 2012. Because the interest exceeded the volume of available service, the storage services were divided proportionally and two agreements for a long-term uninterruptible services were concluded.

Within the monitoring process, the SSO indicated that the rules of storage capacity allocation were described by this entity in Rules for Storage Services, schedules of procedures for new storage capacity allocation in storage installations, and tariff for storage service.

On its website the SSO published detailed information regarding the offered services and conditions of entering into agreements as well as the current and scheduled operation of the underground storage facilities including:

- filling level in every UGS at a start and end of a storage day – the inventory is updated once a day,
- daily amounts of injected/withdrawn gaseous fuel – the level updated once a day,
- uncontracted storage capacity,
- scheduled and unscheduled maintenance breaks of storage installations,
- available unused capacity under the daily storage service – published within a few minutes since the available unused nominal injection and withdrawn capacities have appeared.

### ***Monitoring the implementation of safeguard measures***

In 2012 the President of ERO monitored the implementation of safeguard measures in case of a sudden crisis situation, a threat to the physical security or safety of persons, equipments, installations or system integrity, through verification of emergency plans for restrictions in natural gas consumption (hereinafter: "restriction plans"), submitted for approval by the transmission, distribution and combined system operators.

### *Restrictions in natural gas consumption*

Under the Act on Storage, if preventive measures undertaken by the TSO or combined gas system operator in case of a threat to the security of system operation turn out to be insufficient, the operator notifies the minister in charge of economy about need for implementing restrictions to natural gas consumption in accordance with the restriction plans. The restrictions in hourly and daily consumption of natural gas can be introduced in case of: a threat to the fuel security of the country, unexpected increase in natural gas consumption, disruptions to natural gas supply, failure in network system, threat to the security of system operation, threat to people safety, threat of substantial material losses, or necessity of fulfilling the international obligations by the Polish state.

The restrictions in natural gas consumption can be introduced by the Council of Ministers at the proposal of the minister in charge of economy through an ordinance while taking into consideration the significance of customers to the economy and functioning of the country, particularly the tasks performed by the customers in the period when the restrictions will be in force. The restriction may be introduced for a fixed period of time, in the whole territory of Poland or its part.

The gas transmission, distribution and combined system operators or energy undertakings acting as operators are obliged to develop plans of introducing restrictions to natural gas consumption. The plans determine the maximum hourly and daily volumes of natural gas consumption for individual customers connected to the network at all supply level. The entities obliged to develop the restriction plans inform the customers about the maximum volume of natural gas consumption at every gas supply level, set for them in the approved plan. These volumes, set forth by the approved restriction plans, become an integral part of sale agreements, transmission or distribution services agreements and common service agreements.

The restriction plans are updated annually and are submitted for the approval of the President of ERO by 15 November of a relevant year.

According to the Ordinance of the Council of Ministers of 19 September 2007 on the manner and methods of implementing restrictions to natural gas consumption<sup>17)</sup>, the restrictions concern the customers who meet all of the following conditions: 1) they withdraw natural gas at exit point of the gas system 2) the sum of contracted capacities (set forth in the contracts enumerated in Article 5 section 2 point 2 and section 3 of the Energy Law) for this exit point amounts to at least 417 cubic metres per hour, and 3) they are included in the restriction plans. The restrictions in question do not apply to household consumers.

During the time the restrictions are in force the gas TSO:

- fulfils the obligations resulted from introducing restrictions by determining and publishing the gas supply levels, according to the restriction plans,
- coordinates the actions of energy undertakings involved in natural gas trading, other gas system operators, gas storage system operators, gas liquefaction system operators in order to ensure the security of the gas system and implementation of restrictions introduced on the basis of the Act on Stocks,
- manages the total volume and capacity of natural gas storage facilities and natural gas liquefaction installations connected to the gas system as well as launches obligatory reserves of natural gas.

In 2012 the President of ERO received 31 applications for approving the restriction plans from the DSOs, and one application regarding this matter from the TSO. The President of ERO, by issuing the decisions in December 2012, approved the restriction plans submitted by seven gas DSOs. Additionally, in February 2012 the regulator issued a decision regarding the amendment to the restriction plans approved in 2011, as a result of changes introduced to the agreements with the

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<sup>17)</sup> Journal of Laws, No. 178, item 1252.



customers. The applications of other operators related to the approval of restriction plans for the next period, including the application of the transmission system operator, are investigated in 2013.

In 2012 the restrictions to natural gas consumption were not implemented.

### *Obligatory reserves of natural gas*

Under the Act on Stocks, the President of ERO by his decision, verifies or defines the obligatory reserves of imported natural gas in the amounts meeting - in the period between 1 October 2012 and 30 September 2013 – at least 30-day average daily gas imports, performed by a company involved in importing natural gas for its further resale. The aim of maintaining the obligatory reserves is to prevent from negative effects of disruptions in natural gas supply, allowing for a fast covering of shortage in the gas supply to the market.

The verification of the reserves concerns entities which already conduct the activity in terms of importing gas for its further resale while the volume of those reserves is determined for entities which only begin the activity in terms of importing gas for its further resale.

In the first case, the level of the obligatory reserves of natural gas is set by an undertaking itself on the basis of the volume of imports performed in the period between 1 April of the preceding year and 31 March of the year in question. It is calculated on the basis of the statistical reports developed by the company each year. The undertaking is obliged to submit to the President of ERO the information about determined level of reserves by 15 May of a relevant year.

In the second case, the level of obligatory reserves is determined by the President of ERO:

- for the period from the date of starting the import to 30 September, on the basis of the undertaking's declaration regarding the planned import volume,
- from 1 October to 30 September of the following year, on the basis of the average import volume in the previous period of supply activity.

In 2012 the President of ERO issued one decision verifying the volume of reserves set by PGNiG SA which the undertaking was supposed to maintain in the period between 1 October 2012 and 30 September 2013. On the basis of this decision the volume of obligatory reserves was reduced from 886.12 mcm to 883.7 mcm due to the fact that the year which was the basis for determining the reserves was a leap year. Admittedly, the original value was legally acceptable but – taking into consideration the costs of maintaining reserves that are covered by all customers of the undertaking - the President of ERO did not find any basis for setting it at a higher level than the minimum one.

In 2012 the President of ERO, acting under the Act on Stocks, controlled meeting the obligation to maintain the obligatory natural gas reserves by the responsible entities<sup>18)</sup>. Three undertakings were subject to control: one control was finalised at the beginning of 2013 and two are still in progress. The completed control concerned PGNiG SA which on 30 November 2012 was called for submitting information about meeting the obligation to maintain the obligatory reserves in the amount ensuring gas supply to Poland as well as minimisation of consequences of a threat to the country energy security, an emergency situation in gas network or an unexpected increase in natural gas consumption. Within the conducted proceeding, the company presented relevant information and explanations along with the documentation confirming i.a. the level of obligatory reserves maintained by the undertaking, use of storage service to maintain the obligatory reserves and the quality of these reserves. The company also confirmed that it concluded an agreement for transmission services with the TSO and the take-off of the obligatory reserves is possible. The control conducted by the President of ERO showed that the company did not commit any violations to the provisions of the Act on Stocks in the controlled period. The obligatory reserves were launched according to the decision of 2 February 2012, granted to the company by the minister in charge of the economy for the period of

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<sup>18)</sup> Under Article 30 section 1 of Act on Stocks, the control is applied to energy enterprise involved in importing natural gas for its further resale in terms of fulfilling the obligations described in Article 24 and meeting the conditions described in Article 24a of the Act.

In accordance with Article 64 section 1 point 1 of the Act, the President of ERO imposes penalties for not obeying the rules for determining and maintaining the obligatory gas reserves which, depending on the violated regulation, are imposed on an undertaking or a person managing the undertaking activity.

On the basis of the control results, pursuant to Article 30 section 9 of Act on Stocks, the President of ERO can call the energy undertaking involved in importing natural gas for its further resale for removing the breaches described in the control protocol, appointing the date of their removal.



two months. The necessity for launching the reserves was justified by a significant increase in customer demand for natural gas resulting from a sudden drop of air temperature at the end of January 2012 (on 1 February 2012 the demand increased to the level of 67.6 mcm with the average daily temperature reaching -11.9°C). As a result of the above actions one could note a shortfall in gas reserves (according to the situation on 31 May 2012) in relation to the level required by the decision of the President of ERO<sup>19</sup>). However, by 20 June 2012 PGNiG SA has refilled the obligatory reserves to the amount required by the decision of the President of ERO.

#### 4.1.3. Network and LNG Tariffs for connection and access

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

The tariffs for the gas distribution and liquefied natural gas regasification are calculated according to the provisions of the Ordinance of the Minister of Economy dated 6 February 2008 on the specific provisions for setting and calculating tariffs and charges in trading gaseous fuels<sup>20</sup>) hereinafter referred to as the "tariff ordinance". The tariffs for gas transmission and storage, apart from the rules set forth in the tariff ordinance, take into account of the provisions of the 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<sup>21</sup>) hereinafter referred to as the "Regulation 715/2009".

In the transmission tariff approved in 2012, the rates of transmission fees were set as the entry-exit rates. The tariffs also included the method of calculating charges for services offered under short-term contracts (including single-day contracts), the terms and conditions and the methods of calculating charges for the interruptible transmission services, as well as the methods for calculating charges for reverse flow services. Additionally, the TSO tariff described the rules for settlements in the start-up period.

The tariff for storage service enabled settlements of firm and interruptible services, long- and short-term services (monthly, weekly, daily), services offered as bundled units (including the flexible bundle), and those offered separately.

In 2012 the multi-year regulatory model – introduced for the first time in 2011 – was "suspended". It was supposed to be applied in approving the tariffs of DSOs from the PGNiG SA capital group (later referred to as the "DSOs") serving more than 100,000 customers. The model was to be enforced for a period of three tariff years between 15 July 2011 and 30 June 2012. The "suspension" resulted from a new Ordinance of the Minister of Economy on principles of shaping and calculating tariffs for gaseous fuels that was expected to come into force. The new regulation will change the rules of financial settlements in the Polish gas market.

The general method of calculating tariff for transmission service (by OGP Gaz-System SA and EuRoPol Gaz SA) was not subject to any changes in 2012 in comparison to 2011. The rates of transmission fees were calculated on the basis of planned justified costs and return on employed capital, which was calculated according to the provisions of paragraph 6 section 3 of the tariff ordinance. Under this ordinance the sum of net value of capital employed in the licensed operation (RAV) and working capital (WC) is compensated, according to the weighted average cost of capital (WACC), defined with a formula presented in the Tariff Ordinance.

With regard to Transmission Grid Code amendment, the rules of calculating DSOs distribution fees and storage fees were modified. According to the document every DSO and SSO should conclude an inter-operator agreements in order to purchase, in the case of the DSOs, the capacity at the exit point from the transmission network that is an entry point to distribution networks and, in the case of the SSO, the capacity at the entry/exit points to/from the storage facilities. Before the new Transmission Grid Code entered into force, the supplier or customer booked contractual capacity from OGP Gaz-System SA both at the entry and exit points to/from the transmission system (including entry and exit points to/from storage facilities). The regulations of the Transmission Grid Code introduced

<sup>19</sup>) According to the decision of the President of ERO of 6 May 2011, the required volume of reserves should amount to 555,800,000 cubic metres.

<sup>20</sup>) Journal of Laws of 2008, No. 28, item 165.

<sup>21</sup>) OJ L 211/36.

new gas market model and affected the distribution and storage fees - in the calculation method of distribution and storage charges not only the prime cost and return on employed capital are considered as a basis for these charges calculation, but also the on-debited costs are taken into account (in this case – the cost of purchase of contracted services).

Within the tariff approval process, the President of ERO analyses in detail the costs which are the basis for calculation of the tariff rates while ensuring that cross-subsidising is not present between the licensed and unlicensed activities and between various types of licensed activities.

The transmission and distribution undertakings are obliged to conclude network connection agreements on the basis of equal treatment rule with the entities applying for access, if technical and economic conditions for connection and supply of those fuels exists and the party demanding the conclusion of the agreement fulfils the conditions for connection and take off. In case of entities which do not conduct the activity in terms of gas transmission or distribution, production or extraction, gas storage and liquefaction or regasification of the liquefied natural gas, the fee for connection to the high-pressure network constitutes 1/4 of actual expenditures made for connection completion. For connecting the entities conducting activity as specified above, the charged fee is equal to the actual expenditure made on the connection execution. For entities which equipment, installations and networks are being connected to the low-, medium-, and high-pressure network a connection fee is set on the basis of rates calculated by the DSOs and contained in their tariffs approved by the regulator. The rates are calculated on the basis of 1/4 of average annual investment expenditure related to construction of network sections necessary for connecting those entities (determined in the DSOs development plans).

The tariffs are published in the Industry Bulletin of the ERO within 14 days from the approval date. The gas undertakings adopt the above mentioned tariffs within the period not shorter than 14 days and not longer than 45 days from the date of their publication.

An undertaking can appeal against the regulator decision approving or denying the tariff approval to the District Court in Warsaw – Court of Competition and Consumer Protection, through the President of ERO within a two-week period from the day of the delivery of that decision.

Up to now, the regulator has not been empowered to set or approve temporary tariffs for transmission and distribution services in case of a delay in their setting by the undertakings performing such services, as described in the provisions of the Directive.

#### **4.1.4. Cross-border issues**

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

The responsibilities of the President of ERO include monitoring the gas system functioning in terms of management and allocation of capacity on interconnectors, in cooperation with the competent authorities of the EU Member States or the member states of the European Free Trade Agreement (EFTA) – parties to the European Economic Area agreement.

In 2012 the President of ERO monitored the cooperation of the transmission system operator – Gaz-System SA – with the TSOs of the neighbouring countries. The cooperation was based on the inter-operator agreements concluded with the Belorussian OAO Bieltransgaz, Ukrainian Ukrtransgaz NAK Naftogaz, German Ontras-VNG Gastransport GmbH and Czech NET4GAS. These agreements concern the TSOs cooperation in terms of controlling gas flows at interconnection points at Drozdowicze (Ukraine), Wysokoje and Tietierowka (Byeloruss), Lasów, Gubin and Kamminke (Germany) and Cieszyn (Czech Republic).

At the same time, the procedures for monitoring the transmission capacity allocation at all interconnectors, also the Eastern ones, were ensured.

Table 9 presents the information on cross-border transmission capacity at the interconnectors of the national transmission system, operated by OGP Gaz-System SA.

**Table 9.** 2012 transmission capacity allocation at the interconnectors with other system operators/owners

System operator	Country	Interconnection	Direction of supply	Type of nominations	Unit	Total firm transmission capacity <sup>1</sup>	Total interruptible transmission capacity <sup>2</sup>	Reserved firm transmission capacity	Reserved interruptible transmission capacity	Unreserved firm transmission capacity	Unreserved interruptible transmission capacity	Completed transmission <sup>3</sup>
ONTRAS	Germany	Lasów	Poland	day/hour	million cubic metres per year	1 370.88	1,547	1,405	176	0	1,370	1,078
					GWh	15,285	17,244	15,670	1,967	0	15,277	12,011
ONTRAS	Germany	Gubin	Poland	day/hour	million cubic metres per year	17.57	17.57	17.57	0.00	0	18	4.37
					GWh	196	196	196	0	0	196	49
Severomoravské plynárenské	Czech Republic	Branice	Poland	day/hour	million cubic metres per year	1.405	1.405	0.606	0.799	0.799	0.606	0.227
					GWh	16	16	7	9	9	7	3
Severomoravské plynárenské	Czech Republic	Cieszyn (V-IX)	Poland	day/hour	million cubic metres per year	58.02	381.89	58.02	345.32	0.00	36.57	58.60
					GWh	652	4,289	652	3,878	0	411	659
Severomoravské plynárenské	Czech Republic	Cieszyn (I - IV; X - XII)	Poland	day/hour	million cubic metres per year	531.65	531.65	531.65	30.67	0.00	500.98	509.83
					GWh	5,970	5,970	5,970	34	0	5,626	5,706
Ukrtransgaz	Ukraine	Drozdowicze	Poland	day/hour	million cubic metres per year	4,571	5,645	4,323	1,387	248	4,258	3,577
					GWh	51,606	63,727	48,802	15,660	2,805	48,068	40,016
Bieltransgaz	Byelarus	Tietierowka	Poland	day/hour	million cubic metres per year	237.2	237.2	237.2	0.0	0	237	86.7
					GWh	2,644	2,644	2,644	0	0	2,644	967
Bieltransgaz	Byelarus	Wysokoje	Poland	day/hour	million cubic metres per year	5,482	5,482	3,264	2,226	2,218	3,256	3,055
					GWh	61,124	61,124	36,394	24,820	24,730	36,304	34,140
OGP Gaz-System SA	Poland	Lwówek	Poland	day/hour	million cubic metres per year	2,372	2,372	1,212	1,204	1,160	1,168	1,247
					GWh	26,373	26,373	13,472	13,384	12,901	12,989	13,872
OGP Gaz-System SA	Poland	Włodawek	Poland	day/hour	million cubic metres per year	3,074	3,074	1,745	1,664	1,329	1,411	1,861
					GWh	34,187	34,187	19,409	18,501	14,778	15,686	20,700
ONTRAS	Germany	Kamminke	Germany	day/hour	million cubic metres per year	131.76	131.76	67.64	0.00	64	132	2.99
					GWh	1,466	1,466	752	0	714	1,466	33
Ukrtransgaz	Ukraine	Hermanowice	Ukraine	day/hour	million cubic metres per year	0.0	441.6	0.0	105.7	0	336	49.1
					GWh	0	4,981	0	1,882	0	3,100	554

- 1) The maximum firm transmission capacity that can be offered to the network users by the TSO, while taking into account the system integrity and exploitation requirements of the transmission network.
- 2) Interruptible capacity at IV level of supply reliability in accordance with the Transmission Grid Code and the Tariff for Transmission Services.
- 3) Transmission performed during the period between July and December 2012, calculated on the basis of an average monthly heat combustion for a relevant entry/exit point.

Source: OGP Gaz-System SA.

The monitoring of activities undertaken by OGP Gaz-System SA in 2012 proved that the TSO:

- launched a physical gas flow towards Ukraine,
- updated the inter-operator agreement with the Ukrainian operator - Ukrtransgaz,
- agreed on the operational balancing account (OBA) rules at the Hermanowice entry point – Ukraine direction.

Since October 2012, a possibility of transmitting gas towards Ukraine has been offered by the TSO. The offered physical transmission capacity can reach 4.8 million cubic metres per day. The service is offered on interruptible basis at the 4 level of supply reliability. The offering of transmission services towards Ukraine was possible due to an annex to the agreement on inter-operator cooperation concluded with the Ukrainian operator as well as determination of the OBA rules.

In 2012 the TSO was leading intensive works to introduce the bundled capacity at the Lasów interconnector, as a part of the roadmap of an early implementation of the CAM Network Code. In the process of introducing bundled capacity following parties were involved: the President of ERO, the German regulatory authority Bundesnetzagentur, and most of all transmission system operators of Poland and Germany – OGP Gaz-System SA and ONTRAS-VNG Gastransport GmbH. In April 2012 the representatives of both TSOs agreed the text of the letter of intent which was the first official document in terms of TSOs cooperation on offering bundled products. The intentional letter was signed on 23 April 2012.

In August 2012 the operators agreed with the regulators to launch a pilot project for bundled capacity allocation in the middle of 2012. The operators also agreed that the earliest possible date when the offering of the bundled capacity may start is 1 January 2014, and the offered capacity will reach maximum 5,200 cubic metres per hour. It was decided that the allocation of bundled capacity will be based on the provisions of CAM NC.

The aim of the pilot project was mainly to facilitate the development of natural gas market in Poland, increase the level of transmission systems' integration in the EU, increase the level of market liquidity in the EU Member States, make transmission systems available to interested parties and enable them to supply gas to their contractors, reduce the risk of differences in capacity volume on both sides of Lasów IP, conclude transmission agreements.

The concept of conducting the pilot project by both TSOs was approved by both regulators at the end of July 2012. OGP Gaz-System SA and ONTRAS launched market consultations on the considerations for the pilot project of offering the bundled products at Lasów IP. In order to ensure the best understanding of the rules of bundled product offering by the network customers, a special consultation seminar was held on 15 November 2012 in Warsaw. During the meeting the issues of the pilot project were presented and explained, including the new rules resulting from the EU regulation, product characteristics and procedures for the auction platform.

On 7 December 2012 the operators signed "Cooperation Agreement for Bundling at Interconnection Point Lasów".

On 1 March 2013, the President of ERO issued a decision recognizing the OGP Gaz-System SA Rules for the auction of the Bundled Product at IP Lasów" as agreed, and the auction of allocating capacity according to the schedule included in the Rules was held on 3 June 2013.

Within the TSO activities aimed at defining market interest in increasing technical capacity in the period between 16 August 2012 and 7 September 2012 the operator commenced the Open Market Screening Procedure for the following interconnection points:

- I. Mallnow reverse (ID 87002) – market interest in possibility to provide transmission services from Germany (physical reverse flow). The reverse flow is currently performed on the interruptible basis at IV level of gas supply reliability in accordance with point 9.2 of the Transmission Tariff. The technical capacity at the virtual reverse point at Mallnow is equal to the sum of the technical capacity at the collection points to the Polish system.
- II. Tietierowka (ID 572405), gas transmission in BY-PL direction through the Tietierowka entry point (ID 572405) to the Grabówka exit point (ID 588010).
- III. Lasów reverse (ID 202411) – market interest in ensuring the possibility of transmitting gaseous fuel towards Germany (physical reverse flow). The reverse flow is currently performed at IV level of supply reliability in accordance with the current tariff of OGP Gaz-System SA for gaseous fuel transmission services.

Immediately after closing the procedure, the operator informed the neighbouring TSOs about its results: Mallnow reverse – GASCADE Gastransport GmbH, Tietierowka – OAO Bieltransgaz, Lasów Reverse – ONTRAS – VNG Gastransport GmbH.

OGP Gaz-System SA currently conducts consultations with OAO Bieltransgaz and ONTRAS – VNG Gastransport GmbH in order to coordinate further actions for the extension of the interconnectors which were subject to the completed screening.

According to Article 6(5) of the 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<sup>22)</sup> (hereinafter referred to as the "Regulation 994/2010"), as of 3 December 2013 the TSO is shall enable permanent bi-directional transmission capacity on all interconnectors, with the possibility of obtaining an exemption under specific circumstances.

On 2 March 2012 the German TSO GASCADE Gastransport GmbH submitted to BNetzA an application for exemption from implementing the physical reverse flow at Mallnow IP, under Article 7(1)(b) of Regulation 994/2010.

In 2012, in terms of enabling physical bi-directional flow of gas at the interconnectors, the OGP Gaz-System SA initiated talks with the GASCADE company on reverse flow implementation at the Mallnow IP. The

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<sup>22)</sup> OJ L 295 of 12.11.2010.

conducted Open Market Screening procedure confirmed market interest in firm reverse transmission services at the Mallnow in the volume higher than expected.

Taking account of this fact and in accordance with the procedures included in Regulation 994/2010, in 2012 the President of ERO, together with Gaz-System SA and the Minister of Economy, undertook initiatives aimed at enabling the physical bi-directional gas flow at Mallnow and ensuring necessary conditions for making the investment decision by GASCADE. Taking into consideration the significance of the physical reverse at Mallnow for the development of the EU internal market and for ensuring security of gas supply to Poland, on 14 September 2012 the President of ERO met with the representatives of BNetzA in Bonn to discuss the possibility of financing and completing the investment. The above mentioned activity was justified by Article 6(8) of Regulation 994/2010, according to which, if the market does not require an investment and where the investment incurs costs in one Member State for the benefit of the other Member State, the regulatory authorities shall decide jointly on the cost allocation before any investment decision is made. In November 2012 BNetzA gave a negative opinion on the GASCADE application for exemption from physical reverse implementation at Mallnow. The agreement on cooperation regarding the extension of the Mallnow IP was signed by GASCADE and OGP Gaz-System SA on 21 November 2012. The parties envisage that the necessary works will be completed by the end of 2013.

In 2012 at a Polish-Czech interconnector at Cieszyn the transmission capacity were allocated on a day ahead basis. Since 2013 the firm capacity is offered. The volume of capacity available for next day is set in a dynamic way on the basis of the flows in both systems, monitored in cooperation with the Czech operator NET4GAS. The capacity available for the next day is published on the operator website.

Additionally, in September 2012, OGP Gaz-System SA signed with the Croatian transmission system operator PLINACRO d.o.o. a declaration of cooperation on fostering the development of gas market in the middle-east Europe. The aim of the agreement is to enhance the cooperation between the partners in the projects of the LNG market development, extension of underground gas storage facilities, and completion of gas connections within the North-South gas corridor.

Moreover, in 2012 OGP Gaz-System SA was also leading an intense activities connected with the extension of the transmission system in order to diversify sources of gas supply to Poland. As a part of this activities, the operator maintained bilateral relations with the TSOs of the following countries:

1. the Czech Republic – NET4GAS s.r.o. (in December 2012 a business analysis for the PL-CZ connection was approved, and in March 2013 a cooperation contract was concluded).
2. Slovakia – eustream as (a business analysis approved in October 2012, and in May 2012 a feasibility study of PL-SK connection was completed).
3. Lithuania – Lietuvos Dujos (in May 2012 a feasibility study of PL-LT connection was completed).
4. Germany – Open Grid Europe, PPG Pipeline Projektgesellschaft mbH, E.ON, VNG, InterTransGas GmbH (the talks on the extension of the transmission infrastructure in the north-western Poland have begun).

In 2012 the President of ERO monitored also the rules of managing and allocating capacity on the Polish section of the Yamal-Western Europe pipeline. The table below presents transmission capacity on the Polish section of the Yamal-Western Europe pipeline.

**Table 10.** 2012 transmission capacity on the Polish section of the Yamal-Western Europe pipeline

a)

Total transmission capacity at the entry point [million cubic metres per hour]	Total transmission capacity at the exit point at the Polish-German border [million cubic metres per hour]	Total transmission capacity at the exit points to the OGP Gaz-System SA [million cubic metres per hour]	Unreserved transmission capacity at the entry point to the system [million cubic metres per hour]
3.850	3.500	0.619	0.014 T=0°C

b)

Transmission capacity [million cubic metres per year] (annual = daily x 365 x 0.91)			
Reserved at the point of entry	Reserved for transit	Reserved for domestic consumption	Unreserved
30.583	27.900	2.682	0.111

\* The above data is presented in GOST. The agreements and the published data is shown for the conditions p=101.325 kPa and t=293.15 K.

Source: OGP Gaz-System SA.



### Cooperation with the regulatory authorities from other countries

The fulfilment of regulatory responsibilities concerning the cooperation on cross-border issues is one of the main priorities of the President of ERO. In the previous year, as a result of launching the pilot project for early implementation of the CAM NC, the President of ERO was cooperating with the German regulatory authority BNetzA.

Moreover, in connection with the priorities of the Polish Presidency in the Visegrad Group (June 2012 – June 2013) and the Memorandum of Understanding of gas market integration in the V4 region signed by the Ministers of Economy of the V4 countries on 31 October 2012, the President of ERO as well as other V4 regulators were asked to develop (by the end of 2012) an analysis of gas market liquidity in the region. At the first stage of the project, coordinated by the President of ERO, every regulator prepared a report containing an assessment of the current national market liquidity within the context of its potential integration within the V4 group. The four national reports were a basis for defining short- and long-term objectives for developing common gas market model in the region. In consultation with the other regulators, the President of ERO developed the "Analysis of the current state of market liquidity in the V4 region – state of play and challenges ahead". This report together with the national reports, which constitute an integral part of the analysis, were submitted to the Polish Ministry of Foreign Affairs. They are supposed to be a basis for further examination of the possibilities for implementation of the gas target model in the V4 region and setting a long-term strategy in the "Road map for common gas market in the V4 region" which was to be developed in June 2013.

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

Monitoring investment plans is based on reports on their execution developed by the transmission and distribution companies, submitted to the President of ERO by 1 March of each year.

In 2012 OGP Gaz-System SA, carried out investments on the basis of the development plan approved in 2009 for the period between 1 May 2010 and 30 April 2014. In 2012 the justified level of the DSO investments for the years 2012–2013 was agreed. For three of the DSOs it concerned the investments which scope had been agreed in 2009 (for the years 2009–2013), for the other three it concerned the updated plans for the years 2012–2013.

**Table 11.** Summary of investment outlays (in total for 6 DSOs and the TSO) in current prices

Year	Investment outlays	
	Planned	Actual
	[thousands of PLN]	
2009	1,705,464	1,430,122
2010	1,907,838	1,458,411
2011	2,264,962	1,773,655
2012	3,056,846	2,173,850

Source: ERO.

In 2012 the sum of investment outlays incurred by the TSO amounted to 1,118,567,000 PLN.

**Table 12.** Length of methane rich distribution and transmission networks

Year	Network length [km] for		
	E	other gaseous fuels	in total
2010	167,220.3	9,242.1	176,462.4
2011	171,038.1	9,108.0	180,146.1
2012	173,161.8	9,343.0	182,504.8

Source: ERO.

The length of methane rich E gas transmission networks amounted to 10,063.95 km in 2012<sup>23)</sup> while the length of the transmission networks of other gaseous fuels in this year amounted to 654.24 km.

<sup>23)</sup> OGP Gaz-System SA and Europol Gaz SA in total.



The role of the President of ERO in the process of assessing the efficiency of network operation covers mainly the following tasks:

- approving, within the tariffication process, such level of the undertaking revenues as to ensure the security of supply and improve the efficiency of network operation measured by the average interruption time due to downtimes, improve technical network capacity and decreased volume of gas allocated to cover balancing margins,
- assessing the network operation during the process of agreeing draft development plans for the coming years, when justified level of the planned outlays covered with the tariffs income is analyzed, in the context of network development and the security of supply,
- requiring the network undertakings to include in their tariff information on discount rates regarding quality of service, including the reductions of the contractual capacity volume and failures to meet the quality standards of customer service.

OGP Gaz-System SA participated within ENTSG in the development of the adopted "Gas Regional Investment Plan Central-Eastern Europe 2012–2021" which identified 42 investment projects on the Polish territory. 18 of the reported projects were notified as projects of common interest within informal working groups created during works on the Regulation (EU) No. 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No. 1364/2006/EC and amending Regulations (EC) No. 713/2009, (EC) No. 714/2009 and (EC) No. 715/2009<sup>24)</sup>.

In order to ensure consistency of the consistency of the national development plan with the EU-wide and regional development plans (that shall be assessed by the regulator), the legislative works regarding the ten-year development plans have been conducted. As a consequence, a statutory obligation was imposed on the transmission system operators to develop the draft national development plans for ten-year periods. In the process of developing these plans, the ten-year EU-wide development plans have to be taken into consideration. Moreover, the gas operators are obliged to update their plans in two-year cycles. It seems that the introduced mechanisms will allow for monitoring and executing the consistency of the national plans with the Community-wide plans from 2013.

#### **4.1.5. Compliance**

##### ***Compliance of regulatory authority with binding decisions of the Agency for the Cooperation of Energy Regulators and European Commission and with the Guidelines***

Pursuant to Article 41(1)(d) of Directive 2009/73/EC, the regulatory authority shall comply with, and implement any relevant legally binding decisions of the Agency and of the Commission. However, taking into consideration that the provisions of the above mentioned Directive have not been implemented to the Polish law yet, it is difficult in the present moment to assess the compliance of regulatory authority activities with the legally binding ACER and the EC decisions. This issue will become more relevant in the next years of the regulator's authority activity.

It was due to similar reasons that in 2012 the President of ERO did not ask the Agency to issue its opinion on the compliance of the undertaken decisions with the guidelines of the Agency. At the same time, the compliance of the decisions of the President of ERO with the guidelines were not subject to the European Commission examination.

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

In 2012 the monitoring of the transmission, distribution, and storage system operators was based on an analysis of fulfilling their obligations which resulted directly from Regulation 715/2009 and the Energy Law, specifically in relation to transparency. No violation of the TSO obligations in relation to cross-border issues was detected.

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<sup>24)</sup> OJ L 115 of 25.4.2013.

*Monitoring the fulfilment of obligations resulting from Regulation (EC) No. 715/2009 on conditions for access to the natural gas transmission networks*

In 2012 the President of ERO monitored the execution of tasks by the TSO, in particular those related to the non-discriminatory treatment of system users and the reporting obligations.

Monitoring of the transmission system operator activity, performed by OGP Gaz-System SA, concerned:

- services connected with the third party access,
- applied mechanisms of transmission capacity allocation,
- congestion management procedures,
- transparency of published technical data necessary for the network customers to obtain an efficient access to the system,
- balancing mechanisms and imbalance charges.

*Monitoring the fulfilment of obligations imposed under Regulation (EC) No. 715/2009 on conditions for access to the storage systems*

In 2012 monitoring the fulfilment of the tasks by the SSO tasks was focused mainly on meeting the obligations imposed on the undertaking under Regulation 715/2009 and the Energy Law, particularly related to the TPA rule, rules of capacity allocation and congestion management procedures as well as transparency requirements.

As far as the scope of storage services offered by the SSO is concerned, the monitoring showed that the storage facilities CUGS Mogilno, UGS Husów, UGS Wierzchowice, UGS Strachocina, UGS Swarzędz and UGS Brzeźnica were made available to the market participants within standardised procedures of storage capacity allocation (regulated by the Rules for Storage Services) and that the SSO performed the storage services required by law.

In terms of storage capacity allocation mechanisms, the monitoring proved that the SSO published information on the contractual and available storage capacity, including the unused storage capacity offered within a daily storage service. The market participants were also informed about the rules for storage capacity allocation, concluding storage service agreements and their execution (nominations, re-nominations, allocations) which were described in the Rules for Storage Services, published on the SSO website.

The conducted monitoring displayed that in order to prevent the accumulation of storage capacity reserves in case of contractual congestion, the SSO used the instruments of congestion management. They were used for assessing contractual storage capacity utilization, making available the unused nominal injection and withdrawal capacity volume within the daily storage service, as well as enabling and organising trading in uncommitted storage capacity.

In relation to transparency rules, the monitoring proved that the operator fulfilled the obligation under Article 19 of Regulation 715/2009 concerning publishing the detailed information regarding offered services.

*Monitoring fulfilling the statutory tasks by the DSOs*

During the reported period, the regulator carried out proceedings related to DSOs' activity which in particular concerned: refusal to conclude common service agreement by a distribution system operator, refusal to conclude gas sale agreement and unjustified suspension of gaseous fuels supply.

*Monitoring fulfilling the certification conditions by the TSO*

As the process the third energy package implementation into the Polish law is still in progress, up until now any procedures of TSO certification have not been conducted.

Moreover, in 2012 the President of ERO monitored (under Article 9d of the Energy Law) the execution of TSO and DSOs tasks related to their structure, i.e. their legal and organisational form, independence regarding the conducted activity, non-discriminatory treatment of system users and fulfilment of their reporting obligations.

## 4.2. Promoting competition

### 4.2.1. Wholesale market

In 2012 the wholesale gas market in Poland was still dominated by one undertaking – PGNiG SA. However, it should be noted that the segment is developing successively.

In 2012 97 entities were licensed to trade in gaseous fuels. The gas trading companies that did not belong to the PGNiG capital group, acquired around 50% of natural gas from PGNiG SA, while the rest of the demand was met by the import. The volume of gas they sold constituted in 2012 more than 5% of the total sales and amounted to 707.47 million cubic metres.

**Table 13.** Volume of gas purchased and sold by the largest trading companies in 2012

	In total	PGNiG SA	Other trading companies
Purchased gas	16,414.69	14,965.62	1,449.07
Sold gas	15,436.22	14,728.75	707.47
gas sale to trading companies	340.73	322.45	18.28

Note: in case of the other trading companies, the difference between purchase and sale constitutes the own consumption needs.

Source: ERO.

The natural gas trade was conducted exclusively under bilateral contracts in 2012. The prices of gaseous fuel were resulting from tariffs and were not differentiated on account of the purpose for which the gas was bought (whether to use it for internal purposes or resale). Some of the trading companies were buying gas directly from the pits - in this case the price was not subjected to regulation and was set under the bilateral contracts.

#### 4.2.1.1. Monitoring the level of prices, the level of transparency, the level and effectiveness of market opening and competition

In 2012 works over introducing a new gas market model were being conducted. Detailed conditions of using the transmission and distribution systems by the system users were described in the Transmission and Distribution Grid Codes which came into force on 1 January 2013. The codes took account of the legal requirements, especially those concerning functioning of the regulated (infrastructural) part of the gas system and calculation of gaseous fuel tariffs as well as the rules included in the draft CAM NC. They introduced also necessary changes that are supposed to ensure trading in natural gas through virtual trading point and gas exchange as well as through bilateral contracts (OTC). In December 2012 the gas market was launched on the POLPX. Those changes positively effected the Polish gas market and, thus, in February 2013 regulator decided to exempt companies acting on the wholesale gas market from the obligation to submit tariffs for approval. Hence, a dynamic development of wholesale gas market is expected in 2013.

### 4.2.2. Retail market

A high level of concentration in the Polish gas market, resulting from the dominant position of the PGNiG capital group, has been influencing the structure of the retail market and the pace of changes for many years. Still, the natural gas sale is performed mainly by the incumbent supplier PGNiG SA. However, its percentage share in the market has diminished slightly – from around 96.38% in 2011 to around 94.64% in 2012. The remaining 5.36% (3.62% in 2011) was covered by several dozen entities, aiming to strengthen their market position.

The retail gas market is subject to slow changes. Since 2011 there has been a constant growth in the number of the trading companies which sell gas to the end-users. In 2012 13 biggest trading

companies, independent from PGNiG capital group, were supplying gas to the end-users. The biggest entities, in terms of gas supply volume, that did not belong to the PGNiG capital group and conducted business activity on the retail market, are: Egesa Grupa Energetyczna SA (1.22%), G.E.N Gaz Energia SA (0.73%), EWE energia Sp. z o.o. (0.52%), Grupa Duon SA (0.47%), ENESTA SA (0.38%), Polenergia Kogeneracja Sp. z o.o. (0.3%), HANDEN Sp. z o.o. (0.24%), Anwil SA (0.22%), ArcelorMittal Poland SA (0.18%), Sime Polska Sp. z o.o. (0.14%), Fenice Sp. z o.o. (0.14%), Elsen SA (0.1%), Huta Pokój SA (0.07%), KGM Polska Miedź SA (0.05%). The business activity of these companies is based on reselling natural gas acquired through intra-Community purchases or from PGNiG SA. The gas is supplied mainly to the end-users with the use of local distribution networks owned by the above mentioned companies.

Comprehensive analysis of the PGNiG capital group retail gas sales showed that in 2012 households were most numerous group of PGNiG customers, constituting 96.9% of the total consumer number. Its share in the sale volume in 2012 amounted to 26.1%. Industrial consumers – mainly chemical, electricity and heat and power plants had the biggest share in the sale of natural gas - 60.2%. Moreover, PGNiG SA was selling gas to OGP Gaz-System SA and the DSOs from the PGNiG SA capital group - for current consumption and in order to balance the system.

Insufficient changes concerning the access to the gas sources outside the PGNiG capital group justify the necessity of maintaining the price regulation before real changes in this market sector are implemented. However, having in mind a need of promoting and increasing competition in the national gas market, the President of ERO undertook in 2012 actions aimed at increasing liquidity of the wholesale gas market. The planned legal changes, particularly introducing the so-called exchange obligation, are aimed at eliminating market barriers and ensuring the actual development of the retail gas market.

#### **4.2.2.1. Monitoring the level of prices, the level of transparency, the level and effectiveness of market opening and competition**

Monitoring gas prices in Poland is executed through monitoring gas market functioning including the approval and supervision of tariffs applied by undertakings conducting gas trading activity.

In 2012 4 proceedings concerning the tariff of PGNiG SA (which supplies gaseous fuels to over 95% consumers in Poland) were conducted. One of the proceedings was related to the approval of the tariff while the other three regarded the approval of the amended tariff, with one including a request for extension of its application term.

The proceeding concerning the approval of the new prices and charges was ended on 16 March 2012 with a decision approving the proposed prices and charges. In consequence of approving the new PGNiG SA tariff, the average price of methane rich gas increased by around 12.5%, the price of GZ-41,5 (Lw) nitrogen gas by 12.6%, and the price of GZ-35 (Ls) nitrogen gas by 11.3%. The increase in methane rich gas prices was justified by the costs related to gas imported under one basic and eight auxiliary contracts. In the basic gas purchase contract the prices for gas were indexed – in the dollar dimension – to the prices of oil-derivative products on global markets and – in the zloty dimension – were dependent on the currency exchange rate (PLN/USD). In relation to the price constituting the basis for calculation of the previous tariff, the import price in the main contract increased notably. Moreover, the Polish currency clearly weakened in comparison to US dollar.

Relatively the least affected by the new tariff were the customers consuming the smallest amounts of methane rich gas – that is the consumers from groups with an index between 1, 2 and 3 for whom the average payment increased by 7.2%, 9.4%, and 10.6% respectively (in national scale). In the areas of the respective DSOs, the deviation from the national average price in individual groups did not exceed 1 percentage point. The increase of average monthly payments for W-1 customer group, using gaseous fuel to prepare meals, with the average annual consumption amounting to 116.35 cubic metres, amounted to 7.2%. It meant an increase of average monthly payments by 1.81 PLN. Analogically, for W-2 and W-3 consumer groups, the average payment increased amounted respectively by 8.81 PLN and 35.42 PLN.

At the end of November 2012, PGNiG SA submitted a proposal for correction of the binding tariff. The proposal concerned i.a. reducing the price of gaseous fuels and approving new rates of network charges, taking account of the new costs of transmission, distribution, and storage services connected with the expected enforcement of new tariffs of OGP Gaz-System SA, DSOs, and the change in the

SSO tariff. PGNiG applied for tariff change (decreasing the prices for end-users) due to successful finalisation of negotiations on changing the price formula included in the contract with OOO Gazprom Export.

In 2012 new suppliers dynamically started their activity in the gas retail market, contributing to the rise in the number of supplier switching. To the end of 2012, 210 supplier switching were conducted. To compare, in 2011 this possibility was used only by 4 entities.

Table 14 illustrates the dynamic growth of supplier switching during 2012.

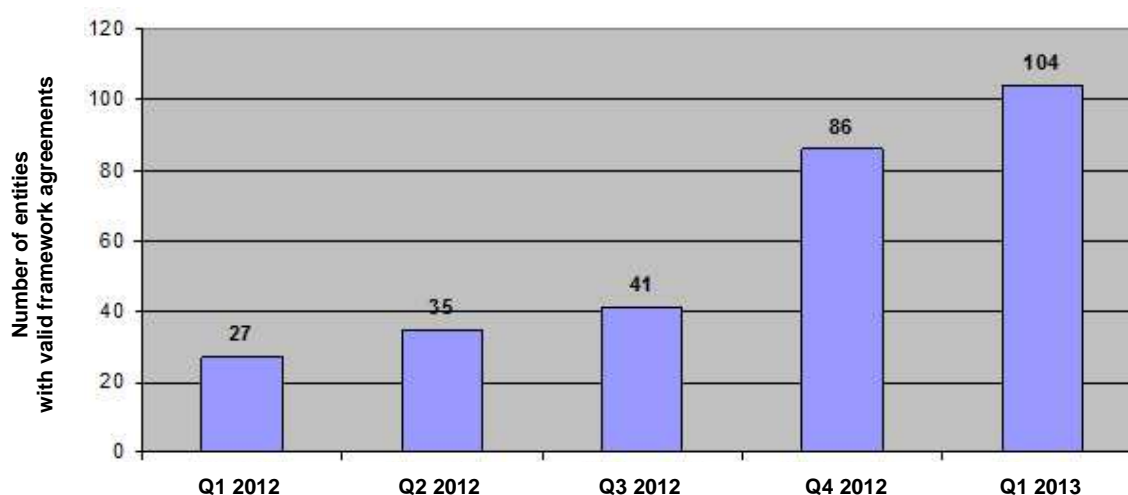
**Table 14.** Number of gas supplier changes in 2012 in quarterly divisions

Q1 2012	Q2 2012	Q3 2012	Q4 2012
6	19	17	168

Source: ERO.

The supplier switching rate in the gas market is influenced to a high extent by distribution service agreements – so-called “framework agreements”. Along with the increase in the number of framework agreements concluded by a given DSO, the possibility of the gas supplier switching grows.

**Figure 10** Number of valid framework agreements concluded by operators according to the situation at the end of every quarter of 2012



Source: ERO.

#### 4.2.3. Recommendations on supply prices, investigations and measures to promote effective competition

Pursuant to Article 45 section 1 of the Energy Law and executory regulations, the gas tariffs set by the energy undertakings shall allow for covering the planned justified costs of the conducted business activity along with the fair return on capital employed in this activity. The deviations of the planned costs from the actual costs (both above and below the threshold) are not taken into account in the tariffs of those undertakings, determined in the subsequent years.

Nevertheless, in case of a significant change to the conditions of conducting the business activity by the above mentioned undertaking during the time the tariff is in force, the undertaking can turn to the President of ERO for the approval of the correction of the binding tariff. In well-justified cases (both in a situation when external conditions threaten the financial standing of the undertaking or when they generate too high revenues) the President of ERO, after completing an administrative proceeding, can issue a decision correcting the applied tariff.

Having in mind the promotion of the competition and counteracting anti-competitive practices, the President of ERO cooperates with the President of UOKiK (Office of Competition and Consumer Protection).

In 2012, after completing anti-monopoly proceedings the President of UOKiK issued two decisions regarding practices limiting competition<sup>25)</sup>. The decisions regarded the following proceedings:

1. an anti-monopoly proceeding initiated *ex officio* in 2011 (ref.: DOK1-411/1/11/MF/PK) to investigate if the Polskie Górnictwo Naftowe i Gazownictwo S.A. based in Warsaw (hereinafter referred to as "PGNiG") abused the dominant position, through counteracting the development of conditions necessary to create or develop the competition in the market. The practices of PGNiG were investigated in relation to including questionable provisions on contract termination in the common service agreement, what could violate the provisions of the Competition and Consumer Protection Act, and Article 102 of the Treaty on the Functioning of the European Union<sup>26)</sup>.

During the anti-monopoly proceeding, PGNiG expressed its intention to undertake measures to eliminate the questionable regulations. After completing the proceeding, in 2012 the President of UOKiK issued a decision (No. DOK-1/2012) which imposed on PGNiG an obligation to introduce certain words to the models of common service agreements for gaseous fuel supply (concluded with the consumers who consume more than 10 cubic metres per hour of methane rich natural gas or more than 25 cubic metres per hour of nitrogen natural gas) and to the agreements already concluded, and to conclude new common service agreements with customers on the basis of such modified agreements.

The decision is legally binding.

2. an anti-monopoly proceeding initiated *ex officio* in 2010 (ref.: DOK-411/1/10/MF/PK) to investigate if PGNiG abused the dominant position in the national wholesale gas market by refusing to sale gas on the basis of a common service agreement to NowyGaz Sp. z o.o. based in Warsaw (hereinafter referred to as "NowyGaz"), an undertaking planning to conduct further gas resale. After completing the anti-monopoly proceeding, in 2012 the President of UOKiK issued a decision (No. DOK-2/2012):
  - i. recognising the activities of PGNiG abusing its dominant position in the national wholesale gas market through restricting sales to the detriment of contractors or customers, by refusing to supply natural gas on the basis of the common service agreement to the undertaking planning its further resale, i.e. NowyGaz, as practice restricting the competition in the national retail gas market and violating a prohibition included in the Competition and Consumer Protection Act, and pronouncing the abandonment of that practice as of 30 November 2010.
  - ii. recognising the activities of PGNiG abusing its dominant position in the national wholesale gas market by preventing the development of conditions necessary to create or develop the competition in the national retail gas market through the refusal to supply gas on the basis of the common service agreement to the undertaking planning its further resale, i.e. NowyGaz, as practice restricting the competition and violating a prohibition included in the Competition and Consumer Protection Act, and pronouncing the abandonment of that practice as of 30 November 2010.

The party issued an appeal, the decision is not valid.

In 2012 the President of UOKiK was leading also explanatory proceedings with respect to undertakings from the gas sector. Two of them were completed:

1. an explanatory proceeding (ref.: RPZ-400/47/11/JM) initiated in 2011 to provide a preliminary explanation on whether the conduct of Wielkopolska Spółka Gazownictwa Sp. z o.o. based in Poznań related to connecting customers to the gas network would justify the initiation of the explanatory proceeding. The proceeding was initiated in connection with a customer complaint suggesting that every entity being connected to the gas network is required to purchase a gas connector construction plan from the employees of the Gryfice-Goleniów Gas Distribution Area.

The proceeding did not give any basis to initiate the anti-monopoly proceeding and was closed on 9 February 2012.

2. an explanatory proceeding (ref.: RWA-400-26/1/JZ) initiated in 2011 to provide a preliminary explanation on whether in terms of qualifying products recommended for installation and exploitation works in the operating area of Mazowiecka Spółka Gazownictwa Sp. z o.o. in Warsaw

<sup>25)</sup> Fragment on the basis of UOKiK information.

<sup>26)</sup> OJ L C No. 115, 9.5, 2008, p. 47



(a part of the PGNiG capital group) the company abused the dominant position by preventing development of the conditions necessary to create or develop competition in the market.

The proceeding was completed on 4 January 2013. The information collected in the course of this proceeding did not give any basis for initiating the antimonopoly proceeding.

Two proceedings, initiated in 2012, have not been completed yet:

1. an explanatory proceeding (ref.: RBG-400-26/12/PA) to provide a preliminary explanation on whether the methods of financial settlements used by PGNiG in case of a change in its tariff violated the provisions of the Act was committed that would justify the initiation of an antimonopoly proceeding. The proceeding is aimed to provide an explanation whether PGNiG abused the dominant position in the gas sales market by charging gas payments based on forecasts determined before the reduction of gas prices which took place in January 2013.
2. an explanatory proceeding (ref.: DOK1-400-8/12/MF) to provide a preliminary explanation on whether the gas sale rules used by PGNiG represent a violation of the provisions of the Consumption and Consumer Protection Act that would justify the initiation of an antimonopoly proceeding.

The information and evidence collected in the course of this proceeding gave grounds to initiate on 3 April 2013 an antimonopoly proceeding (ref.: DOK1-411-1/13/MF) related to the abuse of the dominant position by PGNiG in the national wholesale and retail gas markets in a manner that may constitute a violation of the Competition and Consumer Protection Act provisions, as well as of the Article 102 of the Treaty on Functioning of the European Union.

Moreover, in 2012 the President of UOKiK developed a report "Directions of Competition and Consumer Protection Development on Gas Market in Poland" which presented the most important problems connected with the competition in the gas market and described the proposals of changes, which should result in the development of effective competition in that market. The report was a voice in discussion over the target model of the gas market in Poland.

### 4.3. Security of supply

According to the Energy Law, the Minister of Economy is the authority in charge of energy policy i.a. issues related to energy security. At the same time, it is also a competent authority in terms of security of gas supply as described in Regulation 994/2010. The regulator cooperates with the Minister of Economy in ensuring the security of supply in order to fulfil the tasks resulting from the above mentioned regulation and Directive 2009/73/EC.

In consequence, the security of gas supply (understood as ensuring customers the access to energy of specified quality and at transparent prices) is the area of energy security monitored constantly by the President of ERO with the use of assigned instruments.

#### 4.3.1. Monitoring balance of supply and demand

In 2012 gas supplies from abroad in the amount of 11,265.84 mcm were supplemented with gas from domestic sources in amount of 4,317.27 mcm, which constituted almost 27% of the total national supply of this resource.

Total gas supplies from abroad consisted of import from the Eastern direction and intra-Community supplies from Germany and the Czech Republic. The import from the Eastern direction, performed under a long-term contract concluded between PGNiG SA and OOO Gazprom Export in 1996, constituted an important part of gas supplies. 9,017.32 mcm of natural gas purchased under this contract constituted approximately 82% of the total import of this resource to Poland. The summary volume of the supplies executed under contracts with Germany and the Czech Republic amounted to 1,982.63 mcm, constituting around 18% of the total gas supply to Poland.

Information on the gas supply and domestic production in 2012 are presented in the table below.

**Table 15.** 2012 total natural gas supplies

Supplies		Production	
Total supplies	Peak	Total	Daily production capacity

[billion cubic metres]	[million cubic metres per day]	[billion cubic metres]	[million cubic metres per day]
14.97	75.21	4.32	11.8/12.7
			average annual production/peak production

\* Extraction + imports + other domestic sources - exports + change of reserves (Note: the purchase from domestic sources was also included in order to give the total supply of natural gas).

\*\* Maximum daily supplies of gas in a year.

Source: PGNiG SA.

**Table 16.** 2012 domestic extraction capacity

Extraction capacity [billion cubic metres per year]	Extraction capacity [million cubic metres per day]
4.43	12.74

\* The extraction capacity was estimated on the basis of 90% of maximum daily extraction capacity of 365 days which take into account exploitation stoppages of extraction sites. The difference between extraction capacity and production of natural gas is connected with seasonal fluctuations in demand for nitrogen gas over the summer and winter seasons. Over the period of peak demand for nitrogen gas (significant temperature falls during the winter season) the production capacity is utilised at the maximum level while during the summer seasons the demand for this kind of gas significantly falls. The extraction capacity of pits extracting methane rich gas is utilised at the maximum level during the whole year.

Source: PGNiG SA.

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

In 2012 the total consumption of natural gas in Poland amounted to 15,436.22 mcm. According to the forecasts, in the next years the role of gas in the national energy mix should increase due to its more widespread use in electricity generation, expected development of highly efficient combined heat and power technologies, and due to a continued growth of gas consumption by the end-users. The expected demand for natural gas until 2020 is presented in the table below.

**Table 17.** Expected natural gas demand in the years 2013–2020

Year	[billion cubic metres]	[MToe]
2013	15.249	13.262
2014	15.535	13.510
2015	15.717	13.668
2016	18.303	15.917
2017	18.384	15.988
2018	18.455	16.050
2019	18.522	16.107
2020	18.597	16.173

Source: PGNiG SA.

In 2012, OGP Gaz-System SA fulfilling the operator tasks, transmitted respectively: 13.67 bcm (151,523,696 MWh) of methane rich gas and 1.13 bcm (9,868,372 MToe) of nitrogen gas. The table below shows a volume of transmitted gas (in MWh and bcm in 0°C), expected demand for the next 3 years, and a long-term forecast for the years 2013–2020.

**Table 18.** Expected gas transmission volumes in the years 2013-2020.

a) methane rich natural gas (while adopting the average heat combustion for all exit points recorded in 2012 at the level of 11.088 kWh/cubic metres)

	Year	[MWh]	[billion cubic metres]
Volume of transmitted gas (completed)	2012	151,523,696	13.67
Expected demand (forecast)	2013	171,652,335	15.48
	2015	198,166,782	17.87
	2020	282,219,179	25.45

a) nitrogen natural gas (while adopting the average heat combustion for all exit points recorded in 2012 at the level of 8.759 kWh/cubic metres)

	Year	[MWh]	[billion cubic metres]
Volume of transmitted gas (completed)	2012	9,868,372	1.13
	2013	9,868,372	1.13
Expected demand (forecast)	2015	9,634,900	1.10
	2020	5,956,120	0.68

Source: OGP Gaz-System SA.

According to the TSO, the expected increase in the amount of supplied gas may result from a continued process of connecting new consumers – mainly small companies – to the distribution networks and big industrial customers to the transmission network. It is expected that until the end of 2014 the increased gas transmission will be managed mainly by using the existing entry points to the gas system.

### 4.3.3. Measures to cover peak demand or shortfalls of suppliers

The 2012 monitoring of the security of gas supply was focused on these market areas which were connected with the activities described below, in particular with the issues related to:

- **licences**

In case of licence for foreign trade in natural gas, the ability of an entity to create mandatory reserves influencing the security of supply is taken into consideration. The entity applying for such licence has to own storage capacities, have a preliminary agreement for obligatory reserve storage service concluded or obtain an exemption from the obligation of maintaining mandatory reserves (through an administrative decision issued by the Minister of Economy). Moreover, the President of ERO, while issuing the licence, informs the entrepreneur about the obligation to ensure the proper level of supply diversification, in accordance with the Ordinance of the Council of Ministers of 24 October 2000 on the minimum level of diversification of foreign natural gas supplies<sup>27)</sup>. The issued licences for foreign trade in natural gas include the obligation to ensure the diversification of gas supply.

- **tariffs**

Monitoring the security of gas supply is conducted also through the tariffication process of the infrastructure undertakings. During the tariffication proceedings the scope of financing the assets (transmission, distribution, storage and liquefied gas installations) required for supplying fuels to customers is decided. The level of investment outlays for network assets as well as the amounts of money designated for repairs and modernisation of these assets, determine its physical condition, i.e. operational security. The review of annual and quarterly reports presented by the companies of the PGNiG SA capital group and OGP Gaz-System SA shows that the approved tariffs allowed for financing the investment and modernisation plans as well as for repairs.

- **approving gas limitation plans prepared by the operators**

The transmission, distribution and combined systems operators submit for the regulator's approval the restriction plans to the natural gas consumption in case of emergency situations. The detailed information on the content and objectives of restriction plans were described in point 4.1.2. of this report.

- **agreeing draft development plans for gas network undertakings**

Agreeing the draft development plans allows regulator for monitoring the initiatives necessary for maintaining reliability and quality of network services at the required level. It is aimed at defining the justified level of investment outlays which ensures the minimisation of expenditure and costs incurred by these undertakings (i.e. the costs will not result in excessive growth of gas prices and charges in the succeeding years while at the same the continuity, reliability and quality of supply is ensured).

- **setting and monitoring mandatory reserves of gaseous fuels**

In 2012 the mandatory gas reserves were maintained in four underground storage facilities, including one salt cavern: CUGS Mogilno, UGS Husów, UGS Strachocina and UGS Wierzchowice (detailed results of monitoring the volume of gas reserves were described in the point 4.1.2).

<sup>27)</sup> Journal of Laws of 2000, No. 95, item 1042.

- **monitoring the level of gas supply diversification**

An important element of ensuring energy security of the country is the diversification of sources of natural gas supply sources, according to the values included in the regulation on the minimum level of diversification of foreign gas supplies. The above mentioned levels determine the maximum share of gas imported from one country in relation to the total amount of gas imported in a given year, for the period between 2001 and 2020. According to the provisions of this regulation, in the years 2010–2014 the maximum share of gas imported from one country in relation to the total amount of gas imported in a given year cannot be higher than 70%.

The President of ERO conducts annual monitoring of the diversification level of foreign gas supply and analyses if and how entities licensed to foreign trade in natural gas follow the provisions of the above mentioned regulation.

In 2012 the monitoring of diversification level of gas supply in 2011 was conducted and the examination of gas supply diversification level from abroad in 2010 was completed. The completed examination, conducted on the basis of information submitted by the licensees, showed that in 2010 two licensees did not fulfil the obligation of gas source diversification. Proceedings to impose penalties for not meeting the obligation (and thus committing a violation to the conditions of the licence for foreign trade in natural gas) were initiated against these licensees. In one case the proceeding was suspended *ex officio* due to a preliminary issue.

- **trading limits for gaseous fuel supplies introduced in 2012**

In the first half of 2012, in connection with a high consumer demand for gaseous fuel in the winter period (over 60 mcm per day), and its envisaged further increase as well as in connection with using up gas from trading reserves and risk of consumption/demand imbalance, PGNiG SA introduced trading limits for gaseous fuels with respect to three industrial customers.

## 5. CONSUMER PROTECTION AND DISPUTE SETTLEMENT IN ELECTRICITY AND GAS

### 5.1. Consumer protection

#### Compliance with Annex 1 to Directives 2009/72/EC and 2009/73/EC

In 2012 works over introducing amendments to the Energy Law (to implement the provisions included in the Annex to Directives 2009/72/EC and 2009/73/EC) were being conducted. The amendment should come into force in 2013. The proposed provisions regulate the DSOs obligation to allow the gas and electricity consumer for switching the supplier within 21 days, introduce vulnerable customer protection system based on housing benefits, and introduce the alternative dispute resolution mechanism for household consumers. The provisions will also impose on an undertaking, which supplies gas or electricity to household consumers, the obligation of delivering a copy of energy consumer rights and ensuring public access to this document.

The provisions of the Directive, which have precise and unconditional character, are applied directly, e.g. provisions related to the consumer right to switch supplier within 3 weeks from the day of submitting the application, or the consumer right to receive the last settlement with the previous supplier not later than 6 weeks since the day of the supplier switching.

#### ***Consumer right to conclude agreements guaranteeing honest and transparent conditions regarding receiving compensations and return of payments, the consumer right to file complaints and settle disputes***

Pursuant to the provisions of the Energy Law every transmission or distribution energy undertaking is obliged to ensure the transmission or distribution service of gas or electricity for all consumers and suppliers on the basis of the equal treatment rule. The service is performed on the basis of an agreement which an undertaking is required to conclude. The undertaking is also obliged to conclude a network connection agreement with an entity, if the technical and economic conditions for connection and reception exist. At the same time, the default supplier is required to perform complex service and conclude a common service agreement (an agreement combining the conditions of sale and service agreement), on the basis of the equal treatment rule, with household consumers of gaseous fuels or electricity that do not exercise their right to switch supplier. The undertakings performing the services of storing gaseous fuels and liquefaction of natural gas are obliged by the law to conclude with the customers agreements under which these services are to be performed.

The provisions of the Energy Law determine the minimum catalogue of elements that should be regulated by the agreements. The agreement for connecting to the network should set the date of completing the connection and the envisaged date of concluding the agreement. According to the draft amendments, the agreement will also include the schedule of connecting to the network. On the other hand, the distribution service agreement should determine the quality standards and conditions for ensuring reliability and continuity of gas or electricity supply as well as technical parameters of gas or electricity and the amount of discount for not maintaining the parameters and quality standards of customer service. Moreover, every agreement should set the period of application of the contract and conditions of its dissolution.

All terms and conditions of the agreement must be known to the customer in advance. Energy undertakings are obliged to immediately send to the customers the drafts of agreements (sale agreement, transmission or distribution service agreement of gas or electricity, common service agreement, gaseous fuels storing service agreement, and gas liquefaction service agreement) or drafts of changes to the concluded agreements, excluding the changes in prices or charges which are determined in the approved tariffs. If changes are to be introduced into the concluded agreements, a written information about the right to terminate the agreement should be sent together with the draft of the new agreement.

According to above mentioned amendment to the Energy Law, the sale agreement or common service agreement should determine the parties to the agreement and include information on consumer rights such as the method of filing complaints and settling disputes; possibilities of obtaining help in case of a downtime and the place and method of obtaining information on the binding tariffs, including fees for maintaining the gas or electricity system.

***Consumer right to obtain information about prices and charges applied by energy undertakings and, in case of their change, the right to obtain notice about any intention to introduce changes to the agreement and information about the right to withdraw from the agreement after receiving such notice***

Pursuant to the provisions of the Energy Law, the gas and electricity suppliers which supply the end-users connected to the distribution network are obliged to publish on their websites and make publicly available information on sale prices of gas or electricity as well as the conditions of their application. At the same time, as it was indicated above, the energy undertakings are obliged to notify to the customers all changes in the concluded agreements along with a written information about the right to terminate the agreement in case of a lack of acceptance. Moreover, the customers are informed by the supplier about every rise in prices or fee rates for supplied gas or electricity, determined in the approved tariffs. The supplier is obliged to give notice within one settlement period from day of the rise. According to the draft amendment to the Energy Law, the customer should be notified in a transparent and understandable way.

The tariff is a part of the agreement between the energy customer and its supplier, approved by the President of ERO. The energy undertaking is obliged to inform the customers about the change in the tariff. The customers do not have to consent to the new conditions set in the tariff (most frequently it concerns the rise of energy prices) and can terminate the agreement. If they do not do this, it is assumed that they are bound by the conditions set forth in the new tariff. Similarly, if the energy undertaking changes

the model of agreement or rules of performing services – then the customer should be notified and if one does not terminate the agreement at the closest possible date, it is assumed that one accepted the proposed changes.

***Consumer right to choose the method of payment. Employing estimation methods guaranteeing accurate forecasts of the consumption (in case of settlements based on forecasts)***

Providing consumers with various forms of payment was the subject of the regulator recommendation directed to the electricity undertakings (Good Practice collection). In practice, the energy undertakings allow various payment methods and the customer has the right to choose the most suitable one.

The issues connected with calculating forecasted settlements are regulated by the provisions of the tariff regulation:

- settlement period for I-IV connection groups should be not longer than two months, and for customers from the V connection group (household consumers) cannot be longer than one year. The settlement periods determined in the tariff of an undertaking performing complex service are correlated with the settlement periods of an undertaking performing distribution service for its customers,
- if the settlement period is longer than one month, fees for electricity and for transmission and distribution services of electricity can be charged during this period in an amount determined for the forecasted electricity consumption in this period (forecasts are based on the volume of electricity consumption determined on the basis of readings of metering and billing equipment, conducted in the analogical period of the preceding calendar year). Moreover, the customer can lodge reservations regarding the forecasted fees if he/she envisages significant changes in electricity consumption.



***Consumer right to switch supplier within the three-week period and to receive the final settlement with the previous supplier within 6 weeks***

The DSOs are obliged to complete the supplier switching procedure within 3 weeks from the day of submitting relevant application and the previous supplier is obliged to make the settlement with the customer not later than 6 weeks after the day of the switching.

The draft amendment to the Energy Law requires electricity and gas system operators to allow the gas and electricity customers to switch supplier within 21 days. Moreover, the proposed provisions oblige the previous supplier to make the final settlement with the customer who exercised the right to change supplier, within the period not longer than 42 days from the day of switching. In order to ensure the practical execution of this obligation, the system operator will be required to submit to the previous and new supplier data regarding the volume of gas or electricity consumed by the customer, within the time that allows the previous supplier for making settlements with the customer.

***Consumer right to benefit from transparent, simple and inexpensive procedures for investigating complaints and disputes with the use of out of court system. Institution of customer ombudsman as a support for customers and an alternative mechanism to investigate disputes***

Since 10 April 2012 in Warsaw the Arbitration Court for Energy Matters by the Chamber of Industrial Energy and Energy Customers has been functioning. Moreover, there are also Municipal and District Consumer Ombudsmen in Poland, to whom the consumers can complain in individual cases including the energy-related cases. The detailed information on functioning of the Arbitration Court as well as on the activity of Municipal and District Consumer Ombudsmen were described in the Report for the previous year.

Furthermore, the household consumers can take advantage of consumer arbitration courts in which the fees for registration are not very high. However, due to the complicated character of many energy-related cases from it may be necessary to appoint an expert witness whose work is paid by the party losing the case - it is an additional risk for the customer, limiting the number of cases addressed to the arbitration courts.

The draft amendment to the Energy Law assumes the extension of the arbitration court competences (acting on the basis of the Act of 15 December 2000 on Commercial Inspection<sup>28)</sup>) to settling disputes on property rights resulting from sale agreements, transmission or distribution service agreements, and common service agreements, as well as agreements for connecting to the network, concluded between an energy undertaking and household customer. According to the amendment, the sale agreement or common service agreement should include information about methods of filing complaints and settling disputes. At the same time, an obligation to notify the household consumer about his rights will be imposed on the gas and electricity supplier, including the information about methods of filing complaints and settling disputes.

The competences of the regulator with respect to settling disputes were described in detail in point 5.2. However, it should be noted that the regulator settles disputes through administrative proceedings what does not fully correspond to the alternative dispute settlement mechanism.

Regardless of the above, it should be underlined that the tasks of the President of ERO include also conducting information activity addressed to the electricity and gas customers, including providing information via complex information point, with an info-line to inform and promote the right to switch supplier. Therefore, within the structure of ERO there is an Information Point for Fuel and Energy Consumers, where consumers can obtain information and advice regarding their rights. The Point also develops and implements educational programmes popularising knowledge about the electricity and gas markets. Detailed information on the activity of the Point as well as contact data are posted on the ERO website.

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<sup>28)</sup> Journal of Laws of 2009, No. 151, item 1219, as amended.

### **Public service obligations**

As a result of unbundling DSOs from the biggest vertically integrated undertakings, energy undertakings involved solely in electricity or gas distribution as well as gas or electricity trading companies had appeared in the electricity and gas markets.

The distribution undertakings unbundled from the biggest incumbent companies were designated by the President of ERO to perform the function of distribution system operators. Presently, there are 5 big electricity DSOs which networks are connected to the transmission grid and 6 big gas DSOs which networks are connected to the gas transmission network. Meanwhile, the trading companies ("incumbent suppliers") were obliged to act as the default suppliers for customers who did not decide to switch supplier, until the time of designating the *ex officio* supplier, by tender or under a decision of the President of ERO. In 2012 no tender procedure was held. The majority of electricity household consumers and all gas consumers have concluded common service agreements with the default supplier. Such agreement contains the terms and conditions of both sale and transmission or distribution service agreements. Moreover, the default supplier is required to perform complex service and conclude a common service agreement on the basis of the equal treatment rule with a household consumer who does not exercise its right to switch supplier and is connected to the network of an energy undertaking indicated in the default supplier's licence. It is worth underlining that a household consumer who terminates the common service agreement within the notice period envisaged in the agreement cannot be charged by the default supplier with any additional costs other than those specified in the agreement.

There are also other electricity suppliers operating in the market, among which around 200 are vertically integrated industrial energy undertakings performing simultaneously the distribution services. There are around 20 suppliers in the gas market.

### **Vulnerable customer protection**

Currently in Poland neither any definition of a vulnerable customer exists, nor a support system for such type of customers is implemented. The customers who have problems with settling accounts due to poverty can be subject to social service benefits (the deciding criteria here is the income and family dysfunction). However, such help can be obtained only when additional means are available (energy supplies are not included in the social service protection scheme). At the same time, the customers can turn for help to energy companies in order to benefit from programmes conducted within the corporate social responsibility initiative (CSR).

The draft amendment to the Energy Law introduces a definition and protection system of vulnerable customers of electricity and gas. According to the proposed support system, municipalities will provide energy allowances to vulnerable customers who were granted housing benefit (electricity customers) or fuel allowance (gaseous fuel customers), and who are also a party to the common service agreement or sale agreement of electricity or gas respectively, and who live in the place to which these utilities are supplied. Simultaneously, it is envisaged that the means for paying the above mentioned allowances by municipalities will be secured and will come from a designated subsidy from the State budget funds.

### **Ensuring access to consumption data**

Pursuant to Article 5 section 6c of the Energy Law, the electricity suppliers are required to inform their customers about the volume of electricity consumed by the consumers in the previous calendar. They should also inform customers where they can find information on average electricity consumption for a given energy consumers group as well as how they can improve energy efficiency and technical characteristics of energy efficient devices.

### ***Consumer right to obtain information about the actual volume and cost of energy consumption with frequency enabling for elastic reaction to this information and adjusting the consumption size***

Most of all, this right is supposed to increase the customers' awareness regarding saving and rationalising energy consumption. In order to exercise the consumer right to obtain information about the actual consumption and cost of energy in adequate frequency, further actions are needed in relation to:

#### **a) popularisation of smart metering**

In May 2012 the President of ERO developed "The concept of the metering market model in Poland, with special emphasis on the requirements for the Independent Measurements Operator" and published it on the ERO website. The document determines optimal (in regulator's opinion) structure of the metering data market and in particular ideas for the proposed market model and the role of a new entity on this market, the Independent Operator of Measurements. The document is a starting point that forms a basis for further works aimed at defining the legal and organisational frames of this market. It is related to 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", published by the President of ERO in 2011. Subsequently, in January 2013 the "Position of the President of ERO on the detailed regulatory rules for stimulation and supervision of the investments in AMI" was published.

By publishing the above documents, the President of ERO takes active part in shaping future smart metering systems in Poland. The Positions refer to the necessary requirements with respect to the implemented smart metering systems, regulatory rules for incentivizing and supervision of the investments in AMI, and metering market model in Poland. They are addressed to the DSOs, TSO, and electricity suppliers. Their aim is to prepare the process of implementing the metering solutions in Poland, consistent with the "Smart Metering Smart Grid Ready" formula, dedicated to all dispersed consumers in groups G and C1X (households and small enterprises) and, if applicable, to customers from other groups 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 foundations of smart grid development.

#### **b) access to transparent and understandable energy bills**

The lack of access to transparent and understandable bills constitutes a major problem for the customers. As the statistics of electricity customers' inquiries show, in 2012 5% of all cases were related to billing and invoicing. As regards gas customers, the cases connected with the financial settlements – in individual tariff groups and on the basis of the forecasts – and changes in gaseous fuel prices as well as billing and invoicing constituted 39%.

The biggest problem for the customers was to understand individual items on the bills, particularly with respect to distribution charges (several types of rates). The next major problem is to understand the forecasted invoice values and the associated settlement rules.

The Customer Guide, available on the ERO website, provides a detailed explanation on the various items of electricity bills. Moreover, the customers can obtain detailed information on their bills from the ERO Information Point for Fuel and Energy Customers.

## **5.2. Dispute settlement**

The President of ERO settles disputes only in matters connected with a refusal to conclude an agreement concerning connection to the network, sale agreement, transmission or distribution service agreements of fuels or electricity, transport agreement of natural gas, storing service agreement, liquefaction service agreement of natural gas, and common service agreement, as well as unjustified stoppage in supplying gaseous fuels or electricity. It should be noted that the above mentioned competences concern the enumerated cases and regard only the future contractual relations between the energy companies and customers. The decisions of the President of ERO are subject to control of the Court of Competition and Consumer Protection.

In 2012 the majority of proceedings conducted by the regulator concerned the refusal to conclude the agreements for connecting to the electricity grid (mainly regarding RES connection) due to a lack of technical or economic conditions. Connection to the gas network was much more rarely a subject to the proceeding before the President of ERO. Moreover, the regulator settled disputes in terms of refusal to conclude the transmission and distribution service agreements.

With respect to issues related to connection to the electricity grid, the recorded complaints and applications concerned mostly the prolonged execution date of the network connection agreement. As the reason for not keeping the date of the agreement execution, the undertakings most frequently pointed out to the difficulties in collecting relevant documentation and obtaining permissions required by law, problems with placing equipment on the land properties of private owners (the issue of setting an adequate easement) and not fulfilling by the connected entity obligations imposed on it by the connection agreement.

In terms of dispute regarding gas transmission services, the President of ERO issued a decision settling the dispute concerning refusal to conclude the agreement for transmitting gas on a firm basis – stating that OGP Gaz-System SA is not obliged to enter into an agreement in question with the undertaking which submitted the application.

A significant number of disputes between customers and energy undertakings arise with regard to the concluded agreements. Thus, it is worth noting that the President of ERO does not have competences in relation to the already concluded agreements and such cases lay within the jurisdiction of a general court.