

Amendment to the Energy Law

Further to our previous News Alerts from the first half of 2011, we would like to summarise the key changes imposed by an amendment to Act no. 458/2000 Coll. providing for the terms and conditions of enterprise and execution of the state administration in the energy segments, and amending some other laws (hereinafter referred to as the "Energy Law"). The amendment was published in the Collection of Laws on 19 July 2011 in Chapter 75 under no. 211/2011 Coll. and came into effect on 18 August 2011.

The key changes include the following items:

- Dispatcher control
- Authorisation of the development of new power resources
- Extension of the ERO powers
- Separation of producers and owners of transmission systems
- Strengthening of the consumer's position

Dispatcher control

The amendment introduces the duty to install a device through which the energy production facility could be disconnected from the grid if necessary.

Pursuant to the new wording of Section 23 ss. 2 par. q), the power producer is obliged to "equip the power plant with an installed

output exceeding 100 kW with a device which enables dispatcher control of the power plant, and to maintain the device in working order; the duty does not apply to the power plants exploiting renewable power resources, which were first launched into operation before 2000, with an installed output not exceeding 10 MW, and to small hydro-electric plants with an installed output not exceeding 10 MW".

Term and sanctions for the failure to meet the duty

The power producer is obliged to equip the power plant with an installed output exceeding 2 MW, which had been launched into operation before the Act came into effect, with a device that enables dispatcher control by 30 June 2012, and by 30 June 2013 in the case of the power plants with the installed output from 100 kW to 2 MW.

The failure to meet the duty is subject to a penalty up to CZK 50,000,000, or 1 % of the net turnover achieved by the licence holder in the last completed accounting period.

An option to change or discontinue power supply from power plants was stipulated in the Energy Law already before the amendment; however, the terms and conditions allowing the application of this measure were rather strict. The list of terms and conditions is now being extended in case of "threat to

the safe and reliable operation of the grid and by the application of available market mechanisms provided by the market operator and transmission system operator“.

Compensation for unpurchased power

Power production in the power plants using renewable power resources may be limited only against compensation (for unpurchased power) in the amount corresponding to the total income of the producer after deduction of the cost of unproduced power, which the producer would have achieved had the production not been limited.

Compensation is provided by the transmission system operator or the distribution system operator whose technical control center limited the power production in the power plant using renewable power resources via dispatcher control.

Any prospective disputes concerning the compensation are to be settled by the Energy Regulatory Office; its powers have been extended by the amendment (see below).

Authorisation for the new power resources development

The development of new power plants with a total installed output exceeding 1 MW is now possible only upon state authorisation granted by the Ministry of Trade and Industry. There is no legal title to the authorisation.

The amendment specifies the requirements of the application for authorisation and regulates the process of the applications assessment. First of all, the power plant concerned must be in compliance with the state energy policy, the National Action Plan for

power generated from renewable resources and the system development plan.

In addition, the location of the plant, exploited primary power resources, energy efficiency, impact on the safe and reliable operation of the grid, financial requirements of the power plant development, safety of persons and property and safety of power supplies are also subject to the assessment.

Subject to the authorisation assessment is also the level of anticipated future demand for the power and the impact of the power plant on balance between the supply of and demand for power.

The authorisation expires in the cases presumed by law; it may be also cancelled by the Ministry, either on the grounds of a material failure to meet the terms and conditions of the authorisation, or upon a request made by the authorisation holder.

Extension of the ERO powers

The amendment extends the powers of the ERO namely in the area of power and gas market supervision where the ERO powers also include the settlement of disputes over the amount of compensation for unpurchased power in connection with the dispatcher control (see above).

The ERO also assumes the inspecting powers from the State Energy Inspection under the Energy Law. However, the State Energy Inspection is not being thereby dissolved; it will still be in charge of the inspection and processing of suggestions concerning the Act providing for the support of power generation from renewable resources.

The ERO will also monitor the oversight of the Consumers Protection Act in the energy segment; the ERO will also settle consumer disputes, e.g. disputes over the return of the amounts overpaid, or claims concerning billing.

Separation of producers and owners of the transmission systems

One of the objectives of the amendment is to support free market operations. This is to be achieved, *i.a.*, by equal access to the distribution networks.

With respect to its shareholders structure, the transmission system operator must be independent of power or gas production or of power or gas trade. The amendment also specifies the terms and conditions of the independence, which include the following:

- the transmission system operator must be also the owner thereof,
- certain persons and groups of persons acting in compliance must not control the transmission system operator or the enterprise thereof,
- certain persons must not function as members of a statutory body, members of the Supervisory Board, proxy holders or members of any other body of the transmission system operator, and must not appoint, elect or otherwise constitute the body.

The new rules requiring the ownership separation of the transmission system operator and the transportation system operator will be applied by 3 March 2012 at the latest.

Strengthening of the consumer's position

The amendment specifically facilitates withdrawal from a power supply contract on the part of the consumer. This option may be exercised in a situation where the consumer concludes a power or gas supply contract outside the standard premises of the supplier, or in a situation where the supplier increases the price or changes any other contractual terms; the supplier must publish such changes no later than 30 days before they come into effect. Should the supplier fail to notify the consumer of such changes at least 30 days before they come into effect and, at the same time, the supplier advises the consumer of his right to withdraw from the contract, the consumer may withdraw from the contract no later than 10 days before the change is to occur. However, if the supplier fails to inform the consumer of the changes within this deadline, the consumer may withdraw from the contract even 3 months after the change came into effect. No financial claims may be lodged against the consumer in the case of the contract withdrawal on the part of the consumer.

The consumer must also be granted the option to select a manner of payment for the supplied power or gas, which is not detrimental to the consumer. The amount of advance payments for power or gas stipulated by the supplier is also limited.

bpv Braun Partners s.r.o.
Palác Myslbek
Ovocný trh 8
CZ-110 00 Praha 1

Tel.: (+420) 224 490 000

Fax: (+420) 224 490 033

www.bpv-bp.com
prague@bpv-bp.com

This material is distributed to business partners and associates of the Company. Further distribution or copying of any parts thereof without previous consent is not permitted. Our intention is not providing an overall analysis of the topics presented herein but pointing to those that are interesting at the given moment.

The users should always request the respective professional services related to the information and the Company does not assume any liability whatsoever for the conduct or abstention from the conduct carried out upon the information contained herein.