Report on the activities of ElCom 2011

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Federal Electricity Commission ElCom

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Contents

About ElCom

ElCom (from left to right): Carlo Schmid-Sutter (President), Anne d'Arcy, Hans Jörg Schötzau (Vice President), Brigitta Kratz (Vice President), Matthias Finger, Aline Clerc and Werner Geiger

Duties

» The Swiss Federal Electricity Commission (ElCom) is responsible for monitoring the Swiss electricity market and securing compliance with the Swiss Federal Electricity Supply Act.

» As an independent state regulator, ElCom is playing an active role in the transition from a monopolistic electricity supply system to a competition-based electricity market.

» Here, one of its duties is to monitor the electricity tariffs for end users with basic supply. ElCom also has to ensure that the network infrastructure is properly maintained, and is also expanded as required so that the future supply can be guaranteed.

» In order to fulfil these duties, ElCom has been endowed with wide-ranging competencies, in particular in the following areas:

» It supervises electricity tariffs for fixed end users (households and other end users with an annual consumption below 100 MWh) and end users who do not choose to gain access to the network. It also examines network utilisation remuneration. It may prohibit unjustified electricity price increases, or if tariffs are too high it is empowered to order price reductions. It

may take steps in response to complaints or requests, or on its own initiative in its official capacity as regulator.

» It mediates in, and rules on, disputes associated with free access to the electricity network. With effect from 1 January 2009, large-scale consumers (i.e. those with an annual consumption of at least 100 MWh) have been able to freely choose their electricity supplier. Consumers with an annual consumption below 100 MWh will only be able to gain free access to the electricity market from 2014, providing that full liberalisation is not rejected by the electorate in a referendum.

» ElCom is empowered to rule on disputes relating to remuneration at cost for feed-in to the grid, which was introduced on 1 January 2009 for producers of electricity from renewable energy sources.

» ElCom monitors electricity supply security and the status of the electricity networks.

» It defines the procedures for the allocation of network capacities in the event of shortfalls in cross-border transmission lines, and co-ordinates its activities with European electricity market regulators.

» ElCom also has to ensure that ownership of the transmission network is transferred to the national operator, Swissgrid AG, by the end of 2012 (separation process).

Organisation and personnel

ElCom comprises seven independent members appointed by the Federal Council, plus a Technical Secretariat. It is not subject to any directives of the Federal Council, and is independent of the administrative authorities.

The Electricity Commission

At the end of 2011, the Federal Council confirmed the seven existing members of the Electricity Commission for the 2012 to 2015 legislative period. All of them are independent of the electricity industry, and they all work on a part-time basis. On average, the Commission holds a plenary meeting once a month, and its members also attend meetings of the four committees: "Prices and Tariffs", "Networks and Supply Security", "Legal Issues", and "International Relations".

In the year under review, the composition of the Commission was as follows:

President:

Carlo Schmid-Sutter, attorney-at-law and notary public, president of the cantonal executive ("Landammann") of Appenzell Innerrhoden.

Vice Presidents:

- Brigitta Kratz, attorney-at-law, tutor in private law at the University of St Gall.
- Hans Jörg Schötzau, doctor in natural sciences, titular professor at the Swiss Federal Institute of Technology, Zurich, former CEO of NOK (Networks, Trading, Sales).

Members:

- Anne d'Arcy, Professor of Corporate Governance and Management Control, Vienna University of Economics and Business.
- Aline Clerc, degree in engineering from the Swiss Federal Institute of Technology, Lausanne, specialist in rural and environmental engineering, expert at the Consumers' Association of Suisse Romande (FRC) in Lausanne.
- Matthias Finger, PhD (political science), Professor of Management of Network Industries at the Swiss Federal Institute of Technology, Lausanne.
- Werner Geiger, degree in engineering from the Swiss Federal Institute of Technology, Zurich, independent business consultant.

Technical Secretariat

The Technical Secretariat provides the Commission with technical and specialised support, prepares the Commission's decisions and implements them. It conducts administrative proceedings and carries out the necessary clarifications. It is independent of any other authorities and is solely subject to the directives of the Commission. Until the end of 2011, the Swiss Federal Office of Energy was responsible for the administration of the Technical Secretariat. With effect from 1 January 2012, responsibility was transferred to the General Secretariat of the Federal Department of the Environment, Transport, Energy and Communications (DETEC). In the year under review, the number of employees of the Technical Secretariat remained unchanged at 34.

Head of the Technical Secretariat
Renato Tami, attorney-at-law and notary public

Prices and Tariffs (10 employees)
Stefan Burri (Dr. rer. pol.)

Legal Issues (8 employees)
Nicole Zeller, attorney-at-law

Networks and Europe (8 employees)
Michael Bhend, electrical engineer

Commission Secretariat
(7 employees)
Dario Ballanti (Dr. sc. nat.)

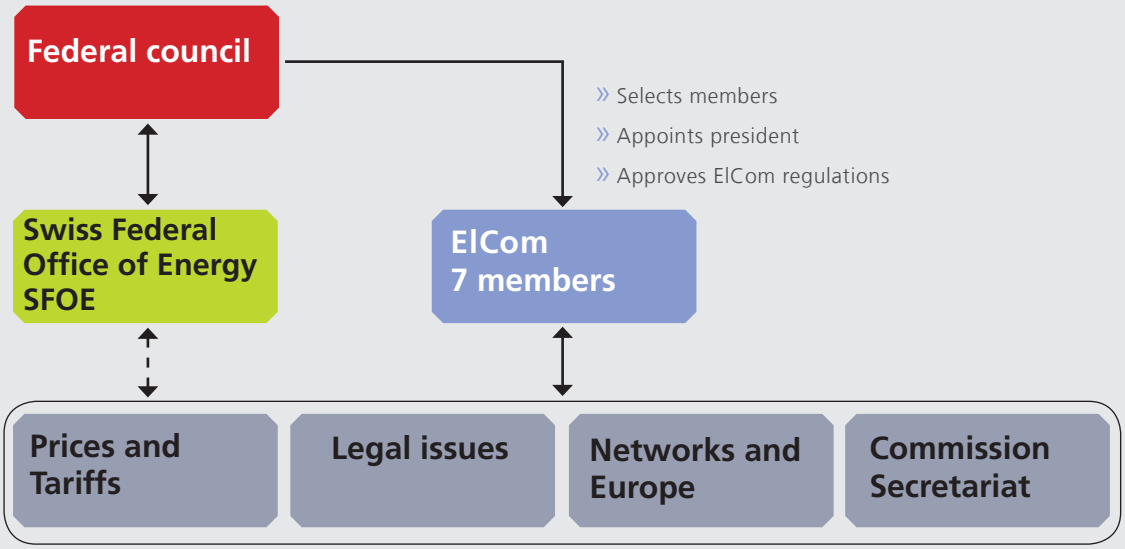

Figure 1: Structure of ElCom with attachment of the Technical Secretariat to the Swiss Federal Office of Energy until the end of 2011.

International activities

Eglisau-Glattfelden hydropower plant on the border between Switzerland and Germany.

Shortfall management

The network capacities at Switzerland's borders are specified on the basis of network and operational reliability, and are optimised to meet the requirements of electricity trading. They are conservatively measured at the northern borders (with France, Germany and Austria) and are thus rarely reduced for operational reasons. By contrast, the capacities at the southern border are measured generously, and are therefore more often subject to reductions. In 2011, the allocation of capacities (auction) was carried out for the first time by CASC (Capacity Allocation Service Company), which is domiciled in Luxembourg, on the basis of an explicit procedure in which network capacity is auctioned independently of the energy. With the exception of the reduction rule, the intended coordination of auction regulations for 2012 at all Swiss borders was concluded in December 2011. This exception relating to reductions is to remain in effect until further notice due to the different capacity specification. In addition, in view of the expiry of a long-term agreement at the French border, a portion of the capacity from France can be auctioned in the direction of Switzerland with effect from December 2011. It was also possible to introduce intraday capacity allocation at this border. This can be initiated as of 18 January 2012, and takes place on the same platform as the intraday

allocation at the German border (www.intraday-capacity.com). Preparations for the further development of capacity allocation in accordance with the implicit procedure, in which the energy is allocated with the capacity, were initiated with neighbouring states Germany and France in 2011.

Border power plants

A border power plant produces energy from a body of water bordering a neighbouring country. The use of such bodies of water is contractually agreed between the involved countries. Older treaties normally do not include explicit criteria concerning the shared use of the body of water in a liberalised environment. Upon request, on 12 May 2011 ElCom pronounced a ruling concerning the allocation of priority for a border power plant. The relevant treaty stipulates that the energy produced on Swiss sovereign territory is to be transferred abroad free from restrictions of any kind under public law. ElCom found that the contractual provisions would not be complied with if line capacity would have to be auctioned for the transport of the energy. In the case of border power plants it is to be assumed that both countries have an interest in the common utilisation of the water forces, and that priority therefore has to be granted jointly by both countries, though it must at no time exceed the level of hydropower production.

Auction proceeds

In accordance with Article 22, paragraph 2c of the Swiss Federal Electricity Supply Act, ElCom is responsible for deciding on the use of proceeds from market-oriented allocation procedures (auction proceeds) as defined in Article 17, paragraph 5 of the above Act. On 21 December 2011, ElCom pronounced a ruling regarding the use of auction proceeds in 2010. After deduction of the costs relating to auctions and redispatch (costs for guaranteeing the availability of the allocated capacity) in accordance with Article 17, paragraph 5a, Electricity Supply Act, the proceeds are to be used for the maintenance or expansion of the transmission network or for securing the recoverable costs of that network (Article 17, paragraphs 5b and 5c, Electricity Supply Act). These two uses are not prioritised by law. A portion of the auction proceeds was used for securing the recoverable costs in the transmission network in accordance with the ElCom ruling dated 6 March 2009 regarding the costs and tariffs for network utilisation at level 1 and system services. The remainder of the auction proceeds are to be used for the maintenance or expansion of the transmission network. In order to prevent the double assertion of recoverable costs, the remaining revenue is to be used for project costs that are incurred by Swissgrid after 1 January 2013, since the transmission network has to be transferred to the national network operator as of the above date.

International bodies

In view of its geographical location and the availability of its (supplementing) power plants, Switzerland is an important partner for Europe and is thus affected by developments within the European Union (EU). In accordance with Article 17, paragraph 1 of the Electricity Supply Act, ElCom is responsible for processes relating to the management of shortfalls. It is therefore actively involved in those European bodies in which the regulations governing cross-border electricity transport and trading are formulated.
On the basis of voluntary cooperation, since 2000 the European energy regulators in the CEER (Council of European Energy Regulators) have been advocating the creation of a uniform, competitive and sustainable internal electricity market. At the end of 2011, ElCom submitted a request to be granted the status of observer within the CEER. For ElCom, observer status facilitates cooperation within Europe.
ElCom is also closely monitoring the activities of ACER (Agency for the Cooperation of the Energy Regulators, which was established in March 2011), in which it represents Switzerland's interests in a variety of workgroups. ElCom's full participation in ACER largely depends on the conclusion of an electricity agreement between the EU and Switzerland.

International legal developments

The European Commission, ACER and the European Network of Transmission System Operators for Electricity (ENTSO-E) have pursued their efforts relating to European network codes in accordance with the third EU Energy Package, which entered into force on 3 March 2011.
The aim behind these codes is to harmonise on a step-by-step basis the regulations governing the operation of the electricity system, the development of the electricity market, network investments and the structure of tariffs in the area of energy use in the EU. The objectives are to secure the electricity system, integrate renewable energy and establish a European single electricity market by 2014/2015.
ENTSO-E has commenced work on the formulation of the first codes based on the framework guidelines of ACER.[1] ElCom is monitoring developments in this area, as well as those governed by Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT).

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[1] *Technical requirements for grid connection (20 July 2011); Operational management of the electricity system (2 December 2011); Management of interconnection capacities and shortfalls (29 July 2011).*

Transfer of the transmission network to Swissgrid

Masts in the ultra-high-voltage transmission network.

Transmission network transfer modalities

In accordance with Article 33, paragraph 4 of the Electricity Supply Act, transmission network owners are required to transfer their networks to Swissgrid by the end of 2012. In the year under review, these players focused on the preparation of agreements on contributions in kind. ElCom again intensively supported this process in 2011. In the spring it opened formal proceedings concerning this issue. The purpose of these proceedings is to specify the transaction modalities as well as the applicable transaction value for the transfer of the transmission network to Swissgrid. In response to a petition from various parties, in an interim ruling dated 7 July 2011 ElCom stated that it is responsible for these proceedings. The parties concerned lodged an appeal against this interim ruling with the Swiss Federal Administrative Court.

In the autumn, ElCom commissioned an economic expertise that is to report on the planned financing concept for the transaction. As before, ElCom is focusing on the question whether the financing of Swissgrid over the short, medium and long term is secured in terms of the impending investment in the transmission network, which is essential for ensuring supply security in the Swiss electricity grid.

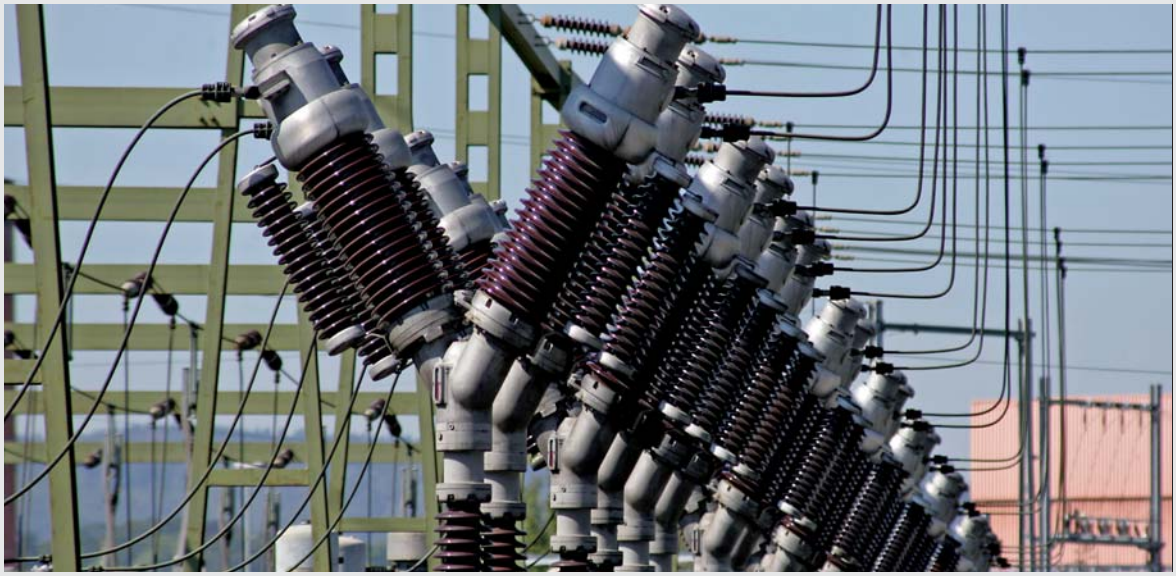
Court rulings, definition and delimitation of the transmission network, rulings on review requests

In a ruling dated 11 November 2010, ElCom formulated its definition of the transmission network and specified its delimitation. ElCom found that the entire meshed 220/380 kV network belongs to the transmission network. This includes T connections, switchboard sections, certain cross-border lines, and installations that are used together with other network levels and are mostly used in connection with the transmission network, without which it would not be possible to operate the latter safely and efficiently. Stub lines that are connected to the meshed transmission network with only one connection point are not part of the transmission network. Several of the involved parties lodged appeals against the decision of ElCom with the Federal Administrative Court, and for this reason the ruling is not yet legally binding in its entirety. However, the basic principle of allocating the 220/380 kV network to the transmission network was not contested.

In two cases, ElCom considered a partial review of its ruling of 11 November 2010. In the first case, a cross-border line is not included in the capacity calculations despite its citation in the 2008 Statistical Yearbook of the European Network of Transmission System Operators for Electricity (ENTSO-E). In the second case, a transformer is not located in control zone Switzerland, and is therefore not a cross-border line at a level below 220 kV. In both cases, ElCom came to the conclusion that, contrary to the original decision, the cross-border line and the transformer do not form part of the Swiss transmission network and do not have to be transferred to Swissgrid.

In July 2011, the Federal Administrative Court ruled that stub lines, both with and without supply nature, belong to the transmission network. One of the parties involved in the proceedings lodged an appeal against this decision with the Swiss Federal Supreme Court. As before, other proceedings at the Federal Administrative Court concerning cross-border issues and switchboard sections are still pending.

Supply security



Substation in Laufenburg.

Key data relating to the Swiss electricity network

Thanks to the collection of cost-accounting data from all network operators, during the period under review ElCom was for the first time able to gain a complete overview of the most important installations in the Swiss electricity network. The table and illustrations below contain figures for 687 out of a total of 730 network operators, and include the 86 largest operators. It is possible that the figures for the lower network levels have been slightly underestimated, since these are based on self-declarations by network operators which have only been verified by ElCom to a limited extent.

Type of installation	No. of installations	Measurement unit
Pipe system, high voltage (NL 3), medium voltage (NL 5) and low voltage (NL 7)	101,409	km
Cable (NL3)	1,893	km
Cable, medium voltage (NL5)	30,607	km
Cable, low voltage (NL7)	72,852	km
Cable, connection to household (NL7)	45,926	km

Type of installation	No. of installations	Measurement unit
Supply line (NL1)	6,750	Line km
Overhead line (NL3)	7,057	Line km
Overhead line, medium voltage (NL5)	12,232	Line km
Overhead line, low voltage (NL7)	11,558	Line km
Substation, NL2, NL3, NL4 and NL5	1,114	Quantity
Transformer NL2	150	Quantity
Switching field NL2	139	Quantity
Transformer NL3	92	Quantity
Switching field NL3	1,917	Quantity
Transformer NL4	1,117	Quantity
Switching field NL4	1,384	Quantity
Transformer N5	1,067	Quantity
Switching field NL5	27,467	Quantity
Transformer station NL6	48,985	Quantity
Mast transformer station NL6	6,287	Quantity
Cable distribution box, low voltage (NL7)	155,764	Quantity

Installations in the Swiss electricity network

The declared original acquisition and production costs of the distribution network (excluding the transmission network) amount to 33 billion Swiss francs, while the remaining costs total 17 billion. The residual value of the transmission network is around 2 billion Swiss francs. From these figures it may be deduced that the total residual value of the Swiss electricity network is approximately 19 billion Swiss francs, and that the network has been depreciated by around fifty percent.

Figure 2 shows the declared residual values by network level. It only shows the residual values of the 86 largest network operators. The remaining operators normally only operate at the lower network levels, and their residual values of around 3 billion Swiss

francs therefore had to be added to the figures for network levels 6 and 7. We can then see that network levels 6 and 7 on their own account for approximately 50 percent of the total residual values. Supply lines and cables account for around five-sixths of the installation values.

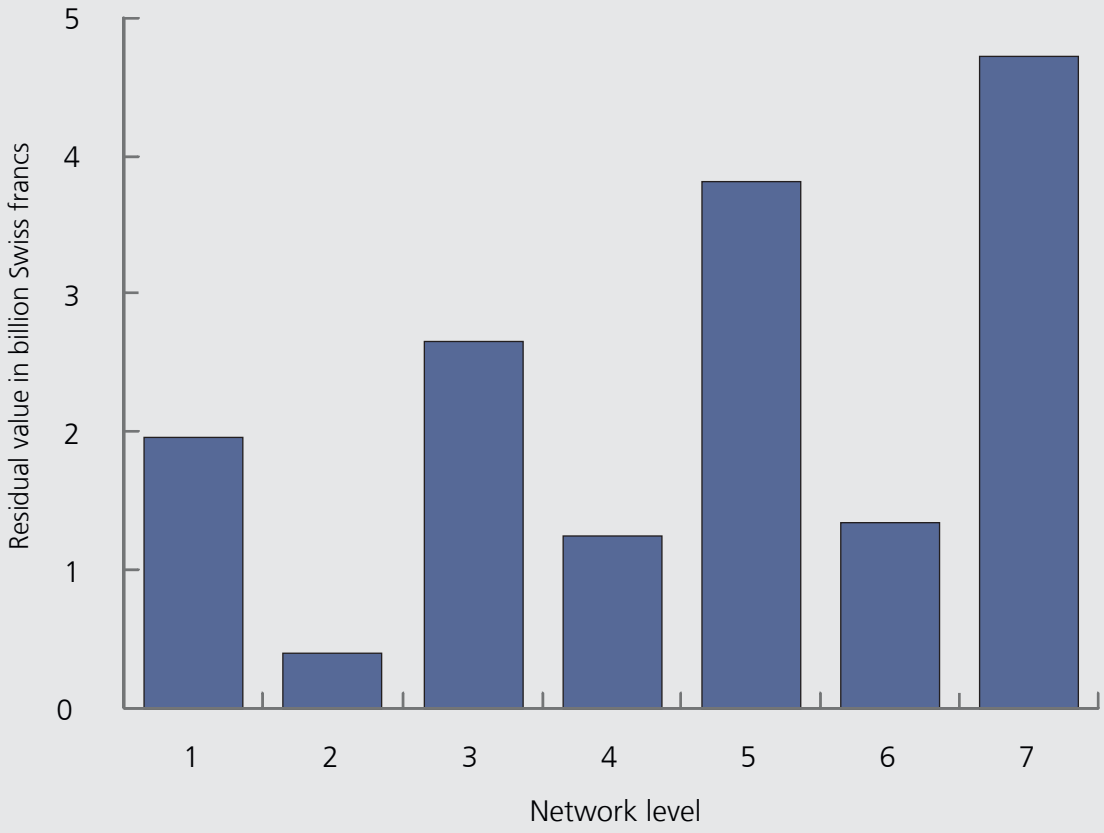


Figure 2: Residual values by network level.

Figure 3 shows the distribution of the residual installation values amounting to 17 billion Swiss francs and the utilisation revenue of 3.2 billion Swiss francs from the distribution network by size of operator. The 100 biggest operators have been formed into groups of 10, while the remaining 630 have been grouped in a separate category. As we can see, the 10 largest network operators (dark blue) own approximately half, and

the 40 largest operators (dark blue, brown, light yellow and light blue) around three quarters, of all declared installations, and generate the corresponding levels of network utilisation revenue. The residual value of the largest distribution network operator is around 70 times higher than that of the hundred largest network operators.

Distribution of residual values (total, 17 billion Swiss francs)

Distribution of network utilisation revenue (total, 3.2 billion Swiss francs)

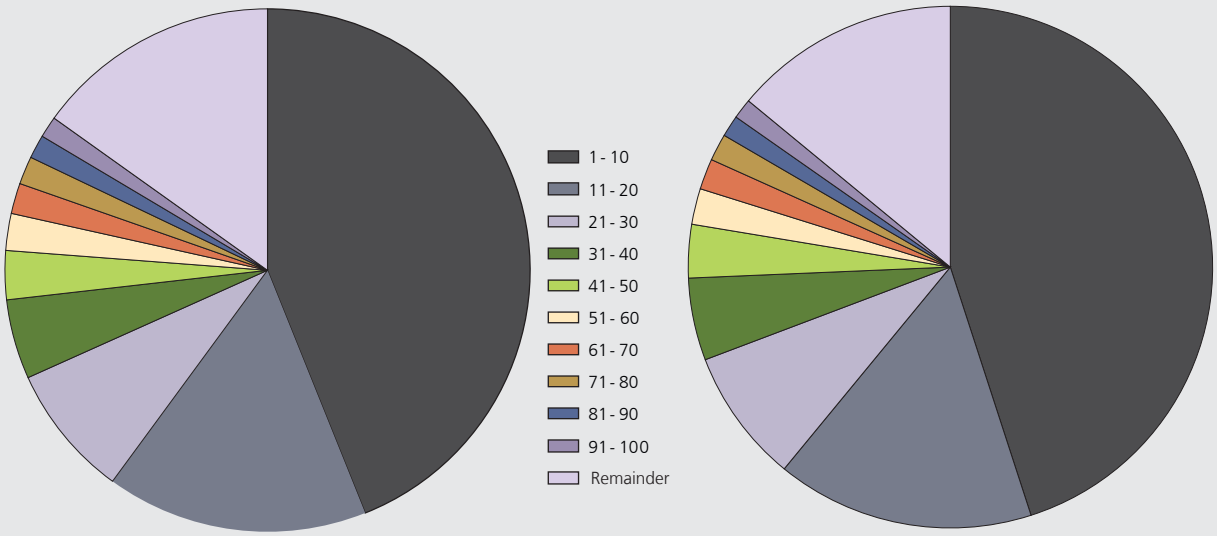


Figure 3: Residual values and network utilisation revenue (distribution network) by size of operator.

Figure 4 shows a breakdown of network costs. Operating and capital costs each account for almost half, and the remainder concern direct tax, fees and services. The high proportion of operating costs is to some extent attributable to the fact that some operators have very high capitalisation levels. The relatively low importance of taxes can primarily be explained by the fact that two-thirds of network operators

in the distribution network are not subject to taxation. However, taxes account for a significantly higher proportion among those operators who are subject to taxation.

Breakdown of network costs
(total, 4 billion Swiss francs)

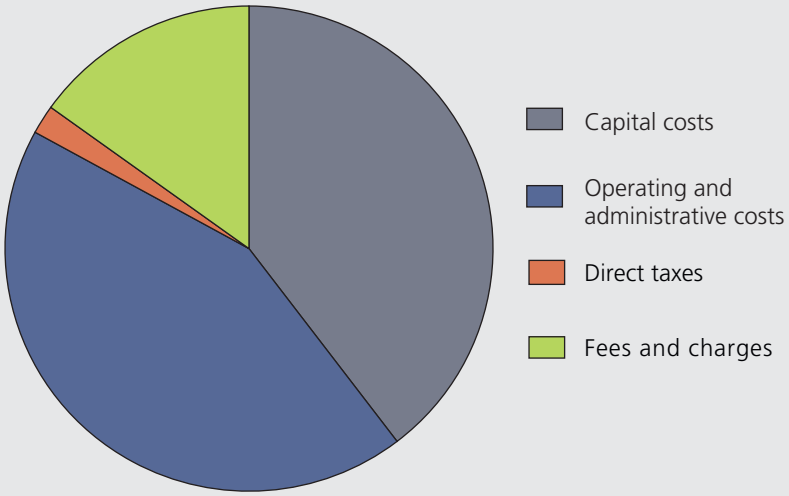


Figure 4: Breakdown of network costs.

System services

The term "system services" refers to the auxiliary support services that are required for the safe operation of electricity networks. These services guarantee a high level of network availability and secure the necessary degree of network stability. Within the scope of its review of tariffs for 2012, ElCom examined the calculation of costs for system services and carried out a number of adjustments.

Reserve capacity, which is required in order to compensate fluctuations in consumption and production at any time, accounts for the largest proportion of system service costs. The necessary power plant capacities are procured via an auction procedure, the results of which are periodically monitored by ElCom, which also assesses the effectiveness of the procedure from the point of view of competition.

Network availability

Network operators are obliged by law to submit the internationally standard key supply quality data to ElCom. For reasons of comparability, ElCom calculates the key data itself, and thus needs network operators to supply basic data relating to interruptions in their supply area. In 2011, ElCom evaluated the interruptions reported by network operators during 2010, and its evaluation revealed that, overall, it is not yet possible to assume that the quality of submitted data is sufficient. In view of this, ElCom provided all network operators with summary feedback with the aim of improving the quality of data collection.

For the reporting of supply interruptions in 2012, ElCom issued Directive 4/2011 (obligation for network operators to record and submit supply quality data in 2012). The circle of network operators to whom the requirement applies is unchanged versus 2011, as is the method of data collection.

Monitoring of the market

The monitoring of the market that was introduced in 2010 in coordination with the Swiss Federal Office of Energy (SFOE) and with the support of the Swiss Federal Financial Market Supervisory Authority (FINMA) in order to identify potential risks in the energy trading sector, was evaluated in 2011. The objective here was to assess the extent to which risks arising in association with energy trading activities could represent a threat to Switzerland's supply security. A threat of this nature could arise, for example, if an energy supplier were to run into liquidity problems as the result of losses incurred in proprietary trading. To shed a light on this problem, the individual energy supply companies were questioned about the fundamentals of their risk policy, its practical implementation and their current level of risk exposure. Initial results indicate that the questioned energy suppliers only enter into limited trading risks that are well within their risk-bearing capacity. In comparison with many of their European counterparts, Swiss energy suppliers are generally characterised by a higher equity ratio, which underscores their higher risk-bearing capacity.

Energy policy

Following the reactor disaster in Japan in March 2011 that occurred as the consequence of a powerful earthquake and subsequent tsunami, the situation with respect to nuclear energy in Germany was reassessed and a moratorium on nuclear power plants was declared. This led to the immediate shutdown of 8 nuclear power plants with an output of 8.4 GW. This move meant that German network operators found themselves in a more difficult situation, and voltage problems were predicted for areas in the south and the north of the country. The associated problems were eased thanks to contractually secured reserves within Germany and Austria. In addition, a redispatch agreement was concluded with Swissgrid and Italian network operator TERNA, concerning the provision of assistance in the form of supplies of energy for Germany. These supplies are procured as necessary in Switzerland and Italy, and compensated by the involved German network operators.

Grid expansion and planning

High-voltage transmission line at the Nufenen Pass.

Long-term planning

In accordance with Article 8, paragraph 2 of the Electricity Supply Act, network operators are required to draw up long-term plans concerning the expansion of the network infrastructure. In accordance with Article 20, paragraph 2a, Electricity Supply Act, the national network operator is responsible for planning the entire transmission network. The aim here is to ensure that the network is constantly maintained and expanded so that secure, productive and efficient operation can be assured at all times. ElCom has to be included in the planning and realisation of projects so that it can assess the financing requirements and ensure that investments are distributed evenly in all regions of the country. In the year under review, ElCom did not explicitly request the above information from distribution network operators, and limited itself to examining the expansion plans for the transmission network. The delimitation of the transmission network for the purpose of its transfer (Article 33, paragraph 4, Electricity Supply Act) has not been definitively specified at the legal level (the ruling by the Swiss Federal Supreme Court is still pending), and this means that the questions of competency and financing still need to be clarified for certain expansion projects. In addition, due to the events that occurred during the year under review and the resulting decision to gradually withdraw from the use of nuclear energy, the future requirements on the transmission network need to be examined in detail. These factors have a considerable influence on the planning of the expansion of the transmission network, and this means it was not possible to complete the plans in the year under review. ElCom assists Swissgrid with the preparation of long-term planning.

Recoverable costs

In accordance with Article 15, paragraph 1 of the Electricity Supply Act, only the costs of a safe, productive and efficient operation of the network are recoverable. In particular, this question arises in connection with the cabling of high-voltage supply lines, which gives rise to higher costs in comparison with overhead lines. The question whether the costs for cabling can be regarded as recoverable, especially when there is a cheaper alternative, therefore needs to be examined.
At the request of the Federal Department of the Environment, Transport, Energy and Communications (DETEC), the Swiss Federal Office of Energy (SFOE) developed a new evaluation method for transmission lines. Within the work group, comprising representatives of the Federal Office for the Environment (FOEN), the Federal Office for Spatial Development (ARE) and the SFOE, in addition to the criteria of environment, spatial development and technical aspects, ElCom also drew attention to the question of economic viability as a basis for assessing an efficient network.
In the year under review, with respect to "Riniken" the Swiss Federal Supreme Court ruled in favour of a cable solution. It substantiated this ruling by citing the long-term economic viability of a cable solution that is primarily attributable to lower costs resulting from energy losses.
ElCom welcomes the overall concept according to which the various options relating to transmission line projects are assessed not only on the basis of utilisation and protection criteria, but also from the point of view of economic viability. As noted above, ElCom also incorporated this into the preparation of the new evaluation method for transmission lines.

Costs and tariffs

ElCom controls electricity tariffs for end users with basic supply.

Market situation

In the initial phase of liberalisation of the market, only large-scale consumers with consumption of more than 100 MW per annum have the right to choose between basic supply and free market access (Article 6, paragraphs 1 and 2, Electricity Supply Act). According to information supplied by network operators, these users account for around half the energy consumed in Switzerland. As we can see from Figure 5, in the first three years only very few end users made use of this right to choose, since only 5 percent of electricity is supplied on the free market.

These figures have to be interpreted with caution, however, since in summer 2011 the Swiss Federal Supreme Court ruled that steel processor Stahl Gerlafingen has to be classified as an end user with basic supply, and does not have access to the free market (cf. page 29). It is unclear to what extent this ruling was reflected in the figures that had to be submitted to ElCom only a short time afterwards.

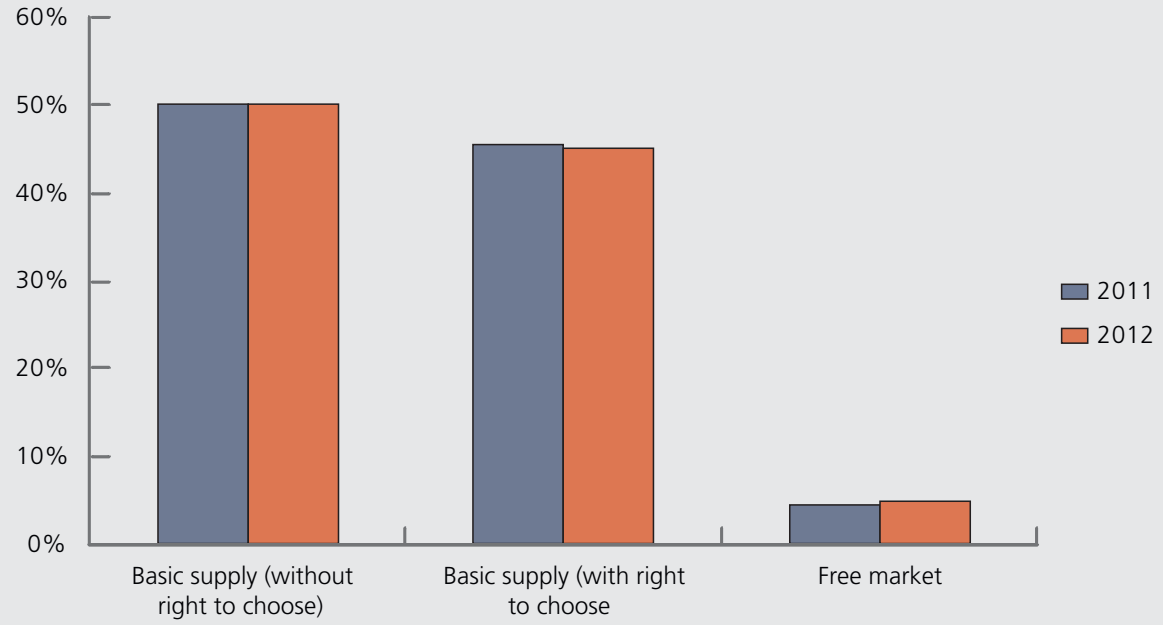


Figure 5: Supplied energy by end user category.

Development of tariffs in 2012

Tariffs for 2012 had to be published by the end of August 2011, and this meant that it was already possible to comment on them in the year under review.

Following a slight increase in 2011, which was primarily attributable to a higher energy price, tariffs for households (based on the example of consumer profile H4, i.e. an apartment with an annual consumption of 4,500 kWh) are slightly lower in 2012 (cf. Figure 6).

This decrease is almost entirely attributable to the reduction of the network use tariff, roughly half of which is attributable in turn to lower costs for system services (0.77 cents per kWh in 2011 versus 0.46 cents per kWh in 2012). On the other hand, fees and charges and the surcharge for the promotion of renewable energy (feed-in remuneration at cost) remained largely unchanged for households. It can therefore be stated that, on average, distribution network operators have only changed their tariffs to a minor extent in the past few years.

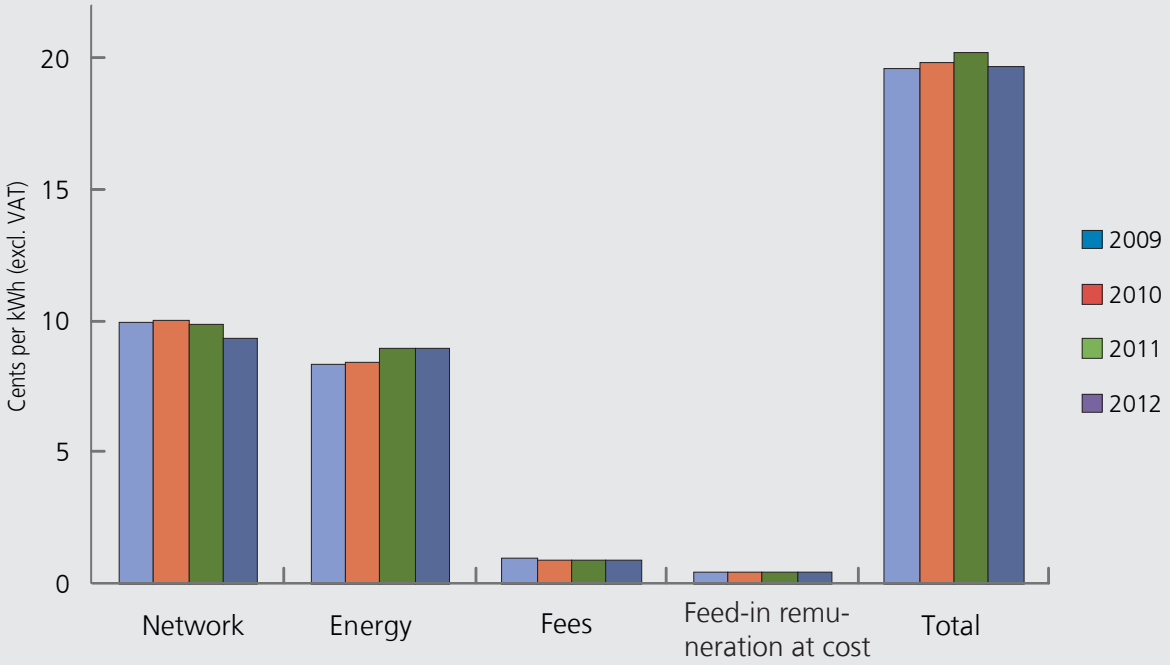


Figure 6: Cost components of the overall electricity price for consumer profile H4.

As we can see from Figure 6, the overall electricity price is above all influenced by network and energy prices, whereas fees and charges and feed-in remuneration at cost account for less than ten percent of the total price. When comparing electricity prices, the fact has to be taken into account that tariffs vary according to region, and that considerable differences can arise depending on the amount of electricity consumed by a customer at a given time (consumer profile).

Annual financial statements of networks

In order to ensure transparency, in Directive 3/2011 ElCom specified minimum requirements on the annual financial statements which distribution network operators are obliged to publish in accordance with Article 12, paragraph 1 of the Electricity Supply Act. An annual financial statement is required to include a balance sheet and income statement that are compiled separately from the other areas of activity, and also has to show

figures for the current and the previous year. In addition, the income statement must include network income and expenses, as well as network profit/loss.

The ElCom Technical Secretariat audited the 2010 annual financial statement of each distribution network operator, and where necessary reported any failures to comply with the specified minimum requirements. Distribution network operators who did not compile their annual financial statement in accordance with Article 11 of the Electricity Supply Act or ElCom Directive 3/2011 were not required to make the necessary adjustments, but they must observe the comments and instructions of ElCom when they prepare their 2011 annual financial statements.

The audits carried out by the ElCom Technical Secretariat revealed that a large number of network operators failed to comply with the requirement of reporting the figures for the distribution network completely separately from the other activities, both in the income statement and in the balance sheet.

Cost accounting

In accordance with Article 11, paragraph 1 of the Electricity Supply Act, distribution network operators are obliged to submit their cost accounting to ElCom. The documentation is then examined by ElCom, which provides each operator with feedback. The Technical Secretariat of ElCom also carried out an in-depth audit of the network values declared by seven distribution network operators who had primarily applied the synthetic valuation method for calculating their 2011 tariffs. These operators were asked to revise the valuation of their network. In addition, 56 distribution network operators who had used a too-high weighted average cost of capital were requested to adjust it.

With reference to cost accounting for the 2012 tariffs, those distribution network operators who had submitted their Excel file before the middle of October received feedback already in December 2011.

The audits carried out by the Technical Secretariat of ElCom revealed that a large number of network operators did not declare any differences in cover. In accordance with Directive 4/2010 and Article 19, paragraph 2 of the Electricity Supply Ordinance, any surpluses realised in the past have to be compensated by reducing the network use tariffs. The Technical Secretariat also ascertained that the application of synthetic values is less widespread, but is nonetheless still common practice, even though in accordance with Article 13, paragraph 4 of the Electricity Supply Ordinance the synthetic valuation method may only be applied by way of exception.

Transmission network tariffs

On 29 April 2011, the national network operator published its tariffs for use of the transmission network in 2012. Following a summary examination, in a ruling dated 9 June 2011 ElCom provisionally reduced these tariffs to the levels that were applicable in 2011. The proceedings had not been concluded as of the end of 2011.

The definitive results of the examination are not yet available, though the examination tended to focus on similar aspects to those that were examined regarding the 2009, 2010 and 2011 tariffs. Within the scope of the examination, the capital costs of the owners of the transmission network were reviewed in detail, while the stated operating costs and other types of expenses were only subjected to a summary audit. For the audit of the capital costs, network valuation was a central aspect, largely in view of the forthcoming transfer of the transmission network to Swissgrid. In the 2012 tariff review process, attention was also paid to other questions associated with this process, e.g. the handling of utilisation rights.

In association with transit cost compensation (Inter-TSO compensation), a summary audit was carried out.

- Since the general system services tariff had been subjected to an in-depth examination during the past three tariff audits, it was no longer included in the process this year.
- As of the end of the year, an appeal lodged by a transmission network owner with the Swiss Federal Supreme Court concerning the issues of indexing, the 20 percent penalty and the deduction of 1 percent from the admissible interest rate, was still pending.

Distribution network tariffs

Network costs

Within the scope of the tariff review process, an audit of the network costs was concluded in the case of three distribution network operators. The two main areas of dispute relating to network costs are network valuation and the recoverability of certain operating costs.

In the case of network valuation, the main question was how the value of installations that were acquired via the operating costs is to be calculated. Here, ElCom adopted the same practice it has pursued in the past concerning the transmission network. This means that installations that have already been covered by charging end users via operating costs can no longer be recapitalised and subsequently depreciated and subject to interest.

The reductions of operating costs concern expenses such as sports and culture sponsoring, which are not classified as recoverable costs. In addition, other costs were reduced that are so high that they are not necessary in their entirety for a secure and efficient network.

In the cases to be assessed in the year under review, the recoverable costs were reduced by between 0 and 30 percent.

In another case, an electricity supply company had used the profit from network use remuneration to reduce the energy price for all its end users to below the purchase price. In response to a complaint, based on Article 10, paragraph 1 of the Electricity Supply Act the ElCom Technical Secretariat had to examine whether this took the form of cross-subsidisation between network operation and other areas of activity. Here the question whether the network use remuneration charged by the electricity supply company was correct was not examined, i.e. whether it was based on the network costs alone and not on additional costs relating to other areas of activity. Since there was no transfer of costs from one area to another, or between various client groups (in monopoly and competition situations), no cross-subsidisation took place. Electricity supply companies may therefore freely utilise the profit obtained from network activities within the scope of the relevant provisions of electricity supply legislation.

Energy

In several cases, the profit obtained from the distribution of energy to clients with basic supply was the subject of complaints submitted to ElCom.

From discussions held with the distribution network operators it became clear that, among municipal works in particular, the distinction between distribution profit and fees and charges had not always been made in the past in accordance with the provisions of the Electricity Supply Act. This issue was to some extent resolved through a subsequent re-declaration and by inform-

ing end users accordingly. In other cases a refund was ordered in the form of the issue of credit advices to clients.
As of the end of the year under review, several cases concerning the acquisition costs of energy were still pending.

Large-scale consumers

In its July ruling on the case involving Stahl Gerlafingen, the Swiss Federal Supreme Court found that, following the entry into force of the Electricity Supply Act, all end users have an entitlement to basic supply. This means that an end user that has already purchased electricity via the market does not lose its entitlement to basic supply. On the other hand, the Court reaffirmed the principle, "once free, always free". Following the entry into force of the Electricity Supply Act, end users lose their entitlement to basic supply when they opt to buy electricity on the market. As a result of this ruling, various network operators settled pending disputes with end users. In some cases the applicable tariffs are still the subject of dispute and are being examined by ElCom.
In a further case, ElCom found that the legislation governing electricity supply does not specify an entitlement to a degressive tariff. Since in accordance with the relevant legal provisions it is the network operators who are responsible for specifying tariffs, the allocation of a large-scale consumer to a client group with an annual consumption higher than 100 MWh could not be contested.
In another case, ElCom ruled that an end user may be connected to different network levels if the sub-networks are operated on a galvanically separated basis.

Other legal issues

» In 2011, for the first time the Swiss Federal Office of Energy fined the head of an electricity works for refusing to provide ElCom with information.

» In a licence agreement, following the entry into force of the Electricity Supply Act the supply of free or preferential energy may not be recovered by charging a fee for network use. The same principle applies to the costs of system services. This means that network operators are not permitted to pass on these costs to municipal licence holders or end users. An appeal against this ruling by ElCom was lodged with the Federal Administrative Court.

» In a ruling pronounced on 4 May 2011, the Federal Administrative Court upheld a decision by ElCom concerning a dispute over network level allocation. In this case, a municipal electricity works and a regional supply company could not agree on the network level to which the municipality was to be allocated. In its ruling dated 11 February 2010, ElCom found that, for an emergency connection that primarily benefited the municipal works, in keeping with the principle of "user pays" it was appropriate that the municipal works should pay the associated costs.

» The Federal Administrative Court rejected the appeal by the municipal works and fully upheld the ruling by ElCom. The Court found that industry documents are not of a juridical nature. They may be considered if they apply within the scope of electricity supply legislation and are found to be appropriate. In addition, with respect to the complaints by the municipal works concerning procedural matters, the Federal Administrative Court ruled that these were unsubstantiated. The ruling by the Federal Administrative Court dated 4 May 2011 is legally binding.

» If networks of different operators at the same network level are directly connected with one another, this can result in additional costs for end users ("pancaking"). In a ruling on this issue, ElCom came to the conclusion that a division of network levels for the purpose of reducing the additional costs arising through pancaking is reconcilable with the provisions of electricity supply legislation.

» The Federal Administrative Court upheld a ruling by ElCom dated 11 November 2010 in which a hotel was allocated to network level 7. Here, the Court supported the finding of ElCom that industry documents may be considered if they are reconcilable with the provisions of electricity supply legislation and deemed appropriate. In addition, the Court ruled that ElCom is a specialised authority with technical discretion, and for this reason for the assessment of specialised issues it is to be entrusted with the responsibility of choosing between several viable solutions.

» In a notice dated 17 February 2011, ElCom pointed out that, in accordance with the Electricity Supply Act, the term "fees and charges" refers to amounts that are collected by cantons and municipalities on the basis of legal provisions. ElCom is examining whether a legal basis exists for the collection of fees and charges, and whether these have to be disclosed to end users on electricity bills. Water rates and other charges based on licences for the use of hydropower do not take the form of fees and charges in accordance with the Electricity Supply Act, and therefore do not have to be shown separately either in published tariffs or on the bills of end users. They are allocated to the energy supply component of the tariff, and are not normally audited by ElCom.

» In a petition submitted by a network operator, ElCom was asked to decide who has to bear losses on accounts receivable relating to feed-in remuneration at cost and system services if an end user declares bankruptcy. In its ruling on 19 December 2011, ElCom came to the conclusion that such losses have to be borne by the network operators, and not by Swissgrid, but that they may be included in their tariffs in the form of differences in cover, and thus passed on to their end users.

Feed-in remuneration at cost

Modules of a large solar energy plant in La Chaux-de-Fonds.

ElCom is empowered to rule on disputes relating to remuneration at cost for feed-in to the grid, which was introduced in 2009 for producers of electricity from renewable energy sources. In the year under review, Swissgrid again rejected numerous new applications for feed-in remuneration at cost, or placed them on the waiting list. And in its turn, ElCom again received and ruled on requests to review the decisions by Swissgrid. The number of such cases is, however, declining. Instead, ElCom is now having to deal with an increasing number of cases in which the deadlines for submitting project progress or start-up reports have expired.

In 2011, in two cases ElCom ruled that feed-in remuneration at cost also has to be paid for the renewable portion in the case of systems that produce electricity from both fossil-based and renewable energy, and a corresponding synergy deduction from the remuneration rate has to be made for jointly utilised system components. In another case, ElCom ruled that feed-in remuneration at cost also has to be paid to a producer for the electricity produced within the permissible production deviation, but not for electricity produced in the period during which the permissible production deviation is exceeded.

ElCom upheld a number of revocation orders concerning Swissgrid's approval of feed-in remuneration applications. In a ruling dated 18 August 2011 it found that the applicant had not received an extension of the deadline for submitting the project progress report. And in its rulings dated 17 November 2011, it found that a revocation of an approval of an application for feed-in remuneration due to failure to observe the deadline does not represent an undue adherence to formality, and that the progress of the project was insufficient at the time the application was submitted.

Increases in network capacity

In accordance with Article 22, paragraph 3, Electricity Supply Ordinance, increases in network capacity that become necessary as the result of input in accordance with Articles 7, 7a and 7b of the Energy Act, form an integral part of system services. Remuneration for necessary increases in network capacity requires the approval of ElCom (Article 22, paragraph 4, Electricity Supply Ordinance). In 2011, ElCom ruled on 10 applications for remuneration of costs for necessary increases in network capacity. In the past two years, ElCom has pronounced a total of 14 rulings on costs for network increases in which it has granted costs amounting to around 4.6 million Swiss francs (of which 320,000 were awarded in 2010) relating to a production output of 20.9 MW. This results in average network increase costs of 220 Swiss francs per installed kW of production output.

	Production output [kW]	Network capacity increase costs [Swiss francs]
Minimum network capacity increase	18	11,356
Maximal network capacity increase	15,500	2,117,200
Average for 14 network capacity increases	20,909	4,600,223
Average for 14 network capacity increases	1,494	328,587

Figures relating to rulings on network increases.

Appendix

Facts and figures for 2011

Complaints, etc.	Brought forward from previous years	Received in 2011	Dealt with in 2011	Carried forward to 2012
Specific matters relating to tariffs	198	159	108	249
Feed-in remuneration at cost	2	22	9	15
Other cases	83	227	132	178
Total	**283**	**408**	**249**	**442**

ElCom activities: statistics for 2011.

Appeal proceedings

ElCom has pronounced 106 rulings since 2008, of which 13 were pending at the Federal Administrative Court (and 2 were suspended) as of the end of 2011, and 4 were pending at the Swiss Federal Supreme Court.

	Rulings
ElCom	**106**
Pending at the Federal Administrative Court	**13**
Suspended at the Federal Administrative Court	**2**
Pending at the Federal Supreme Court	**4**

ElCom appeal proceedings

Meetings

The members of the Commission attend monthly plenary meetings. In addition, the four committees hold their own meetings and ElCom also organises workshops and other extraordinary meetings. In the year under review, the members of ElCom attended a total of 14 full-day and 28 half-day meetings.

ElCom events

2011 ElCom Forum

The 2011 ElCom Forum was held at the University of Fribourg on 18 November. This was the second ElCom Forum, and its central theme was "Switzerland's role in the European electricity market". The 2011 Forum had a very strong international focus. In view of its geographic location, Switzerland is Europe's electricity hub. More than 10 percent of Europe's electricity flows through Switzerland, and it is only thanks to intensive cooperation with neighbouring countries and transmission network operators that cross-border electricity transmission is possible at all.

Around 200 representatives of the electricity industry attended the 2011 Forum, together with a variety of other participants. Speakers included Federal Councillor Doris Leuthard and the head of ACER (Agency for the Cooperation of the Energy Regulators), Alberto Pototschnig. Other lectures were presented by representatives of ENTSO-E (European Network of Transmission System Operators for Electricity) and EFET (European Federation of Energy Traders), as well as by the lead regulator of Region Central West and Swissgrid.

ElCom itself focused on the current priorities and challenges, including shortfall management and cooperation with other regulators. Harmonisation with foreign regulatory authorities is one of ElCom's official tasks.

The next ElCom Forum will be held on Friday 16 November 2012 at the Culture and Congress Centre in Thun.

Information events for network operators

In the year under review, the Technical Secretariat of ElCom organised 13 information events at a variety of locations in the country's 3 main language regions. The main topics were the collection of cost accounting data and ongoing legal issues. Approximately 500 people attended these sessions (primarily representatives of small and large network operators), which provided an excellent opportunity for those in attendance to meet and learn from ElCom's specialists.

Financial information

Key financial data for 2011

ElCom had a budget of 6.401 million Swiss francs at its disposal in 2011. Its effective expenditure amounted to 5.965 million Swiss francs. This amount covered the fees and expenses of the Commission members, the salaries of the 34 employees of the Technical Secretariat, and external consulting fees. It did not cover IT, logistics, human resources and real estate services, which were provided by the Swiss Federal Office of Energy to which the Technical Secretariat was affiliated until the end of 2011.

Income in the year under review amounted to 2.844 million Swiss francs, which comprised revenue from supervisory fees collected from Swissgrid for cooperation with foreign authorities (Article 28, Electricity Supply Act), and from charges billed to the parties within the framework of rulings.

Budget for 2012

For 2012, expenditure has been budgeted at 7.501 million Swiss francs. This amount increases with effect from 1 January 2012 following the administrative affiliation of ElCom with the Federal Department of the Environment, Transport, Energy and Communications (DETEC), since from that date onwards the budget encompasses all costs for the Commission and the Technical Secretariat.

The sources of revenue are the supervisory fee and income from procedural costs.

Publications

All publications may be viewed on the official ElCom web site (www.elcom.admin.ch).

Rulings

21.12.2011	Use of proceeds from market-oriented allocation procedures dating from 2010
15.12.2011	Payment of proceeds from market-oriented allocation procedures
15.12.2011	Electricity tariffs, 2008 to 2011
15.12.2011	Responsibility for feed-in remuneration at cost and system services contributions in the event of losses of accounts receivable
15.12.2011	Ruling of 30 March 2011 concerning feed-in remuneration at cost
17.11.2011	Revocation of feed-in remuneration for a biogas facility due to lack of project progress report /burden of proof in administrative proceedings
17.11.2011	Revocation on 18 March 2011 of feed-in remuneration at cost in accordance with Article 3h, paragraph 4, Energy Ordinance
17.11.2011	Remuneration for increase in network capacity (waste-to-energy plant)
17.11.2011	Remuneration for increase in network capacity (photovoltaics system)
20.10.2011	Addition costs of network use
13.9.2011	Status of membership of an association and a federation / extension of proceedings
13.9.2011	Remuneration for increase in network capacity (photovoltaics system)
13.9.2011	Remuneration for increase in network capacity (photovoltaics system)
13.9.2011	Remuneration for increase in network capacity (photovoltaics system)
18.8.2011	Revocation ruling dated 22 October 2010 on a positive decision regarding feed-in remuneration at cost in accordance with Article 3h, paragraph 4, Energy Ordinance
18.8.2011	Levy of an ultra-high voltage tax in 2008
18.8.2011	Remuneration for increase in network capacity (photovoltaics system)
7.7.2011	Examination of recoverable network costs for 2008/2007 financial year
7.7.2011	Transmission network transaction / responsibility of ElCom / extension of subject matter of the case
9.6.2011	Assessment of decision on registration for feed-in remuneration at cost (wood-fired combined heat and power plant)

9.6.2011	Ruling on provisional measures relating to 2012 costs and tariffs at network level 1
9.6.2011	Remuneration for increase in network capacity (photovoltaics system)
9.6.2011	Remuneration for increase in network capacity (wind park)
12.5.2011	Refund from too-high down-payment for general system services
12.5.2011	Application for granting of export rights
12.5.2011	Refund of down-payment for general system services
12.5.2011	Revocation ruling dated 2 June 2009 on a positive decision regarding feed-in remuneration at cost dated 20 January 2009 in accordance with Article 3h, paragraph 4, Energy Ordinance
12.5.2011	Remuneration for increase in network capacity
14.4.2011	Approval of 2009 general system services costs
17.3.2011	Request for tariff review
17.3.2011	Partial review of ruling dated 11 November 2010 concerning the definition and delimitation of the transmission network (1)
17.3.2011	Partial review of ruling dated 11 November 2010 concerning the definition and delimitation of the transmission network (2)
17.3.2011	Submission of 2011 cost accounting and electricity tariffs
17.3.2011	Allocation to a network level
17.2.2011	Review of power plants tariff
17.2.2011	Remuneration for increase in network capacity
13.1.2011	Network use costs, system services costs
13.1.2011	Reconsideration of power plants tariff

Directives

9.12.2011	4/2011	Obligation for network operators to record and submit supply quality data in 2012
9.6.2011	3/2011	Annual financial statements of networks
12.5.2011	2/2011	Transparent and readily comparable billing
17.3.2011	1/2011	Calculation of interest rate for assets required for operation

Notifications

8.7.2011	Enquiry regarding responsibility for costs for fibre optics for smart metering / smart grid
12.5.2011	Measurement costs and access to measurement data
14.4.2011	Tariffs for second dwellings
17.2.2011	Fees and payments to the state
13.1.2011	Refund of costs for system services due to repeal of power plants tariff

Newsletter

2.11.2011	Newsletter 7/2011
22.8.2011	Newsletter 6/2011
17.6.2011	Newsletter 5/2011
31.5.2011	Newsletter 4/2011
17.3.2011	Newsletter 3/2011
17.2.2011	Newsletter 2/2011
24.1.2011	Newsletter 1/2011

Press releases

6.9.2011	2012 electricity prices: average decrease of around 2 percent for households, 1 percent for commercial companies
16.6.2011	ElCom provisionally cuts transmission network tariffs for 2012

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