



## 2008 report on the activities of ElCom



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

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# Introduction

The entry into force of the new Electricity Supply Act on 1 January 2008 resulted in a variety of fundamental changes within the Swiss electricity industry. The tradition that had been in place for a number of decades, according to which consumers were forced to rely on an integrated electricity supply company and fixed tariffs, was partially abolished. The liberalisation of the Swiss electricity market means that the electricity grid as a natural monopoly has to be separated from the other areas of activity. This opens up new opportunities not only for the industry, but also for consumers: large-scale consumers can now obtain their electricity supplies from providers other than their regional network operator, and are also able to negotiate tariffs. And in their turn, energy suppliers can now operate in new regions.

The regulated segment of the electricity market, i.e. the electricity grid, is supervised by a new regulator: the Swiss Federal Electricity Commission (ElCom), which is responsible for ensuring a safe and affordable electricity supply in all areas of the country. It also has to ensure that in-

centives continue to exist for the electricity industry to invest in an efficient and high-quality network infrastructure. At the same time, ElCom has to guarantee that the tariffs for network use and electricity supply are kept within reasonable bounds as specified in the new legislation, and that costs are not unfairly passed on to consumers.

In this regard, ElCom faced a major challenge in 2008, in that suppliers announced sharp increases in electricity tariffs for the following year, both for trade and industry as well as for private households. This move triggered hefty political reactions, which culminated in a short-term amendment to the Electricity Supply Ordinance.

ElCom is confident that, by working closely together with all involved players, it will be able to find acceptable and balanced solutions to the existing challenges that above all meet the relevant legal requirements. The initial decisions to be taken by ElCom at the beginning of 2009 will hopefully provide useful indicators for all involved players regarding the development of the electricity market in Switzerland.

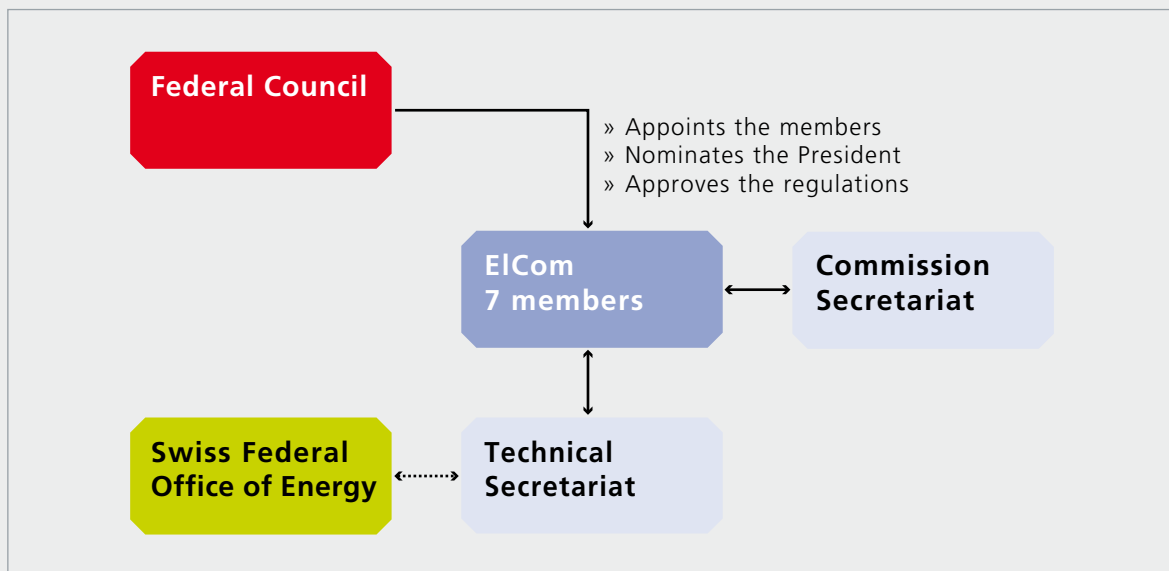
# Swiss Federal Electricity Commission ElCom

## Duties



The Swiss Federal Electricity Commission (ElCom) is responsible for monitoring competition on the Swiss electricity market. 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, a function that it has adopted from the price regulator (ombudsman). On the other hand, ElCom has to ensure that the network infrastructure is properly maintained, and is also expanded where shortfalls are identified so that the future supply can be guaranteed. In order to fulfil these duties, ElCom has been entrusted with wide-ranging competencies:

- » It supervises electricity tariffs for end users who do not have free network access (households and small/medium-sized companies with an annual consumption below 100 MWh), as well as network utilisation tariffs. 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 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 elec-



**Figure 1:** Structure of ElCom

tricity supplier. Consumers with an annual consumption below 100 MWh will only be able to gain free access to the electricity market as of 2014, providing that no referendum is launched in opposition to full liberalisation.

- » 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 regulates the distribution of network capacities in the event of shortfalls in cross-border transmission lines, and coordinates 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, in accordance with the specified deadline (separation process).

## Organisation and personnel

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

### The Electricity Commission

The seven members of the Electricity Commission were appointed by the Federal

Council for a term of office until the end of 2011. 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 Remuneration of Input", and "Contacts (Europe)".

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

#### **Members**

- » Anne d'Arcy, masters degree in law, Professor of Accountancy, University of Lausanne (Faculté des Hautes Etudes Commerciales, HEC)
- » Aline Clerc, degree in engineering from the Swiss Federal Institute of Technology, Lausanne, specialist in rural and environ-

mental engineering, expert at the Consumers' Association of Suisse Romande (FRC) in Lausanne

- » Matthias Finger, doctorate in 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. During the year under review, the number of employees of the Technical Secretariat climbed to 21.

#### **Head of the Technical Secretariat**

- » Renato Tami, masters degree in law, attorney-at-law and notary public

#### **Pricing and Tariffs Section (8 employees)**

- » Stefan Burri, doctorate in social and economic sciences

#### **Legal Affairs and Feed-in Remuneration Section (6 employees)**

- » Nicole Zeller, masters degree in law, attorney-at-law



### **Networks and Europe Section**

(6 employees)

- » Michael Bhend, degree in engineering from the Swiss Federal Institute of Technology, Zurich

### **Commission Secretariat**

The Commission Secretariat is ElCom's contact and co-ordination centre for the general public, the electricity industry and the media. It co-ordinates the activities of the Commission and the Technical Secretariat, and provides the Commission with administrative support. Number of employees as of the end of the year under review: 4.

### **Head of the Commission Secretariat**

- » Frank Rutschmann, doctorate in natural sciences

## **Legal bases**

- » Swiss Federal Electricity Supply Act of 23 March 2007 (SR 734.7)
- » Swiss Federal Electricity Supply Ordinance of 14 March 2008 (SR 734.71)
- » DETEC Ordinance of 3 December 2008 on exemptions from network access and calculation of recoverable costs in the cross-border transmission network (SR 734.713.3)
- » Swiss Federal Energy Act of 26 June 1998 (SR 730.0)
- » Swiss Federal Energy Ordinance of 7 December 1998 (SR 730.01)

- » Regulations of the Swiss Federal Electricity Commission dated 21 November 2007 (SR 734.74)

The Electricity Supply Act entered into force on 1 January 2008, and its associated Ordinance entered into effect on 1 April 2008. The articles of specific relevance to the liberalisation of the electricity market came into effect on

1 January 2009, after which date those end users with an annual consumption of more than 100 MWh per business location were able to freely choose their supplier. The Electricity Supply Act stipulates that the market is to be fully liberalised after a period of 5 years (i.e. on 1 January 2014). The necessary resolution is to be adopted by Parliament, and will be subject to an optional referendum (Article 34, paragraph 3, Electricity Supply Act).

The maximum permissible remuneration for network use is to be specified by the Electricity Supply Act and its associated Ordinance (Articles 14 ff, Electricity Supply Act, and Articles 12 ff, Electricity Supply Ordinance). The specified amount may not exceed the recoverable operating and capital costs and the fees and payments to the state (cost-based method).

The legislation governing electricity supply is not intended solely for the purpose of creating a competition-based electricity market, but was also conceived as an instrument for maintaining and securing an adequate electricity supply

(Article 1, Electricity Supply Act). The Electricity Supply Act therefore regulates the basic supply (Articles 5 ff), entrusts network operators with the tasks associated with securing the electricity supply (Article 8), and empowers ElCom to propose measures to the Federal Council for maintaining or restoring supply security in the event that this should be at risk (Articles 9 and 22).

Electricity supply companies are required to secure the independence of network operation. Cross subsidisation between network operation and other areas of activity is prohibited. Electricity supply companies are also required to separate their activities relating to distribution networks from their other business activities, at least in terms of accounting (Article 10, Electricity Supply Act). The nation-wide transmission network is operated by a domestic company (Swissgrid), which has been established as a joint stock corporation under private law, with domicile in Switzerland (Article 18, paragraph 1, Electricity Supply Act) and is majority-owned by the district production plants. The transmission network operator may neither carry out any activities in the areas of electricity production, distribution and trading, nor hold interests in any companies that carry out such activities. This does not apply to the purchase and supply of electricity required for operational reasons, especially for the provision of system services (Article 18, paragraph 6, Electricity Supply Act). The

majority of the members of the Board of Directors, including the Chairman, and the members of the management board of the national network operator must be independent of the electricity industry (Article 18, paragraph 7, Electricity Supply Act).

As current owners of the nation-wide transmission network, the district production plants are required to transfer their respective holdings to the national network operator by 1 January 2013 at the latest (Article 33, paragraph 4, Electricity Supply Act). This means that, as of the above date, Swissgrid will not only be responsible for the operation of the transmission network, but as its owner it will also be responsible for its maintenance and expansion. In the event that the district production plants should fail to transfer their ownership to the national network operator by the specified deadline, ElCom has a right of expropriation (Article 33, paragraph 5, Electricity Supply Act).

At the same time as the Electricity Supply Act entered into force, an amendment to the Swiss Federal Energy Act dated 26 June 1998 was also implemented. The aim of this amendment was to introduce a variety of measures, in particular remuneration of feed-in at cost (Article 7a, Energy Act), in order to bring about an increase in the average level of annual electricity production from renewable energy sources by at least 5,400 GWh by 2030 (Article 1, paragraph 3, Energy Act).

# Priorities in 2008

## Pricing and tariffs



### Announcement of tariffs for 2009 and subsequent reactions

The tariffs for 2009 announced by national network operator Swissgrid in May 2008 were higher than had been anticipated by many market participants. The stated reasons included costs for system services and the valuation of the transmission network. In response to the announced tariff increase, in its capacity as regulator ElCom initiated proceedings against Swissgrid, in which the approximately 40 owners of the transmission network were also included. Most of the tariffs for end users that were announced at the end of August by the approximately 800 network operators were also higher versus those in the previous period. The reasons for the often enormous increases were the

reevaluation of the networks in the calculation of network use remuneration, the higher costs for system services, the new fee for the promotion of renewable energy (feed-in remuneration at cost) and higher charges by some municipalities. The Commission received around 2,500 general complaints and formal objections against these electricity price increases from a wide range of sources reflecting the entire spectrum of distribution network operators and end users: municipal operators, private households, small and medium-sized companies, large-scale consumers. In most cases, the general increases were reprimanded, but in many cases this also applied to specific tariff components such as the basic rate (which was especially high for second dwellings),

night-time rates (particularly for owners of electric storage heaters or heat pumps, but also for commercial operations such as bakeries), as well as for one-time connection and network cost contributions for the connection of new properties to the supply network.

### **Examination of 2009 tariffs of the transmission network**

On 23 May 2008, Swissgrid announced its tariffs for the use of the transmission network in 2009. ElCom subsequently received around 30 complaints requesting a review or reduction of these tariffs. On 26 June 2008, in its capacity as regulator ElCom initiated an examination of these costs and tariffs, which it concluded at the end of the year under review. This complex process concerned the networks of 39 operators, and ElCom focused its attention on two priority areas:

#### **Examination of the network use tariff**

The network use tariff reflects the operating and capital costs of the 39 owners of the transmission network and the national network operator, Swissgrid. ElCom closely examined the network valuation and thus the amortisation and interest costs of the various facilities. The analysis of the network valuation revealed that the owners applied systematic values for facilities (up to a specific cut-off date) that they had calculated on the basis of replacement prices (also referred to as synthetic network valu-

ation). Based on Article 15, paragraph 3 of the Electricity Supply Act, ElCom demanded that, wherever possible, the original acquisition and development costs must be taken as the basis for the calculation of capital costs. In accordance with Article 13, paragraph 4 of the Electricity Supply Ordinance, ElCom only recognises synthetic network valuation if the acquisition and capital costs cannot be calculated. For the facilities valued on the basis of calculation of acquisition and capital costs, ElCom verified whether the already billed operating and capital costs were correctly deducted, and whether the applied price indices met the specified legal requirements. ElCom also verified the total amount of operating costs.

The examination of the network use tariffs of the transmission network was close to completion as of the end of 2008.

#### **Examination of the general system services tariff**

This tariff includes the quantities and acquisition costs relating to reserve energy, which is necessary in order to ensure network stability and supply security in the event of unexpected occurrences such as the breakdown of a power plant. In Switzerland, reserve energy is primarily provided via storage power plants (hydropower). The power plant blocks in Switzerland are very large in comparison with the overall production volume. Thus in order to compensate the failure of one of the larger power plants, a high quantity of reserve energy has to be

available, and this results in correspondingly high costs. ElCom examined how much reserve energy in the European context actually has to be provided in Switzerland. Also, the question had to be examined as to whether these costs would have to be partially borne by the producers. To clarify these issues, ElCom called on the services of external experts.

ElCom intends to conclude its tariff examinations by the beginning of March 2009. If the results show that a change in tariff is necessary, a retroactive compensation as of 1 April 2009 will have to be made in the tariffs for 2009.

### **Proceedings against other network operators**

On the basis of numerous appeals and complaints, in the course of the year under review ElCom carried out a variety of examinations of network utilisation and electricity tariffs of distribution network operators. Examinations of network valuations showed that a large number of facilities were valued on the basis of synthetic values. The valuation principles described above for the transmission network also apply to distribution networks: Article 15, paragraph 3 of the Electricity Supply Act stipulates that the valuation of these facilities must be made on the basis of acquisition or development

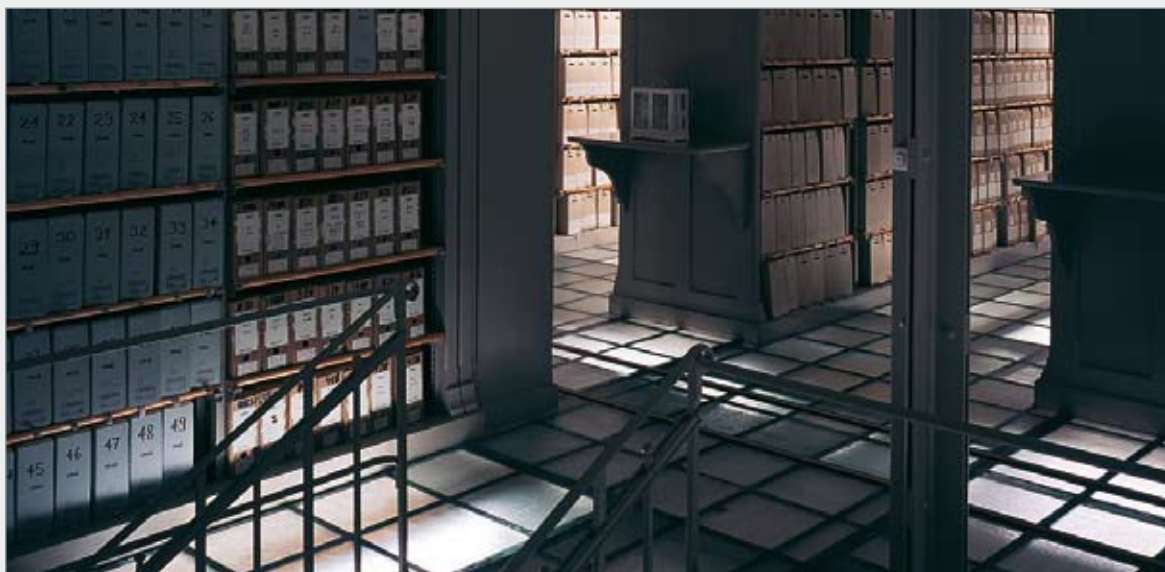
costs. Article 13, paragraph 4 of the Electricity Supply Ordinance only permits synthetic valuation by way of exception. In such cases, ElCom demands that operators must carry out a valuation in accordance with the applicable legal provisions.

With the revision of the Electricity Supply Ordinance dated 12 December 2008, all network operators were required to recalculate their tariffs for 2009 and publish them by the end of March 2009. In view of this, ElCom halted the examinations it had already initiated, and will reinstate them after the new tariffs for 2009 have been published.

### **Instrument for standardised cost accounting**

In accordance with Article 11, paragraph 1 of the Electricity Supply Act, network operators are required to produce statements of costs for each network and submit them to ElCom on an annual basis. ElCom will be collecting these cost accounts for the first time in 2009, and in order to ensure that they can be readily evaluated they need to be submitted by the network operators in a standardised form. For this purpose, at the end of the year under review ElCom and the industry began to jointly develop an instrument for the systematic reporting of costs.

## Legal affairs



### **Independence of Swissgrid**

The Electricity Supply Act contains a variety of provisions concerning the independence of the national network operator, Swissgrid. For example, the President and the majority of its members must be independent persons. They may not simultaneously exercise an executive or management function in companies that are active in the areas of electricity production and trading, nor may they perform the function of service provider for such entities (Article 18, paragraph 7, Electricity Supply Act).

Konrad Peter stepped down as Chairman of the Board of Directors of Swissgrid in mid-May 2008, and Vice Chairman Hans Schweickardt took over as Chairman on a temporary basis. As a result of this move,

only six of the twelve members of the Board of Directors were independent persons. ElCom strongly urged Swissgrid to restore the legally required majority of independent members, and this requirement was subsequently met at the beginning of December 2008, when Peter Grüşchow was elected Chairman of the Board of Directors.

At the end of October 2008, the Board of Directors of Swissgrid decided to dissolve its technical commissions, which had supported it by providing specialised know-how during the development phase.

The Articles of Incorporation of Swissgrid require the approval of the Federal Council, which examines whether they guarantee the independence of Swissgrid as required by law (Article 19, Electricity Supply Act). The



Federal Council approved the amendment in the middle of December 2008, subject to the requirement that the majority holding in Swissgrid by the cantons and municipalities is guaranteed. A special workgroup is to look for a suitable solution by the middle of 2009.

The relevant legal provisions are also an important factor in the examination of the 2009 transmission network tariffs. Here the question has to be examined whether the tariffs announced by Swissgrid are in fact legally valid. At the time the tariffs were announced in May 2008, the Articles of Incorporation of Swissgrid had not yet been approved by the Federal Council. Furthermore, when the tariffs were adopted by Swissgrid, the composition of its Board of Directors did not comply with the relevant provisions of the Electricity Supply Act. ElCom therefore had to examine this matter within the scope of its ruling concerning the 2009 costs and tariffs of the transmission network.

### **Separation of the transmission network**

The Electricity Supply Act makes a distinction between several levels of separation (also referred to as "unbundling"): information level (Article 10, paragraph 2), organisational level (Article 10, paragraph 1), accounting level (Article 10, paragraph 3, and Article 11, paragraph 1), legal level (Article 33, paragraph 1), and ownership level (Article 33, paragraph 4).

During the year under review, a number of

owners of the transmission network asked ElCom for permission to postpone the stipulated legal separation and to only implement it at the time of transfer of ownership of the transmission network to national network operator Swissgrid. In view of the clear wording of the relevant legislation, however, ElCom was unable to grant the requested permission to postpone the stipulated separation.

Within the scope of its supervisory function, ElCom will closely monitor the separation of the transmission network by the end of 2012.

### **Electricity consumption by large-scale consumers**

Following the publication of tariffs at the end of August 2008, in accordance with the Electricity Supply Act those entities with an annual electricity consumption of more than 100 MWh (i.e. large-scale consumers) were given the opportunity for the first time of deciding whether they wish to meet their electricity needs in 2009 by participating in the energy market as "free end users". However, only very few large-scale consumers decided to make use of this opportunity to participate in the market. The main reason for this is that these consumers, too, have the right to continue to receive basic supply until the implementation of the second stage of market liberalisation in 2014. With basic supply, consumers can benefit from electricity tariffs which, in accordance with Article 4 of the Electricity Supply Or-

dinance, have to be based on acquisition costs and long-term supply agreements. In autumn 2008, these regulated tariffs were significantly more attractive than the European market prices. Another factor here is that, in accordance with Article 11, paragraph 2 of the Electricity Supply Ordinance, the decision to switch from basic supply to the free market is irrevocable, and many large-scale consumers regard the associated risk as too high.

Once an end user has exercised the right to enter the free market, the prices for electricity supplies are determined on the basis of concluded agreements. ElCom is not responsible for examining these supply conditions in the free market, and in the course of 2008 had to inform a number of end users to this effect who had submitted complaints about such agreements. If indications should exist that point to illegal restrictions of competition (for example, unlawful competition agreements), these can be reported to the competition authorities.

A large number of electricity supply companies had already concluded written agreements with large-scale consumers even before the official (partial) liberalisation of the market. The question now has to be examined whether these large-scale consumers have effectively joined the free market as a result of such agreements, or are still entitled to participate in the basic supply scheme. Large-scale consumers and electricity supply companies tend to interpret the provisions of Article 11, paragraph 2 of

the Electricity Supply Ordinance differently. ElCom plans to examine this matter in the first half of 2009.

At the end of 2008, some large-scale consumers feared that they might not receive supplies as of 2009 due to the expiry of their supply agreements. In such cases, ElCom issued a precautionary ruling stipulating that the contractual supplier must continue to supply the large-scale consumer in question with electricity. It also specified the tariff for the duration of the proceedings (ruling by ElCom dated 17 November 2008, case no. 957-08-137).

### **Network use remuneration in supply areas abroad**

Certain areas abroad that are located close to Switzerland's borders receive electricity supplies from Swiss providers, and belong to control zone Switzerland. And vice versa, some areas within Switzerland belong to a control zone outside the country and receive electricity from foreign suppliers. This situation gives rise to the question as to which tariffs apply in such cases with respect to system services and network use: those in Switzerland, or those in the neighbouring state?

Contrary to private law, public law does not recognise an effective collision provision that specifies the law that applies to cross-border matters. Instead, the principle of territoriality applies, which means that Swiss public law only applies to matters that arise within Switzerland. ElCom has qualified the supply



of electricity from control zone Switzerland to areas outside the country as subject to Swiss public law. In view of this, Swiss law is applicable, and Swiss tariffs are valid (ruling by ElCom dated 30 October 2008, case no. 952-08-017).

A petition was subsequently lodged with the Swiss Federal Administrative Court in the form of a precautionary measure to the effect that, for network use abroad by Swissgrid, the applicable tariff should be based on the corresponding prices in the country concerned. The Federal Administrative Court rejected this petition in its interim ruling dated 22 December 2008 (case no. A-7862/2008).

### **Feed-in remuneration at cost**

The Federal Energy Act stipulates that, by 2030, the annual production of electricity from renewable energy sources must be increased by at least 5,400 GWh versus the level recorded in 2000. For this purpose it contains a package of measures for the promotion of renewable energy and efficient electricity use. Here the main measure concerns remuneration at cost for the feed-in of electricity from renewable energy sources. For 2009, around 200 million Swiss francs have been budgeted for feed-in remuneration at cost, compensation of existing facilities (15 to 16 cents per kWh), sureties for geothermal energy projects, and requests for tenders. An additional 60 million Swiss francs have been budgeted for refunds to large-scale consumers, enforcement and

balance energy costs, and fluctuations in market prices. The Federal Energy Act provides for a maximum surcharge of 0.6 cents per kWh on Swiss end electricity consumption as a means of financing feed-in remuneration at cost. The applicable surcharge in 2009 is 0.45 cents per kWh.

Feed-in remuneration at cost applies to the following production technologies: small-scale hydropower (output up to 10 MW), photovoltaics, wind energy, geothermal energy, biomass and biological waste.

Producers were able to register for feed-in remuneration from 1 May 2008 onwards. In the first six months, Swissgrid received more than 5,000 applications. There is so much interest in this promotion scheme that it is rapidly approaching its limits. For example, the 2008 quota for new photovoltaics systems has already been reached. In accordance with the provisions of the Energy Act, the Swiss Federal Office of Energy had to call a halt on decisions regarding photovoltaics systems, and instruct Swissgrid to refrain from issuing any further positive decisions relating to these systems. There are currently around 3,000 photovoltaics facilities on the waiting list.

In accordance with Article 25 of the Energy Act, ElCom is responsible for dealing with disputes arising in association with the connection conditions for energy production facilities and surcharges on transmission costs, i.e. feed-in remuneration at cost. In the year under review, ElCom received around 100 appeals against decisions by

Swissgrid. In the majority of cases, producers complained that instead of receiving remuneration commencing from the beginning of 2009 they had merely been placed on a waiting list. ElCom closely examined each complaint, and found that in around 90 percent of all cases Swissgrid had acted correctly, since the annual quota for new photovoltaics systems had already been

reached. In the remaining 10 percent of the cases, ElCom instructed Swissgrid to reverse its decision.

In one further case, a petition was submitted to ElCom requesting that VAT should be paid in addition to the payments made under the feed-in remuneration scheme. A ruling on this case is expected to be made in the first quarter of 2009.

## Networks



### Supply security

In accordance with Article 22 of the Electricity Supply Act, ElCom is required to monitor the development of electricity markets in order to guarantee a safe and affordable supply of electricity in all regions of the country,

as well as to ensure that the transmission network functions smoothly and is properly maintained.

When the Electricity Supply Ordinance entered into force on 1 January 2008, responsibility for the planning and control of the

entire transmission network was transferred to national network operator Swissgrid. However, in practice the responsibility for balance management was again assumed by the balance zones in 2008. With respect to overall responsibility for the management of control zone Switzerland, in the year under review ElCom intervened and instructed Swissgrid to submit the contractually specified disposal rights over the network facilities to ElCom in accordance with Article 33 of the Electricity Supply Act.

### **System services**

When the provisions of the Electricity Supply Ordinance of relevance to the national network operator enter into force, the seven existing balance zones will be transferred by legal means to control zone Switzerland as of 1 January 2009. At the same time, this move means that Swissgrid will also assume official responsibility for balance management and the provision of system services, including the securing of the necessary reserve capacity and guarantee of the maintenance of the voltage level. ElCom is monitoring and supporting the preparatory tasks of the electricity industry for the market-based procurement of system services with effect from the beginning of 2009.

Within the scope of the ongoing proceedings relating to the 2009 tariffs of the transmission network, ElCom intensively examined issues associated with system services. For example, it had to verify the necessary reserve electricity capacity in accordance

with the relevant international standard, and carry out an international comparison of the anticipated costs.

Towards the end of the year under review, an initial series of requests for tenders was implemented. The first results indicate that the market situation for certain products is still barely developed, but since the market is still in its infancy it is too early to draw any meaningful conclusions at this time.

Once the proceedings concerning the 2009 Swissgrid tariffs have been concluded, ElCom will focus its attention on the optimisation of modalities relating to requests for tenders in the reserve energy market. In addition, it will examine certain pricing mechanisms (e.g. for billing balance energy to the balance groups).

### **Collection of key supply quality data**

In accordance with Article 6, paragraph 2 of the Electricity Supply Ordinance, all network operators are required to submit the internationally customary key data relating to supply security to ElCom on an annual basis. In the year under review, in its directive no. 4/2008, ElCom waived the collection of key data so that network operators would be able to focus on their primary tasks such as separation of network operation and the development of a cost accounting system. At the same time, however, ElCom defined the data to be supplied with effect from 1 January 2009, and published the details in directive no. 7/2008. In 2009, only those

network operators with an annual energy balance greater than 200 GWh are required to record interruptions to supply and submit the associated data to ElCom.

Allocation of network zones by the cantons  
The cantons are responsible for the allocation of network zones. Article 5, paragraph 1 of the Electricity Supply Act states that the cantons are responsible for designating the zones in their sovereign territory in which network operators are active. This means that ElCom is not responsible for dealing with disputes arising in this connection. However, the allocation of network zones is of considerable importance for ElCom's activities. In particular in disputes it must be clear which network operator connects which end users at which conditions, and is required to supply them with electricity. During the year under review, the cantons were urged to speed up the allocation process required by law. Although this process has meanwhile been initiated in all cantons, by the end of the year under review only very few cantons had actually brought it to a conclusion. It obviously requires more time in those cantons that have a large number of network operators and greatly fragmented network zones.

### **Network connection and change of network level**

In a certain number of cases, the allocation of end users and network operators to a particular network level resulted in disputes that were carried out with the involvement

of ElCom. In two cases, the dispute concerned the question whether municipal network operators were allocated to level 4 or level 5, which has an effect on the amount of network use remuneration to be paid. ElCom therefore decided to closely examine the issue of change of network level and the problem of pancaking. In the above cases, ElCom expects to announce its decisions in the first half of 2009.

### **Increases in network capacity**

In accordance with Article 22, paragraph 3 of the Electricity Supply Ordinance, increases in network capacity that are required as the result of connection of producers (especially facilities qualifying for feed-in remuneration at cost) form an integral part of system services. Remuneration for necessary increases in network capacity requires the approval of ElCom. ElCom received a number of corresponding applications in the course of 2008. For this purpose it evaluated a variety of remuneration models (both for specific cases and as standard solutions) and commissioned a corresponding expert report. It expects to issue a directive in the first quarter of 2009 based on this evaluation.

### **Relations with neighbouring states and the EU**

#### **Bilateral contacts with regulators abroad**

In view of Switzerland's central location and its high degree of integration into the European network, co-ordination with the

regulators in neighbouring states is an important duty for ElCom. In the year under review, it held talks with the Commission de Régulation de l'Énergie (CRE) in France, the Bundesnetzagentur (BNetzA) in Germany, E-Control in Austria and Autorità per l'energia elettrica e il gas (AEEG) in Italy, and pursued co-operation on bilateral issues on an ad-hoc basis. The most important topic that was discussed in these bilateral talks was how to deal with shortfalls in the cross-border transmission network. Other topics included the expansion of this network and the ongoing development of access to the respective national reserve energy markets.

Furthermore, ElCom was invited by the Belgian regulator (Commission de Régulation de l'Électricité et du Gaz, CREG), which functions as leader in the Central West region, to participate in a valuable exchange of information.

#### **Activities associated with the Central South regional initiative**

When the Electricity Supply Act entered into force, conditions in Switzerland were made similar to those in the EU electricity market, and ElCom was then granted observer status in the Co-ordination Committee of the European Central South region as of the beginning of the year under review. The objective of the various regional initiatives, which are firmly anchored in EU legislation, is to harmonise the market conditions in each region. The northern border

region of Italy had already been co-ordinated in the past within the scope of multilateral agreements between the five involved network operators. The main topics in the year under review concerned the securing of transparency, the creation of a single auction office for network capacities, and the question of integrating Switzerland's northern border region into France, Germany and Austria.

The procedures for dealing with shortfalls in the northern border region of Italy have been co-ordinated for quite some time already, and are based on the needs of the Italian market. In view of this situation, ElCom supported the efforts within the scope of the Central South regional initiative to co-ordinate auction procedures in the Italian border region. With respect to the creation of a central auction office, ElCom regards independence, transparency, reconcilability with Swiss legislation and the restriction to purely operational activities, as prerequisites for agreeing to such a solution. In the year under review, these prerequisites were not yet met.

With respect to the question of integration of Switzerland's northern border region, ElCom's consideration is towards the needs of the market. In electricity trading, this region is an important element for balancing general and peak loads, and is thus a significant factor for electricity supply security in Switzerland.

### **Activities within the CEER Electricity Focus Group**

For the European Regulators Group for Electricity and Gas (ERGEG), ElCom is a representative of a non-EU state and is therefore only entitled to attend meetings of the Electricity Working Group, and only for the purpose of discussions within the "Electrical Security of Supply", "Sustainable Development" and "Electrical Quality of Supply" task forces. ElCom's participation in these task forces was initiated in the year under review, and is to be extended in the coming years. In this way, ElCom aims to increase its degree of networking with EU regulators and secure the status of its information concerning the EU laws and directives that are of relevance for Switzerland.

### **Shortfalls in cross-border network capacities**

In the run-up to the entry into force of the Electricity Supply Act on 1 January 2008, joint auction procedures with Italy were introduced. Here, ElCom examined the auction rules and co-operation agreements drawn up by the involved transmission network operators from the point of view of harmonisation with the applicable national legal provisions. In order to guarantee legal as well as investment security, both Swiss and Italian legal provisions stipulate that existing electricity supply agreements must be performed outside the framework of auction procedures in accordance with the requirements specified in the relevant legislation.

The allocation procedures in Switzerland's northern border region were modified before the Electricity Supply Act entered into force, and meet the corresponding legal requirements. These procedures were carried out unchanged in the year under review.

In accordance with Article 22, paragraph 2 of the Electricity Supply Act, ElCom is responsible for deciding on the use of revenue from the proceeds of auctions. In the year under review, system operation and the provision of the associated system services were effectively secured by the existing balance zones. In view of this, ElCom allocated the bulk of the revenue from auctions to the owners of the transmission network, based on the transition clause contained in the Electricity Supply Act. This means that the revenue was used for securing the recoverable costs of the transmission network in accordance with Article 15 of the Electricity Supply Act.

### **Merchant lines**

All line operators are required to grant third parties access to their network without discrimination. Access to the network secures the freedom to buy electricity from a supplier of choice, or to feed electricity into any desired network. As an incentive for increasing the cross-border transmission capacity, Article 17, paragraph 6 of the Electricity Supply Act provides for the option of foreseeing exemptions from network access for additional capacity on the basis of new cross-border lines.

On 15 December 2008, the Swiss Federal Department of the Environment, Transport, Energy and Communications (DETEC) issued an Ordinance on exemptions from network access and calculation of recoverable costs in the cross-border transmission network (SR 734.713.3). This instrument empowers ElCom to licence merchant lines (under certain conditions), i.e. transmission network capacities that have been exempted from network access.

On 30 December 2008, ElCom granted such a licence for the line between Robbia (Switzerland) and San Fiorano (Italy). The costs for this line are borne by the investor for the period of the exemption, and do not qualify as recoverable costs as defined in the relevant legislation. After the period of exemption has expired, the additional

capacity will be placed at the disposal of the market players within the scope of the auction procedures, and the line concerned will be transferred to the national operator in the same way as other cross-border lines by not later than the end of 2012.

For the line that was introduced in the year under review between Mendrisio (Switzerland) and Cagno (Italy), an exemption from network access was granted by the Italian authorities. Based on Article 17, paragraph 6 of the Electricity Supply Act, the investor (Nord Energie SpA) submitted an application to ElCom in December 2008 for exemption from network access in accordance with applicable Swiss legislation. The associated procedure is expected to be concluded in the first quarter of 2009.

# Appendix

## Facts and figures for 2008

Nature of complaints	Brought forward from 2007	Received	Dealt with	Carried forward to 2009
Specific matters relating to tariffs	2	1754	750	1006
General complaints relating to tariffs	0	737	737	0
Feed-in remuneration at cost	0	94	91	3
Other cases	2	163	108	57
<b>Total</b>	<b>4</b>	<b>2748</b>	<b>1686</b>	<b>1066</b>

In the course of 2008, the Technical Secretariat of ElCom received 1,754 specific complaints from private households and trade and industry concerning excessive network use remuneration or electricity tariffs of around 200 companies. These complaints concerned the electricity supply companies to varying degrees. For example, more than 750 complaints were received in response to the announced tariffs of one single network operator. In the year under review, ElCom focused on examining the transmission network tariffs and the tariffs of several large distribution network operators, the adjustment of which would affect a large number of consumers. In all cases ElCom informed the senders about this approach, and kept them up-to-date with the progress of the various examinations.

A further 737 submissions took the form of general complaints about increased electricity prices. ElCom answered these in the form of a letter in which it outlined the reasons for the higher electricity prices, and drew attention to its ongoing examination of the 2009 tariffs of the transmission network, as well as to the option of lodging an official objection.

94 submissions concerned appeals by producers of electricity from renewable energy against negative decisions by Swissgrid regarding the payment of feed-in remuneration at cost. The remaining 163 cases concerned various other matters that have been outlined in the section dealing with the priorities for 2008 (separation of the transmission network, electricity consumption by large-scale consumers, network connection, increases in network capacity, system services, merchant lines, etc.).

## 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 33 full-day and 62 half-day meetings within Switzerland. In addition, they participated in 33 industry events throughout the country (usually as speaker), and paid 5 visits to regulators in other countries.



## Financial information

### Key financial data for 2008

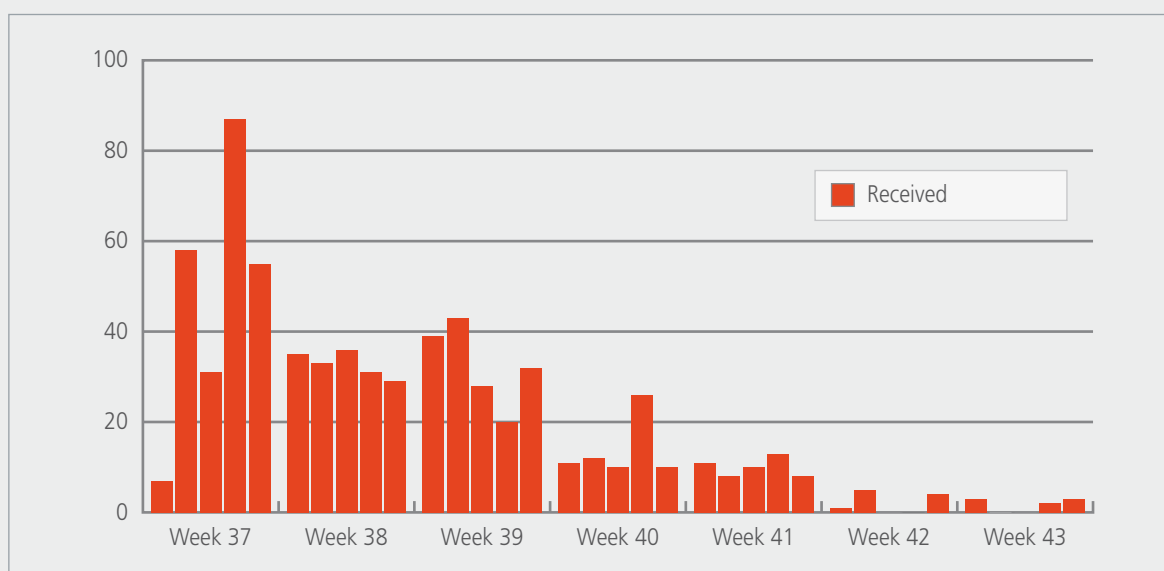
ElCom had a budget of 650,000 Swiss francs at its disposal in 2008. This amount covered the fees and expenses of the Commission members and the salaries of the employees of the Commission Secretariat. It did not cover personnel costs for employees of the Technical Secretariat, fees for external consultants, and the provision of IT, logistics, human resources and controlling services, all of which are components of the budget of the Swiss Federal Office of Energy (SFOE), to which the Technical Secretariat is attached.

Revenue in the year under review amounted to around 1 million Swiss francs, the sources

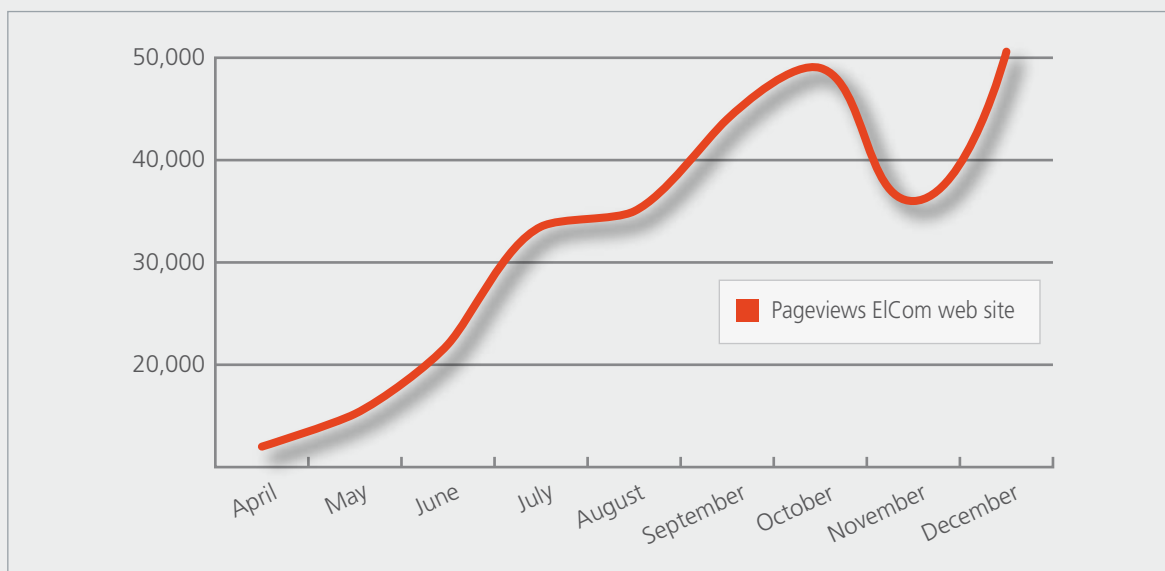
of which were the supervisory fee collected from Swissgrid for co-operation between ElCom and foreign authorities (as per Article 28 of the Electricity Supply Act), and procedural costs which were billed to the parties concerned upon the pronouncement of rulings.

### Budget for 2009

ElCom has a budget of 685,000 Swiss francs for 2009. As before, the sources of revenue are the supervisory fee and income from procedural costs.



**Figure 2:** No. of general complaints about excessive electricity tariffs in autumn 2008. Immediately after the announcement of the new tariffs on 31 August 2008, ElCom received numerous letters of complaint, which it answered in the form of a letter outlining the reasons for the increases and the measures it would be taking in response.



**Figure 3:** Number of hits on the ECom web site in the period between April 2008 and the end of the year. Interest in the activities of ECom increased constantly during the first year of liberalisation of the electricity market.

## IT

### Web site

The ECom web site was launched in January 2008 and is being continually expanded. It is primarily used for the purpose of publishing ECom directives, rulings and press releases, but also functions as an information platform and point of contact for electricity consumers. For example, consumers who have the impression that a given electricity tariff is unjustifiably high can report this to ECom by completing a special form on the web site. The Technical Secretariat will then investigate the matter. It is the policy of ECom to reply to all submitted reports. A special section will be added to the web

site in summer 2009 dealing with electricity prices and permitting comparisons (in table form and by region) of the tariff components of the approximately 800 network operators.

### Network operators database

In order to more efficiently perform its official duties, ECom is currently developing a concept for a comprehensive IT project. The aim here is to develop a tool for evaluating the data collected from the approximately 800 network operators: cost calculations, tariffs for 15 synthetic consumption profiles, and statistics concerning interruptions to the electricity supply. The data will be transmitted by the network operators via an Internet portal to the Technical Secretariat for evaluation.

Portions of the data sets are to be published on the ElCom web site in autumn 2009, where it will be possible to compare tariffs (and specific components) of various munici-

palities and network operators. An external IT provider has been entrusted with the task of implementing the new database.

## Publications

### Directives

10.12.2008	7/2008	Obligation for network operators to record and submit supply quality data for 2009
4.8.2008	6/2008	Transparent and readily comparable billing
4.8.2008	5/2008	Acquisition costs and long-term purchase agreements
23.6.2008	4/2008	Submission of key supply quality data for 2008
29.5.2008	3/2008	Valuation of systems and facilities
29.5.2008	2/2008	Calculation of interest rate for assets required for operation
27.3.2008	1/2008	Handling of confidential data

### Rulings and decisions

15.12.2008	957-08-053	Information concerning the calculation of network use remuneration
17.11.2008	957-08-137	Delivery guarantee and pricing structure for end users in accordance with Article 6 of the Electricity Supply Act
30.10.2008	952-08-017	Supply of reserve energy to neighbouring countries

### Media releases

5.12.2008	ElCom welcomes the Federal Council's amendment to the Electricity Supply Ordinance
22.9.2008	ElCom closely examining electricity price increases
26.6.2008	Swiss Federal Electricity Commission (ElCom) to examine transmission network tariffs
17.3.2008	Electricity market and feed-in remuneration at cost: adoption of associated ordinances
31.1.2008	Electricity Commission (ElCom) on the right track



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