



Report on the activities of ElCom 2009



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About ElCom



Duties

The Swiss Federal Electricity Commission (ElCom) is responsible for monitoring competition on 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. One of its main duties is to monitor the electricity tariffs for end users with basic supply, a function that it has adopted from the former price regulator (ombudsman). 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 fixed end users (households and other end users with an annual consumption below 100 MWh) and end users who choose not to gain access to the network, 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 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 any referendum that may be launched in opposition to full liberalisation should be unsuccessful.

- » 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 condition 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, by the end of 2012 (separation process).

Regulatory principles

As regulator, ElCom is a federal authority that supervises a monopolised sector of the economy (the electricity grid and regulated electricity tariffs), and makes adjustments where necessary. As the authority responsible for enforcing electricity supply legislation, it also possesses judicial powers. Its rulings are legally binding unless they are referred to a higher instance (Swiss Federal Administrative Court or Swiss Federal Supreme Court). ElCom pronounces all its

rulings on the basis of the relevant legal provisions. It acts completely independently of the companies it regulates and any other political authorities. It is not involved in the legislative process, but in the same way as all stakeholders is entitled to state its position within the scope of the normal consultation procedures.

ElCom initiates its proceedings either in its capacity as regulator, or at the request of a third party. It prioritises its examinations of tariffs in accordance with the number of involved consumers, the relative level of the tariffs and the number of received complaints.

Proceedings initiated by ElCom normally culminate in a ruling. In some cases, however, a settlement may be reached with/between the involved parties before a ruling is made. However, ElCom is not a mediator, it is a judicial authority that should only be called on if the parties concerned have not been able to reach an out-of-court settlement. In the course of an investigation, ElCom may in some cases carry out hearings in addition to obtaining written statements of position. ElCom bills its services in the form of fees to be paid by one or other of the involved parties, depending on the outcome of the proceedings. It has to conduct proceedings in an economic manner, and this means that, in view of the limited available resources, it is never able to clarify all aspects of every case.

Pricing and tariffs



Transmission network

2009 tariffs

Ruling

On 6 March 2009, ElCom ruled on the transmission network costs and tariffs, and reduced the tariffs announced in 2008 for network level 1 by around 40 percent as of 1 January 2009. Based on the transitional clauses stipulated in the Swiss Federal Electricity Supply Ordinance by the Federal Council in December 2008, an on-account tariff was also specified for general system services for power plants with an output of at least 50 MW. The tariffs for balance group management, active current losses and idle energy supplied in accordance with the relevant requirements, were not examined. Network operators were ordered to

compensate the difference between the adjusted tariffs and the amounts invoiced up to the end of March 2009 by not later than 1 July 2009 (Article 31c, paragraph 3, Electricity Supply Ordinance).

Within the scope of the ruling, the capital costs of the owners of the transmission network were examined in detail, while the stated operating costs and other types of expenses were only subjected to a summary audit.

In the examination of capital costs, network valuation was a central factor, since this has a significant influence on imputed interest and depreciation of fixed assets. Capital costs are calculated on the basis of the original acquisition or production costs (Article 15, paragraph 3, Electricity Supply Act). If

these figures can no longer be determined, they may by way of exception be calculated on the basis of a synthetic network valuation. However, many transmission network owners had been systematically applying synthetic acquisition figures for the valuation of their network, even though historical acquisition figures had been available for this purpose. In comparison with valuation based on the original acquisition or production costs, this method also results in an overestimate of the effective value by an average of 20.5 percent. For synthetically valued facilities, Article 13, paragraph 4 of the revised Electricity Supply Ordinance calls for a deduction of 20 percent. ElCom thus made a deduction of around one-third for synthetically valued installations. The declared capital costs were reduced by a total of approximately 70 million Swiss francs. Operating expenses concern costs for services that are directly associated with the operation of the networks (Article 15, paragraph 2, Electricity Supply Act). The transmission network owners had not calculated all the declared operating costs with the required degree of detail, or had calculated them partially on the basis of pure estimates instead of actual figures. For declared operating costs of this nature, ElCom made a deduction due to lack of transparency, as a result of which the declared capital costs were reduced by a total of approximately 17 million Swiss francs.

The national network operator also obtains revenue from auctions for capacities in the cross-border transmission network. ElCom is responsible for deciding how this revenue is to be used (Article 20, paragraph 1, Electricity Supply Ordinance): from the 2009 auction revenue, 30 million Swiss francs are to be used for reducing network costs, and ElCom will decide at a later date on the use of the remaining auction proceeds.

ElCom reduced the declared costs for system services by approximately 70 million Swiss francs. Of the remaining costs, approximately 200 million Swiss francs were charged to power plants with an output of at least 50 MW (Article 31b, paragraph 2, Electricity Supply Ordinance). The national network operator has to procure system services through a transparent, non-discriminatory and market-related procedure (Article 20, paragraph 2b, Electricity Supply Act in conjunction with Article 22, paragraph 1, Electricity Supply Ordinance). The applicable modalities relating to requests for tenders have to be constantly optimised. In addition, the national network operator is required to examine and introduce cost-cutting measures in the area of system services. ElCom received information on a regular basis concerning the status of these activities.

In a partial ruling dated 23 January 2009, the question of the number of output points was examined. Here ElCom came to the conclusion that for the basic tariff per output point the feed-in has to be taken

into account with the aid of an adjustment factor in order to ensure that the principle of user pays is complied with. ElCom also specified that, in accordance with the wording of Article 2, paragraph 1c, Electricity Supply Ordinance, each measurement point at the point of transfer from the transmission network to the distribution network is to be regarded as an output point, and that several measurement points in a sub-station may not be combined to form one output point.

Appeals

17 out of 85 parties lodged an appeal with the Federal Administrative Court against the ruling pronounced by ElCom on 6 March 2009, and as of the end of the period under review the Court had pronounced several interim rulings: the petitions to restore the postponement effect of the appeal and to release undisclosed portions in the ruling and the documentation were rejected. The exchange of correspondence in the appeal proceedings was still in progress as of the end of the period under review.

2010 tariffs

Examination priorities

For the examination of tariffs at network level 1 in 2009, the main focus was on network valuation, which resulted in a significant reduction of imputed net book values and the associated interest and depreciation. For the examination of the tariffs for

2010, close attention was therefore paid to consistent compliance with the method developed in the prior year for calculating imputed capital costs. Thanks to an increase in personnel, it was also possible to carry out a more intensive examination of the operating costs.

Beyond this, the examination also focused on the agreements between Swissgrid and its shareholders, which concern the costs for the development of the national network operator.

Provisional ruling

The tariffs published by Swissgrid in May 2009 were 17 percent higher versus those specified by ElCom for 2009. It was in the interests of all downstream network operators and end users that the principles cited in the ruling dated 6 March 2009 (concerning 2009 tariffs at network level 1) would also be applied for the tariffs for 2010. For this reason, on 9 July 2009 ElCom provisionally reduced the 2010 tariffs published by Swissgrid for the transmission network. In order to ensure that the electricity tariffs in accordance with Article 12, paragraph 1, Electricity Supply Act and Article 10, Electricity Supply Ordinance could be published as scheduled on 31 August 2009, the 2010 tariff for general system services also had to be specified sufficiently in advance. Two parties appealed against this provisional ruling to the Federal Administrative Court, but each withdrew their appeal following an interim court ruling.

Orders to submit accounting documentation

Within the scope of examinations of 2010 costs and tariffs at network level 1, two companies failed to submit their documentation to ElCom – despite being expressly requested to do so – based on the original acquisition or production costs in accordance with Article 15, paragraph 3, Electricity Supply Act. In order to be able to examine the network valuation of relevance to the calculation of the costs and tariffs, ElCom pronounced provisional rulings ordering both companies to submit the required documentation. Here it based its action on the reporting obligation for electricity companies in accordance with Article 25, paragraph 1, Electricity Supply Act. ElCom nullified the postponement effect for any appeals against these interim rulings.

One of the transmission network owners lodged a petition with the Federal Administrative Court calling for the Court to instruct ElCom to refrain from carrying out any examinations, both in general and in the proceedings concerning the 2010 tariffs, until a decision has been made regarding the appeal against the ruling on the 2009 tariffs. The Federal Administrative Court rejected this petition.

Distribution networks

In the course of the year under review, ElCom was able to carry out three examinations concerning network utilisation or electricity tariffs of distribution network operators in the French-speaking and German-speaking regions of the country. These examinations were initiated by ElCom in its capacity as supervisory authority after it had received numerous complaints. With respect to capital costs, the main focus was on issues relating to network valuation and examining applications in accordance with Article 31a, Electricity Supply Ordinance. With respect to operating costs, ElCom examined whether the operating revenue was also included in the calculation of costs, and whether the common costs were allocated to the correct codes. As a result, the involved end users benefited considerably from reductions in network use and electricity tariffs.

ElCom also commented on the question of the extent to which a supplier is obliged to offer a lowest-priced electricity product (e.g. electricity from nuclear energy or non-certified hydropower). Reasonable tariffs also have to be based on the acquisition costs of efficient production (Article 6, paragraph 1, Electricity Supply Act). In this way, the degree of appropriateness of a tariff is assessed on the basis of the offered product range. In accordance with the relevant federal legislation, it is the supplier who specifies the product range. Here, any

requirements specified in cantonal or municipal legislation have to be complied with. However, the legislation governing electricity supply does not specify a requirement to offer lowest-price products or to reintroduce the lowest-priced product.

Requests to apply a higher interest rate

Electricity consumers should not have to pay additional amounts for the supply networks due to excessive network utilisation tariffs. For this purpose, in its revision of the Electricity Supply Ordinance in December 2008 the Federal Council added a corresponding provision (Article 31a) to the Ordinance.

Here the legislator assumed that a large number of operators whose networks were put into operation prior to 1 January 2004 either carried out a new valuation or increased the current valuation of their facilities. In view of this, the legislator reduced the interest rate for these facilities by one percentage point for an interim period of 5 years.

However, not all networks that were put into operation before 1 January 2004 were actually revalued. Those operators who did not revalue their facilities could therefore apply to ElCom for exemption from this interest rate reduction, and approximately 10 percent of all network operators made use of this option.

89 applications were received, of which 23 were rejected while the remainder were granted full or partial exemption. Some of the applicants were not in agreement with the rejection and requested a contestable ruling. Two appeals against the decisions of ElCom were lodged with the Federal Administrative Court.

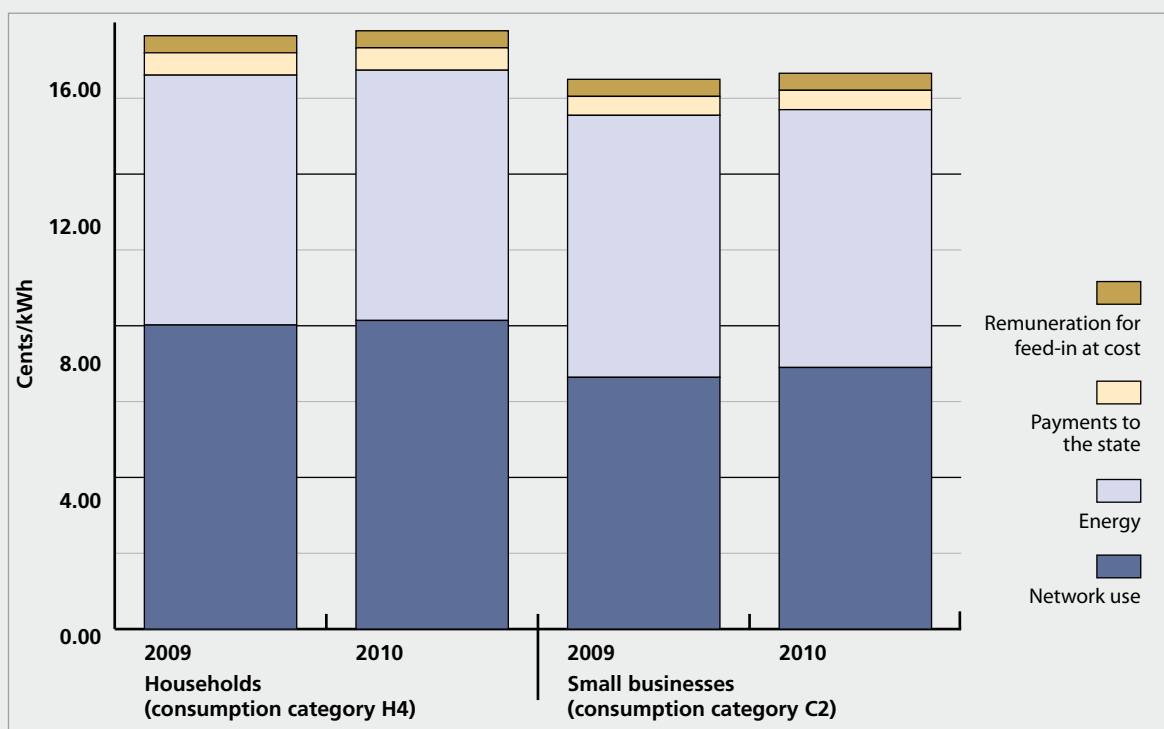
Cost accounting and tariffs database

In the year under review, ElCom published the electricity tariffs of all network operators on its web site for the first time so that they can be directly compared. For this purpose, the operators supplied ElCom with their tariffs for 15 typical consumption profiles of their clients (private households, trade and industry).

On this web site (www.strompreis.elcom.admin.ch), which was put into operation on 7 September 2009, three tariff components (energy, network, fees to the state) can be depicted separately for each municipality. And for the first time, comparisons of the various pricing components can be depicted graphically with the aid of diagrams and maps. The database contains tariff details for almost all the approximately 800 network operators in Switzerland.

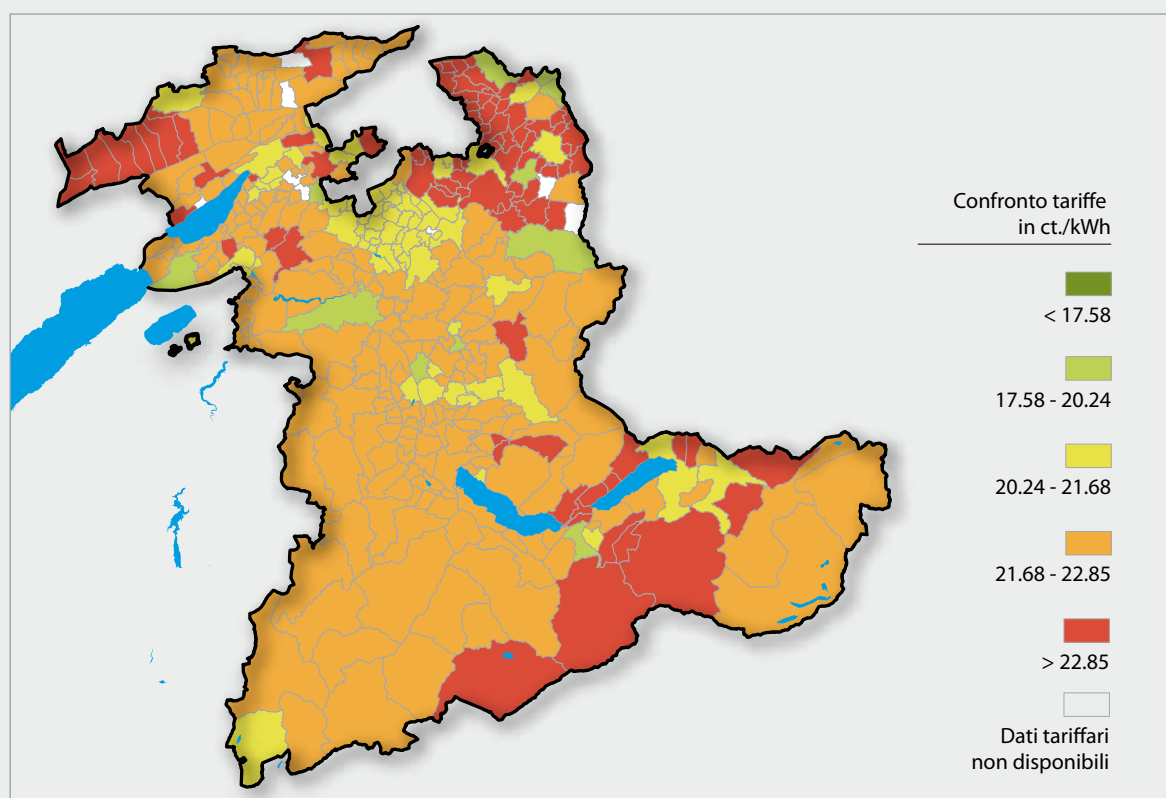


The tariffs of Swiss electricity supply companies can be viewed and compared on the ECom web site (www.strompreis.elcom.admin.ch).



Prices for an average household (consumption category H4: 5-room apartment with electric cooker and tumble dryer, annual consumption 4,500 kWh). The depicted tariffs are based on information provided by network operators and have not yet been verified. Prices for a small business (consumption category C2: annual consumption 30,000 kWh, maximum required capacity 15 kW). The depicted tariffs are based on information provided by network operators and have not yet been verified.

We can also see that, as before, prices differ greatly from region to region:



Total prices per household (consumption category H4) in the canton of Bern.

There are a number of reasons for these differences. The origin of the energy plays a decisive role: network operators with their own power plants can often supply their consumers at cheaper prices than companies that have to buy their energy from other producers or on the market. Company policy is another factor that influences tariffs: for example, a company operating as a provider of basic energy supply may regard itself to be fulfilling a political mandate of supplying electricity as cheaply as possible, whereas a company operating on a strict-

ly commercial basis sets out to achieve as much profit as possible.

Not all network operators supplied the requested data by the specified deadline (31 August), and since ElCom attaches a great deal of importance to publishing data relating to all tariffs, the negligent operators received urgent reminders, which led to the desired result.

At the same time as tariff data were being collected, ElCom also conducted a cost accounting survey for the 2010 electricity tar-

iffs. This was carried out with the aid of a questionnaire prepared by ElCom upon consultation with the industry.

ElCom decided to limit this survey to the 100 largest companies. This method proved to be successful, and gave the other network operators a little more time to prepare the documentation that was required in accordance with the new criteria.

Based on a summary examination, ElCom ascertained that:

- » The submitted survey documents were often not completed in full, and some parts were not understood correctly.
- » Approximately 30 percent of the network operators apply the method of synthetic valuation frequently instead of only by way of exception.
- » In some cases, the provisionally calculated network utilisation tariffs clearly exceed the reported costs.

All network operators who submitted their cost accounting to ElCom received individual feedback concerning their input. In order to simplify the process and improve the level of quality, in 2010 ElCom will supplement both the questionnaire and the instructions, and introduce special training.

Market access for end users

In its ruling dated 25 June 2009, in interpretation of Article 6 of the Electricity Supply Act ElCom pronounced that end users who,

in the past, had made use of market mechanisms after concluding electricity supply agreements, are no longer entitled to revert to basic supply. This means that these end users have to procure energy on the market, which depending on the price level may be more or less attractive than basic supply at regulated prices.

In a case to be ruled on by ElCom, an industrial company obtained its supplies in the past from the network operator on the basis of neither a tariff nor an agreement taking the place of a tariff. Instead, an individually negotiated contractual relationship always existed between the two parties. What was decisive for ElCom is the fact that, with the specific contractual arrangement and the respective electricity price agreements with the network operator – which provided for favourable conditions – the large-scale consumer had already benefited from market mechanisms. The basis of the negotiations was always the current market price. In addition, the industrial company concerned had already made use of free network access on a previous occasion in that it had received energy from another supplier for the period of one year.

ElCom thus came to the conclusion that the industrial company concerned is to be regarded as an end user that has already made use of its entitlement to gain network access in the past. The company lodged an appeal against the ruling by ElCom with the Federal Administrative Court, as a result of which the ruling is not yet legally binding.

System services



Market study

As the national network operator, Swissgrid has been responsible for the provision of system services since January 2009. In accordance with the Electricity Supply Act and the Electricity Supply Ordinance, Swissgrid is obliged to secure the procurement of storage capacity and active current losses through a market-oriented, non-discriminatory and transparent procedure.

Since January 2009, based on the relevant legal provisions Swissgrid has been taking steps, including monthly requests for tenders, relating to the procurement of primary, secondary and tertiary reserve energy, as well as weekly requests for tenders for secondary and tertiary reserve energy. A variety

of improvements to the bidding conditions relating to reserve capacity were introduced with effect from July 2009. The bid price procedure now applies for all requests for tenders, and replaces the former limit price procedure for primary and secondary reserve energy. For all products, Swissgrid has also specified an upper price limit that may not be exceeded. As before, the option for Swissgrid to demand mandatory supplies (holding of reserve capacities without remuneration) within the scope of an emergency concept should requests for tenders lead to insufficient supplies, remains an integral part of the procurement process.

Cost-cutting measures

Due to the conditions described above and the low competition intensity, in the first few months of the year the price development for the holding of reserve capacities in control zone Switzerland was unfavourable. This resulted in the introduction of cost-cutting measures relating to the procurement of system services: ElCom decided to initiate a process aimed at reducing the costs of procurement of system services by Swissgrid. The initiated process involved the preparation and implementation of measures, and was closely co-ordinated with Swissgrid. During the year under review, three external expert reports were commissioned, namely "Analysis of the market for

reserve capacity and active current losses in control zone Switzerland", "Dimensioning of reserve capacity for control zone Switzerland" and "Opportunity costs of holding reserve capacities". The involved experts carried out in-depth studies of the most important elements of the reserve energy market and listed potential solutions. In addition to the measures introduced by Swissgrid, these three expert reports also contributed towards the rapid and consistent implementation of the necessary changes to the bidding conditions relating to system services and the structure of associated products. Some of these adjustments were already carried out in the year under review, and resulted in significant cost reductions. Other measures will be implemented in the course of 2010.

Supply security



Supply quality

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 future, ElCom wants to be able to compare these key supply quality data from network operators, as well as make comparisons with those of foreign network operators. For this purpose ElCom will calculate the key data itself, and thus needs network operators to supply basic data relating to interruptions.

In 2009, all network operators with an annual energy turnover greater than 200 GWh were required to record interruptions in their supply area and report them to ElCom. Some of the received data have already been evaluated, and the initial findings point to a generally good level of supply quality. How-

ever, it will only be possible to make more detailed assessments after data have been collected from all major network operators over a period of several years.

From 2010, the approximately 100 largest network operators are required to record and report all interruptions in their supply area that last 3 minutes or longer. For each interruption they are also required to indicate the energy that would have had to be supplied during the interruption. The corresponding data must be submitted to ElCom once a year via the network operator portal.

Long-term plans

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 in-

frastructure. 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. In accordance with Article 8, paragraph 3, Electricity Supply Act, they are also obliged to inform ElCom on an annual basis about the operation and load of the networks, as well as about any unusual occurrences. In accordance with Article 22, paragraph 3 of the Electricity Supply Act, ElCom also monitors the status and maintenance of the transmission network, and verifies that the investments of the national network operator are distributed evenly throughout the regions of the country. In the year under review, ElCom did not explicitly request the above information, and limited itself to examining the expansion plans for the transmission network (see below).

Expansion of the transmission network

An initial plan for the expansion of Switzerland's nation-wide transmission network was presented in the report dated 28 February 2007 by the Swiss Federal Office of Energy's "Transmission Lines and Supply Security" workgroup. The plan encompasses 39 strategic projects for the expansion of the network until 2015. Based on this list, and with a now extended time frame up to 2020, Swissgrid updated the cited list and

added a further 23 projects. However, as of September 2009 only 1 of these 62 projects had been implemented.

For this reason, ElCom wants to be involved in the planning process to a greater extent in the future, and have better options for reacting in the event that difficulties should arise concerning the implementation of the projects. In addition, a portion of the proceeds from auctions for capacities in the cross-border transmission network can be used for network expansion projects.

In the past, transmission line projects have met with often immense opposition by both the general public and politicians. The Swiss Federal Office of Energy's "Transmission Lines Sectoral Plan" core group is focusing on this problem and is also applying a study and evaluation model concerning which ElCom has submitted a statement of position.

Supervision of electricity trading

In the wake of the financial crisis, ElCom examined the question whether the supervision of electricity exchanges still meets the present-day requirements. Electricity derivatives are a component of electricity business and are used for hedging electricity supplies. But they can also be used to drive trading and for speculation purposes. Such transactions are associated with financial risks, which currently cannot be supervised by ElCom or any other supervisory authority. Thus in the autumn ElCom organised an

internal meeting that was also attended by the Swiss Financial Market Supervisory Authority (Finma), the Swiss Federal Office of Energy (SFOE) and the Swiss Federal Department of Finance (FDF). The results are currently being evaluated, and further-reaching clarifications will be a priority for 2010.

Here, ElCom will co-ordinate its activities with the Council of European Energy Regulators and the European Financial Supervisory Authority, since the international activities of some companies are exposed to these risks and this could ultimately represent a threat to supply security.

Strategic management exercise in 2009

On 19 and 20 November 2009 the Federal Council and Federal Administration carried out a strategic management exercise ("SFU09") on the topic of blackouts and supply shortfalls. ElCom was actively involved in the preparations for this exercise, holding lectures on competencies in the area of supply security, and during the actual exercise was also directly represented in the special task force of the Federal Department of the Environment, Transport, Energy and Communications (DETEC).

Together with the various involved players, ElCom updated and clarified the interfaces and competencies relating to blackouts and electricity shortfalls. In accordance with the principle of subsidiarity, it is the electricity

sector that is responsible for dealing with blackouts. By contrast, with respect to the problem of electricity shortfalls – which the industry itself is unable to overcome – the aim is to introduce a form of electricity management in accordance with Article 28 of the National Economic Supply Act (SR 531). In this case, supported by an electricity management ordinance to be issued by the Federal Council, the Federal Department of Economic Affairs would in turn issue corresponding ordinances restricting consumption, allocating quotas, requiring electricity networks to be switched off, and restricting or prohibiting electricity exports. The Federal Office for National Economic Supply will play a central role in the formulation and enforcement of measures relating to electricity management. However, in the event of a medium-term to long-term threat to domestic supply security, ElCom is responsible for providing the Federal Council with proposals for measures, for example relating to the strategic network expansion and the increase in production in accordance with Articles 9 and 22 of the Electricity Supply Act. In addition, the Swiss Federal Office of Energy (SFOE) is responsible for formulating energy policy measures (laws and ordinances) aimed at guaranteeing supply security for the attention of the Federal Council and Parliament.

The findings and conclusions resulting from the "SFU09" exercise are to be applied for the purpose of enhancing supply security and preserving the network infrastructure. A final report outlining measures for improvement is currently in preparation.

Separation and delimitation of net



Separation of the transmission network

The Electricity Supply Act stipulates that the owners of the transmission network must transfer their holdings in the network into a legally independent company by 31 December 2008. With a few exceptions, the owners complied with this requirement.

The Electricity Supply Act also stipulates that the national network operator, Swissgrid, must become the owner of the network it operates by the end of 2012. This means that the present-day owners have to transfer all the corresponding facilities to Swissgrid in exchange for shares or other securities. ElCom is closely monitoring this process, which is being implemented within

the scope of a project initiated by the electricity industry. One of the most important points to be clarified in detail is the question of which facilities are to be transferred to Swissgrid, and at what price.

Allocation to a network level

On 14 May 2009, in a ruling on a specific legal dispute ElCom pronounced that a municipal operator cannot be billed for costs relating to network level 5. This was the first ruling by ElCom concerning allocation to a specific network level. It was accepted by the parties involved in the proceedings and is therefore legally binding.

The dispute resulted from a difference of opinion between a municipal electricity

works and a regional supplier over allocation to a specific network. The level of remuneration to be paid for network utilisation depends on the network level to which an end user or distribution network operator is connected.

Remuneration only has to be paid for those network levels of which use is actually made or use could be made. In the opinion of ElCom, allocation to network levels 2, 4 or 6 is conceivable under certain conditions. Here the importance of emergency connections between various sub-stations had to be examined. Since the matter concerned reciprocally used strictly reserve connections, for assessment purposes a galvanically separated network operation had to be assumed, whereby only the main connections had to be considered for the allocation to network levels. In its ruling, ElCom also took industry documents into account in its application of the relevant legal provisions.

Site networks

In the year under review, ElCom also ruled on a specific case relating to site networks. Article 4, paragraph 1a, Electricity Supply Act, defines site networks as electricity supply lines intended for local distribution within a limited area. These are found on industrial sites, airport premises, railway stations, shopping centres, etc., and in accordance

with the Electricity Supply Act they are not defined as electricity networks.

The above case involved a shopping centre that is the proprietor of electricity supply facilities to which all shops operating in the complex are connected.

In the opinion of ElCom, this shopping centre qualifies as a site network in accordance with the definition in Article 4, paragraph 1a of the Electricity Supply Act, and is an integral part of the supply zone of the network operator concerned. Basic supply is the responsibility of the operator of the network, who may delegate certain tasks to the shopping centre. However, the network operator has to remunerate the shopping centre for the utilisation of its local distribution line. Since the pooling of clients is prohibited, the tenants of the shopping centre do not meet the criteria for an economic unit, and thus pooling for the purpose of gaining free network access is not possible.

The ruling was accepted by the parties involved in the proceedings and is therefore legally binding.

ElCom has to rule on other cases concerning site networks that are still pending. Since site networks are very heterogeneous, however, each case has to be examined and judged individually. These cases will result in the addition of precedents to ElCom's legal practice.

Feed-in remuneration at cost



Entitlement to remuneration

On 2 February 2009, the Swiss Federal Office of Energy (SFOE) announced that the funding for the promotion of electricity from renewable energy had been exhausted. Consequently, as of this date all registrations by electricity producers from small hydropower (up to 10 MW), photovoltaics, wind energy, geothermal energy, biomass and biomass waste facilities had to be placed on a waiting list. This decision was communicated to all applicants by Swissgrid.

In the course of 2009, ElCom received numerous petitions calling for a reassessment of the decisions by Swissgrid. In most cases, ElCom confirmed Swissgrid's decisions on various grounds: attainment of costs ceiling, missing documentation, registration errors

on the part of the applicant, etc. Following the intervention of ElCom, Swissgrid revoked its original decision in four cases, as a result of which the applicants concerned are entitled to receive feed-in remuneration.

Another case to be dealt with by ElCom concerned value added tax in association with feed-in remuneration at cost. In its ruling dated 19 February 2009 ElCom found that VAT is already included in the remuneration rates, and therefore does not have to be paid out in addition to the remuneration. The petitioning party referred the ruling by ElCom to the Federal Administrative Court. Acting in response to a request from a private individual, ElCom confirmed the conditions under which a facility is entitled to receive feed-in remuneration at cost. In order to qualify for the initial quota, the applicant must be in possession of the form

entitled "Application for an independent production facility to be connected in parallel to the distribution network", as well as a construction permit, both of which must have been issued prior to 1 May 2008. Since these requirements were not met in this case, Swissgrid acted correctly in placing the application on the waiting list (ruling by ElCom dated 26 March 2009).

In addition, the Technical Secretariat of ElCom answered numerous written and telephone enquiries relating to feed-in remuneration at cost.

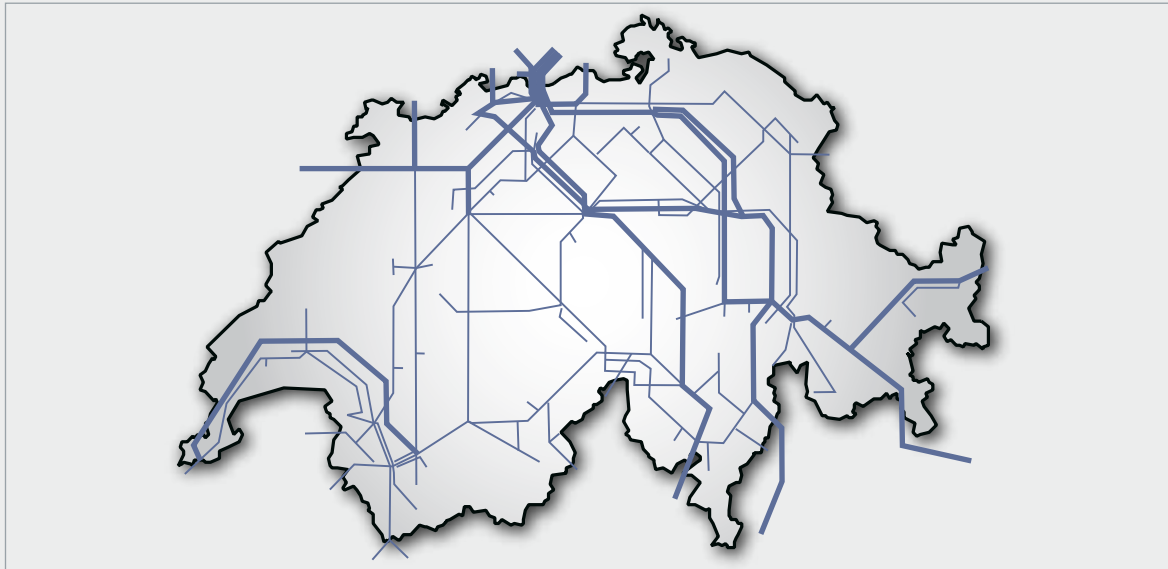
Increases in network capacity

In association with the connection of power plants for the production of electricity from renewable energy sources to the electricity grid, in certain cases Swissgrid bears the costs for the necessary increases in network capacity (Article 22, Electricity Supply Ordinance).

In March 2009, ElCom published a directive on increases in network capacity. The main purpose of this directive is to provide guidelines for submitting applications for the refund of costs of the necessary increases in capacity, and to define the principles on which these applications are to be dealt with.

In 2009, five applications of this nature were submitted, but ElCom has not yet approved any remuneration of costs for increased network capacity. The first rulings are expected to be made in 2010.

International activities



Merchant lines

The Electricity Supply Act stipulates that all network operators must grant third parties access to all networks without discrimination.

As an incentive for increasing the cross-border transmission capacity, Article 17, paragraph 6 of the Electricity Supply Act provides for the option of granting exemptions from network access for certain lines. The Federal Ordinance on exemptions from network access and calculation of recoverable costs in the cross-border transmission network (SR 734.713.3) contains transparent and non-discriminatory regulations for granting exemptions, and empowers ElCom to exclude transmission capacities (also referred to as merchant lines) from network access under certain conditions.

In December 2008 and May 2009 respectively, ElCom received applications for exemptions from network access for two lines. In its rulings dated 16 April and 27 August 2009, ElCom exempted these two lines from network access for 13 and 10 years respectively. The costs for this line are to be borne by the investors 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 must be placed at the disposal of the market players within the scope of the auction procedures, and the lines concerned must be transferred to the national operator as an integral part of the transmission network.

Inter transmission system operator compensation (ITC)

For a number of years now, the costs associated with the transit of electricity through a country have been partially compensated through a system that was established on a voluntary basis by the operators of European transmission networks (inter transmission system operator compensation, ITC). Switzerland – which handles a high transit volume, largely due to its geographical situation – was one of the main beneficiaries of this scheme in 2009, but the amount of compensation was not sufficient to cover all cross-border transmission costs.

The European Commission wants to officially introduce this mechanism and declare it mandatory as of 2010. It also proposed amendments to certain calculation principles, which could significantly reduce the amount of the compensation payments to Switzerland. The continued involvement of Switzerland in the ITC scheme has therefore been placed in question. In view of the importance of compensation for electricity transit, this issue is to become the subject of bilateral negotiations between Switzerland and the EU.

Third EU liberalisation package

On 13 July 2009, the EU published its revised legislation governing the gas and electricity markets ("third energy package"). With this package it is extending and underscoring its intention to reform and liberalise these two markets and enhance supply security in the countries of the EU.

In the electricity sector, a new directive and a new set of regulations that the EU member states will have to observe with effect from March 2011 will strengthen the competencies and independence of the national regulatory authorities. They will urge regulators as well as network operators to co-operate more intensively at both the regional level and throughout the EU. They will ensure that the operators of the transmission network do not carry out any production, trading or distribution activities, and act independently. And they will also ensure greater protection for consumers.

In addition, a new ordinance is to form the basis for the creation of an Agency for Co-operation between Energy Regulators (ACER) by March 2011. This EU-wide body will assist the national regulators of EU member states in exercising their powers at the cross-border level. It will also work closely together with the new European Network of Transmission System Operators for Electricity (ENTSO-E), which will replace the various existing organisations (ETSO, UCTE, etc.). Together, ACER and ENTSO-E will deal with issues relating to management, op-

eration, technical advancement and overall development of the European transmission network.

ElCom plans to continue to play an active role in the future within the framework of ACER. However, at present ElCom only possesses observer status in the ERGEG (Electricity Regulators Group for Electricity and Gas) Electricity Working Group.

European regional initiatives

The EU has created seven regional workgroups (regional initiatives) in order to promote local co-operation between states in the electricity sector. Since 2008, ElCom has been participating as an observer in the activities of the Central South regional initiative, which encompasses Germany, Austria, France, Italy, Greece and Slovenia).

During the year under review, the main activities in the Central South region were as follows:

a) Finalisation of a report on the transparency of cross-border electricity trading in the region. With the aid of suitable key

data a picture was drawn up of how much capacity is allocated at which borders and on the basis of which method. For this report, ElCom only supplied data relating to Switzerland's southern border with Italy. Contrary to the view of the Italian regulator, for ElCom it is clear that Switzerland's northern border should not be included in the Central South region.

b) Progress with the planning of a single auction office for network capacities at the borders of the Central South region. Here it was decided that the independent auction office in the Central West region (Germany, Belgium, France, Luxembourg and the Netherlands) is also to carry out the auctions in the Central South region. In the year under review, the question whether Switzerland's northern borders should also be included in these auctions remained a matter of dispute. In this matter too, ElCom is of the firm opinion that, while the capacities at Switzerland's northern borders could be auctioned via the same auction office, this would have to take place separately and in accordance with separate regulations.

Appendix

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

The seven members of the Electricity Commission were appointed by the Federal Council 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: "Pricing and Tariffs", "Networks and Supply Security", "Legal Affairs", and "Networks and Europe".

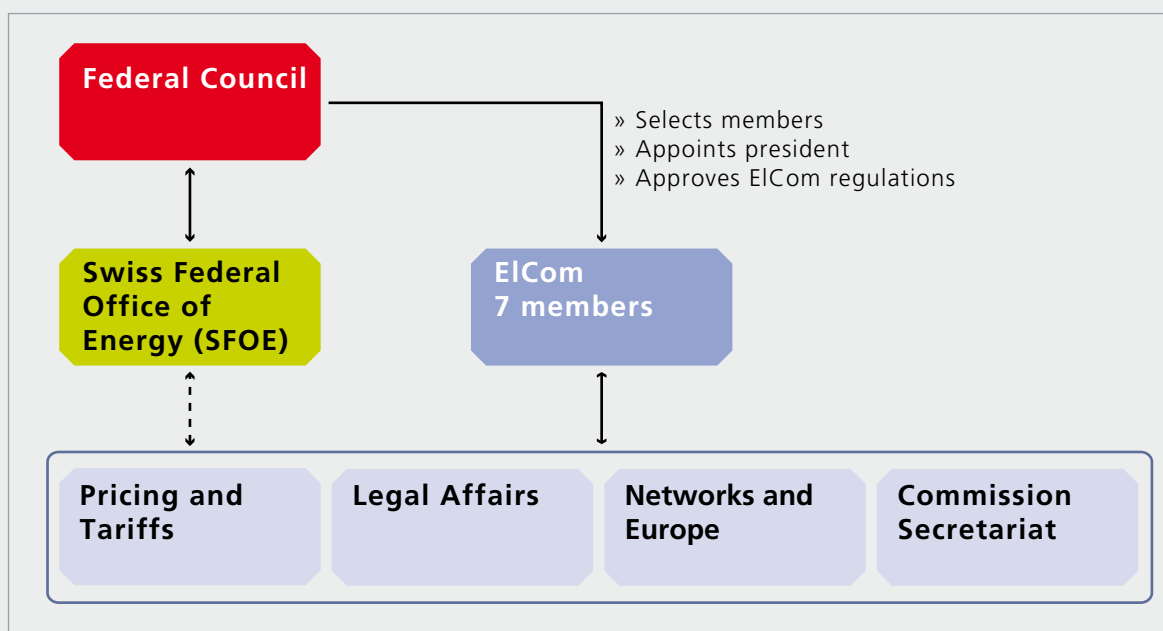
In the year under review, the composition of the Commission was as follows:

President:

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

Vice Presidents:

» Brigitta Kratz, attorney-at-law, tutor in private law at the University of St Gall.



Organisational chart of ElCom (as of 1 January 2010)

- » 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 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 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. During the year under review, the number of employees of the Technical Secretariat climbed to 31. With effect from 1 January 2010, the former Commission Secretariat was integrated into the Technical Secretariat as a new section.

Head of the Technical Secretariat

Renato Tami, attorney-at-law and notary public

Pricing and Tariffs (9 employees)

Stefan Burri

Legal Affairs (8 employees)

Nicole Zeller, attorney-at-law

Networks and Europe (7 employees)

Michael Bhend, electrical engineer

Commission Secretariat (6 employees)

Frank Rutschmann

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)
- » Ordinance of the Federal Department of the Environment, Transport, Energy and Communications (DETEC) 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)

Facts and figures for 2009

Complaints, etc.	Brought forward from 2008	Received in 2009	Dealt with in 2009	Carried forward to 2010
Specific matters relating to tariffs	984	409	1112	281
Applications in accordance with Article 31a, paragraphs 2 and 3	0	103	100	3
Feed-in remuneration at cost	30	38	54	14
Other cases	118	186	168	136
Total	1132	736	1434	434

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 37 full-day and 63 half-day meetings in Switzerland. In addition, they participated in 20 industry events throughout the country (usually as speaker), and attended 7 meetings abroad.

Financial information

Key financial data for 2009

ElCom had a budget of 0.685 million Swiss francs at its disposal in 2009. This amount covers the fees and expenses of the Commission members and the salaries of some of the employees in the Commission Secretariat section. It does not cover personnel costs for the other employees of the Techni-

cal Secretariat, fees for external consultants, and the provision of IT, logistics, human resources and controlling services (approximately 5 million Swiss francs), 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 1.2 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 2010

Expenditure of 1.19 million Swiss francs has been budgeted for 2010 (excluding the Technical Secretariat). The sources of revenue are the supervisory fee and income from procedural costs.

Publications

Directives

16.1.2009	1/2009	Calculation of network utilisation remuneration, 1st quarter 2009
26.3.2009	2/2009	Increases in network capacity
8.5.2009	3/2009	Calculation of interest rate for assets required for operation
13.7.2009	4/2009	Transparent and readily comparable billing
4.12.2009	5/2009	Obligation for network operators to record and submit supply quality data with effect from 2010

Rulings

23.1.2009	Basic tariff per output point and number of output points
30.1.2009	Network utilisation remuneration, petition to decree super-provisional measures
19.2.2009	Compensation for value added tax in association with feed-in remuneration at cost
19.2.2009	Pricing structure, end users with basic supply
6.3.2009	Costs and tariffs for network utilisation at level 1 and system services
26.3.2009	Entitlement to feed-in remuneration at cost in accordance with Article 7a, Federal Energy Act, and Article 29, paragraph 4a, Federal Energy Ordinance
26.3.2009	Application of higher interest rate in accordance with Article 31a, paragraph 2, Electricity Supply Ordinance (plus six additional rulings on this matter during 2009)
26.3.2009	Approval of network utilisation remuneration in 2008 at network level 7 for 2009 (Article 31a, paragraph 3, Electricity Supply Ordinance)(plus one additional ruling on this matter during the year under review)
16.4.2009	Granting of an exemption from network access (merchant line) (plus one additional ruling on this matter during 2009)
14.5.2009	Allocation to a network level, network utilisation remuneration and system services
28.5.2009	General terms and conditions for billing costs of the transmission network
28.5.2009	Obligation to supply a lowest-priced product / contesting of electricity tariffs

25.6.2009	Supply obligation and tariff structure for fixed end users in accordance with Article 6, Electricity Supply Act; qualification of (...) as end user having waived network access in accordance with the Electricity Supply Act
9.7.2009	Acquisition of electricity by owner of site network (with limited distribution) for resale to commercial tenants
9.7.2009	Ruling on provisional measures relating to 2010 costs and tariffs at network level 1
14.9.2009	Application for issue of provisional measures
21.9.2009	2010 costs and tariffs at network level 1 / adjustment of documentation
10.11.2009	2010 costs and tariffs at network level 1 / adjustment of documentation / petition for postponement of proceedings
14.12.2009	Costs for system services

Notifications

21.8.2009	Examination of group E electricity tariffs
16.10.2009	Examination of electricity tariffs of Stadtwerk Winterthur
2.11.2009	Possibility for end users who have gained access to the network to revert to basic supply
2.11.2009	Eligibility of households with consumption > 100 MWh
2.11.2009	Examination of 2009 tariffs of SIG
15.12.2009	Publication of basic tariffs (request from Foundation for Consumer Protection)



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