**Towarzystwo Obrotu Energią**
ul. Czackiego 7/9/11, 00-043 Warszawa
tel. (22) 827 57 93 ,fax (22) 826 61 55
toe@toe.pl www.toe.pl

# STATUS OF ELECTRIC ENERGY MARKET LIBERALISATION IN POLAND

## REPORT OF ASSOCIATION OF ENERGY TRADING (TOWARZYSTWO OBROTU ENERGIĄ) ON PROGRESS IN SHAPING AN INTERNAL ELECTRIC ENERGY MARKET IN POLAND

Report drafted by team of Association Of Energy Trading (Towarzystwo Obrotu Energią) specialists in response to the European Commission letter dated 13th May 2005

**Warsaw, July 2005**

**CONTENTS:**

# 1. INTRODUCTION

One of the main objectives of all the on-going changes and freeing the energy market both in Poland and in EU countries and, more generally, changes in all fuel-energy sectors, is to improve the terms (mainly prices, but also service standards) of supplies to end users of products – the energy media. The main figure of any market is the customer/buyer and it is the customer who decides his source of supply (of electricity, but also heat, gas, fuel), on what terms and at what prices.

At the EU level, the framework of common internal electric energy market were set by Directive 2003/54/WE of European Parliament and Council of 26 June 2003 on common electric energy internal rules, superseding Directive 96/92/WE [16]. Very significant is also the European Parliament and Council Ruling (WE) 1228/2003 of 26th June 2003 on conditions for grid access in cross-border exchange of electric energy [17].

In Poland the statutory basis for energy markets (electric energy, heat and gas) is provided by the Act of 10th April 1997: Energy Law [18] and the enabling legislation issued on its basis. It should be noted that the most recent update of the said Act, adopted by the Act of 4th Match 2005 changing the Energy Law Act and the Environment Protection Law Act [18], had as its aim to adapt the Polish legislative provisions to EU regulations, including the cited Directive and Ruling. Two documents, adopted by the Council of Ministers: *Energy Policy of Poland until 2025* adopted on 4th January 2005 [10] and *Update of the Ownership Policy Practice of the Minister of Treasury Regarding the Electric Energy Sector* adopted on 7th June 2005 [1] are of particular importance to shaping a competitive electric energy market in Poland.

This report entitled *Status of Electric Energy Market Liberalisation in Poland* has been drafted by Association of Energy Trading (Towarzystwo Obrotu Energią - TOE) [28] in response to the European Commission website appeal [20] of 13th May 2005 to provide the Commission with information for a report on progress in shaping the internal market of electric energy. The Report represents the views of TOE members concerning such issues, as:

- current and likely future developments of the electricity markets;
- whether improvements to any aspect of the market opening framework should be explored either at national or Community level; and,
- whether any reinforcement to measures to protect the interests of customers need to be considered.

This Report was drafted on the basis of materials and experience of TOE functioning as a grouping of representatives of the numerous trading companies associated in TOE and the institutions, in which TOE involves its efforts, including Polish Electricity Association - PKEE [25] which acts within EURELECTRIC structures.

# 2. PRESENT AND PROJECTED DEVELOPMENT OF THE ELECTRIC ENERGY MARKET IN POLAND. EXTERNAL AND INTERNAL MODALITIES OF THE ELECTRIC ENERGY MARKET IN POLAND.

## 2.1. Polish statistical data, with focus on electric energy sector data

Poland – located in Central Europe on southern shores of the Baltic Sea, member of the European Union and NATO, borders on Germany, Czech Republic, Slovakia, Ukraine, Belarus, Lithuania and Russia. Total land surface of the country is 312 685 sq. km (68th country on earth in terms of size), population is over 38.2 million (30th place globally), population density is 122 inhabitants/sq. km. In terms of Gross Domestic Product (GDP), Poland is:

- According to one source (World Factbook, 2004) 24th economy globally;
- According to another source (Wikipedia citing IMF, 2005 forecast) 23rd economy globally.

Gross Domestic Product per capita (at purchasing power parity) amounts to:

- According to one source (World Factbook, 2004) $12 000 (57th place among independent countries worldwide);
- According to another source (Wikipedia citing IMF, 2005 forecast) $13 275 (51st place among independent countries worldwide).

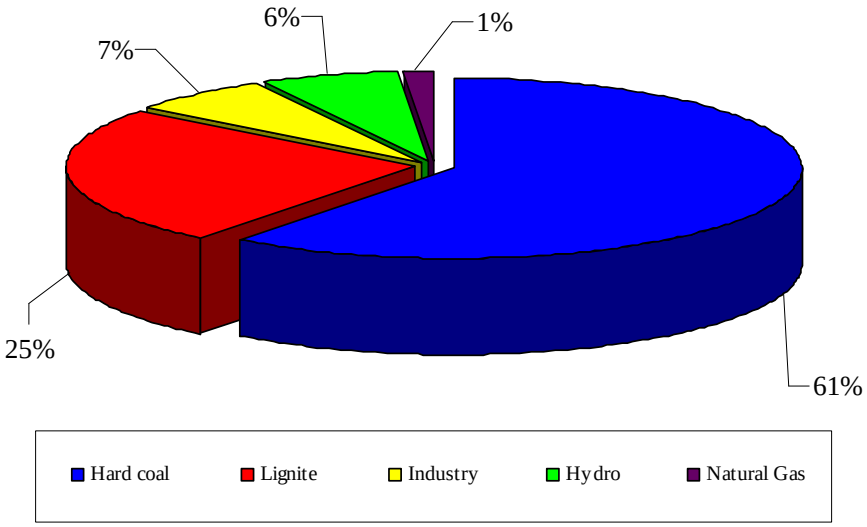
GDP growth in 2004 came to some 5.3% (Polish Central Statistical Office [27] data). GDP contribution structure is as follows: agriculture ca 3%, manufacturing ca 31%, services 66%. Inflation in 2004 amounted to 3.5%. Leading macroeconomic statistics for Poland are shown in Table 1.

Table 1. Macroeconomic data for Poland

| | | 2002 | 2003 | 2004 | 2005P | 2006P |
|---|---|---|---|---|---|---|
| **Inhabitants** | mn | **38.2** | **38.2** | **38.2** | **38.1** | **38.1** |
| **Inflation rate** | % | **1.9** | **0.7** | **3.5** | **3.3** | **2.6** |
| GDP per capita (excluding PPP) | USD | 5 010 | 5 480 | 6 240 | 7 310 | 7 760 |
| **GDP growth** | % | **1.4** | **3.8** | **5.3** | **4.5** | **4.0** |
| Budget deficit | % | -5.0 | -4.5 | -4.6 | - 3.7 | -3.3 |
| **Unemployment (end)** | % | **20.0** | **20.0** | **19.5** | **18.9** | **18.6** |
| Export | bn USD | 56.7 | 72.8 | 91.4 | 108.5 | 119.7 |
| Import | | 63.1 | 78.1 | 95.9 | 113.9 | 126.6 |
| Trade balance | | -6.4 | -5.3 | -4.5 | -5.4 | -6.9 |
| Exchange rate (avg. annual) | 1 USD | 4.08 | 3.89 | 3.65 | 3.40 | 3.42 |
| Exchange rate (end year) | | 3.84 | 3.74 | 2.99 | 3.31 | 3.48 |
| Exchange rate (avg. annual) | 1 EUR | 3.86 | 4.40 | 4.53 | 4.37 | 4.40 |
| **Exchange rate (end year)** | | **4.02** | **4.72** | **4.08** | **4.35** | **4.36** |
| CIT | % | **28** | **27** | **19** | **19** | **19** |

Source: own study on the basis of [5] [22] [25]

Installed capacity of Polish power stations at the end of 2004 was 34 715 MW, of that 32 162 MW in grid power stations (21 138 MW hard coal fired, 8 856 MW brown coal fired and 2 168 MW hydro power stations) plus 2 553 MW in industry-run power stations. Compared with 2003 there was a slight capacity decline of 0.3%, with a note that installed capacity was reduced in brown coal fired grid stations (down 4.8%), with capacity increase for other types of power stations [13] [15]. Structure of power generation by segment is shown on Graph 1.




Graph 1. Electric power generation in Poland by segment in 2004 – types of generation

Gross domestic demand for electric energy in 2004 was just over 144 TWh, some 3.5 TWh or 2.5% more than in 2003. Same as the demand for power, national consumption of electric energy was also on the increase (same as in 2002-2003, when it increased 3.2%). Main data concerning the electric energy sector are shown in Table 2.

Table 2. Data on electricity sector in Poland, 2004

| **Electricity production and demand** | |
|---|---|
| Gross electric energy production [GWh] | 154 102 |
| - industry power plants | 8 052 |
| - independent power plants remaining | 438 |
| Gross domestic demand for electric energy [GWh] | 144 069 |
| Generation | |
| Generation capacities [MW] | 34 715 |
| Generation attainable [MW] | 31 887 |
| Load max [MW] | 23 108 |
| Load min [MW] | 10 828 |
| **Cross-Border Exchanges** | |
| Export [GWh] | 12 487 |
| Import [GWh] | 3 194 |
| Energy consumption | |
| Net energy consumption [GWh] | 106 189 |
| Sale of electric energy for end-users by distribution company [GWh] | 97 760 |
| Number of energy end-users [thousand] | 15 662 |

Source: own study on the basis of [13] [26] [29]

## 2.2. Structure of electric energy market in Poland

Polish electric energy sector is made up of the following sub-sectors of power enterprises:

- Power generators (power plants/stations, PP);
- Transmission System Operator (TSO), transmitting power at 220 kV and 400 kV;
- Distribution System Operators (DSO) (110 kV and lower voltages), organised within structures of distribution companies – electricity utilities;
- Entities trading in electric energy – trading companies (independent as well as those within structures of distribution companies).

The power generation sub-sector in Poland consists of grid power stations and industrial sources (power plants and CHP). A listing of the largest grid power plants was provided in Table 3. The company called PSE – Operator SA, set out fully from structures of Polish Power Grid Company (Polskie Sieci Elektroenergetyczne SA), has the function of Transmission System Operator. Distribution systems are managed by fully consolidated distribution companies. Operating territories of each consolidated distribution company are shown on Graph 2, the market share of distribution companies (post-consolidation) are shown in Table 4. Consolidation plans do not preclude the option of merger between the largest electric power generators in Poland – BOT (holding BOT Górnictwo i Energetyka SA) and PKE (Południowy Koncern Energetyczny SA), already horizontally integrated energy groupings – which should considerably strengthen the position of consolidated groupings.

Given the form in which energy is traded, the energy market in Poland is divided into the following sectors:

- Bilateral contracts segment (including regulated trade under Long Term Contracts LTC - KDT);
- Power exchange segment;
- Balancing segment (balancing-out market administered by Transmission System Operator).
- Segment of mandatory purchases of energy from renewable sources and heat-coupled energy.

The share of each sector is shown in Graph 3.

Table 3. Listing of largest power stations in Poland, 2003/2004

| Power Plant | Capacity [MW] | Production [GWh] | Fuel | Share in the Polish market (production) | Revenue 2004 [mn PLN] |
|---|---|---|---|---|---|
| **BOT** | **8 052** | **46 626** | | **30.4%** | **9 054*** |
| Bełchatów | 4 420 | 28 276 | Lignite | 18.4% | |
| Opole | 1 466 | 8 359 | Hard coal | 5.5% | |
| Turów | 2 166 | 9 991 | Lignite | 6.5% | |
| **ZE PAK** | **2 738** | **13 090** | | **8.5%** | **1 755** |
| Pątnów | 1 600 | 7 174 | Lignite | 4.7% | |
| Adamów | 600 | 3 490 | Lignite | 2.3% | |
| Konin | 538 | 2 426 | Lignite | 1.6% | |
| **PKE** | **5 053** | **18 822** | **Hard coal** | **12.3%** | **3 553** |
| Jaworzno 3 | 1 345 | 4 991 | Hard coal | 3.3% | |
| Łaziska | 1 155 | 4 426 | Hard coal | 2.9% | |
| Łagisza | 840 | 3 038 | Hard coal | 2.0% | |
| Siersza | 786 | 2 837 | Hard coal | 1.8% | |
| Jaworzno 2 | 290 | 972 | Hard coal | 0.6% | |
| Halemba | 200 | 476 | Hard coal | 0.3% | |
| Blachownia | 165 | 628 | Hard coal | 0.4% | |
| EC Katowice | 136 | 902 | Hard coal | 0.6% | |
| EC Bielsko-Biała | 81 | 261 | Hard coal | 0.2% | |
| EC Bielsko-Północ | 55 | 291 | Hard coal | 0.2% | |
| Kozienice | 2 820 | 11 154 | Hard coal | 7.3% | 1 772 |
| Electrabel Połaniec | 1 600 | 7 308 | Hard coal | 4.8% | |
| Rybnik | 1 775 | 9 695 | Hard coal | 6.3% | 1 407 |
| Dolna Odra | 1 600 | 4 745 | Hard coal | 3.1% | 1 216 |
| Ostrołęka | 694 | 2 130 | Hard coal | 1.4% | |
| Skawina | 590 | 2 730 | Hard coal | 1.8% | 387 |
| Stalowa Wola | 340 | 1 208 | Hard coal | 0.8% | |

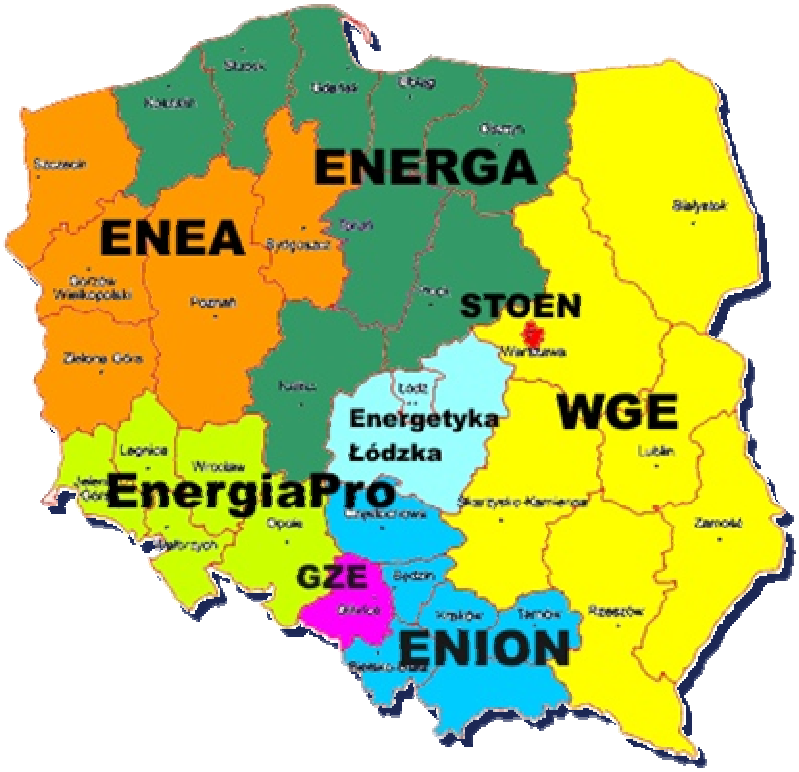
Source: own study on the basis of [13] [15]

* sum of revenues generated by 5 entities: Elektrownia Bełchatów SA, Elektrownia Turów SA, ElektrowniaOpole SA, KWB Bełchatów SA and KWB Turów SA

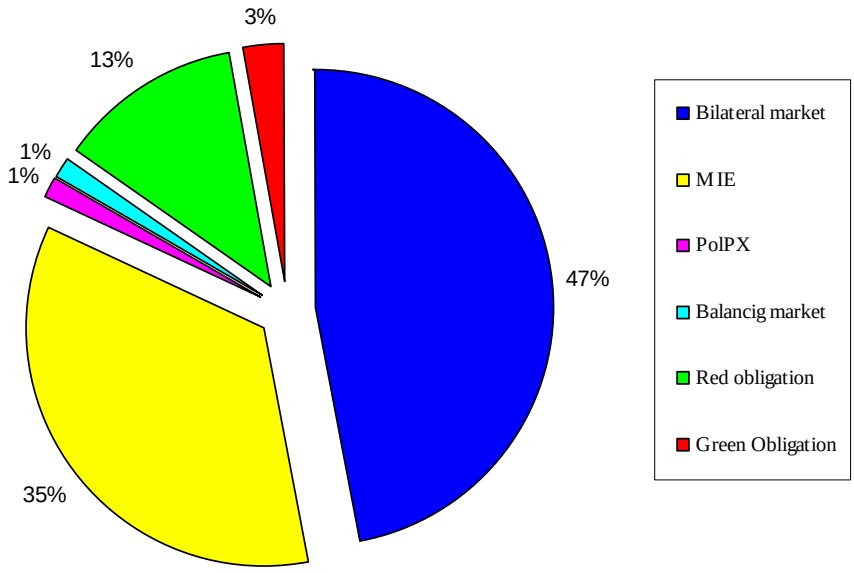
Table 4. Main data of distribution companies in Poland

| Distribution Company | Sales [GWh] | Number of customers [mn] | Revenue 2004 [mn PLN] | Share in the Polish market (sale) [%] | Area [km$^2$] |
|---|---|---|---|---|---|
| L-6 Group (with Energetyka Podkarpacką) | 18.6 | 3.7 | 5 951 | 18.5% | 105 842 |
| Koncern Energetyczny ENERGA | 17.6 | 2.7 | 4 977 | 17.5% | 74 627 |
| ENION | 16.5 | 2.3 | 4 228 | 16.4% | 25 500 |
| Koncern Energetyczny ENEA | 14.2 | 2.2 | 4 102 | 14.1% | 58 192 |
| EnergiaPro Koncern Energetyczny | 10.8 | 1.6 | 3 060 | 10.8% | 27 429 |
| Ł-2 (Energetyka Łódzka) | 7.2 | 1.1 | 1 908 | 7.2% | 16 645 |
| Górnośląski Zakład Elektroenergetyczny | 10.1 | 1.1 | 2 410 | 10.1% | 4 062 |
| STOEN | 5.4 | 0.8 | 1 595 | 5.4% | 486 |
| **TOTAL SUM** | **100.4** | **15.5** | **28 231** | **100.0%** | **312 783** |

Source: own study on the basis of [13][26][27][29]

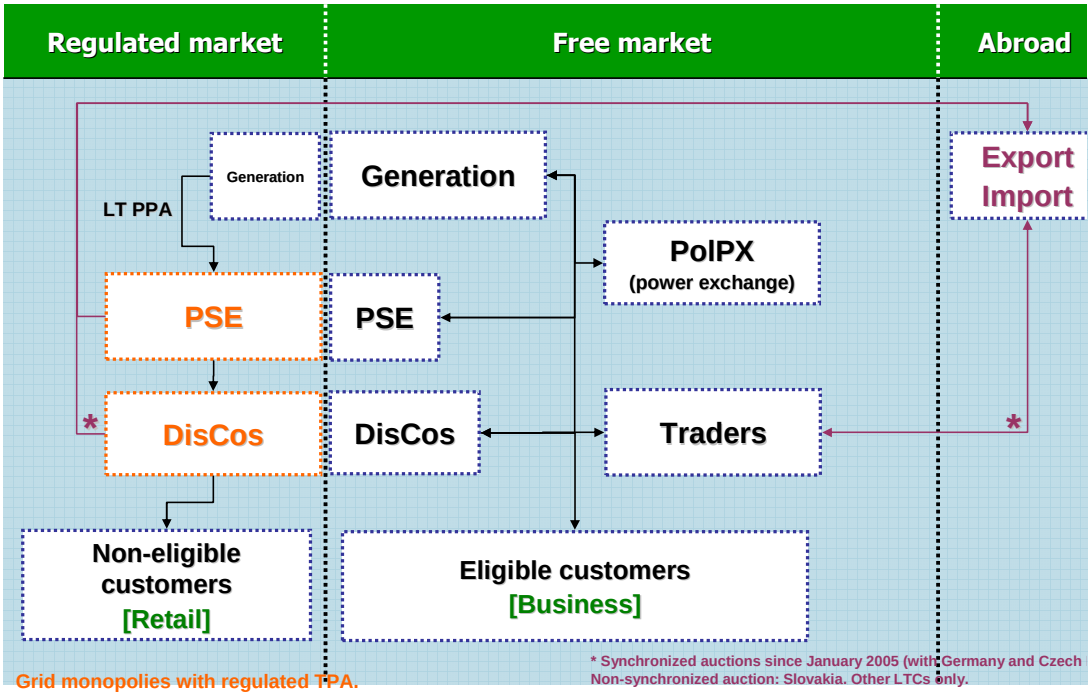



Graph. 2. Distribution companies - energy sector groupings in Poland




Graph 3. Segments of electric energy market in Poland

From the perspective of regulatory functions, the electric energy market in Poland, just as in most EU countries, may be divided into the regulated and the unregulated portions. Statutory regulatory functions are exercised in Poland, by virtue of the Energy Law Act, by President of Energy Regulatory Authority (Urząd Regulacji Energetyki - URE) (see also Chapter 2.5). The organisational diagram of electric energy segments from regulatory perspective are shown on Graph 4.




Graph 4. Breakdown of electric energy market by segment in Poland [4] [5]

Even though this is not formally reflected in any statutory provisions, the national energy market may be divided in two from the perspective of scope of operation: ,

- The system market which is the part of the energy market in which trade relates to transmitted volumes, that is power in the 220 kV and 400 kV grid;
- Local markets, in which energy trade relates to distributed volumes, that is power in distribution networks of 110 kV and less..

It should be noted that the groups of enterprises (generating, distributing, trading), in view of the need to work together within the electric energy system and considering their group interests, have formed the following Societies:

- Towarzystwo Gospodarcze Polskie Elektrownie (TGPE) - Economic Society Power Stations;
- Polskie Towarzystwo Elektrociepłowni Zawodowych (PTEZ) - Polish Association of Professional Heat and Power Plant";
- Polskie Towarzystwo Przesyłu i Rozdziału Energii Elektrycznej (PTPiREE) - Polish Power Transmission and Distribution Association;
- Towarzystwo Obrotu Energią (TOE) - Association of Energy Trading;
- The segment of energy from renewable sources has several Societies and Chambers associating representatives of different renewable energy sources;
- In terms of institutions representing energy users, there are several Societies and Chambers associating customers, of which one of the leading is Izba Energetyki Przemysłowej - House of Industrial Power Industry, unfortunately it represents almost exclusively the large industrial firms.

The said Societies act as a platform for discussions and formulation of positions regarding reforms and ownership policy of the state.

## 2.3. Legal modalities and their impact on the state of electric energy market liberalisation in Poland

The statutory foundations for operation of energy (electric power, heat, gas) markets in Poland are provided by the Act of 10th April 1997 – Energy Law [18] and the enabling legislation – rulings – issued on its basis. The Energy Law Act sets out the principles for shaping State energy policy, the principles and conditions for supplying and using fuels and energy, including heat, and for operation of energy sector enterprises, and defines the agencies empowered to administer questions of fuels and energy management. Polish Energy Law is an Act with very extensive subject coverage.

The Act, most provisions of which came into force by the end of 1997, forms the basis for freeing energy markets and introducing competition to energy sub-sectors. Unfortunately, the 26 updates of the Act resulted in changing the letter and sense of many of its original provisions. Claims from various quarters that it would be advisable to supersede this Act with a new, consistent one, are to be considered as fully warranted.

The most recent update of the Act through enactment of the Act dated 4th March 2005 on amending the Energy Law and the Environment Protection Law Acts [19], was meant to adjust the Polish legislative order to EU regulations, including the earlier cited Directive and Ruling. The update of March 2005 introduced several changes reflecting on the energy market in Poland, in particular on laying the grounds for more extensive liberalisation of the energy market in Poland. It is to be noted that the „update" Act had to be adopted in the fast-track mode, since the date set for implementing the energy & gas Directive elapsed on 1st July 2004. Beyond question, many of the adopted changes bring closer to functioning of a competitive energy market, and this could reflect positively on practical implementation of the TPA principle. Still, some of the changes made have given rise (during the legislative process) and may give rise in the future to numerous questions, mainly of interpretation nature.

The key changes made by the March update concern the following:

- Procedures for splitting grid-related activities (what operators of distribution systems do) from trade (trading in electric energy) - unbundling;
- Introducing and function of so-called *supplier of last resort;*
- model for trading in rights accruing from certificates of origin relating to energy from renewable source, as a mechanism to support renewable sources energy generation;
- defining with more precision the terms of reference of ERA (URE) President.

To give an idea o the scope of changes, suffice it to note that Article 3 of the updated Act contains no fewer than 30 modifications or entirely new definitions applied by the legislator. The most significant of these cover definition of such terms as transmission, distribution and sale of fuels or energy; definition of balancing out the system,; several definitions relating to installations and types of grids; categories of market participants – particularly operators of distribution and transmission systems and supplier of last resort – definition of a vertically integrated enterprise, comprehensive service and finally cross-subsidizing.

Substantive new changes are called for as regards the model of mandatory purchase of energy co-generated with heat. We also view negatively the procrastination in issuing enabling legislation to the Act, since many provisions of regulations in force prior to issuance of the March update are inconsistent or contradictory to provisions of the amended Act and call for urgent change.

## 2.4. Selected Government papers and their impact on the level of electric energy market liberalisation in Poland

Poland's energy policy in the general economic context of Poland after 1989 was carried out on the basis of the following Government program documents:

1. ***Assumptions for the Republic of Poland's Energy Policy from 1990 to 2010*** *(Założenia polityki energetycznej Rzeczypospolitej Polskiej na lata 1990 – 2010)* adopted in August 1990.
2. ***Assumptions for Poland's Energy Policy Until the Year 2010*** *(Założenia polityki energetycznej Polski do 2010 roku )* adopted in October 1995.

3. ***Assumptions for Poland Energy Policy Until the Year 2020*** *(Założenia polityki energetycznej Polski do 2020 roku)* adopted in February 2000.
4. ***Evaluation of Implementation and Amendments to Assumptions for Poland's Energy Policy Until the Year 2020 with annexes*** *(Ocena realizacji i korekta Założeń polityki energetycznej Polski do 2020 r. wraz z załącznikami*) adopted in April 2002.

In view of changes in the economy related to Poland's accession to the European Union, and also new challenges to energy security resulting from the international geo-political situation and experiences in implementing competitive markets of electric energy and gas fuels, the need arose for formulating a new strategy. The paper ***Energy Policy of Poland until 2025*** *[10]* adopted by the Council of Ministers in January 2005 is a document outlined a set of actions designed to ensure energy security, competitiveness of the economy, its energy efficiency and environment protection. According to this document, **the basic mechanisms for the functioning of the energy industry are the mechanisms of a competitive market, with the necessary administrative regulation** in the areas, where competition is currently highly curtailed. The document set out the long-term thrust of actions through 2025, a package of tasks for execution by 2008 and the actors responsible for executing these tasks in the following areas:

- Generation capacities of domestic fuels and energy sources,
- Volume and types of stocks of fuels,
- Transport capacities, including cross-border exchanges connections,
- Energy efficiency of the economy,
- Protection of the environment,
- Development of use of renewable energy sources,
- Restructuring and ownership changes of the fuels and energy sector,
- Research and development work,
- International cooperation.

The second document of key importance as regards ownership policy of the State, and hence reflecting significantly on the scope of freeing the electric energy market in Poland, is the June 2005 document entitled *Update of the Ownership Policy Practice of the Minister of Treasury Regarding the Electric Energy Sector adopted by the Council of Ministers on 28th January 2003*. The document adopted by the Council of Ministers includes information about progress on the points covered by *the Program for Implementing Ownership Policy of the Minister of State Treasury With Regard to the Electric Energy Sector* and plans for further restructuring of electric energy sector firms, encompassing vertical and horizontal consolidation of enterprises and advances in transforming ownership in the sector. **This document substantially altered the earlier approach of State authorities to changes in the sector.**

In following up on this document, the already performed setting out of the Transmission System Operator should be followed up as early as possible by a similar move in relation to the distribution companies – there should be a split of energy transmission and distribution from the other operations involved in generating and selling electric energy. There is a need for designating Distribution System Operators and appointing supplier of last resort. **Owner actions by the Minister of Treasury are to focus on keeping both the scope and the dates of these market oriented changes.**

Policy of the Minister of Treasury acting as owner with respect to electric energy sector companies will encompass the process of restructuring, including horizontal and vertical consolidation of the energy generation and the energy distribution companies. The already started privatisation processes will continue, and for the consolidated enterprises the Minister of State Treasury will draft a new privatisation strategy. By the same token, the Government – reserving certain conditions – **has expressed consent to vertical integration of electric energy sector companies** (something it rejected in earlier documents).

As regards further privatisation of companies with a State Treasury ownership stake:

- The Minister of Treasury will monitor execution of investment pledges obtained in the process of privatising energy sector enterprises and apply the appropriate corrective measures as needed;
- **The process of privatising electric energy sector companies will be continued,** and the selected mode of privatisation (public offer, invitation to negotiate) will be analysed on a case-by-case basis and will depend on current market & macroeconomic environment as well as the needs of the privatised company itself;
- **For large energy groupings and conglomerates the preferred privatisation path will be by public offer**; offers of enterprise stock to strategic investors are also not precluded;
- The Minister of Treasury will continue efforts to sell off the shares still retained by State Treasury in the privatised companies.

## 2.5. Role of the regulator in developing electric energy sector competition

Along with introducing fully free energy markets and market mechanisms to the sector, a need arose for introducing regulations of selected areas of the electric energy sector. The main aim of regulations in this sector is to ensure proper energy management and safeguarding end user interests.

Under the Polish Energy Law Act, the regulatory responsibilities regarding fuels and energy management and promotion competition have been entrusted to President of Energy Regulatory Authority (URE). President of URE is the central Government administration agent appointed for 5 years tenure by the Prime Minister at the request of the Minister responsible for economic affairs. President of URE discharges his duties with assistance from the Energy Sector Regulatory Office. The terms of reference of URE President cover:

- Issuing and retracting concession licences;
- Accepting and controlling application of tariffs for gas fuels, electric energy and heat, including analysis and validation of costs applied by energy sector enterprises as justified in calculating the prices and fee rates in tariffs;
- Accepting grid traffic and operation instructions with respect to balancing out the system and managing system constraints;
- Organising and managing tenders for: appointments as supplier of last resort, addition of new electric energy generation capacities and executing projects reducing the requirement for electric energy;
- Controlling customer service quality standards and controlling, on customers' request, compliance with quality parameters of gas fuels and energy;
- Controlling implementation of duties imposed by regulations [17];

- Co-operating with the agencies concerned in counteracting competition restraining practices of energy sector enterprises;
- Defining methods for controlling and initiating actions to improve efficiency of energy sector enterprises;
- Issuing and retracting the certificates of origin referred to in Article 9e Section 1;
- Performing other tasks defined in the Actor in other statutes.

President of URE, as an element of monitoring progress of competition on the electricity market, makes annual analyses of the degree to which the freedom of selecting the supplier is exercised by entitled customers and identifies the barriers: technical, formal, economic and also of psychological nature, which make it difficult or outright prevent exercise of the access right of entitled customer to transmission services. These analyses then serve for drafting proposals of methods to eliminate the constraints on access to transmission services. A particularly vital role in ensuring competition is to be played by the Department for Promotion of Competition, established within URE structures.

In exercising office, in addition to identifying barriers to grid access, in early 2005 the President of URE for the first time launched an attempt to study the quantitative and qualitative aspects of the practice of renegotiating contracts with customers by distribution companies. Analysis of survey responses indicated that **only some of the rebates granted by distribution companies were warranted on technical grounds** (such as usage of high proportion of contracted power, placing and sticking to hourly demand timetables, thereby reducing the costs of non-balanced supply of the distribution company, summing up contracted power in various take-off points or sale of energy in band form). **The remaining rebates were given simply to prevent the customer from switching suppliers. It should be noted that the question of renegotiating energy supply terms in a natural way solves the legal distinction of grid operation from trading.**

Another initiative of the URE President was the appointment (in March 2005) of a **Team for System Solutions of the Energy Market (RSREE Team)**. The Team, chaired by URE President, is composed of representatives of URE, UKIE, UOKiK and industry associations (PTPiREE, TGPE, PTEZ and TOE). The Team has so far concluded that **the quality of electric energy market functioning in Poland is currently unsatisfactory, and decisive steps are needed to change the functioning of that market in both its wholesale and retail segments** (Team proposals are reviewed more extensively further on in this Report).

It should be noted that on the part of URE President the practical efforts to bring about and promote competition, which were first launched at the turn of 2004 and 2005, have not so far yielded the expected results, due to difficulties in eliminating the behaviour habits of former monopolists.

Development of the electric energy market in Poland should be spurred considerably by the *Communique of President of URE dated 15th July 2005 concerning assumptions for drafting traffic and operation instructions for electric energy transmission and distribution grids* published on URE website on 21st July 2005. The President of URE considers it indispensable and vital for future work to define the expectations of the Regulator during the period of drafting by TSO of proposed transmission grid traffic and operation instructions and distribution grids traffic and operation instructions for acceptance (as under the updated Act, the President of URE is required to accept such instructions as regards balancing the system and managing system constraints.

According to the cited Communique, **the distribution companies should:**

- Enable the customers connected to their grids to file aggregated schedules (aggregated schedule of several customers or of one customer connected at several powering points);
- Refrain from granting rebates, except in the cases stipulated in tariffs;
- Limit the technical requirements to be met when changing supplier to a single metering-billing arrangement enabling hourly recording of energy used and a single data transmission path, and transmit data in off-line mode, for readings once a day;
- Refrain requiring from the customers exercising their right to select supplier to replace the measuring transformers with single measuring core and change the precision class of electric current meters;
- Reduce the requirements to be met by customers changing suppliers for presentation of a bank guarantee to cover the costs of deviations.

URE President issued guidelines that, irrespective of the above, steps are to be taken for replacing the present methodology of higher assurance of power delivery coefficients with possible charges for ensuring standards higher than required by regulations (e.g. concerning shorter power delivery interruptions).

In the Communique, the President of URE also noted that **conduct of competing trade requires complete legal separation of such activity from regulated activities.** In this context, the President of URE expects that **starting 1st January 2006, the distribution companies will cease selling energy as art of regulated trade (to tariff customers) and free market trade (to customers exercising the option of selecting their supplier) within the same corporate entity.**

# 3. BARRIERS TO TPA IN POLAND. THE NEED TO CONSIDERING MEASURES STRENGTHENING CUSTOMER SAFEGUARDS

## 3.1. TPA before and after Poland's accession to the European Union

One of the key elements enabling access for customers to the energy market is the Third Party Access (TPA) principle. In Poland this principle was enacted in to law by provisions of Article 65 of the Energy Law Act and Ruling of the Minister of Economy dated 6th August 1998 about the timetable for specific groups of customers to acquire the right to access transmission services. Under this Ruling, customers with annual electric energy purchases of not less than 500 GWh have been granted access rights to transmission services as of 4th September 1998. At the time (that is in 1998) according to the (1997) statistical data, such access rights were acquired by 21 customers in aggregate representing a market for some 9.5 TWh. Customers buying over 100 GWh annually acquired the access rights to transmission services as of 1st January 1999. According to statistics, by that date access rights were acquired by 83 customers in total (21 since 4th September 1998 plus 62 since 1st January 1999). The remaining customers were given access rights according to the following timetable:

- Customers with annual purchase volumes of not less than 40 GWh – 1st January 2000;
- Customers with annual purchase volumes of not less than 10 GWh – 1st January 2002;
- Customers with annual purchase volumes of not less than 1 GWh – 1st January 2004.

In the initial version of the Ruling the remaining customers, irrespective of voltage levels, were to be given access to the grid as of 5th December 2005. Nonetheless, a successive Ruling by the Minister of Economy, Labour and Social Policy issued on 20th January 2003, concerning the timetable for awarding grid access rights to customers has (and rightly so) made the requirements more specific, that the energy must be purchased for own needs. The 2003 Ruling also postponed the date of opening the market for all customers to 1st January 2006.

Poland's accession to EU resulted in another change of the conditions for third party access to electric power grids. Under the 2003 Ruling, as of 1st January 2004 all customers purchasing annually over 1GWh of electric energy for own needs were entitled to grid access. At the time this meant a group of some 6.6 thousand customers. Under EU guidelines, after 1st July 2004, the option of free choice of electric energy supplier was gained theoretically by a very large group of customers (some 1.9 million) – meaning all but household customers. But (according to TOE data), only 44 customers in practice exercise their TPA rights. A listing of the degree of electric energy market opening is shown in Table 4. Development of the TPA principle broken down by distribution companies in statistical terms for the years 2003and 2004 is shown in Table 5, drawn up on data from [6].

According to many energy market participants in Poland, the market presently functioning in our country fails to meet the basic criteria of competition.

**The current state of electric energy market in Poland is unsatisfactory, also from the perspective of trading companies, as evident from the following:**

- **Absence of stable legislative environment and unpredictable directions of legislative changes;**
- **Lack of absolute clarity of binding legal regulations – application of varying interpretations;**
- **Lack of equal access for electric energy market participants in Poland;**
- **Barriers to implementation of the TPA principle** (to be described in a further part of the report).

It should be noted that the unsatisfactory degree of electric energy market opening is a feature of both Poland and of numerous other EU countries (vide [3]).

Table 5. Opening of the electric energy market - 1998 – 2004

| Period | Eligibility threshold [GWh] | Eligible customers | Size of open market [TWh] | Market opening [%] | Change deliverers [customers] |
|---|---|---|---|---|---|
| 4.09-31.12.1998 | >500 | 21 | 9,5 | 9 % | 6 |
| 1.01-31.12.1999 | >100 | 83 | 23,0 | 22 % | 12 |
| 1.01.2000-31.12.2001 | >40 | 138 | 28,5 | 30 % | 13 (2000)<br>6 (2001) |
| 1.01.2002-31.12.2003 | >10 | 560 (2002)<br>641 (2003) | 36,0 | 37 % | 19 (2002)<br>29 (2003) |
| 1.01.2004-30.06.2004 | >1 | about 6,6 thousand | 53 | 52% | 64 |
| Since 1.07.2004 | all non-households | about 1,9 mn | 82 | 80 % | 78 (URE)<br>54 (TOE) |
| Since 1.01.2006 (1.07.2007) | | about 15,6 mn | 102 | 100% | ??? |

Source: own study on the basis of [6][13][29] and TOE

Table 6. Progress of TPA principle in Polish electricity sector

| | Eligible customers in 2004 | | | Change deliverers [customers] in 2004 | | | |
|---|---|---|---|---|---|---|---|
| | Number (1.01.-30.06) | Number (1.07.-31.12) | Delivered energy [GWh] | Number* | Tariff Group | Power of electr. [MW] | Delivered energy [GWh] |
| ZE Białystok | 186 | 76 074 | 1 251 | - | - | - | - |
| LUBZEL | 147 | 50 627 | 1 647 | - | - | - | - |
| ENION | 828 | 218 024 | 11 147 | 26 | A23/A23s/ B23 | 742 | 2522 |
| GZE | 429 | 133 847 | 7 907 | 29 | A23/B23 | 681 | 2376 |
| Rzeszowski ZE | 234 | 73 537 | 2 236 | 2 | A23/B23 | 12 | 33 |
| EnergiaPro Koncern Energetyczny | 703 | 173 430 | 8 268 | 7 | A23/B23 | 617 | 3437 |
| Łódzki Zakład Energetyczny | 224 | 34 712 | 1 248 | - | - | - | - |
| Koncern Energetyczny ENERGIA | 1 012 | 395 340 | 13 676 | 2 | A41/B23 | 121 | 1002 |
| Zamojska Korporacja Energetyczna | 72 | 38 188 | 762 | 3 | B23 | 30 | 150 |
| ZEORK | 191 | 69 192 | 2 441 | 1 | B23 | 4 | 6 |
| ENEA | 1 548 | 353 362 | 8 912 | 2 | A23/B23 | 29 | 13 |
| ZE Łódź-Teren | 225 | 65 925 | 3 085 | 1 | B23 | 11 | 82 |
| STOEN | 550 | 60 912 | 3 013 | 3 | A23/B23 | 31 | 135 |
| ZE Warszawa-Teren | 278 | 140 014 | 3 280 | 2 | B23 | 6 | 35 |
| **TOTAL SUM** | **6 627** | **1 883 184** | **68 870** | **78** | | **2283** | **9791** |

Source: [6]

* Number of customers applying TPA means number of energy sale contracts concluded with selected sellers other than the „home" distribution company (for instance, on STOEN territory TPA is applied in practice by two customers (corporations), but one of them has two separate energy supply contracts for different connection points and different voltages).

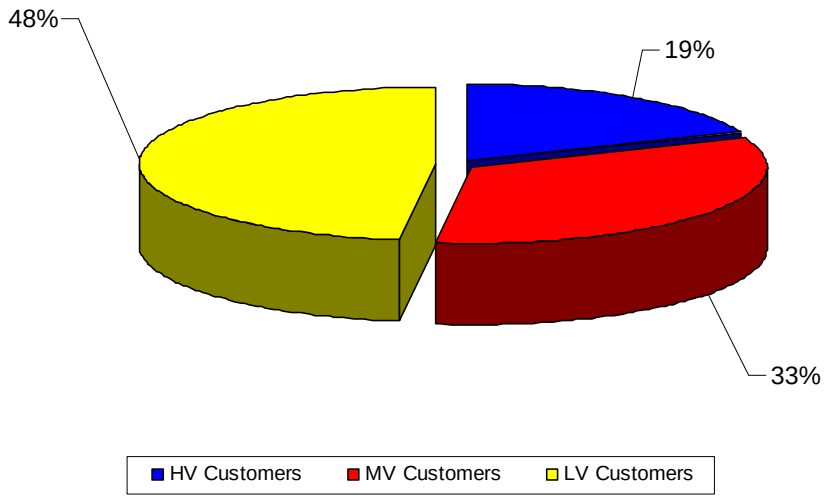
## 3.2. Final Customers in Poland – basic facts

Domestic electric energy consumption in 2004 amounted to just over 144 TWh, with supply of electric energy to end users from operator grids coming to some 106 TWh. Sales of electric energy by distribution companies to customers in 2004 came to nearly 98 TWh, by trading companies some 2 TWh, the remaining sales are direct sales by power plants and CHP's some 7 TWh and hydro some 4 GWh. Sales of electric energy to customers in 2004 increased some 2.62% over their 2003 level; also to be noted is the nearly 1% drop in share of distribution companies in sales to end users. The structure of electric energy customers by voltage levels are shown in Table 10 and Graph 5. The market of energy customers in Poland by usage type is shown in Graph 6.

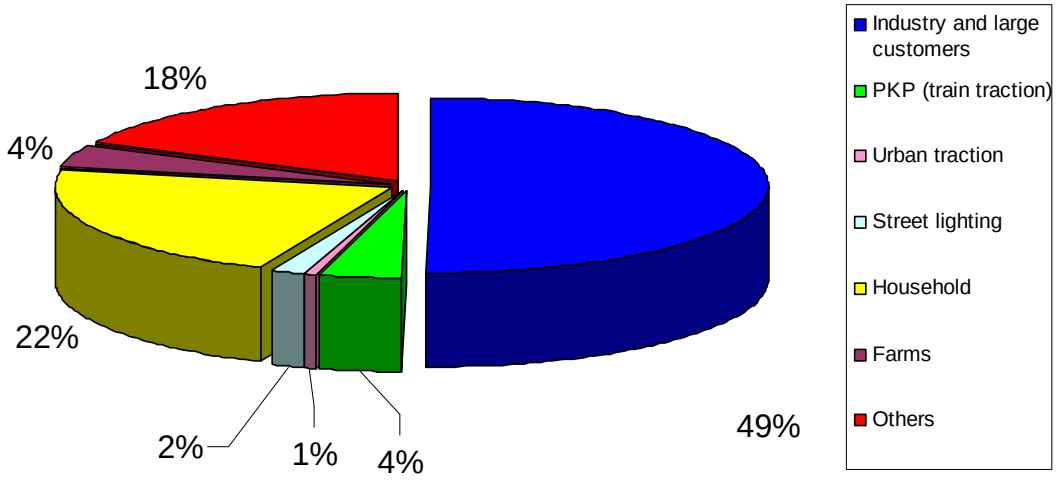
Table 10. Structure of electric energy sales to customers in 2004 by voltage levels

| No. | Customers | Sale of energy by DisCos [GWh] | Number of Customers [-] | Sale per customer [MWh] |
|---|---|---|---|---|
| 1 | HV Customers | 18 435 | 267 | 69 045 |
| 2 | MV Customers | 32 388 | 26 914 | 1 203 |
| 3 | LV Customers | 46 937 | 15 634 537 | 3 |
| | including households | 27 533 | 14 122 370 | 2 |
| **4** | **TOTAL SUM** | **97 760** | **15 661 718** | |

Source: own study on the basis of [15] [27] [29] and TOE




Graph 5. Structure of electric energy sales to customers in 2004 by voltage levels




Graph 6. Structure of electric energy sales to customers in 2003 by usage type

## 3.3. Main barriers to TPA in Poland

The low present share of entitled customers in direct purchases of electric energy on the market is due to legal, technical and economic considerations (the last meaning negligible or, in extreme cases, nil profitability of changing the supplier). Existing energy providers, meaning the "home" distribution companies fearing reduced revenues are very reticent to accept the resort of customers to their TPA rights. Only a few of the companies go for reciprocally advantageous co-operation with customers in this respect.

**It is to be hoped that in the near future changes will be introduced to binding legal regulations, enabling wider scale exercise of TPA rights by customers (under new enabling legislation to the revamped Energy Law Act) and there will be wider promotion of the TPA principle in Poland, especially to medium and small businesses.** Such changes are being championed by numerous organisations and institutions, including TOE, especially on the forum of Polish Electricity Association - PKEE or the Team for System Solutions for the Electricity Market in Poland.

In late 2004 the Market Committee of PKEE, with active participation of TOE drafted ***Position Paper on Practical Implementation of the Third Party Access Principle*** (for download from [25] and [28]). This position paper was presented to the Ministry of Economy and Labour and to the President of URE. It included a review of practical implementation of the TPA principle, indicating **the most serious barriers effectively blocking the possibility of freely choosing electric energy suppliers:**

1) Very elevated requirements regarding metering-billing systems and systems for transmitting meter data set by regional operators DSO for entities interested in exercising their TPA rights. These reflect direct import of various provisions from the Transmission Grid Traffic and Operation Instructions to into Distribution Network Traffic and Operation Instructions, without taking account of differences in volume of power and electric energy involved for different groups of customers.
2) Limiting by DSO the precision of electric energy purchase contract schedules to 1 MWh (this limitation, despite numerous signals from representatives of various electric energy industry sub-sectors about the need to change the precision of schedules to 1 kWh, has not been addressed in the currently binding documents).
3) Absence of transparent rules for balancing out the entities connected to grids of distribution companies, passing on the real costs of balancing incurred by DSO.

According to URE [6] [13], the problems most frequently encountered by customers applying for exercising the right to free choice of supplier in 2004 confirm these barriers:

1) Very high costs involved in modernising the metering-billing systems, constituting data transmission routes to DSO and extension of the IT support system for market operation. Distribution companies generally place too elevated requirements regarding the metering systems, often more demanding than stipulated in the Transmission Grid Traffic and Operating Instructions (IRiESP) developed by the high voltage transmission system operator.

2) The principle of notifying electric energy demand schedules, defined by distribution companies, which demanded presentation of schedules by entitled customers two days in advance of the planned delivery time, while they themselves notified their schedules to the system balancing market managed by the Transmission System Operator by 11:00 o clock of the day preceding delivery.
3) Precision of contract notification transplanted directly from the balancing market, the rules of which call for notifying energy sales contracts for each hour with precision down to 1 MWh, which is precision appropriate for the wholesale market. Distribution companies transplant this approach directly to the level of end users opting for TPA. For the latter this implies considerable financial drain connected with undercontracting or overcontracting own requirements.
4) Absence of real price competition in the generation field and limited interest shown by generating firms in direct sales to customers. This is due in part to too narrow power bands ordered by entitled customers poor development of the electric energy market constrained by functioning of long-term contracts and mandatory purchases of energy from CHP and renewable source generators.
5) The „non-sector" causes, such as poor financialstanding of a large part of entitled customers, who would be interested in changing the supplier, but the suppliers having no interest in selling electric energy to entities facing difficulties with maintaining financial liquidity.

The disinclination of customers to seek new energy suppliers is also due to the need for taking the risk connected with shaping a „basket of purchases" and drawing up day hourly schedules, with the risk of incurring the costs of own deviations from projections on the balancing market. Many entitled customers continue as tariff customers of distribution companies, since in the distribution company tariffs they get precisely defined costs of purchasing energy, and the cost of balancing deviations id dumped together with deviations of all distribution company customers. [6]

## 3.4. Efforts on practical implementation of the TPA principle

On the basis of work done by TOE, the Polish Electricity Association - PKEE Market Committee already in December 2004 recommended the following directional actions which should exert a positive impact on the interest of electric energy market participants in the TPA principle:

a) Adopting the principle of classifying customers from the perspective of differentiating the formal and technical requirements to be met for exercising their TPA rights;

b) Verifying the binding Distribution Networks Traffic and Operating Instructions so as to eliminate artificial barriers to practical implementation of the TPA principle, with particular focus on provisions concerning:
   - Requirements set for metering-billing systems,
   - Requirements regarding transmission of metering data,
   - Principles concerning balancing of the entities connected to the network managed by given distribution grid operator;

c) Adopting the principle of balancing out the customers connected to the distribution network at real cost incurred by operators of these networks, taking into account the requirement of effectively managing traffic in distribution grids;

d) Drafting a model Distribution Grid Traffic and Operating Instructions containing standard requirements regarding metering-billing systems and the principle of balancing the entities connected to distribution networks on the basis of experience and conclusions drawn from verification of currently applied formal documents.

Proposals regarding actions necessary to increase the interest of electric energy market participants in the TPA principle, targeting the technical barriers, have been presented more extensively in Annex 3 to the *Position Paper* (vide [14]). The main barriers to practical implementation of the third parties grid access principle regarding the metering-billing systems have been grouped in the following four areas:

- Requirement of having transformers with two metering cores,
- Requirements as to precision class of electric energy meters,
- Requirements regarding having two metering-billing systems,
- Requirements regarding manner of transmitting metering data.

In working on practical implementation of the TPA principle in Poland, a very significant role was played by the request addressed by URE President to the distribution companies on 18th January 2005 with a request for data on implementation of the TPA principle on the operating territory of each company and the follow up meeting (in mid-February 2005) to sum up the collected data. URE President proposed drafting standards covering the following three groups of issues:

1) Procedures for managing requests for transmission services.

2) Terms for provision of transmission services to customers exercising their right of choosing their electric energy supplier.
3) Procedures for changing supplier.

According to the URE President's proposal, each distribution company should draft and implement a procedure for managing requests concerning provision of transmission services, including requests for splitting up the existing contract into a transmission contract and energy sale contract. URE President even formulated draft proposals of how such a procedure should look like.

On standardising the terms for provision of transmission services to customers exercising their right of choosing their electric energy supplier, the President of URE proposed to have the requirements set by distribution companies to the customers requesting a change of supplier apply nationally standardised terms for provision of transmission services, such as, e.g. criterion of applying load profiles, requirements for entitled customers regarding metering systems and requirements concerning transmission of metering data, or the financial security requirements set for customers exercising the right of choosing their supplier.

According to URE President, the procedures of changing supply themselves should encompass:

- Sequence of steps to be taken by customers to change their supplier;
- Mode and time for reading meters when suppliers are being changed;
- Mode of exchanging metering data with the energy supplier;
- Term for notice of existing contracts and changing energy supplier and permitted frequency of supplier change.

Another element which could exert a positive impact on modalities of electric energy trade in Poland covered appointment (in March 2005) and work (during three working meetings) of the **Team on System Solutions for the Energy Market (RSREE Team)**. Team members have identified the prime reasons for poor implementation of competition in the Polish electric energy sector as being:

1) Declining efficiency of the wholesale market, including that market's susceptibility to manipulation; and
2) Barriers in the retail market curtailing the freedom of choice for energy supplier's customers.

In the opinion of Team members, these things significantly slow down the process of developing competition, and by the same token put off or outright prevent attaining the objectives set when proceeding to implementation of market solutions in the Polish electric energy sector.

In the retail market area the RSREE Team proposed to execute the following by mid-2006:

- Developing the guidelines for metering all institutional customers and define the rules for setting up the necessary infrastructure and software support for metering, data transmission and invoicing;
- Functional split between the technical balancing conducted by operators of distribution systems as part of regulated activities and the commercial balancing;

- Introducing, as part of enabling legislation, both new functions and the entities designated to carry out the functions, defining their specific terms of reference as: commercial operator (responsible for balancing out, participating in the balancing market, clearing the accounts with sellers) and operator of metering, managing the metering operations;
- Drafting and applying in practice simple, standard, non-discriminatory and generally applicable procedures for changing suppliers;
- Drafting standard contracts governing relations between the various market entities;
- Spelling out in detail the terms of reference for supplier of last resort;
- Developing the precepts for an information campaign addressed to customers, on exercising the to freely choose their energy supplier.

Successive decisions concerning next steps in practical implementation of TPA in Poland took place during the June meeting of PKEE Market Committee (15th and 16th June 2005). This meeting summed up the efforts made to date regarding TPA in Poland and clearly noted that:

1) As part of TPA-directed actions, given that the efforts to date failed to more significant results, at the present juncture the time has come to **stop discussions concerning the barriers – and move on to implementing solutions.** Solutions which will allow for elimination of the already identified and broadly presented barriers. At the same time there is a need for a discussion forum on long-term solutions, so that current expedient actions should not become a barrier to the target solutions. All interest groups should be represented at this forum: end users, generators, trading firms and operators.
2) It is proposed **as part of expedient actions in drafting legislation and in the process of validating IRiESP and IRiESR**:
   a) To use the fruits of work done by PKEE concerning requirements for metering-billing systems (see above);
   b) To enable formation and to transparently regulate balancing groups;
   c) To create, publish and require entities to observe standard procedures for changing electric energy supplier;
   d) To verify the rules for accounting deviations in the distribution network;
   e) To apply realistic and standard lead times for notifying sales contracts by entitled end users serviced by the distribution network;
   f) To draft and implement in practice standard transmission contracts – standard to be understood as e.g. contract forms downloaded from the web, signed by market participant and sent back to the transmission service supplier (not negotiated);
   g) To enable settlement of deviations by suppliers, which for the entity exercising TPA right implies having the new supplier take over the risk of entity functioning on the market (precision of notifications, prices).
3) In order to co-ordinate continuing efforts to implement the TPA principle on national scale and co-ordinating continuing efforts of the Market Committee, it is necessary to secure exchange of information and available documents (in as far as possible) between distribution companies, URE and the other market participants or urgent drafting of documents for future action (where the necessary materials are lacking).

4) As part of discussions on long-term solutions, a positive opinion has to be expressed on the so called functional model of the market, proposed jointly by PSE – Operator SA and URE in the RSREE Team. The model, calling for splitting off technical and commercial balancing, providing for the possibility of establishing balancing groups all through the country, has been accepted as the target model, to be implemented successively. Continued work should aim at filling in the details regarding the functions to be implemented by the various entities.

The Market Committee also addressed an appeal and proposed publications by URE President (within his official prerogatives) of a communique-position regarding application of the TPA principle. It would be particularly valuable to have an indication which elements are considered as barriers to implementing the energy market and what sort of actions are associated with bad (monopolistic) practices.

**The initiatives of URE President, PKEE and TOE all encounter numerous difficulties in implementation, mostly due to the distribution companies. Particularly important, however, is not a theoretical approach to broader than so far application of TPA in Poland, but the practical implementation of solutions and standards developed through joint efforts and convincing a large part of customers off the benefits accruing from participation in a competitive electric energy market.**

# 4. ROLE OF TRADING COMPANIES

## 4.1. Trading sector in Poland

Compared with the other EU countries, trading in electric energy is not well developed in Poland. There is a number of causes which influences this state of affairs. Lone of them is the fact that the electricity market in Poland exists in a grossly simplified form, based on physical trade (trade with physical delivery). On the Polish electric energy market the prevailing opinion for a long time was that an ideal market means a straight line set up of generator – distributor – consumer, while each trading enterprise is only a superfluous go-between. Yet, an ideal market is a liquid market, meaning a market where at any time it is possible to buy and sell the products offered on the market, not making a significant impact on the momentary price . On such a market next to trading in physical commodities there is also trading in derivative instruments.

According to the statutory definition provided in Article 3 of the Energy Law Act, trading means an economic activity consisting of wholesale or retail trade in fuels or energy. It should be noted, however, that even though Electric Energy Trade licences have been issued to 294 enterprises (URE data as of 31st March 2005), the number of significant traders on the market, according to estimates, is around 20, with the volume of energy handled by these companies is more than 30 TWh. It should also be emphasized that the number of TPA customers serviced by "independent Trading Companies comes to more than half of all the enterprises which managed to exercise their right to change their supplier. Selected data on Trading Companies (Traders) in Poland are presented in Table 11.

## 4.2. Selected actions of trading companies to implement competition in the electric energy sector

Association of Energy Trading (Towarzystwo Obrotu Energią) – TOE is the institution associating trading companies in Poland, at the end of June 2005 it associated 21 trading companies operating in Poland and more than 60 persons connected with the electric energy trading community. The prime aims of TOE cover:

- Launching actions supporting development of a competitive energy market in Poland;
- Promoting principles of conducting trade in energy and fuels and standards of such trade;
- Conducting information activities regarding the sector, in particular promoting information concerning opportunities for profiting by market participants from a competitive market for energy and fuels;
- Shaping the ethical standards for energy and fuels trade;
- Representing socially or economically significant interests of the energy and fuel trading sector to Government administration agencies and other associations.

Table 11. Selected data on trading companies in Poland

| Trading Company | Sales of Energy 2003 [GWh] | Sales of Energy 2004 [GWh] | TPA sales Energy 2004 [GWh] | Revenue (Sales of Energy) 2004 [thousand PLN] | TPA customers 2003 [-] | TPA customers 2004 [-] |
|---|---|---|---|---|---|---|
| APT Polska | 435 | | | | 0 | 0 |
| Atel Polska | 101 | 958 | 116 | 107 668 | 0 | 1 |
| BH Steel-Energia | 15 | 562 | 91 | 72 124 | 0 | 1 |
| E.ON Polska | 1 300 | | | | 0 | 0 |
| EGL Polska | 797 | 1 094 | 0 | 131 924 | 0 | 0 |
| Electrabel Polska | 6 442 | 4 070 | 104 | 466 402 | 1 | 1 |
| Elektrim-Volt SA* | 2 947 | | 0 | | 0 | 0 |
| ELNORD | 4 033 | | | 458 599 | | 2 |
| EnergoPartner. | 0,3 | 489 | 0 | 55 728 | 0 | 0 |
| Everen | 550 | 506 | 506 | 62 839 | 10 | 10 |
| Inter Energia | 20 | 825 | 0 | 96 600 | 0 | 0 |
| JAC EnTra | | | 0 | around 130 000 | 0 | 0 |
| Karbonia PL ** | 0,5 | 0,5 | 0 | 0 | | 0 |
| Polenergia | 549 | 2 243 | 456 | 285 173 | 3 | 3 |
| Polska Energia - PKH | 5 175 | 5 586 | 0 | 648 053 | 5 | 0 |
| PSE - ELECTRA | 4 031 | 6 854 | 1 033 | 778 888 | 3 | 2 |
| ZOMAR | | | | | 0 | 0 |

Source: trading companies and TOE

* almost whole trade executed by agency agreements or agreements about cooperation (trade made for the personal account small and doesn't refer to end user)

** since 1.09.2003 only export electricity to Czech Republic - line 110 kV

As part of its running operations in 2004, the TOE Executive Board appointed six Working Groups to take part in work linked to the energy market, with the following aims:

- Power Exchange Working Group – working on facilitating direct participation of the electricity trading companies in the transactions on the Power Exchange. The Working Group, together with the Polish Power Grid Company and the Polish Power Exchange (Towarowa Giełda Energii SA) designed the model of participation of the electricity trading companies in the Power Exchange;
- Renewable Energy and Cogeneration Working Group – concerning itself with issues of trading in renewable energy and encompassing issues of trading in electric energy co-generated with heat;

- Balancing Market Working Group – involved in questions relating to balancing electric energy and securing access for trading companies to the balancing market in Poland;
- Polish Electric Energy Market Index Working Group– working on a model and implementation of the first outside the exchange price index of the electric energy market in Poland;
- EFET Working Group – working on developing and implementing in Poland a standard agreement on buying and selling electric energy (similar to the ones in use in many EU countries);
- Cross - Border Exchange Working Group – taking part in activities aimed at coordinating the rules of cross - border exchange with other countries, and its formal and legal conditions (including excise return)..

Since its inception TOE has been actively involved in drafting the statutory provisions relating to the energy market in Poland. We formulate opinions on the legislative solutions proposed at Government level and also formulate new solutions bringing closer the rules of free trading of energy in Poland. TOE is member of the Polish Energy Market Committee (PKEE) which in turn is member of EURELECTRIC. Elected TOE members are active representatives of TOE in the PKEE Market Committee (see above). As part of PKEE efforts, TOE representatives co-formulated the *Position Paper on Practical Implementation of the Third party Access to Grid Principle* (see above). TOE has its representative also in the RSREE Team which is involved in efforts to change the electric energy market in Poland (see above).

In 2005 TOE has involved itself in the following projects / issues:

- **Adapting the so-called EFET general agreement to Polish conditions** and practical implementation of the EFET standard on the Polish market – as of end July, translations have been completed of both the general agreement and all its annexes, a renowned law firm has positively reviewed the said translations and compliance of the said contract with Polish law requirements; EFET itself has taken a positive view of working together with TOE. As next steps, TOE is planning an implementation effort, including a seminar on the project to which all interested parties will be invited;
- **Introduction a Polish electric energy market index –** as of the end of July 2005,. Platts working jointly with TOE developed the documents necessary for implementation of the first price index for the electric energy market in Poland outside the commodity exchange; work is now entering the implementation phase;
- **Second Energy Fair – Jachranka 2005** planned for late October will inaugurate the campaign promoting the TPA principle and possibilities of purchasing electric energy from any seller. The objective of the event organised as a joint project with the Industrial Energy Chamber (IEP) associating energy customers, is to organise a forum as a meeting place for all actors involved in the electric energy market.

## 4.3. Changes necessary to allow for continued development of energy trading in Poland

Considering the present character of operations by Trading Companies in Poland, it would appear that enterprise of this type are among the best prepared for operating in a competitive

environment. Still, without early changes in their external operating environment (over which the Trading Companies have practically no influence), understood not as giving them a more elevated status vis-à-vis the other market participants, but just as treating the Trading Companies the same as other energy sellers, early introduction of true competition with unrestrained possibilities of choosing the supplier in the electric energy sectors could prove difficult.

Main barriers cooperation of Trading Companies were identified already during early studies initiated by TOE. In early 2004, the changes specified below were listed as prime requirements which could ensure equal Trading Companies access to the electricity grid:

1. Enabling Trading Companies access to the power exchange in Poland;
2. Introducing co-ordinated auctions of cross – border exchange;
3. Making a clear split between the ecological trait (reflecting energy production from renewable sources, and in the future also energy co-generated with heat) and regular electric energy;
4. Editing and implementing a Polish translation of the framework EFET contract;
5. Developing and implementing a price index of the Polish electric energy sector;
6. Enabling Trading Companies to directly enter into transactions and notifying open positions on the balancing market;
7. Sanctioning formation of balancing groups and applying clear-cut definitions to govern operation of such groups (commercial operators), with a view to the role and tasks of Trading Companies in the accepted model of the electric energy market in Poland;
8. Introducing clear and transparent rules for switching electric energy supplier and terms for exercising TPA rights;
9. Eliminating imbedded cross-subsidising in distribution company tariffs.

In 2004, TOE efforts in conjunction with TGE SA and PSE – Operator SA resulted in development and implementation of a model for Trading Companies participation in TGE SA. This model, event though shaped in result of involved discussions and compromises, since 2005 formally allows for Trading Companies access to TGE SA (barrier # 1 on the list above). Since 2005, again following lengthy discussions both among and with Polish energy market participants as well as TSO, co-ordinated auctions of cross-border exchanges are being held (barrier # 2). The March 2005 revamping of the Energy Law Act, among other changes, introduced a distinction between energy as such the ecological trait (barrier # 3); trading in property rights on the Polish energy exchange (TGE SA) is to be inaugurated as of 1st October 2005. Well advanced is work on editing and implementing the Polish version of EFET general agreement and a price index of the Polish electric energy market (barriers #4 and #5). Starting with the second quarter of 2005, discussions are being held within the RSREE Team on modifying the Polish electric energy market model, allowing for o-called formation of supra-regional balancing groups and entering into transactions between Trading Companies acting as commercial operators representing particular groups (barriers #6 and #7). Unfortunately, progress in this area requires lengthy discussions and numerous compromises, and in effect so far the Team was unable to formulate and present a clear-cut position which could serve as starting point for continued changes. Barriers to practical implementation of TPA along with proposed changes have been presented in earlier sections of this Report.

# 5. CONCLUSIONS. OPPORTUNITIES FOR FACILITATING AND IMPROVING PLANS FOR OPENING THE ELECTRIC ENERGY MARKET IN POLAND

The coming years will prove the significance of freeing the energy markets in the European Union and in Poland, including the principle of Third Party Access to the grids. It is to be hoped that the impact of positive experiences of other EU countries with implementing energy markets (understood as more than just the electric energy market) will reflect positively on the pace of electric energy market changes in Poland. One should realise, however, that on every competitive market the number of sellers, the character of selling and the quality of goods depend on behaviours and decisions of customers. In the realities of the Polish electricity market a very few customers take advantage of the TPA principle. The practical opening of the electric energy market on the level of about 10%,limited practically to large-scale industrial customers provides little cause for optimism. Numerous barriers effectively prevent practical implementation of the TPA principle. The price levels of electric energy sales and strong differentiation of prices for various market segments, all coming on top of the barriers, often puts in question the profitability of switching electric energy supplier by a customer. For that reason most of the entitled energy users sticks to the traditional mode of supplying themselves energy.

The present status of the electricity market in Poland from the vantage point of trading companies is far from satisfactory, as evident from the following elements:

- Lack of stable law and predictability of direction of changes in law;
- Lack of clarity of binding legal regulations – application of differing interpretations;
- Lack of equal access for participants of electric energy market in Poland;
- Lacking regulation of the long-term contracts issue;
- Lack of clear-cut ownership policy of the State – changing ideas regarding restructuring, future changes in the sector;
- Barriers to implementation of TPA principle.

Also in the opinion of members taking part in work of the Team on System Solutions for the Electric Energy Market, the quality of electric energy market functioning in Poland is currently unsatisfactory, and decisive steps are needed to change operation of the electric energy market, both in the wholesale and in the retail segments.

To facilitate and improve the situation in opening the Polish electric energy market, we propose the following implementation steps, eliminating the myriad barriers to freeing the Polish electric energy sector:

- Clearly spelling out the rules/requirements regarding metering-billing systems – through a Ruling on functioning of the electric energy system;
- Developing procedures for switching suppliers;
- Regulating application of load profiles;
- Clearly regulating the principles to govern balancing of customers availing themselves of TPA;

- Publishing by ERA (URE) President of a list of barriers and specifying so-called "impermissible practices" as extension of requirements concerning Distribution Networks Traffic and Operating Instructions;
- Eliminating unequal treatment of TPA customers in relation to tariff customers, in the form of:
  - Demanding bank guarantees when changing suppliers,
  - Discriminatory mode of charging for deviations on the balancing market for TPA customers.
  - Worsening conditions in transmission contracts after splitting the energy purchase/sale contract from contracts concerning transmission services,
  - Introducing extra-tariff fees,
  - Passing on to customers all costs of transmitting metering data,
  - Limiting the hour for notifying load requirements to, say 7 a.m.
- Eliminating cross-subsidising of various activity types in the companies within tariffs;
- Necessary clear addressing of the interpretation issue of new statutory regulations, in such areas as supplier of last resort, purchase of red energy, regulations regarding property rights stemming from certificates of origin.

It is to be noted that the initiatives of ERA (URE) President, PKEE and also TOE encounter myriad implementation problems, mostly caused by distribution companies. Particularly important, however, is not a theoretical approach to applying the TPA rule on a wider scale than so far in Poland, but practical implementation of solutions and standards developed through joint efforts and convincing a large part of customer about the benefits accruing from involvement in a competition-based electric energy market.

It is to be hoped that the desired changes in legal regulations will be made very soon, to allow for fuller exercise of TPA rights by customers (under new enabling legislation following up on the update of the Energy Law Act) and that there will be launch of a major campaign to promote TPA in Poland, particularly among the medium and small enterprises.

## 6. BIBLIOGRAPHY

[1] Update of the Ownership Policy Practice of the Minister of Treasury Regarding the Electric Energy Sector (adopted by the Councilof Ministers on 28th january 2003). Ministry of Treasury. Government document adopted by Council of Ministers on 7th June 2005. Warsaw, June 2005.

[2] Ciura Sz., Kocot H., Kulesa M.: Selected modalities of functioning of trading enterprises in Poland, with particular focus on TPA implementation (Wybrane uwarunkowania funkcjonowania przedsiębiorstw obrotu w Polsce, ze szczególnym uwzględnieniem wdrażania TPA). XI Scientific-Technical Conference 'ELECTRIC ENERGY MARKET 2005: Energy security of Poland within European Union structures". Kazimierz Dolny, 25 – 27 April 2005.

[3] Fourth Benchmarking Report. Annual Report on the Implementation of the Gas and Electricity Internal Market. Communication from the Commission, COM(2004) 863, 05/01/2005.

[4] Górski G.: Status and Future of the Internal Power Market in Poland. 6th Edition Energy Trading Central & Eastern Europe 2005. Budapest, May 24, 2005,

[5] Górski G.: The Entry in The European Union: Which Perspectives ? Viewpoint Of The New Member States: Poland. Suez Prospective seminar, Paris, April 20, 2005

[6] Guzik R.: Right to choose seller in Polish electric energy sector – theory and reality (Prawo wyboru sprzedawcy w polskiej elektroenergetyce – teoria a rzeczywistość). ERA (URE), February 2005

[7] URE President's Communique of 15th July 2005 on assumptions for drafting the traffic and operational instructions for electric energy transmission and distribution grids

[8] Kulesa M.: Comparing the basic developments of transmission and distribution grid operators concerning metering-billing systems (Porównanie podstawowych wymagań OSP i OSR dotyczących układów pomiarowo – rozliczeniowych) – PKEE, Market Committee , TOE, Warsaw, June 2004.

[9] Letter of ERA (URE) President on TPA. URE, Warsaw, 18 January 2005.

[10] Energy Policy of Poland until 2025. Energy Policy Team. Document adopted by Council of Ministers on 4 January 2005, Warsaw

[11] Popczyk J.: Five proposals for customers on the electric energy market. Materials of II Scientific-Technical Conference "Big Customers on Energy Market", Sosnowiec, 1–2 April 2004.

[12] Report of activities in 2003 by ERA (URE) President. Bulletin ERA. Biuletyn URE 2004 No. 3 (35), 4 May 2004.

[13] Report of activities in 2004 by ERA (URE) President. Bulletin ERA. Biuletyn URE 2005 No. 3 (41), 2 May 2005.

[14] Position paper of Market Committee on practical implementation of the Third Party Access to the grid principle. PKEE, Warsaw, December 2004.

[15] Statistics of Polish electric energy sector 2003. ARE, Warsaw, 2004

[16] Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (Official Journal L 176 , 15/07/2003 P. 0037 – 0056)

[17] Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (Official Journal L 176 , 15/07/2003 P. 0001 – 0010)

[18] Act dated 10 April 1997: Energy Law (Dz. U. of 2003 r. Nr 153, item 1504, amended)

[19] Act dated 4 March 2005 changing the Act: Energy Law and the Act: Environment Protection Law a (Dz. U. Nr 62, item 552).

[20] http://europa.eu.int/comm/energy/electricity/index_en.htm

[21] http://pl.wikipedia.org

[22] http://www.eiu.com

[23] http://www.energopomiar.com.pl/tgpe/

[24] http://www.mg.gov.pl

[25] http://www.pkee.pl

[26] http://www.ptpiree.pl

[27] http://www.stat.gov.pl

[28] http://www.toe.pl

[29] http://www.ure.gov.pl