

Trading houses accuse Polish TSO of foul play

(Montel Powernews) - The curtailment of auctioned capacity by the Polish TSO in July was a very expensive and illegal move, say several international trading companies. They have complained both to the TSO and Polish energy regulator, URE, and are not ruling out further legal moves should they not receive compensation.

PSE – Operator (PSE-O), the Polish TSO said during the heatwave in July that it had to take “extraordinary measures” to ensure the continued operation of the Polish transmission system. The TSO said that it had to curtail auctioned capacity due to technical problems which were caused by the severe heat. However, several market participants, disagree with the way the TSO handled the situation.

PCC, a German industrial group and energy trader, was one of the first companies to file a complaint both to PSE-O and to URE, the country’s energy regulator. “We believe that PSE-Operator’s actions were not justified,” Peter Wenzel, vice president of PCC’s trading unit told Montel Powernews. “PSE-Operator violated the EC Council’s regulation concerning conditions for access to the network for cross-border exchanges in electricity,” Wenzel said, arguing that the operator curtailed auctioned capacity without first undergoing any counter trading activities, so acting against EC regulation. “The only time the operator counter traded was for 12 July, the day before the curtailment of auctioned capacity started. The operator acquired 600 MW from the neighbouring markets, which could also have been done on the following days as well,” said Wenzel. “We believe that the operator abused its power, and we will also bring this case to the attention of the Polish competition authority and the European Commission”.

Elnord, a Polish trading company, filed a complaint to the TSO at a later date, and has not yet received a reply. Elnord argues that in addition to a breach of EC regulation, the TSO also violates Polish competition and energy laws, including regulations on energy sources set by the Polish ministry council. According to the regulation, any curtailment in energy transfer [oil, power or heat] can only be implemented when no other actions, such as counter trading, can be taken.

Auction rules

PSE-O maintains that the actions it took in July were in accordance with auction rules set by TSOs and were therefore justifiable. The company maintains that all the decisions made in July were taken with consideration for the security of supply situation in the Polish power system. “The curtailment on the auctioned cross-border capacity was of a non-discriminatory character towards the utilities partaking in the exchange,” said Remigiusz Warzywoda, spokesperson at the TSO told Montel Powernews. “During this difficult period the operator acted according to binding contracts, system transmission and auction rules,” he added.

However, not all market players share that view. “EC regulation overrides any regional or local law, and even more so any contractual provisions” said Christian Jung, attorney at Becker Büttner Held in Cologne.

The other legal issue is the way the auction rules were formed. “It is not my conviction that the traders actually have a weak legal position, but the auction rules have been drafted in a way that formally weakens the traders’ potential claim for damages,” Jung said. “The auction rules explicitly try to avoid any direct claim against the operator of the interconnector, and in any event recoverable damages are limited to the auction price leaving aside the real issue of loss of profit or enhanced cost of covering purchases,” Jung said.

"The auction rules that the TSO uses were prepared and taken into use without any consultation with the market," said Zbigniew Olszewski, the director of the cross border trading division at the Polish energy trading association, TOE. "Market participants should have been more involved in a consultative capacity before the rules were actually put into practice," argued Olszewski.

Becker Büttner Held in Cologne is currently working on the complaint to the Polish competition authority, UOKIK, on behalf of its client. The complaint should be filed early next week.

Monopoly

The companies who have so far complained or are considering doing so claim that PSE - O is abusing its power. "The weather situation was similar across Europe, and some of the operators in other European countries struggled, but none chose to curtail capacity except PSE-Operator," one player said. "I believe that PSE-Operator chose the easy way out, and most of the costs were transferred to the trading companies."

"Some of my clients estimated their losses to be in the region of EUR 500,000 a day, due to PSE-Operator's actions" Jung said. "The TSO was offered counter trading by two of my clients, but never replied to the offer," Jung said.

An additional issue that has puzzled some of the companies that filed the complaint is the fact that during the curtailment from 25 July to 28 July, power was in fact supplied from the Polish to the Czech system. PSE-O was one of the neighbouring operators which supplied emergency power to the Czech operator, Ceps, on the 25 July during an outage in the Czech system. Montel Powernews did not succeed in acquiring any information concerning the exact amount of power supplied to Ceps by PSE-O, however some estimates put it at about 300MW.

The next move

The Polish energy trading association, TOE, is helping companies in their complaints against PSE-O. "We are trying to help our members to obtain the information that might be helpful in the case against the TSO," said Marek Kulesa, the director of the association. There are currently four market participants that have sent their complaints to the TSO, and two more are considering doing so according to Kulesa.

The Polish energy regulator, URE, confirmed at the end of last week that it has received complaints from different market participants, but did not wish to comment on the case at this point.

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