

IN SEARCH OF THE CITIZENS' INTERESTS BETWEEN THE GOVERNMENT, THE ENERGY AGENCY AND EPCG

Hide and seek with electricity



Regulatory Agency for Energy (RAE) was founded in January 2004 based on the Law on Energy, adopted by the Parliament of Montenegro in

by Stevo Muk

June 2003. The law establishes RAE as an autonomous, functionally independent and non-profit organisation with public competences.

RAE's aims, according to the law, are to ensure: that the principles, policies and programmes conceived and promulgated by

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the Government are implemented on the basis of principles of objectivity, transparency and non-discrimination; that energy is distributed to the consumers in a safe, reliable and environmentally friendly way at a just price; that the subjects providing energy can cover their costs at a set rate of return to investments; that the interests of customers and energy providers are as harmonised as possible; and that energy providers are committed to the preservation of stability, capacity and efficiency.

Upon request of the Montenegrin Electric Enterprise (Elektroprivreda Crne Gore – EPCG), the sole producer, transporter and distributor of electrical energy in Montenegro, RAE periodically sets tariffs for energy which have a direct impact on the price of electrical energy charged to the individuals, i.e. households.

In December 2008 RAE adopted a decision on a new set of tariffs for electricity, originally approved by another decision

of this same agency from May 2008 on tables for calculation of prices of electricity charged to the final consumers.

Three Montenegrin citizens, **Goran Đurović**, executive director of Centre for Development of Non-Governmental Organisations, **Daliborka Uljarević**, executive director of Centre for Civic Education and author of this article submitted in December 2008 a complaint against RAE before the Administrative Court, asking it declare this decision void.

The complaint contained a number of justifications and proofs arguing that RAE's decision was illegal. Among other, the complaint states:

"In the justification of the Decision which we seek to annul RAE explains that the accepted price of energy is to be "average price offered at a tender published by EPCG for procurement of additional amounts of electricity, based on offers which

have been opened to date, or 82 euros/MWh". The relevance and nature of such expenditure does not allow the relevant authority to set the price at its discretion,

This is the first time that the citizens of Montenegro filed a complaint against decision of a regulatory agency. The experiences and lessons of this case are therefore an important contribution for the future analysis and scrutiny of the functioning and decision making not only of RAE, but also of other independent regulatory agencies. It is thus very important that this case should be taken to its final consequences in terms of legal effect and establishment of responsibility. We also expect this case to inspire greater interest in the civil society for the functioning and decisions of regulatory agencies

and certainly cannot be accepted based on the "offers opened to date", but only on the grounds of the contract for import-based procurement of electricity. The appendix of this decision does not even contain these "offers opened to date", i.e. the RAE made

its decision about expenditures surpassing 80 000 000 euros without any proofs!

On 20 May 2009 the Administrative Court declared RAE's decision void, and ordered the Regulatory Agency for Energy to formulate a new decision removing all irregularities indicated in the court's verdict. The Court found that "justification of the decision in question is not sufficiently clear and complete, i.e. it is not in conformity with the Law on general administrative proceedings, and does not clarify the relevant fact regarding cost of business of EPCG which, upon its request, the RAE accepted as justified. This concerns mainly the cost of coal and imported electricity".

In an open letter to the Board of Directors of EPCG, after our complaint was accepted, we wrote that "By implementing this illegal Decision of the Regulatory Agency for Energy in the period when this decision applied (December 2008 to June 2009), EPCG increased the price of electricity supplied to households by a significant margin. On these grounds, we would like to raise the issue of returning the money paid by the citizens or charged to the citizens according to the bills for consumed electricity for the period when this illegal decision was in force. Should EPCG fail to act upon the verdict of the Administrative court, this would amount to EPCG unjustifiably increasing its wealth to the detriment of citizens and their households, contrary to the laws of the state of Montenegro and subject to legal action on the part of Administrative

Court".

Bearing in mind eager interests on the part of the public, and especially consumers of electricity, in the forthcoming information on the return of money paid in the form of bills formulated on the basis of an illegal

decision, i.e. lowering the amount of still outstanding bills for the percentage incurred in accordance to the illegal decision, we asked EPCG to decrease the amounts on the future electricity bills by 10.1% of the amount charged in the period December 2008 – June 2009, and for those citizens who have paid the full price of electricity bills in the period December 2008–June 2009 to



lower the amount payable on the next bill by 10.1% of the amount charged and paid in the period December 2008 – June 2009.

We also asked EPCG to inform the public about the total amount charged to the households on the basis of this illegal decision of the Regulatory Agency for Energy for the period when the decision was in force (December 2008– June 2009) and about the difference between the amount charged on this basis and the amount that would have been charged otherwise.

The response of the President of the Board of Directors of EPCG states that "the Law on Energy and the Regulations on electricity tariffs puts the responsibility for establishing income, tariffs and prices determined by this regulation entirely in the hands of the Regulatory Agency for Energy which is also the subject of the said verdict and thus bound to adopt "a new decision, removing

It is unnatural that EPCG should be using Governments' subsidies as an argument, and especially that it should announce on behalf of the Government a legally impossible decision to retroactively eliminate subsidies to its citizens. However, this is a clear sign that EPCG recognises that price hikes incurred through application of the illegal decision of RAE were substantial to the point that they required Government's intervention in order to avoid social tensions

the irregularities stated in the verdict". In other words, the EPCG Nikšić, as an energy provider, is unable to take autonomous decisions in this area and must wait for the final decision of RAE in order to undertake measures resolving the current situation and its relations with consumers. Until then, EPCG is committed to following RAE's decision, as well the decision of the Board of Director on the discount charged to those who pay their bills regularly".

The executive director of EPCG, on the other hand, warned that "if the RAE, acting upon the Courts' verdict, alters its decision and retroactively returns money to the citizens, the Government will also, we presume, retroactively annul its decision to subsidise the bills of the poorest citizens which was taken precisely in order to alleviate to avoid the negative effects of rising energy prices".

The public debate continued with the three of us having to explain that it is inappropriate from EPCG to ask us for the formula according to which we calculated that EPCG should return around 20 million euros to the citizens, since we always claimed that the amount we arrived at is imprecise and provisional, and this was never denied by EPCG.

The citizens are still waiting for the answer from EPCG which, for reasons unknown to us, is still hidden from the public and is solely known to EPCG. If, as the director of EPCG claims, publishing this data "is not a problem", there is no reason not to do it as soon as possible. EPCG is a company owned by shareholders, among which are the state, private companies and individuals. EPCG has its organs who take decisions in the name of its shareholders. It is therefore inappropriate that EPCG should be using

Governments' subsidies as an argument, and especially that it should announce on behalf of the Government a legally impossible decision to retroactively eliminate subsidies to its citizens. However, this is a clear sign that EPCG recognises that price hikes incurred through application of the illegal decision of RAE were substantial to the point that they required Government's intervention in order to avoid social tensions.

The executive director of RAE says that the "Administrative Court's decisions do not apply to EPCG", but has contradicted himself the moment EPCG became involved in the proceedings against RAE, realising, as it turned out rightly, that the verdict of the Administrative Court will have a direct bearing on EPCG.

It is clear that RAE's decision, annulled by the Administrative Court, never existed in

the legal sense. That means that the only legal and relevant decision on tariffs is the one which was in force before the illegal RAE decision from December 2008. A new decision on tariffs by RAE cannot replace the illegal Decision on the basis of which EPCG formulated electricity charges in the period December 2008 – June 2009, nor retroactively introduce legal or material effects.

Recently we asked the Minister of Economy of the Government of Montenegro whether the Government will take any measures to address the current situation, whether independently or through its representatives in EPCG, or in some other way.

We said in our letter that "If the address of the entity responsible for returning the money illegally charged to the citizens continues to disappear somewhere along the lines of EPCG–RAE–Government, it would become clear that the citizens are intentionally led into a situation where they must resort to the courts in order to claim the damages caused by RAE's decisions and inaction on the part of EPCG, i.e. the Government".

This situation would certainly not result in a more efficient judiciary, as the courts will most certainly be flooded with tens of thousands of cases. Besides, the general trust of citizens in the work of RAE and EPCG would certainly suffer in the process.

We also asked the Minister to tell us whether such a large damage inflicted though an illegal decision on the part of RAE will lead to investigations to identify the culprit within RAE and the measures the Government intends to take in this case.

EPCG is obviously planning to ignore the demands from the citizens to return their money, hoping that the citizens will find it too burdensome to actually go to the courts and that the court cases, when they are filed, will take relatively long.

At the same time, this is the first case in which the citizens of Montenegro filed a complaint against the decision of a regulatory agency. The experiences and lessons of this case are therefore an important contribution for the future analysis and scrutiny of the functioning and decision making not only of RAE, but also of other independent regulatory agencies. It is therefore of highest importance that this case should be taken to its final consequences in terms of legal effect and establishment of responsibility.

The author is the president of the Board of Directors of the Institute Alternative (IA)