

Electricity Grid Strategy - new aspects to accelerate the approval process for the expansion of power grids

Introduction

In order to guarantee future power supply, the Swiss power grid infrastructure needs to be renewed, modified and enlarged. For this purpose, the Federal Department of the Environment, Transport, Energy and Communications (DETEC) has been instructed to devise the *Electricity Grid Strategy*. Partial revisions of the Federal Electricity Act (EleG) and the Federal Electricity Supply Act (StromVG) are scheduled. Binding targets and parameters in connection with the planning and grid development processes as well as the inclusion of concerned parties shall be specified therein. The *Electricity Grid Strategy* is part of the Energy Strategy 2050.

The bill on *Electricity Grid Strategy* was submitted for consultation by the Federal Council at the end of November 2014. The guidelines of the *Electricity Grid* concern, inter alia, the specifications for the assessment of the needs in connection with the modification and expansion of the Swiss power grid, the criteria for the selection of transmission technologies, optimizations in relation to approval procedures as well as public relations and rights of participation. The present article is limited to the intended measures for expediting the approval processes in connection with the development of the electricity grid.

Current configuration of procedures

At present, electricity grids are planned and implemented from the point of view of network operators using non-uniform criteria. Since there is a lack of country-wide co-ordination, the relevant projects are tackled under various criteria with regard to priorities and costs. As a result of lacking (cantonal) co-ordination as well as the diverging cantonal appeals procedures, the sectoral plan and sectoral plan ap-

proval processes in question are being considerably slowed down.

Targeted optimization of present approval process

Rapid processing of approval procedures is a central condition for the timely implementation of the *Electricity Grid Strategy*. The focus rests on measures that will simplify and optimize the relevant processes. Below, the central aspects of the consultation concerning procedure acceleration are being discussed.

The “new” grid development process

The process of grid development is to be restructured. It shall comprise the drafting and adoption of an energy-economic scenario framework. Requests for new power lines shall be submitted by the grid operator(s) to the Swiss Federal Electricity Commission (ElCom) in the form of multi-annual plans. ElCom will then confirm whether such needs are justified or not. It is expected that this will make the evaluation procedure more understandable and transparent. The scenario framework serves as basis for planning the grid and specifies the energy-political goals at the federal level, taking into consideration the international context. By including the scenario framework into the *Sectoral Plan for Energy Networks*, the grid-design is to attain the character of legislation.

Based on the scenario framework and so-called “further needs” (*weiterer Bedarf*), network operators shall compile network development plans designed for a ten-year period. The concept of “further needs” comprises renewal and replacement projects as well as regional projects for the connection of production plants or end users, which are not specified or shown in the scenario framework.

In the future, the Federal Council shall be able to designate projects on the level of the distribution network – based on multi-annual plans - as national usage interests (*nationale Nutzungsinteressen*) (*new Art. 15d EleG*). National usage interests would thus be placed on the same level as protected objects of national interest in the area of the environment and culture. In a concrete individual case, the usage interest in power supply can be directly compared to relevant protection interests (e.g. protection of the environment) and a weighing of interests can be implemented. In other words, in the future, the responsible authorities can thus carry out a direct assessment which has the effect of expediting processes.

Specifying of the legal sectoral plan process

A further measure is the substantiation and/or the implementation of a more homogeneous design of the legal sectoral plan procedure. Against this background, the interaction of the parties concerned (communities and private individuals) and the cooperation between the Federation and the Cantons are to be given concrete form in the development of sectoral plans. Furthermore, the group of parties who shall have the right to lodge an objection or appeal in the approval process is to be defined more precisely.

It appears that currently many objections raised against power line projects are not based on any direct interest (so-called direct concern) but that they are merely founded on a general interest in the protection of the environment and landscape. Therefore, clearer general legal conditions for the objection or appeals process would be a relief for all parties involved: the parties concerned could assess in advance whether an objection is even permissible. The authorities concerned would not have to deal with evidently invalid or unfounded objections or appeals and the courts would be relieved of having to deal with complaints regarding the legitimation or right of a party to file an objection.

Acceleration of the process

Two elementary legal changes are to guarantee that the future approval process is expedited.

The first change concerns the extension of the catalogue of inadmissible appeals to the Swiss Federal Supreme Court in public affairs. A subparagraph will be added to Article 83 of the Federal Court Act

(*Bundesgerichtsgesetz*). With this extension, access to the Federal Supreme Court shall be limited to legal questions of fundamental importance regarding plan approval for power facilities.

With the second adjustment, in the existing Article 16 par. 5 EleG and in a new Art. 16 bis EleG, the total duration of the process is legally defined. The authorities and also the parties to the proceedings shall be obliged to expedite proceedings and to comply with their rights and duties to participation without delay. Incidentally, this administrative principle pertains to all public law matters.

Giving concrete form to environmental-legal terms

A further discussion concerns giving concrete form to the framework for the approval of power facilities in the area of environment law. In various areas, current environmental legislation includes indefinite legal terms. This grants (unnecessary) discretion to the enforcement authorities.

Legally anchored clarifications in this area can have the effect of speeding up processes if they facilitate the exercise of discretion on the one hand and on the other, if judicial review of the discretionary decisions becomes unnecessary. A concrete form is desirable also from the constitutional point of view and is conducive to greater legal security in the long term.

The aim is to review and clarify the various protective effects of Swiss federal, cantonal and communally protected areas. Furthermore, the significance of the costs-by-cause principle (*Verursacherprinzip*), pursuant to Art. 2 of the Environmental Protection Act (USG) for electrical systems, or the scope of the precautionary principle (*Vorsorgeprinzip*), pursuant to Art. 11 USG for power facilities is being examined.

By such substantiation, the time-intensive procurement of expert reports (e.g., from the Federal Commission for the Protection of Nature and Cultural Heritage ENHK) would become superfluous in this area.

Requirements for submissions

A further measure for speeding up processes will be the adjustment of formal requirements for objections and complaints. A substantiated duty to state reasons, representation for signature lists, a signature obliga-

tion as well as the a priori rejection of standard form objections are being considered.

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Summing up and looking ahead

Based on the current legal situation, approval procedures take between 5 to 13 years on average. By the intended law revision, the duration of the process is to be reduced to between 4 to 8 years.

The envisaged changes in the area of procedural law aim, inter alia, at approval processes becoming transparent and being implemented, using uniform criteria. Due to the measures discussed, network operators can expect a more rapid and concomitantly more economical implementation of their projects. However, it remains to be seen whether the regulatory shortcut will be approved in this form. The consultation continues until 16 March 2015 and the parties/individuals concerned are requested to communicate their concerns and requests within this period.

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