



FROM NCA Working Group Environmental Auditing
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SUBJECT Summary Tariff regulation Energy Transport (2009)

At the request of the House of Representatives, we have audited the way in which the tariff paid by Dutch consumers for the operation of gas and electricity networks is regulated by the Office of Energy Regulation of the Netherlands Competition Authority (NMa). Tariff regulation is necessary because network operation in the Netherlands is a monopoly: consumers cannot switch to a different network operator.

To prevent network operators abusing their monopoly position, the Minister of Economic Affairs (EZ) has instructed the Office of Energy Regulation to monitor tariffs. The House of Representatives asked us to investigate the operation of the regulatory system and identify problems. It also wanted to know whether the energy companies had actually achieved the efficiency improvements sought through tariff regulation.

1 Conclusions

Protecting the divergent interests at play in the energy sector while ensuring that the regulatory system remains workable and effective requires direct management by the Minister of EZ in accordance with a pre-agreed vision. No such management or vision, however, is in place. The minister's management in recent years has been chiefly ad hoc in nature. She has not acted on some occasions yet has intervened heavily in the regulatory process on others. We wonder whether such ad hoc management by the minister and the reasons for her approach are conducive to the intended aim of regulation: protecting energy consumers from the monopoly position of network operators while increasing the efficiency of network operation without compromising the quality of the energy networks.

Tariff regulation has been beneficial to energy consumers in the past ten years. But the benefits have not always been achieved as intended by means of efficiency gains at the network operators.



The Office of Energy Regulation's statutory remit is inadequate in practice. The Office would like to exercise its regulatory task more effectively but is prevented by law from using the findings of its own reviews of the practical impact of regulation as the basis for new regulation.

2 Recommendations

The Minister of EZ should formulate a clear vision of tariff regulation to protect the divergent interests of energy network operation. The vision should define the minister's responsibility for tariff regulation. The circumstances in which the minister can give instructions to the Office of Energy Regulation and how far the minister can and may regulate individual network operators in this way should be clarified. It should also be clear how the public interest, in the form of affordable prices for energy consumers, should be balanced against the return required by the public shareholders of the regional network operators (municipalities and provinces) and the importance to society of efficient network operation and a high-quality energy network.

The Office for Energy Regulation should calculate the tariff-based benefits realised for consumers and the calculation method should be transparent to consumers.

The Minister of EZ should clarify the scope of the Office's tariff tasks. We think the Office cannot exercise its tasks effectively if it does not periodically review the practical effects of regulation. We also think the Office should steer regulation on the basis of the results of its reviews. If the minister agrees, the Office's statutory tasks and powers will need to be amended.

3 Response of the Minister of EZ

The Minister of EZ will review the regulatory system in 2009 to see where improvements can be made. Changes in the Office of Energy Regulation's remit will also be considered then. Both the NMa and the minister now think the Office's remit is wide enough for it to use the results of its own reviews of the effect of regulation as a basis for new regulation.

Regarding the public ownership of the network operators, the minister will systematically consult the municipalities and provinces concerned.

The minister will ask the Office of Energy Regulation to make alternative proposals to calculate the effects of tariff regulation.