



ROYAL NORWEGIAN
MINISTRY OF PETROLEUM AND ENERGY

The EFTA Surveillance Authority
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Your ref
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Our ref
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Request for Information concerning Directives 2009/72 and 2009/73's provisions related to national regulatory authorities for Norway

Reference is made to the letter from EFTA Surveillance Authority (ESA) dated 16 October 2020, in which the Ministry of Petroleum and Energy is asked to provide information concerning the provisions of Directives 2009/72 and 2009/73 related to national regulatory authorities for Norway.

Reference is also made to the subsequent contact with the Internal Market Affairs Directorate (the Directorate) pursuant to which an extension of the deadline was agreed. The Ministry's reply to the request for information by ESA is set out below.

1. Establishment, structure and organisation of the NRA and appeal body

The Directorate invites the Ministry to explain how compliance with the criteria regarding independence, impartiality and transparency of Reguleringssmyndigheten for energi (RME) and Energiklagenemnda (the Energy Appeal Body) are ensured in practice, bearing in mind the criteria taken into account in the European Commission's interpretative note on the regulatory authorities and the study commissioned by the European Commission on NRA independence.

The Energy Act Section 2-3 second subsection and the Natural Gas Act Section 4 second subsection provide for the legal independence of RME and the Energy Appeal Body. The provisions explicitly state that RME and the Energy Appeal Body are independent, and that they cannot be instructed in their exercise of authority. It is not elaborated in the wording of the provisions that RME and the Energy Appeal

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Body are independent from public authorities and from market actors, but this follows from the preparatory writings of the two Acts, Prop. 5 L (2017-2018) and Prop. 6 L (2017-2018). In these preparatory writings it is clear that the provisions shall be understood and practiced in line with Directives 2009/72 and 2009/73. Furthermore, the Public Administration Act of 10 February 1967 (the Public Administration Act) also applies to RME and the Energy Appeal Body, including the general requirements as to impartiality etc.

The Energy Act Section 2-3 second subsection second sentence and the Natural Gas Act Section 4 second subsection second sentence state that decisions made by RME can only be appealed to the Energy Appeal Body. Hence, RME is given the power to issue final and binding decisions that are not subject to ministerial or governmental scrutiny.

The Energy Act Section 2-3 third subsection and the Natural Gas Act Section 4 third subsection state that RME and the Energy Appeal Body cannot be instructed with regard to the use of their allocated budgets. RME and the Energy Appeal Body have autonomy in the implementation of the allocated budget. They are financed through the state budget adopted by the Parliament (Stortinget) and shall report annually on the use of their allocated budgets. The financial report will be controlled by the Office of the Auditor General of Norway (Riksrevisjonen).

RME is not subject to interventions by the Ministry nor other parts of Government in its HR-management, and the Ministry is not involved in the recruitment and salary setting of RME-staff.

The Ministry is invited to explain how the administrative subordination of RME to the Ministry of Petroleum and Energy works and the impact on RME's independence. The Ministry would like to emphasize that the administrative subordination of RME to the Ministry has no impact on the independence of RME. Administrative subordination means that the Ministry, based on input from RME, is responsible for proposing a budget for RME, which is adopted by Stortinget. In line with the annual budget decision by Stortinget, the Ministry sends RME an allocation letter explaining the allocated budget. RME reports to the Ministry on how the budget has been used and the fulfilment of its tasks. However, the Ministry cannot interfere with regard to how RME is using its allocated budget. This is set forth in the Energy Act Section 2-3 third subsection and the Natural Gas Act Section 4 third subsection.

The Ministry is invited to share the rules of procedures applicable to RME and to explain how these rules were adopted, and how they are applied. In this regard, first, the Ministry refers to the Public Administration Act, which is generally applicable to RME and the Energy Appeal Body. This Act has a number of detailed provisions concerning for example disqualification and impartiality, administrative proceedings, preparation of individual decisions, requirements for individual decisions, appeal

against and reversal of decisions. Second, the Ministry refers to the Freedom of Information Act of 19 May 2006, which also applies to RME and the Energy Appeal Body, governing the right of access to documents. These two Acts supplement the Energy Act, the Natural Gas Act and subsequent regulations.

The mentioned acts are supplemented by a number of specific actions initiated and adopted by RME itself without external influence:

- a) RME has its own separate website on nve.no where it publishes information on its own organization, structure and work, please see www.reguleringsmyndigheten.no
- b) RME's rules of procedure are also published on RMEs website, please see <https://www.nve.no/reguleringsmyndigheten/om-rme/krav-til-uavhengighet/>
- c) RME has clear contact points for all stakeholders, namely a separate e-mail address for inquiries (rme@nve.no).
- d) RME's decisions can be made available to the public upon request according to the Freedom of Information Act. In addition, RME publishes specific categories of individual decisions on its web page as well, with information on procedures for decision making: <https://www.nve.no/reguleringsmyndigheten/om-rme/vedtak-fattet-av-reguleringsmyndigheten-for-energi/> and <https://www.nve.no/reguleringsmyndigheten/nettjenester/nettleie/vedtak-i-uenighetssaker/>
- e) Internal routines for RME's case handling and collaboration with other departments within the Norwegian Water Resources and Energy Directorate (NVE) have been established, and these are published on RMEs website: <https://www.nve.no/reguleringsmyndigheten/om-rme/rutiner-for-saksbehandling-og-samhandling/>

Considering that RME is organised as a unit within NVE, the Ministry is invited to forward all relevant information on how the independence and separation between RME and NVE is ensured. In addition to the information above, the independence and separation is ensured in the following manner:

- a) RME is allocated own budget funds in the state budget that cannot be reallocated.
- b) RME has its own legal section, with no connections to legal services of NVE. Otherwise, RME makes use of other administrative joint services of NVE.

- c) RME has its own separate archive part in the archive system. Cases, documents, and files created by RME employees are automatically routed to this separate archive section.
- d) RME submits its own separate input to public hearings. Such input shall express the professional assessments that RME has made as an independent regulatory authority.
- e) RME's file catalogs and subject databases are secured through access control.
- f) RME is situated at a separate floor in the building of NVE.
- g) Employees of NVE cannot work in both RME and other parts of/units in NVE.
- h) None of RME's cases are handled in Directors' meetings within NVE. Separate management meetings are established between RME and the Director of NVE.
- i) In contact with the media, only employees of RME, or top management of RME (i.e. the Director of NVE) shall comment on matters that fall within RME's scope of responsibility.
- j) RME has its own consultation and report series, separate from those in NVE.
- k) There are clear organizational distinctions between RME and NVE that make RME's independence visible. For instance, RME has its own logo, own document templates and separate email signatures different from those in NVE.

2. Tasks and powers of the NRA

2.1. Tasks related to the setting of terms and conditions or methodologies

The Ministry is invited to describe the allocation of competences between the Ministry, NVE, RME and system operators with regard to the setting of electricity and gas tariffs as well as terms and conditions or methodologies under Articles 37 (6) and 41 (6) of, respectively, the Electricity and Gas Markets Directives, and to explain how this allocation allows RME to independently carry out its tasks.

The Electricity Market Directive Article 37 (6), (9) and (10)

RME is assigned authority to adopt Regulations concerning methodologies for the calculation of permitted and actual transmission and distribution revenues, as well as on the handling of deviations between permitted and actual revenues. This follows from the Energy Act Section 4-11 and the NEM Regulation Section 8-5.

Such methodologies are regulated in Part IV, Chapters 7 to 12, of the Regulation governing financial and technical reporting, income caps for network operations and tariffs. In addition, RME adopts annual individual decisions on the TSO's and each DSO's revenue cap, and thereby their permitted income, as basis for the TSO and each DSO's own setting of tariffs.

Moreover, RME is by the Energy Act and the NEM Regulation assigned the competence of fixing or approving terms and conditions for connection and access to national networks, including transmission and distribution tariffs, the provision of balancing services, as well as access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management, or methodologies for the fixing of such terms and conditions. This follows from the Energy Act Sections 3-3 fourth subsection, 3-4 third subsection, 3-4a third subsection, 4-2 fourth subsection, 4-3 second subsection and 6-1 fourth subsection and appurtenant provisions of the NEM Regulation, cf. the Table of Correspondence (ToC) submitted to ESA on 15 May 2020.

Where provided for by RME, the relevant transmission, distribution or market operators may prepare proposals for the abovementioned terms, conditions or methodologies, as a basis for RME's assessment and approval by individual decision. Such decisions may be appealed to the Energy Appeal Body, not the Ministry.

According to the Public Administration Act Section 38 all Regulations shall be published in the Norwegian Law Gazette, lovdata.no, and cannot be invoked against any person until they have been published, cf. Section 39. This includes Regulations adopted by RME. Individual decisions adopted by RME are published on RME's website or available for all on demand, pursuant to the Freedom of Information Act. This includes all approvals of terms and conditions or methodologies under Articles 37 (6) and 41 (6) of, respectively the Electricity and Gas Market Directives.

RME has the power to amend and modify rules, terms, conditions and methodologies as referred to in Article 37(9) and (10) of the Electricity Market Directive. References to the relevant Sections in the Energy Act and appurtenant Regulations are given in the ToC submitted 15 May 2020. The abovementioned competence assigned to RME to adopt rules, terms, conditions or methodologies include the competence to amend and modify.

The Gas Market Directive Article 41 (6), (9) and (10)

As for the electricity sector, RME is assigned the role as the Norwegian regulatory authority for the natural gas sector, cf. Section 4 of the Natural Gas Act. It follows from the reference in the Natural Gas Regulation Section 1-4 that Chapter 1 and 2 of the NEM Regulation shall also apply, including provisions on the appointment, organization and independence of RME. As for the electricity sector, RME has the authority to adopt individual decisions. The decisions adopted by RME can be appealed to the Energy Appeal Body, not to the Ministry.

As explained below and in the annex to this letter, the Norwegian downstream gas market is limited in size and volume. Furthermore, the EEA Adaptations to the Gas Market Directive Article 49 (5) in the Joint Committee Decision No 93/2017 apply to the defined geographical areas. According to Section 5 of the Natural Gas Act Ministry appoints system operator(s) for transmission, distribution, storage and LNG. The Ministry has notified Gasnor AS and Lyse Neo AS that they will be appointed as distribution system operators for natural gas in their respective areas.

The Natural Gas Act Section 6 contains the overall rules on third-party access to the system and the regulatory competence for RME. The "system" is to be understood as transmission, distribution, storage and/or LNG. It follows from Section 5-1 of the Natural Gas Regulation that the system operator(s) has a duty to connect natural gas undertakings to the system upon their request. In accordance with the EEA Adaptations, RME has the authority to grant exemption from the duty to connect and supply customers in specific cases, cf. Sections 5-2 and 5-3.

According to the Natural Gas Regulation Section 3-1, RME shall fix or approve terms and conditions for access to the system, and balancing services and/or tariffs or the methodology for tariffs. It is the duty of the system operator to prepare a proposal for such terms and conditions, after consulting stakeholders, before submitting the proposal to RME for approval. The decision by RME on terms, conditions and tariffs can have a validity for a period of up to 5 years.

After such a decision has entered into force, RME has the power to instruct the system operator to adjust the terms, conditions and tariffs, if necessary, to ensure that they are proportionate and applied in a non-discriminatory manner. Finally, RME has the authority to amend the approved or fixed terms, conditions and tariffs if the decision was based on incorrect information. This would also apply if important assumptions for the individual decision has changed. In such cases, proposed changes must be sent on consultations by stakeholders.

As regards Article 41 (9) reference is made to the description of the Norwegian gas market below and in the annex to this letter. As explained, there is no transmission system for natural gas in Norway. With regard to Article 41 (10) of the Gas Market Directive, reference is made to the Natural Gas Regulation Section 3-1 third subsection. It follows that the system operator and RME shall publish on their

respective webpages the decisions regarding terms and conditions, tariffs or methodology to fix tariffs. If RME has approved or fixed methodology for tariffs, the system operator shall publish the tariffs on its webpage.

The Norwegian downstream gas market

Although Norway is a large gas producer, the domestic consumption of natural gas is limited. The downstream gas market is mainly located in two areas in the western part of Norway. There is no transmission system for gas in Norway. The Norwegian downstream gas market is limited in size and volumes.

The natural gas market in Norway differs from the European markets in many ways. Natural gas does not have the same function as an energy source for industry and buildings. As compared to the electricity sector, the downstream natural gas market has a relatively minor importance in the Norwegian energy system. By contrast, the European gas market consists of a much larger and much more comprehensive gas infrastructure, with a large number of customers that are highly dependent on a stable and secure supply.

The distribution network in Haugalandet is owned by Gasnor AS and was built in 1994 to deliver gas to Hydro's aluminium plant at Karmøy. The network is 120 km long and distributes around 330 GWh to around 190 businesses and 800 households. The businesses amount for 98% of the total consumption.

The distribution network in Jæren and Ryfylke was built in 2004 and is owned by Lyse Neo AS. The network is approximately 620 km long and distributes around 550 GWh of natural gas and biogas annually. The network supplies around 500 businesses and 1000 households. The businesses make up 87 % of the total consumption.

The above-mentioned distribution networks are connected to the up-stream networks in the North Sea. Therefore, some of the functions of a traditional transmission system operator, such as balancing and capacity allocation must be performed by the distribution system operators. Both distribution networks are supplied from the gas processing plant at Kårstø.

The Gas Market Directive and the Gas Regulation has been implemented in Norwegian legislation with entry into force from 1 November 2019. The Natural Gas Act and the Natural Gas Regulation were revised in order to implement the directive and regulation. In particular, provisions on third-party access, regulatory approval of terms and conditions for balancing services and tariffs were adopted, together with measures to prevent cross-subsidization and to align consumer rights with the Gas Market Directive.

Norway does not have a domestic wholesale market for gas. To the Ministry's knowledge, gas to end users has been priced related to prices at relevant European exchanges, and/or relatively to Norwegian electricity prices. At least for some users, electricity and gas may be substitutable energy sources.

For a more detailed factual description of the domestic natural gas sector including the small-scale LNG sector, see the annex to this letter.

2.2. Other tasks

Norway is invited to provide, for each task listed in Articles 37 and 41 of, respectively, the Electricity and Gas Market Directives, as well as with regard to the certification tasks foreseen under Articles 10 and 11 of the Electricity and Gas Market Directives, a brief and synthetic overview of the actions undertaken by RME, the actions undertaken by other bodies, including the Ministry, NVE and the Energy Appeals Body, the results of these actions, and for each task, the powers that can be exercised by each body.

The Electricity Market Directive Article 37

In the following, the Ministry will provide an overview of the legal basis for the key regulatory tasks by RME, in accordance with Article 37. For a schematic overview of the implementation of Article 37 including all subsections, reference is made to the overview provided in the ToC of 15 May 2020 previously submitted to ESA.

a) Network operators' income

Legal basis: The Energy Act Sections 4-1 and 4-11, the NEM Regulation Sections 4-4, 4-5 and 8-5 and the Regulation governing financial and technical reporting, income caps for network operations and tariffs (the Control Regulation)¹ part I, II and IV.

RME shall ensure that the grid companies are reimbursed for their costs and are given a reasonable return on efficient operation, maintenance, and development of the grid. RME shall in advance fix or approve the terms and conditions or at least the methodologies for the calculation of the network companies' income from fees and tariffs charged for the connection and use of the network.

According to the NEM Regulation Section 8-5 RME is awarded the authority to issue regulations regarding grid operators actual and permitted revenues and the handling of the discrepancies between these. In addition, RME sets revenue caps for the grid companies by individual decisions that regulate how much each grid operator can earn in the future.

RME has the authority to monitor and ensure that grid operators comply with all rules and regulations relating to their income, including rules and regulations on grid operators financial and technical reporting. RME has the authority to take actions to

¹ See link <https://lovdata.no/dokument/SF/forskrift/1999-03-11-302>

enforce compliance, including to impose appropriate sanctions in accordance with provisions in the Energy Act (Chapter 10), the NEM Regulation (Chapter 8) and the Control Regulation (Chapter 18).

b) Network fees and tariffs

Legal basis: The Energy Act Section 4-1, the NEM Regulation Section 4-6 and the Control Regulation² part V on tariffs.

The regulatory authorities shall in advance fix or approve the network companies' tariffs for connection and access of the network, or at least the methodology used by the transmission and distribution companies to set the tariffs, cf. Article 37 (1) (a) and (6) a.

RME has been given the authority to grant a trading license to network companies cf. the Energy Act Section 4-1. In the conditions RME can set methodologies for the network companies' calculation of fees or tariffs for the connection and use of the transmission or distribution network, cf. the Energy Act Section 4-1 second subsection no. 4. As explained above, grid companies set the individual tariffs within the framework of the income cap regulation (methodology) and in line with the requirement of cost reflectiveness and non-discrimination.

In addition, RME can propose, prepare, submit on public consultation, summarise and recommend changes in the relevant Regulations to the Ministry, which can adopt the amendments to the regulations on network fees and tariffs. In this way, RME also has influence on the development of regulations on tariffs and fees for connection and use of transmission and distribution networks. As mentioned above, according to the NEM Regulation Section 8-5, RME is awarded the authority to issue regulations regarding grid operators' actual and permitted revenues and the handling of the discrepancies between these. In this respect RME has decisive authority, and not only influence.

RME shall monitor and control that the network companies set the fees and tariffs in line with the Energy Act, the NEM Regulation and the Control Regulation, and where applicable, conditions in the sales license. RME has supervisory and decision-making competence, including on dispute resolution, related to provisions in the Energy Act and appurtenant Regulations, and any trading licenses that regulate the grid companies' fees and tariffs. RME has the authority to take appropriate enforcement action, if necessary, to ensure that network companies comply with the tariff regulations, cf. the Energy Act Chapter 10 and the NEM Regulation Chapter 8.

c) Metering, settlement, invoicing, and neutrality

Legal basis: The Energy Act Section 4-3, the NEM Regulation Section 4-8 and the Regulation governing metering, settlement, invoicing and neutrality of network services (the Settlement Regulation).³

² See link <https://lovdata.no/dokument/SF/forskrift/1999-03-11-302>

³ See link <https://lovdata.no/dokument/SF/forskrift/1999-03-11-301>

According to the Energy Act Section 4-3 second subsection and the NEM Regulation Section 4-8 third subparagraph, RME has the authority to designate an entity responsible for the coordination of multilateral settlement of electricity supply transactions in the electricity market. RME has designated Statnett as the responsible entity by granting a license for such coordination, being subject to terms and conditions set in the license.

The Settlement Regulation regulates metering including advanced metering systems (AMS), supplier switching, settlement and invoicing of network services and electricity supply contracts, exchange of information regarding customer, electricity production, consumption and metering data, including AMS data, and the storage and protection of, as well as access to, such data in the central datahub Elhub, imbalance settlement and rules on neutrality of network operators. The Ministry has the authority to adopt amendments to the Settlement Regulations, while RME makes proposals, prepares, submits on public consultation, summarises and comments on inputs/ remarks from stakeholders and makes recommendations to the Ministry on final amendments.

Elhub, which is a data hub for all electricity metering data of in Norway, takes over a number of the grid companies' tasks related to the implementation of supplier switching and settlement in the power market, and will ensure market access and efficient business processes in the power market. In addition, it is important that information security, data protection and the right to privacy for personal data is sufficiently safeguarded in Elhub in line with applicable legislation on general data protection.

The decision to introduce AMS is a Member State task according to the Directive, although the monitoring of compliance with the Settlement Regulations is defined as a regulatory task. The implementation of AMS and Elhub aims, among other things, to the facilitation of a more future-oriented and efficient electricity market enabling the electricity consumers to adjust their consumption according to price variations in the market and participate in flexibility markets, including through aggregators.

The Regulation governing requisition of power and enforced reductions in supply in connection with electricity rationing (the Emergency Preparedness Regulation) has provisions on information security and protection of operational control systems and critical electricity infrastructure. NVE possess professional expertise in this field. Therefore, there is a need for coordination between RME and NVE to follow-up the implementation of AMS and Elhub regarding the protection and security of sensitive data.

RME has the authority to monitor and ensure compliance in accordance with the NEM Regulation and relevant provisions in the Settlement Regulation, as well as conditions in Statnett's Settlement License. RME also has the authority to take appropriate actions to enforce compliance, including if necessary, to impose coercive fines or sanctions, cf. the Energy Act Chapter 10 and the NEM Regulation Chapter 8.

The competence according to the Settlement Regulation is divided between RME and NVE. This is specified in the different provisions. Individual decisions made by RME according to the Regulation may be appealed to the Energy Appeal Body, while individual decisions made by NVE may be appealed to the Ministry.

d) Quality of supply in the power system

Legal basis: The Energy Act Sections 3-3 fourth subsection, 3-4 third subsection, 3-4a third subsection, including corresponding Sections in the NEM Regulation on ex ante regulatory control of terms and conditions on connection and use of networks, NEM Regulation Sections 6-3 and 4-13 and the Regulation relating to the quality of supply in the power system (the Regulation on quality of supply).⁴

Requirements of the quality of electricity supply is largely regulated in the Regulation on quality of supply. The Ministry has the authority to issue the Regulation and adopt amendments. RME has the competence to monitor and ensure compliance with the Regulation, including the competence to issue individual decisions.

In accordance with the Energy Act Sections 3-3, 3-4 and 3-4a, RME shall fix or approve the network companies' terms and conditions or methodologies for connections and use of the network, including quality of supply. Network companies have a duty to submit draft terms and methodologies to RME for review for approval or to use terms and conditions which have already been approved and published by RME. At present, RME has started a process involving the Consumer authorities and the electricity industry organisations to review terms and conditions currently in use for the connection and use of networks.

RME ensures compliance by the grid companies through supervision, reporting and dispute resolution in individual cases and by following up complaints. Based on reported data, RME prepares and publishes interruption statistics every year. Data from the reporting of interruptions are also included as a basis for the quality adjustment of each network operator's income cap according to the Control Regulation (calculation of deductions based on interruptions of electricity supply (KILE)). RME shall set or approve minimum standards and requirements for delivery quality or contribute to it together with other authorities.

RME is allocated the competence to ensure that the network companies, generators and end users comply with the provisions in the Regulation and has the authority to take necessary actions to enforce compliance, including the use of coercive fines or sanctions, cf. the Energy Act Chapter 10, the NEM Regulation Chapter 8 and the Regulation on quality of supply Section 5-2a.

The Regulation contains rules on the restoration of electricity supply following disruptions in the distribution network. Coordination is needed to align with NVE's exercise of authority in accordance with corresponding provisions in the Emergency Preparedness Regulation.

⁴ See link <https://lovdata.no/dokument/SF/forskrift/2004-11-30-1557>

e) Cross-border infrastructure and system responsibility

Legal basis: The Energy Act Sections 4-2 and 6-1, the NEM Regulation Sections 4-11, 6-1 and 6-2 and the Regulation relating to the system responsibility in the power system (System Responsibility Regulation).⁵

According to Article 37 (6) (b) and (c) of the Directive, the regulatory authority shall also be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for the provision of balancing services and access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management. Articles 12 and 15 of the Directive mainly set out the obligations regarding the TSOs duties as a system operator. Regulation (EC) No. 714/2009 sets out the rules on the access to the network for cross-border exchanges in electricity.

According to the Energy Act Section 6-1 fourth subsection and the NEM Regulation Section 6-2, RME has authority for fixing or approving, at least the methodologies used by Statnett to establish the terms and conditions for the exercise of its authority as the system operator of the power system in Norway. The System Responsibility Regulation Section 28a require Statnett to develop guidelines on how Statnett intends to perform its authority in accordance with the Regulations. Draft guidelines shall be forwarded to stakeholders for hearing, and the drafts shall then be submitted to RME for approval. RME may request amendments of the guidelines before approving them. After RME has approved the guidelines, Statnett is obliged to follow the approved guidelines in its implementation of the Regulation/performance of authority in accordance with the Regulation.

The Ministry has the authority to adopt amendments to the System Responsibility Regulation, while RME takes part in the revision by proposing amendments to the Ministry. RME prepares, submits formal proposals on public consultation, summarises and comments on inputs/ remarks from stakeholders and then makes recommendations to the Ministry on the final amendments of the Regulation.

According to the Energy Act Section 4-2, a license is required from the Ministry to own or operate electricity interconnectors. RME shall monitor and ensure compliance with regulations regarding system operation and EEA-regulations on access to networks for cross-border exchanges of electricity.

According to the Energy Act Section 4-2 fourth subsection and the NEM Regulation Section 4-11, RME has the authority to fix or approve the terms and conditions or the methodologies for the access to cross-border infrastructures. This shall be decided by RME within the framework of a trading license pursuant to Section 4-2. Pursuant to the ordinary terms of such licenses, the regulatory authority shall approve the licensee's entering into agreements of significant importance which fall within the frame of the license.

⁵ See link <https://lovdata.no/dokument/SF/forskrift/2002-05-07-448>

RME has the competence to ensure that the network companies, generators and end users comply with the above provisions and has the authority to take necessary actions to enforce compliance, including the use of coercive fines or sanctions, cf. the Energy Act Chapter 10, the NEM Regulation Chapter 8 and the System Responsibility Regulation Sections 25, 26 and 26a. RME's individual decisions regarding this may be appealed to the Energy Appeals Body.

f) TSO's and DSOs' planning of new network capacity

According to the Article 37 (1) (g) of the Directive, the national regulatory authority shall monitor investment plans of the TSOs. The NRA may recommend amendments to the plan. According to the Regulation governing energy system analyses (energy planning), Statnett shall submit the annual updated investment plan to NVE. NVE has the authority to ensure compliance with the rules and regulations relating to grid operators planning of investment in and building of new network installations.

It falls within the competence of Member States to designate authorities or bodies that grant authorisations for the development of new generation or network capacity. The authority to grant such authorisations is delegated to NVE, the Ministry or the King's Council depending on the type and size of such installations.

According to Article 37 (1) (r) the regulatory authority shall monitor investments in new production capacity associated with security of supply or at least be given access to information from such monitoring as soon as possible, cf. Article 37 (2). The information shall be reported to NVE according to the Energy Act Regulation Section 6-1 eight subsection cf. third subsection. NVE shall as soon as possible give RME access to such information, cf. the Regulation governing energy system analyses Section 22a second subsection.

Power system studies and concept selection studies are closely linked to the licensing of new generation and network installations. The tasks of following up of the power system studies scheme (KSU) is delegated to NVE, cf. the Energy Act Section 7-1 and the Energy Act Regulation Section 7-1. Pursuant to the Energy Act Regulation Section 9-1 (c) NVE can adopt Regulations on energy planning and has issued such Regulations.⁶

The planning of network reinforcements, the follow-up of KSU and the licensing of new transmission capacity have interfaces with RME's duties to follow-up of Statnett's responsibilities as system operator and Statnett's duty to connect new production and load facilities to the transmission grid. It is for NVE to follow up on Statnett's planning of new transmission capacity. RME shall assess whether the updated annual investments plan regarding new transmission infrastructure is consistent with ENTSO-E's ten-year network development plan. In case of any inconsistencies, RME may propose amendments of the plan. This is specified in the preparatory writings of the amendment of the Regulation governing energy system analyses.

⁶ See link <https://lovdata.no/dokument/SF/forskrift/2012-12-07-1158>

g) Organised marketplace, market behaviour and transparency

Legal basis: The Energy Act Section 4-5, the NEM Regulation Sections 4-9 and 4-10 and Chapter 5, and the Regulation governing conditions for access to the network for cross-border exchanges in electricity.⁷

As mentioned above, according to Article 37 (6) (c) of the Directive, the regulatory authority shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for the access to cross-border infrastructures.

According to the Energy Act Section 4-5 first subsection, RME has the authority to grant marketplace licenses and set conditions in the license for the exercise of the market operator activity. RME has pt. granted marketplace licenses to Nord Pool and Epex Spot. According to the Energy Act Section 4-5 third subsection and the NEM Regulation Section 4-9, RME shall fix or approve at least methodologies used by marketplace licensees to establish the terms and conditions for trading on the marketplace. According to the license, RME shall approve the licensees' entering into agreements of significant importance and which are in accordance with the principles set in the license.

The NEM Regulation Chapter 5 have provisions regarding market behaviour and transparency which have been introduced based on similar provisions in REMIT.

h) Legal and functional unbundling of DSOs

Requirements of legal and functional unbundling of DSOs grid activities are laid down in the Energy Act Sections 4-6 and 4-7. The rules were amended by Act of 27 May 2016 no. 18, which enters into force on 1 January 2021. Supplementary Regulations in the NEM Regulation on legal and functional unbundling for distribution network operators were adopted in the summer of 2020 and will enter into force on 1 January 2021. RME shall ensure that these provisions are complied with by the network operators and may take necessary actions to enforce compliance, including imposing effective, proportional, and dissuasive sanctions, cf. the Energy Act Chapter 10 and the NEM Regulation Chapter 8.

i) Network operators' duty to supply and connect network users

It follows from the Energy Act Sections 3-3, 3-4 and 3-4a that the network operators have a duty to connect consumption and production installations to the grid. A brief explanation of the main duties of grid undertakings and the tasks and responsibilities of RME, the Ministry and NVE is set out below.

DSOs with an area license (< 22 kV) has a duty to supply electrical energy to all customers within its geographical area, cf. the Energy Act Section § 3-3.

Supplementary regulations have been included in the NEM Regulation Section 3-1. RME may grant exemption from the licensee's duty if exceptional circumstances apply. RME has the authority, by individual decision, to fix or approve at least the

⁷ See link <https://lovdata.no/dokument/SF/forskrift/2006-12-20-1563/%C2%A74#%C2%A74>

methodologies used by the area licensee to establish the terms and conditions for connections and use of the grid, cf. the Energy Act Section 3-3 fourth subsection and the NEM Regulation Section 3-1 fourth subsection.

The licensees for other network installations (>22 kV) has the duty to connect new installations that extract electricity from the grid and to make network investments if necessary, cf. the Energy Act Section 3-4. Supplementary provisions have been included in the NEM Regulation Section 3-2. The Ministry may in exceptional circumstances grant an exemption. RME has the authority to fix or approve at least the methodologies used by the grid operator to establish the terms and conditions for the connection and use of the grid by customers that extract electricity from the grid, and if relevant regarding the investment in grid installations, cf. the Energy Act Section 3-4 third subsection and the NEM Regulation Section 3-2 fifth subsection.

All network installation licensees have a duty to connect new generation installations to the grid, and if necessary, to make network investments, cf. the Energy Act Section 3-4a. Supplementary provisions have been included in the NEM Regulation Section 3-3. RME has the authority to ensure compliance. The Ministry has the authority to grant exemption, and this authority has been delegated to NVE, cf. the Energy Act Section 3-4a second subsection and the NEM Regulation Section 3-3 fourth subsection. RME has the authority, by individual decision, to fix or approve at least the methodologies used by the grid operator to establish terms and conditions for the connection and use of the grid by generators, cf. the Energy Act Section 3-4a third subsection and the NEM Regulation Section 3-3 sixth subsection.

RME has the authority to take the necessary actions to enforce compliance by imposing effective, proportional and dissuasive sanctions on grid operators, cf. the Energy Act Chapter 10 and the NEM Regulation Chapter 8.

j) Price comparison requirements

According to the Regulation governing requirements to report on energy delivery agreements,⁸ electricity suppliers shall report information on electricity supply contracts. The information is published on the Consumer Council's electricity price portal, providing information on the electricity suppliers' prices and terms in contracts offered to consumers. RME has the authority to ensure that electricity suppliers comply with the requirements in the Regulation and may take necessary actions to enforce compliance, including authority to issue individual decisions and the use of sanctions (fines).

k) Cooperation with other NRAs, ACER, and ESA

RME has a duty to cooperate with other regulatory authorities and with international institutions such as ACER, ESA and the European Commission in accordance with the obligations pursuant to the EEA-Agreement, cf. the Energy Act Sections 2-3

⁸ See link <https://lovdata.no/dokument/LTI/forskrift/2015-03-09-194>

fourth subsection, 10-1 fourth and fifth subsection and the NEM Regulation Section 2-4.

The Electricity Market Directive Article 10

According to Articles 10 and 24 member states shall designate and approve the transmission system operator (TSO) and distribution system operators (DSO). By delegation from the Ministry, Statnett is designated as transmission system operator (TSO) in accordance with the Energy Act Section 6-1 second subsection. Statnett has the responsibility as system operator in the power system.

According to the Energy Act Section 4-10 and the NEM Regulation Section 7-1, RME has the authority to certify Statnett as transmission system operator, cf. Section 4-8 of the Energy Act. RME has the duty to monitor and ensure that Statnett complies with the rules on ownership unbundling and may reassess the certification if there are transactions or if any new information occurs that would necessitate a reassessment.

RME has the authority to issue fines if Section 4-10 first or second subsection are violated. The same applies if decisions made by RME in accordance with Section 4-10 are violated. This follows from the Energy Act Section 10-7 second subsection.

The procedures laid down in Article 3 of Regulation (EC) No 714/2009 has been implemented in Regulation of 20 December 2006 No. 1563 governing conditions for access to the network for cross-border exchanges in electricity. It is specified that RME is the competent authority. The Ministry has the competence to decide upon requests for exemptions in accordance with Article 17 (new interconnectors). Requests for exemption shall be forwarded to RME, and RME shall give its opinion.

The Gas market Directive Article 41 (1)

As described above, the downstream gas market in Norway is limited in size and volume. The Norwegian gas sector had the status of "emerging market" according to the Second Gas Market Directive until 2014. To this date, there are only two local areas with gas distribution networks in Norway. Thus, the Regulation of the downstream natural gas market is less comprehensive than of the electricity market.

In the following, a description is given to RMEs tasks and competences in the downstream gas sector. The description is supplementary to the content of the ToC submitted to ESA 15 May 2020. The explanation has been arranged in accordance with the list of duties in Article 41 of the Gas Market Directive.

(a) Fixing or approving transmission or distribution tariffs or their methodologies

RME will approve terms and tariffs for access to the system and balancing, or methodologies for terms and tariffs for system operators.

(b) Ensuring compliance of system operators and natural gas undertakings

RME will conduct audits to ensure compliance as prescribed by the Natural Gas Regulation Section 10-1. Scope and number of audits will be based on risk assessment.

(c) Cooperation with regard to cross-border issues

Norway does not have downstream cross-border infrastructure. RME does however take part in a working group for natural gas distribution at Nordic level.

(d) Complying with, and implementing, any relevant legally binding decisions of the Agency and of the Commission

It follows from Section 1-4 of the Natural Gas Regulation that the NEM Regulation Chapter 1 and 2 also applies to RMEs tasks in the natural gas sector. As for the electricity sector, Section 2-4 second subsection in the NEM Regulation obliges RME to bring a decision from ESA into effect. It follows from the provision that RME shall ensure that decisions taken by ESA in accordance with the EEA Agreement, Annex IV No. 47 are implemented in accordance with Norway's EEA legal obligations. However, in light of the fact that no transmission system exists in Norway, this appears to be a provision without practical importance.

(e) Reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Agency and the Commission

RME can exchange information, including confidential information, in accordance with the Natural Gas Act Section 10 with other NRAs in the EEA, ACER and the EFTA Surveillance Authority. Furthermore, RME shall provide a yearly report on its activities in accordance with the NEM Regulation Section 2-3.

(f) Ensuring that there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities

The Natural Gas Regulation Section 4-1 obliges a system operator to keep separate accounts in its internal accounts for the business areas transmission, distribution, LNG and storage facilities in the same way as if the business in question had been carried out by separate companies. Any cross-subsidization is forbidden. RME has the competence in accordance with the Natural Gas Regulation Section 10-1 to conduct audits of the accounts of system operators, which includes examination of cost allocation keys etc.

(g) Monitoring investment plans of the transmission system operators

This provision appears to have no relevance in the Norwegian natural gas sector, as there are no gas transmission pipelines in Norway at the time being. A potential future transmission system operator will have an obligation to provide information to RME according to general provision in the Natural Gas Regulation Section 10-2.

(h) Monitoring compliance with and reviewing the past performance of network security and reliability rules and setting or approving standards and requirements for quality of service and supply or contributing thereto together with other competent authorities

RME will monitor development in performance related to network security, reliability, quality of service and supply with a basis in supervisory activities, e.g. related to the Natural Gas Regulation Chapter 4 (Accounting and requirements for the system operator) and Chapter 8 (Customer relationships and consumer rights).

(i) Monitoring the level of transparency, including of wholesale prices, and ensuring compliance of natural gas undertakings with transparency obligations

RME will monitor that tariffs, terms and conditions are published according to the Natural Gas Regulation Chapter 4, and that natural gas undertakings comply with their duty to provide information to consumers prescribed in the Natural Gas Regulation Chapter 8, cf. the Natural Gas Regulation Section 10-1. There is no wholesale market for gas in Norway.

(j) Monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on natural gas exchanges, prices for household customers including prepayment systems, switching rates, disconnection rates, charges for and the execution of maintenance services and complaints by household customers, as well as any distortion or restriction of competition, including providing any relevant information, and bringing any relevant cases to the relevant competition authorities

RME will monitor relevant indicators and process complaints filed by system users.

(k) Monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent large non-household customers from contracting simultaneously with more than one supplier or restrict their choice to do so, and, where appropriate, informing the national competition authorities of such practices

RME is addressing these issues in the process of approving tariffs, and terms and conditions for third party access and balancing services.

(l) Respecting contractual freedom with regard to interruptible supply contracts as well as with regard to long-term contracts provided that they are compatible with Community law and consistent with Community policies

Freedom of contract is a basic principle of Norwegian contract law, which effectively means that citizens can regulate their own economic affairs through contract without governmental restrictions etc. This basic principle of contract law has long been recognized in Norway, hence there has been no need for adjustments in acts, regulations or licenses to fulfil Article 41(1)(l).

(m) Monitoring the time taken by transmission and distribution system operators to make connections and repairs

RME monitors relevant indicators and will process complaints filed by system users.

(n) Monitoring and reviewing the access conditions to storage, linepack and other ancillary services as provided for in Article 33

This provision is not relevant in Norway, as there are no such installations as covered by Article 33.

(o) Helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in Annex I, are effective and enforced

Chapter 8 of the Natural Gas Regulation comprises obligations on consumer protection, and RME shall monitor compliance with these provisions in accordance with Section 10-1. RME will conduct audits and process complaints filed by system users.

(p) Publishing recommendations, at least annually, in relation to compliance of supply prices with Article 3, and providing those to the competition authorities, where appropriate

This provision is for not relevant in Norway, as there is no wholesale market.

(q) Ensuring access to customer consumption data, the provision for optional use, of an easily understandable harmonised format at national level for consumption data and prompt access for all customers to such data under point (h) of Annex I

A system operator has an obligation to provide clear information to customers on consumption data in accordance with the Natural Gas Regulation Section 8-1, which shall enable the customer to monitor its consumption. RME shall monitor that natural gas undertakings comply with this obligation in accordance with section 10-1. Furthermore, RME will process complaints filed by system users.

(r) Monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, suppliers and customers and other market parties pursuant to Regulation (EC) No 715/2009

This provision is for practical reasons not relevant in Norway, as there are no such undertakings covered by the Regulation in Norway.

(s) RME shall monitor the correct application of the criteria that determine whether a storage facility falls under Article 33(3) or (4) in the Gas Market Directive

This is, for practical reasons not relevant in Norway, as there are no such storages in Norway. See description of small-scale LNG terminals above.

(t) RME shall monitor the implementation of safeguards measures as referred to in Article 46 in the Gas Market Directive

Information concerning the implementation of safeguard measures can be included in the yearly report by RME, cf. the NEM Regulation Section 2-3, if required by the Ministry. The Ministry may set requirements as to what this report shall contain. However, it should be noted that since the local downstream distribution networks are not connected to other Member States' networks, any disturbance of supply related

to these networks that can cause any disturbance to the rest of the internal market is not possible.

(u) Contributing to the compatibility of data exchange processes for the most important market processes at regional level

This provision is for practical reasons not relevant because Norway only has local networks which are not connected.

The Gas Market Directive Article 41 (2) to (17)

In the following, the task and legal basis for actions by RME is described in connection to the provisions in Article 41(2) to (17).

2. Monitoring duties carried out by other authorities

This provision of the Directive enables RME to co-operate with other Authorities, such as for example the Consumer Authorities, where and if relevant. For practical reasons the tasks in Article 41 (3) and (5) relating to the independent system operator/ and independent transmission system operator are not relevant as Norway has not appointed a ITO or ISO.

4. Regulatory authority are granted powers to issue binding decisions, carry out investigations, impose penalties, dispute settlements

RME can issue binding decisions for fixing and approving terms, conditions and tariffs, as described above. RME shall also, in accordance with the Natural Gas Regulation Section 10-1, monitor compliance with provisions in Chapters 3 to 8 in the Natural Gas Regulation. RME can request information in accordance with Section 10-2. Based on Section 10-4, RME can issue decisions requiring undertakings to take necessary steps to ensure compliance with Section 3-1 and the provisions in Chapters 4 to 8 of the Natural Gas Regulation.

In accordance with Section 10-5, RME can impose coercive fines to ensure the implementation of Sections, 5-1, 6-2, 7-1 and 7-2. Furthermore, coercive fines can be imposed on undertakings failing to comply with obligations in decisions based on the Natural Gas Regulation Sections 10-4 and 10-2.

System users can bring disputes to RME in accordance with the Natural Gas Regulation Section 1-5. RME shall, as the main rule, issue a binding decision within 2 months.

6. The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for LNG facilities, balancing services, cross-border infrastructures.

This has been described above. Regarding item (c) of this provision; the Norwegian downstream gas market is not connected to other States.

7. The methodologies or the terms and conditions referred to in paragraph 6 shall be published by the NRA

RME's duty to publish individual decisions is found in Section 3-1 third subsection of the Natural Gas Regulation, and it is also a general practice of the RME to publish the decisions on its website.

8. In fixing or approving the tariffs or methodologies and the balancing services, the regulatory authorities shall ensure that transmission and distribution system operators are granted appropriate incentive, over both the short and long term, to increase efficiencies, foster market integration and security of supply and support the related research activities

It is imperative for RME to consider these elements in all its decisions so that natural gas activities are carried out "in a socially rational manner", as prescribed by the legislative purpose stated in the Natural Gas Act Section 2 and the Natural Gas Regulation Section 1-1.

9. The regulatory authorities shall monitor congestion management of national gas transmission networks including interconnectors, and the implementation of congestion management rules

This provision is for practical reasons not applicable as the Norwegian downstream natural gas market is not connected to other States.

10. Regulatory authorities shall have the authority to require transmission, storage, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. In the event that the access regime to storage is defined according to Article 33(3), that task shall exclude the modification of tariffs. In the event of delay in the fixing of transmission and distribution tariffs, regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies and to decide on the appropriate compensatory measures if the final tariffs or methodologies deviate from those provisional tariffs or methodologies

As indicated above, in the reply to questions about terms, conditions and methodologies, RME has the authority to instruct the system operator to adjust terms, conditions and tariffs to ensure that they are proportionate and applied in a non-discriminatory manner.

11. Any party having a complaint against a transmission, storage, LNG or distribution system operator in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the regulatory authorities. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal

A provision on dispute settlement including the mentioned points and time frames is implemented in Section 1-5 of the Natural Gas Regulation. Disputes between the system operator and a system user relating to terms, tariffs or other obligations of the system operator may be brought before RME. Once the complaint is received, RME shall resolve the dispute by issuing an individual decision in the case within the same deadlines as given in the Gas Market Directive Article 41 (11).

12. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect

According to the Public Administration Act⁹ Section 28, individual decisions may be appealed by a party or another person having a legal interest in appealing the case, and the time limit for lodging an appeal is three weeks, cf. Section 29. This Act applies to RME. There are additional provisions in the Natural Gas Act Section 4 second subsection, the Natural Gas Regulation Section 1-4 third subsection, the NEM Regulation Section 2-2 third subsection and the Regulation governing the Energy Appeal Body.

13. Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. Those mechanisms shall take account of the provisions of the Treaty, and in particular Article 82 thereof

This kind of monitoring is carried out by the Norwegian Competition Authority.

14. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected

RME has been given authority to issue coercive fines for specified violations, cf. the Natural Gas Act Section 11 and the Natural Gas Regulation Section 10-5. More severe violations, effected either intentionally or with gross negligence, may be punished by fines or imprisonment, cf. the Natural Gas Act Section 12 and the Natural Gas Regulation Section 10-6.

15. Complaints referred to in paragraphs 11 and 12 shall be without prejudice to the exercise of rights of appeal under Community or national law

It follows from long-standing customary law in Norway that disputes in administrative cases can be brought before a court for judicial review. Hence, there is no need for amendments of Acts or Regulations to implement the Directive Article 41(15).

⁹ Public Administration Act of 10 February 1967.

16. Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information

The Public Administration Act require that RME decisions shall be reasoned and justified, see in particular Sections 24 and 25 that prescribe when grounds shall be given for individual decisions and lay down rules for what the grounds shall contain.

17. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government

Parties affected by an administrative decision have the right to appeal this decision, as prescribed by the general rules of the Public Administration Act¹⁰, in particular Chapter 6. Individual decisions by RME may be appealed to the Energy Appeal Body which is independent, cf. the Natural Gas Act Section 4 second subsection, the Natural Gas Regulation Section 1-4 third subsection, the NEM regulation Section 2-2 third subsection and the Regulation governing the Energy Appeal Body.

The Gas Market Directive Articles 10 and 11

As the Gas Market Directive Articles 10 and 11 govern transmission system operators, they are for practical reasons not relevant/not applicable for Norway due to the absence of a transmission network for gas.

2.3. Powers

Norway is invited to clarify if RME has the power to carry out investigations. The Ministry confirms that RME has such powers, in this context understood as the power to carry out on-site inspections and request information. This is stated in the different Regulations assigning competence to RME, for example the NEM Regulation Section 8-1 and the Natural Gas Regulation Sections 10-1 and 10-2.

It follows from the Electricity Market Directive Article 37 (4) (b) that the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission (ESA) in conducting an investigation relating to competition law. The Ministry considers that RME has the necessary legal powers (including agreements) to cooperate with and assist these authorities in their investigations relating to competition law in the electricity sector.

The Ministry has been asked to map the powers of RME and other competent bodies with the corresponding tasks, as described in Section 2.2 of ESA's letter of 16 October 2020. In this regard, the Ministry would like to refer to the presentation in Section 2.2 above.

¹⁰ Public Administration Act of 10 February 1967

3. Dispute settlement

First, the Ministry is invited to clarify the scope of disagreements covered by "terms for connection to and use of the grid", and to explain why the two months' deadline for RME's decision can be extended according to the NEM Regulation Section 4-13.

The provisions of the NEM Regulation Section 4-13 was originally introduced in the Energy Regulation Section 4-10 to implement the Electricity Directive 2003/54/EC Article 23 (5) and (6), and the Ministry has given a conformity assessment of this to ESA in letter of 21 November 2011, please see in particular Section 8.3.1 of that letter. To implement the Electricity Market Directive 2009/72/EC duties and powers according to Article 37 have been transferred from NVE to RME. Thus, Section 4-10 of the Energy Regulation has been transferred to and pursued in the NEM Regulation Section 4-13.

The provision is one legal basis for RME to conduct dispute settlement. RME is not barred from dispute settlement of issues not covered by Section 4-13. Rather, RME is empowered to settle disagreements in relation to all duties and powers given to RME. The Energy Act and its appurtenant Regulations contain necessary provisions relating to all these matters, and RME has the power to monitor compliance, settle disagreements and impose sanctions for non-compliance. An overview of these duties and powers is given in the ToC's submitted by the Ministry 15 May 2020. See also Section 2 above.

The scope of disagreements covered by "terms for connection to and use of the grid", cf. the NEM Regulation Section 4-13 is connection and access to national networks, including transmission and distribution tariffs (methodologies). Section 4-13 applies mainly to disagreements between network/grid operators and their customers in relation to the following matters:

- The connection and use of the networks according to the Energy Act Sections 3-3, 3-4 and 3-4a and the NEM Regulation Sections 3-1, 3-2 and 3-3,
- Financial contribution to network investments, payment of network studies, network fees and tariffs according to overriding rules and the Regulation on financial and technical reporting, revenue framework for the network business and tariffs,
- Quality of supply and responsibility for disruptions (KILE) according to the Regulation relating to the quality of supply in the power system.

It follows from the NEM Regulation Section 4-13 that RME shall issue a decision within a period of two months after the receipt of the complaint. This period may be extended by two months where additional information is sought by RME. The extended period may be further extended with the agreement of the complainant.

A similar provision can be found in the Gas Market Regulation Section 1-5. These provisions are harmonized with Articles 37(11) and 41(11) of the Electricity and Gas Market Directives, which are referring to complaints against a transmission or distribution system operator.

Second, the Ministry is invited to clarify whether a review process is possible in Norway, and to which authority and how RME`s regulatory decisions can be appealed.

The Energy Act Section 2-3 second paragraph and the Natural Gas Act Section 4 second paragraph state that decisions made by RME can only be appealed to the Energy Appeals Body. This also follows from the NEM Regulation Section 2-2 third subsection. Hence, RME is given the power to issue final and binding decisions that are not subject to ministerial or governmental scrutiny. Appeals will be handled by the Energy Appeals Body according to Regulation of 24 October 2019 No 1420 governing the Energy Appeal Body. It is specified in Section 1 fourth subsection of this Regulation that the Public Administration Act applies.

It follows from the Public Administration Act Section 28 first subsection that decisions may be appealed by a party or another person having legal interest in appealing the case, to the appellate instance. With regard to decisions made by RME, the notice of appeal shall be made to RME according to Section 32. RME shall then, according to Section 33 second subsection carry out such investigations as are warranted by the appeal. Chapters IV and V of the Public Administration Act apply correspondingly. In the case of a complaint, RME may rescind or alter the decision if it considers the appeal justified. Should no such decision be made by RME, the case shall be sent to the Energy Appeal Body, cf. Section 33 fourth subsection. The Energy Appeal Body may try all aspects of the case and may thereunder take new circumstances into account. Hence, a full review process is a formal right and practical possibility.

Appeals that have been finalized by the Energy Appeal Body may also be reviewed by a court of law. This is in line with the ordinary legal system in Norway.

4. Cooperation with other authorities and exchange of information

The Ministry is invited to clarify with which national authorities RME cooperates for the execution of its tasks, as well as the level and form of cooperation. RME has been given the authority to cooperate with other national authorities when necessary. When monitoring market behavior of the Norwegian power producers and other relevant market participants, RME co-operates with national competition authorities and financial authorities. There is a formal co-operation agreement signed in 2012 between NVE (i.e. today`s RME) and the Competition Authority (Konkurransetilsynet) and Financial Supervising Authority (Finanstilsynet). As for the end-user market, RME cooperates and coordinates the implementation of consumer rights in the

energy sector with such consumer authorities as Consumer Ombudsman (Forbrukerombudet), the Consumer Council (Forbrukerrådet) and the Electricity Complaints Board (Elklagenemnda).

In its letter dated 16 October 2020, the Directorate has noted that several Regulations require RME to share information with NVE, with the exception of confidential information. The Ministry confirm that Regulation of 7 May 2002 No. 448 relating to the system responsibility in the power system Section 25 third subsection and Regulation of 30 November 2004 No. 1557 relating to the quality of supply in the power system Section 5-1 second subsection, require RME to share information with NVE. Likewise, NVE is required to share information with RME. This follows from Regulation of 17 December 2001 No. 1421 governing requisition of power and enforced reductions in supply in connection with electricity rationing Section 3a second subsection and Regulation of 7 December 2012 No. 1158 governing energy system analyses Section 22a second subsection.

There seems to be a misunderstanding with regard to the mentioned exception for confidential information. There is no such exception. On the contrary, it is specified in all the above-mentioned Regulations that information shall be shared without hindrance by any duty of confidentiality.

The purpose of information sharing between RME and NVE is to make RME and NVE able to carry out their respective tasks. RME monitors compliance with provisions specified in Regulation of 7 May 2002 No. 448 relating to the system responsibility in the power system and Regulation of 30 November 2004 No. 1557 relating to the quality of supply in the power system, and may issue the orders that are necessary for implementation of provisions specified, and may also impose sanctions (fines) if provisions are violated. On the other hand, NVE has the overall authority to manage Regulation of 17 December 2001 No. 1421 governing requisition of power and enforced reductions in supply in connection with electricity rationing and Regulation of 7 December 2012 No. 1158 governing energy system analyses.

Overriding responsibility for security of supply, emergency preparedness and electricity rationing lies with the Ministry, and is delegated to NVE. RME monitors the transmission system operator's and the distribution system operators' day-to-day operation of the grid to ensure that they comply with their obligations and ensures the operational security and reliability of the system. Hence RME shall share information with NVE, cf. Regulation of 7 May 2002 No. 448 relating to the system responsibility in the power system. The same reasoning applies to information sharing in accordance with Regulation of 30 November 2004 No. 1557 relating to the quality of supply in the power system.

NVE is appointed as the rationing authority and is responsible for the planning and administration of any measures needed in connection with electricity rationing. At the

same time, RME shall monitor the implementation of safeguard measures as referred to in the Electricity Directive Article 42, cf. Article 37 (1) (t). Information concerning the implementation of safeguard measures should be included in the yearly report by RME, cf. the NEM Regulation Section 2-3. Although RME's monitoring tasks according to Article 37 (1) of the Electricity Directive are not always explicitly mirrored in the legislation, it is clarified in the preparatory writings of the Regulations that RME shall conduct such monitoring. Hence, NVE shall share the necessary information with RME according to Regulation of 17 December 2001 No. 1421 governing requisition of power and enforced reductions in supply in connection with electricity rationing.

NVE shall also share information with RME in accordance with Regulation of 7 December 2012 No. 1158 governing energy system analyses, to make RME able to carry out monitoring of investment plans of the transmission system operator, and compliance with and reviewing of the past performance of network security and reliability rules etc., cf. the Electricity Directive Article 37 (1) (g), (h) and (r).

The information sharing has no impact on the independence of RME. As explained in Section 1 above, the information sharing is regulated by an internal RME routine, and information is archived separately for RME and NVE.

5. Other

The Ministry is invited to clarify if RME's scope of competence is limited to the sale of electricity and gas. RME's area of competence does not include any sectors beyond electricity and gas. The competence is not limited to sale, but includes the necessary actions to ensure a well-functioning market for electricity and gas.

According to the NEM Regulation Section 2-4 second subsection, RME shall ensure that decisions taken by ESA are "*implemented in accordance with Norway's legal obligations*". The Ministry is invited to clarify how exactly it is foreseen that ESA's decisions will be implemented into the Norwegian legal order. The legal basis for RME to implement such decisions stem from the competences given RME to "*fix or approve the terms and conditions or at least the methodologies*", cf. the NEM Regulation Sections 4-9 second subsection, 4-11 and 6-12 first subsection. This will effectively mean that once RME receives a decision from ESA, RME will adopt the necessary decision towards the relevant party/parties, i.e. most likely Statnett and/or NEMOs.

According to Regulation of 7 May 2002 No. 448 relating to the system responsibility in the power system, Section 26, RME is entitled to issue the necessary orders for the implementation of the Regulation. This includes orders to ensure the implementation of the decisions taken by the system operator. RME also has the competence to issue fines if orders are violated.

The Ministry is invited to clarify if explicit measures are foreseen for the breach of confidentiality obligations, in accordance with Articles 37(14) and 41(14) of the Electricity and Gas Market Directives. The Energy Act Sections 10-5 and 10-7, the NEM Regulation Sections 8-3 and 8-4, the Natural Gas Act Sections 11 and 12 and the Natural Gas Act Regulation Sections 10-5 and 10-6 provides legal basis for administrative reactions and sanctions, in addition to fines and/or imprisonment.

The Ministry is invited to further explain why it is considered not necessary to implement provisions of the Electricity and Gas Market Directives related to the freedom of contract, respectively Articles 37 (1) (l) and 41 (1) (l). In the tables of correspondence Norway has stated that freedom of contract is a general contractual principle in Norway. Hence, it would be superfluous to introduce specific provisions stating the same in the sector legislation.

Yours sincerely

Olav Boge
Deputy Director General

Lasse Vannebo
Assistant Director General

This document is signed electronically and has therefore no handwritten signature

Annex: (1)

Annex:

Description on the Norwegian downstream natural gas market:

According to Statistics Norway¹¹ the total production of natural gas was nearly 1175 TWh in 2019. However, less than 1 per cent (11,1 TWh) was used for domestic consumption. The rest is exported to other countries. Unlike several other European countries, Norwegian households in general use electricity, district heating and other renewable energy resources for heating. Gas is primarily being used in industrial production processes. The total domestic energy consumption constituted 242,5 TWh in 2019, whereas the share of electricity was 48 per cent (115,6 TWh). The total share of gas was 4,6 per cent (11,1 TWh¹²), but only 0,4 per cent (0,94 TWh) was distributed within two local distribution systems.

Gas is mainly being distributed in two ways; natural gas (and biogas) in local distribution networks, or as liquified natural gas (LNG) or compressed natural gas (CNG) distributed by sea or road.

There are three locations with small-scale LNG production facilities¹³:

Location	Region	Owner	Capacity (tons/year)
Snurrevarden	Rogaland	Gasnor	20.000
Kollsnes	Vestland	Gasnor	120.000
Risavika	Rogaland	Gasum	300.000

The only large-scale LNG production facility is located at Melkøya, near Hammerfest in Northern Norway. The capacity is 4.200.000 tons/year.

There are two local areas with gas distribution networks in Rogaland in the southwestern part of Norway. Both are connected to the upstream pipelines from Kårstø gas processing plant, and they use injected tail gas from small-scale LNG production facilities in addition to natural gas, see table above.

Gasnor AS has 120 kilometers of distribution (low pressure, 4 bar) at Karmøy and Haugesund. Gasnor AS has around 1000 customers, 800 households and 200 corporate customers. The consumption among the households are low, and mainly for gas stoves and fireplaces. Of the 200 corporate customers, 20 industrial customers use 80 per cent of the distributed gas. In 2019, the total volume was 360 GWh. This is 49 GWh less than in 2018. The distribution network has been developed from 1994 and onwards.

¹¹ <https://www.ssb.no/energi-og-industri/statistikker/energibalanse>

¹² According to table 2 in the energy balance statistics, 11,1 TWh is based on 6,1 TWh net domestic consumption as raw material, 3,5 TWh as consumption in industry, 1,0 TWh as consumption in transport, and 0,6 TWh as other consumption.

¹³ Enova (2016) Småskala LNG i Norge

Lyse Neo AS has 620 kilometers of distribution (50 kilometers 160 bar, 100 kilometres 10 bar, and 570 kilometres 4 bar) in the Ryfylke area. Lyse Neo AS has around 1500 customers; 1000 households and 500 corporate customers. The corporate customers use 80 per cent of the gas. In 2019, the total volume was 580 GWh. This is 26 GWh down from 2018. The storage capacity of the LNG production facility in Risavika (owned by Gasum) is 30.000 m³. The distribution network has been developed from 2004 and onwards.

The two distribution companies above are both connected to the upstream gas system. There are no gas transmission pipelines in Norway.

Along the Norwegian coast, there are (according to 2015 figures) about 20 small-scale LNG terminals owned by 8 different companies¹⁴. These provide gas to nearby industrial companies, or gas from the terminal is distributed by truck to storage located at the industrial facility. Total capacity is about 20.000 m³. In a survey conducted by Enova, respondents representing these terminals reported that capacity utilization on average was 50 per cent¹⁵. These terminals are not connected to any national network. LNG is supplied to the terminal by ship or truck.

Until Norway implemented the third energy marked package, the regulation of this sector was based on a light-handed approach because of the limited scope and the exception from third-party access (TPA) due to emerging markets conditions. Under that regulation, it was necessary to obtain a license to introduce gas infrastructure such as gas transmission or LNG facilities in a new region, and to have separate financial accounts for distribution, LNG and storage. The Ministry is the licensing authority.

¹⁴ Energigass Norge (2015) NORSKEKYSTEN LNG. UTVIKLING AV INFRASTRUKTUR FOR LNG SOM DRIVSTOFF I NORGE. En gjennomgang av status og utviklingstrekk i markedet for LNG som drivstoff med vekt på tilgjengelighet for LNG og utbygging av infrastruktur.

¹⁵ Enova (2016) Småskala LNG i Norge.