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Transfer of the Extra-high-voltage Grid to Swissgrid

Initial Position

Since the beginning of 2013, the national grid company Swissgrid AG ("Swissgrid") has gradually acquired ownership of the entire transmission grid in Switzerland from the previous owners.

This transfer of ownership was necessary in order to implement the requirements of the Electricity Supply Act and is considered one of the largest and most complex transactions stipulated by law. Not only the manner of the transaction, but in particular the scope and value of the individual installations and assets of the transmission network were under discussion. These questions were discussed and determined in numerous rulings by the Electricity Commission ("ElCom") and also in decisions of the Swiss Federal Supreme Court.

At the outset, for example, it was decided that a formal expropriation would not be carried out, but rather that contribution-in-kind agreements would be concluded with the former owners. For the contribution of the transmission grid assets and systems to Swissgrid, the former owners were compensated for 30 % of the value with Swissgrid shares and for 70 % of the value with loan claims against Swissgrid.

In its ruling 2C_25/2011 of 3 July 2012 (BGE 138 II 465 E. 6.2. f.), the Federal Supreme Court commented on the calculation of the 2009 grid level 1 usage tariffs. By means of such grid level 1 usage tariffs, ElCom had previously determined the chargeable operating and capital costs, which in turn were decisive for the value of the individual assets of the transmission network transferred to Swissgrid. The basis for the capital costs should be the original acquisition and production costs. Only if these could not be reliably determined was the synthetic valuation method permitted as an exception. In this context, the Federal Supreme Court corrected ElCom's very restrictive practice with regard to the calculation of asset values in many respects, in particular the double

malus applied by ElCom in connection with the synthetic calculation method. However, it considered the reduction of the values determined on the basis of the synthetic method by 20% to be permissible in accordance with Art. 13 para. 4 StromVV (Electricity Supply Ordinance).

End in sight?

Since January 2021, ElCom has determined the regulatory values of the transmission grid assets in various rulings on timing differences (*Deckungsdifferenzen*). The legally binding orders provide the basis for the adjustment of the valuation of the transferred assets and clear the way for the transaction to now be completed. As the 17,000 plants with around 7,000 km of network transferred to Swissgrid are now estimated to be worth more than 2.5 billion Swiss francs, and therefore substantially more than on the transfer date of the transaction, Swissgrid will have to increase its share capital. A share hub is envisaged for the compensation of the previous owners, whereby, as under the previous model, 30 % of the value is to be compensated in Swissgrid shares and 70 % in loan receivables.

Timing differences and valuation adjustments

ElCom's rulings on timing differences were preceded by several years of litigation concerning its tariff review orders (including the valuation of assets) for the years 2009 to 2012. Due to numerous court judgements, ElCom had to issue various new rulings in this connection. At the request of Swissgrid, ElCom determined the regulatory residual values and the chargeable costs for the 2011 and 2012 tariff years for the former transmission network owners on the basis of the actual costs for the years in question. Based on this, the differences between the original and the new tariff rulings were calculated. They are the basis for the value adjustments to be made.

The actual processing of the order, namely the payment or collection of the differences resulting from the value adjustments and the interest due thereon, is not entirely simple and will entail a certain amount of implementation effort: The transmission grid companies founded for the purpose of outsourcing and transferring the extra-high voltage grid are now all held by Swissgrid and are only being continued so that Swissgrid does not have to conduct proceedings on its own behalf and the previous owners can exert influence on the proceedings as representatives of such transmission grid companies.

According to ElCom, the legally entitled or obligated parties to the timing difference claims are therefore the transmission network companies - and not the previous owners, who are, however, actually the beneficial owners or obligated parties.

In order to ensure that the payment flows can finally be handled to the satisfaction of all parties concerned, one or the other consulting service will probably still have to be called upon.

We will be happy to assist you with any questions you may have in this connection.

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