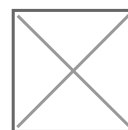


16 february 2016: Energy

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The *Autorité* has published its evaluation report on the legal mechanism providing regulated access to incumbent nuclear electricity (hereinafter ARENH), and an opinion on the decree concerning regulated sales tariffs (hereinafter TRVs), as well as two opinions on plans to phase out TRVs on gas and electricity for certain business consumers

> Version française



Several opinions and a report pertaining to energy markets, having been submitted to the government since December 2015, are now being made public simultaneously.

I) Regarding nuclear electricity production, the *Autorité* invites the government to clarify its position on the future of ARENH, given its effects medium to long-term on the energy production market, as well as its immediate impact on the retail energy market (i.e. calculation of energy prices).

The ARENH is a legal mechanism established under the terms of the NOME law, enacted in 2010, intended to ensure that alternative energy providers are able to purchase, at a controlled price, electricity produced using nuclear energy at plants operated by the formerly state-owned electricity utility *Électricité de France* (hereafter EDF). Its objective is to allow alternative operators to stimulate competition within the electricity retail market. The mechanism, adopted as an

exception within the application of French competition law, was deemed necessary as a transitional measure in order to allow alternative operators to enter into the emerging market and invest in their own electricity production facilities.

Article L. 336-8 of the French energy code stipulates that the *Autorité de la concurrence* and the energy regulation Commission shall each submit an independent report every 5 years to the Government on the implementation and effects of the ARENH mechanism, particularly regarding its impact on the wholesale and retail markets, as well as investments in electricity production facilities.

The report issued by the *Autorité* in accordance with this requirement on December 18th, 2015 found that the ARENH mechanism has so far not attained its stated objectives, and, contrary to legal provisions, no indication of a progressive phasing out of this measure has been made to market stakeholders.

As previously requested in its [opinion 14-A-16](#), the *Autorité* therefore invites the government to urgently adopt a position on the maintenance of this measure, which is due to expire on December 31st 2025. Indeed the risk of perpetuation beyond its legal period becomes more likely as time goes on, due to a lack of clear indications to anticipate its revocation.

The *Autorité* has made the following recommendations:

- if the transitory nature of ARENH is reaffirmed, which is the current state of positive law, it would be beneficial to take rapid measures in order to ensure a progressive phasing out of the mechanism, notably by lowering the volume of electricity being offered by EDF to its competitors – an initiative which would be more easily implemented in the current economic context, given that the decline in the prices on the wholesale market has already rendered ARENH less appealing to buyers;
- if, on the other hand, the ARENH is to be extended beyond 2025, or replaced by a similar measure thereafter, which would imply that effective

competition in the French basic energy production market is not viable in the medium to long term, it would become necessary to plan the implementation of a new measure in order to neutralize the effects of the central role of nuclear energy production in France, in order to ensure that it does not impede the proper functioning of the rest of the national wholesale electricity market.

The choice that is made between these two options will have an immediate impact on the establishment of regulated tariffs. Indeed these tariffs are determined in relation to ARENH prices, which are themselves influenced by the theoretical duration of the mechanism itself, particularly with regard to the calculation of the amortization of investments in the nuclear energy infrastructure.

II) Regarding the calculation of electricity TRVs, the *Autorité* has expressed reservations about measures set to modify the method by which tariffs are set.

In its opinion 15-A-18, the *Autorité* expressed a favourable opinion on the proposed decree regarding the calculation method for electricity TRVs, for which most of the articles included in this decree did not raise any issues, with nonetheless two reservations:

- the first refers to the government's involvement in TRV structuring, which could be more optimally incorporated within the methodological framework and should not allow the government to intervene on tariff structuring for every individual modification of regulated electricity prices;
- the second refers to the option given to the government to make known its preferred "trends" regarding the evolution of tariffs. A measure which needlessly complicates the process of periodic setting of tariffs without producing any practical effect. Since unless detracting from the priority objectives of cost covering and tariff contestability, this measure can only lead to marginal corrections which are unlikely to contribute to the realization of public interest objectives.

III) Revocation of electricity and gas TRVs for business clients: more vigorous measures are necessary in order to encourage clients to subscribe to market

offers before June 30th 2016.

The law on energy consumption enacted on March 14th 2014 (known as the "*Hamon*" law) provided a stage-by-stage revocation of electricity and gas TRVs for business clients whose consumption levels exceeded a certain threshold. Following the initial phase of removing TRVs for gas, the government twice requested the *Autorité*'s opinion on projects aiming to modify existing legislation in order to prepare for the second phase (2015-2016), aiming to be better equipped to deal with business consumers labelled "unresponsive" as of the end of the legally-established transitional six-month period leading up to the revocation of these regulated-tariff contracts.

In opinions 15-A-17 and 16-A-02, the *Autorité* considers that more vigorous incentives should be put in place, and within a faster timeframe, so as to accelerate the natural process by which businesses move away from the transitional energy contracts, thereby leaving no remaining "unresponsiveness" by June 30th 2016. These measures would include more explicit reminders during the transitional period, as well as the eventual application of a significant penalty, to be added to the cost of transitional energy contracts, in order to incite such "unresponsive" business consumers to seek energy contracts on the open market.

The *Autorité* notes that the rapid decline in "unresponsive" businesses observed in January indicates that the objective of extricating such consumers from transitional contracts remains realistic in the coming months, leading it to conclude that the choice of adopting additional measures to deal with late client arrivals after June 30th 2016 is a secondary issue that should not lead to any precipitous administrative action.

> See full text of the evaluation report on the ARENH, published December 18th 2015 on the legal mechanism providing regulated access to incumbent nuclear electricity

> See full text of opinion no.15-A-18, published December 14th 2015, on a proposed decree modifying decree no. 2009-975 on TRVs, enacted on August 12th 2009, relating to electricity regulated sales tariffs

> See full text of opinion no.15-A-17, published December 2nd 2015 on the extinction measures of regulated sales tariffs of electricity and natural gas

> See full text of opinion no.16-A-02, published January 19th 2016, on the proposed ordinances concerning continuity measures for the provision of electricity and gas to consumers at the end of transitional contracts

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