

**Ordinance**  
**on the Further Development of the Nationwide Equalisation Scheme**  
**(Equalisation Scheme Ordinance – AusglMechV)**  
**of 17 July 2009**

Pursuant to section 64 subsection (3) of the Renewable Energy Sources Act of 25 October 2008 (Federal Law Gazette I p. 2074), the German Government decrees with the consent of the Bundestag:

**Section 1**  
**Basic principle**

The nationwide equalisation scheme in accordance with sections 34 to 39 of the Renewable Energy Sources Act shall be implemented under the following terms:

1. The transmission system operators are not obliged to transmit the electricity to downstream utility companies.
2. The utility companies are not obliged to purchase and pay tariffs for electricity from their regular transmission system operators.
3. The transmission system operators are obliged to market the electricity in accordance with section 2.
4. The transmission system operators can claim reimbursement from the utility companies for the expenditure necessitated by the provisions of section 3.

**Section 2**  
**Marketing**

(1) The transmission system operators shall market, themselves or jointly, in a non-discriminatory and transparent manner, the electricity for which tariffs have been paid in accordance with section 16 or section 35 of the Renewable Energy Sources Act. This obligation only persists until the task has been transferred to third parties on the basis of the ordinance in accordance with section 11 number 4.

(2) Marketing in accordance with section 1 shall only take place on the day-ahead or intra-day spot market of an electricity exchange. In order to achieve the best possible marketing of the electricity, the transmission system operators shall apply the due care and diligence of a prudent trader. In doing so, the requirements made by the Federal Network Agency shall be complied with, especially those concerning marketing, trading place, forecasting, procurement of balancing energy, and transparency and notification obligations.

**Section 3**  
**EEG surcharge**

(1) The transmission system operators can claim reimbursement from the utility companies delivering electricity to final consumers for a share of the costs incurred pursuant to the following provisions (EEG surcharge).

(2) The EEG surcharge is to be calculated in a transparent manner from

1. the difference between the revenues forecast in accordance with subsection (3) numbers 1 and 3 for the following calendar year and the expenditures forecast in accordance with subsection (4) for the following calendar year and

2. the difference between the actual revenues in accordance with subsection (4) and the actual revenues in accordance with subsection (4) at the point in time of calculation.

The EEG surcharge for the following calendar year is to be published by 15 October of a calendar year on the websites of the transmission system operators and is to be stated in cents per kilowatt-hour delivered to final consumers; section 43 subsection (3) of the Renewable Energy Sources Act shall apply mutatis mutandis.

(3) Revenues are

1. revenues from day-ahead and intra-day marketing in accordance with section 2,
2. revenues from payment of the EEG surcharge,
3. revenues from interest payments in accordance with subsection (5), second sentence,
4. revenues from settling the balancing energy accounts for the EEG balance area and
5. revenues pursuant to section 37 subsection (4) of the Renewable Energy Sources Act.

(4) Expenditures are

1. the tariffs paid in accordance with section 16 or section 35 of the Renewable Energy Sources Act,
2. repayments in accordance with section 37 subsection (4) of the Renewable Energy Sources Act,
3. interest payments in accordance with subsection (5), second sentence,
4. necessary costs for intra-day equalisation,
5. necessary costs resulting from settling the balancing energy accounts for the EEG balance area and
6. necessary costs for producing day-ahead and intra-day forecasts.

(5) Interest shall accrue on differences between revenues and expenditures. The interest rate per calendar month shall be 0.3 percentage points above the monthly average of the Euro Interbank Offered Rate for one-month lending from prime banks in the participating states of the European Monetary Union (EURIBOR) with a term of one month.

(6) Section 37 subsection (1), second sentence, and section 37 subsections (2 and 4 to 6) and sections 38 and 39 of the Renewable Energy Sources Act shall apply mutatis mutandis. Section 37 subsection (4) of the Renewable Energy Sources Act shall apply whereby the actual equalisation of tariffs paid shall take place by 30 September of the year following feed-in. Section 36 subsections (1 to 3) of the Renewable Energy Sources Act shall apply mutatis mutandis for the equalisation of revenues and expenditures.

**Section 4**  
**Forecasting revenues and expenditures**

Forecasting in accordance with section 3 shall be

conducted according to the state of the art and science. The forecast of revenues in accordance with section 3 subsection (3) number 1 shall be based on the average price of Phelix Baseload Year Futures at the European Energy Exchange AG in Leipzig. This is determined for the trading period between 1 October of the previous calendar year and 30 September of the current calendar year.

#### Section 5 **Burden of proof**

If the need for or level of expenditures in accordance with section 3 is disputed, the burden of proof shall be on the transmission system operators.

#### Section 6 **Application of the special equalisation scheme**

(1) The procedure in accordance with section 40 subsection (1), first sentence, in conjunction with subsection (2), and in accordance with sections 41 to 43 of the Renewable Energy Sources Act shall be conducted under the following terms:

1. The Federal Office for Economics and Export Control shall limit to 0.05 cents per kilowatt-hour the EEG surcharge which is passed through by the utility companies to the final consumers which are electricity-intensive manufacturing enterprises with high electricity consumption or rail operators.
2. The precondition set out in section 41 subsection (1) number 3 of the Renewable Energy Sources Act shall be deemed to have been met if the enterprise has paid the EEG surcharge to its utility company in accordance with its individual share.
3. Section 43 subsection (3) of the Renewable Energy Sources Act shall apply to the claims of transmission system operators among each other in accordance with section 36 of the Renewable Energy Sources Act and shall apply mutatis mutandis to claims against utility companies in accordance with section 3.

(2) Enterprises whose financial year deviates from the calendar year shall, when making an application in the 2010 calendar year, furnish proof of the requirements pursuant to section 41 subsection (1) number 3 of the Renewable Energy Sources Act and pursuant to subsection (1) number 2 by producing the certification of a chartered or certified accountant.

#### Section 7 **Application of the notification and publication obligations**

(1) The obligation to make available the data required for the nationwide equalisation scheme established by section 45 of the Renewable Energy Sources Act shall apply mutatis mutandis to equalisation in accordance with sections 1 to 5.

(2) The obligations in accordance with section 48 subsection (2) number 1 and section 50 of the Renewable Energy Sources Act shall apply mutatis mutandis for the EEG surcharge.

(3) The obligation in accordance with section 51 subsection (1), second part of sentence, of the Renewable Energy Sources Act to state electricity purchase costs when settling differential costs in

accordance with section 54 subsection (1) of the Renewable Energy Sources Act shall be deemed to have been met if the EEG surcharge has been stated.

- (4) The transmission system operators are obliged
1. to publish without delay on their websites and to keep available there the monthly and annual revenues and expenditures, broken down in accordance with section 3 subsection (3) numbers 1 to 5 and subsection (4) numbers 1 to 6,
  2. to notify, without delay, to the Federal Network Agency the revenues and expenditures broken down in accordance with section 3 subsection (3) numbers 1 to 5 and subsection (4) numbers 1 to 6.

#### Section 8 **Application of the provisions on differential costs**

(1) The EEG surcharge shall be deemed to represent the differential costs within the meaning of sections 53, 54 subsection (1) and subsection (3) of the Renewable Energy Sources Act and the difference pursuant to section 54 subsection (2), first sentence, of the Renewable Energy Sources Act.

(2) When giving notice of the EEG surcharge to third parties, the anticipated share of electricity for which tariffs are paid in accordance with the Renewable Energy Sources Act in the anticipated nationwide electricity mix shall be stated in a clearly visible and easily legible fashion.

#### Section 9 **Evaluation**

The Federal Network Agency shall submit to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and to the Federal Ministry of Economics and Technology by 31 December 2011 a report containing an evaluation and proposals for the further design of the equalisation scheme in accordance with this ordinance, with particular consideration of the transferral to third parties of the task of marketing.

#### Section 10 **Tasks and authorisations of the Federal Network Agency**

(1) The tasks and authorisations of the Federal Network Agency in accordance with section 61 of the Renewable Energy Sources Act shall also apply to the monitoring of marketing and the determination, setting, publication and passthrough of the EEG surcharge and to giving notice of the EEG surcharge in accordance with section 8 subsection (2).

(2) For the statements pursuant to section 7 subsection (4), the Federal Network Agency shall produce a consolidated statement and publish this on its website.

#### Section 11 **Authorisation to issue ordinances**

The Federal Network Agency shall be authorised to issue ordinances in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety and the Federal Ministry of Economics and Technology to regulate the following:

1. the requirements for the marketing of quantities of electricity, especially those concerning trading place, forecasting, procurement of balancing energy, and transparency and notification obligations,
2. the determination of items that shall be deemed to be revenues or expenditures in accordance with section 3, and of the applicable interest rate,
3. the incentives for best possible marketing of the electricity and
4. following completion of the report in accordance with section 9 the transferral of the task of marketing to third parties in a transparent and non-discriminatory procedure, especially the details governing the tendering procedure and the legal relationships between third parties and the transmission system operators.

Section 12  
**Transitional provisions**

This ordinance shall not apply to quantities of electricity and tariffs paid that result from the settling of accounts in accordance with section 37 subsection (4) of the Renewable Energy Sources Act for the 2008 and 2009 calendar years.

Section 13  
**Entry into force**

(1) Sections 3, 4, 6 subsection (1) numbers 1 and 3, subsection (2) and sections 7 to 13 shall enter into force on the day following promulgation.

(2) All other parts of this ordinance enter into force on 1 January 2010.

Berlin, 17 July 2009

The Federal Chancellor  
Dr Angela Merkel

The Federal Minister for the Environment, Nature Conservation and Nuclear Safety  
Sigmar Gabriel