
Energy and infrastructure: A review of Q1 2019 news

5.6.2019

The first quarter of 2019 saw some interesting developments within the energy and infrastructure sectors. In this news article, we take you through the key changes to keep you up to date.

Adjustments to the framework for the new biogas subsidy scheme

On 8 February 2019, the parties to the Energy Agreement agreed on the framework for implementing the 2018 Energy Agreement's changes to the current biogas subsidy scheme. As a result of the agreed framework, some biogas companies with biogas plants under construction stood to be adversely affected due to the cut-off date for, inter alia, having obtained environmental approvals.

To accommodate some of the concerns raised by players in the biogas sector, the signatory parties to the Energy Agreement decided on 4 April 2019 to make certain adjustments to the 8 February 2019 agreed framework for the phase-out of the current subsidy scheme. The deadline for obtaining the required environmental approvals has now been pushed back to 1 July 2019. However, it is still a requirement that irreversible investments have been made on 8 February 2019 the latest.

In addition, biogas upgrade plants having a grid connection agreement in place on 1 April 2019 for connection no later than 1 January 2020 will be eligible for an exemption to remain covered by the current subsidy scheme even if they are not connected to the grid on 1 January 2020. This exemption applies if the delay in connecting the plant is due to events that the owner of the plant could not reasonably influence or foresee.

The adjustments have been set out in a memorandum published by the Danish Energy Agency on 5 April 2019, superseding the Agency's memorandum of 8 February 2019. In order to finance the inclusion of the additional biogas plants that now stand to be covered by the current subsidy scheme, the annual pool of nominally DKK 240 million available under the new subsidy scheme will be reduced.

Investments in critical infrastructure

On 4 April 2019, the Finance Committee under the Danish Parliament passed a resolution imposing an obligation on the Government to work towards securing majority ownership of Danish critical infrastructure by either the Danish State or a consumer-owned co-operative society. The resolution was promoted by parties outside the Government constituting a majority in the Parliament.

Exactly what constitutes "critical infrastructure" is not defined in the resolution.

The resolution from the Finance Committee comes at a time when the Danish Government is working to establish a legal framework for foreign investment screenings in Denmark. The framework has not gone out in consultation yet, but according to statements by the Minister of Justice to the Foreign Affairs Committee, the following points are expected to be included:

Contact

Anders Stubbe Arndal
Managing Partner

Phone +45 38 77 43 05
Mobile +45 20 44 21 92
ASA@kromannreumert.com

Christian Richard Paarsgaard Ibsen
Partner

Phone +45 38 77 44 26
Mobile +45 61 55 21 86
cpi@kromannreumert.com

Maria Holst Levin
Director, Attorney

Phone +45 38 77 43 90
Mobile +45 24 86 00 01
mln@kromannreumert.com

KROMANN REUMERT

- The framework will apply to the energy sector and other critical infrastructure;
- The definition of "critical infrastructure" is likely to comprise infrastructure that essential societal functions rely upon;
- The framework will allow the Danish Government to curb investments in critical infrastructure from foreign companies with close ties to nation states; and
- The framework will allow the Danish Government to block investments that are incompatible with public order or security.

New 800-megawatt offshore wind farm named Thor

On 28 February 2019, the Danish Ministry for Energy, Utilities and Climate revealed the location of a new 800-MW offshore wind farm in the Danish part of the North Sea. The wind farm will be named "Thor" after its location 20 km off the coast of the west coast city Thorsminde.

Thor is the first of three planned 800-MW offshore wind farms agreed on by the signatory parties to the 2018 Energy Agreement.

Calls for tenders on Thor are expected to go out in 2019 with a planned grid connection between 2024-2027. With a capacity of 800 MW, Thor will be the largest offshore wind farm in Denmark and among the biggest in Europe. As opposed to previous tendered offshore wind farms in Denmark, the onshore export cabling will not be a task for the TSO, Energinet, but will also be the responsibility of the winner of the tender for the Thor offshore wind farm.

The specific subsidy regime for the offshore wind farm has not yet been determined. It is the long-term ambition of the parties to the 2018 Energy Agreement to make the North Sea a place where offshore wind farms can be constructed without government subsidies.

New agreement for utilisation of surplus heat

An agreement to promote the utilisation of surplus heat was reached on 28 March 2019 by the signatory parties to the 2018 Energy Agreement, as part of implementing some of the 2018 Energy Agreement's decisions on surplus heat. The agreement aims to simplify the applicable regulations governing, and impose lower duties on, the utilisation of surplus heat.

Main points from the agreement include:

- Switching from a tax of 33 per cent of a company's revenue on the sale of surplus heat to a fixed duty of DKK 25 per GJ.
- Introducing a certification scheme for companies, under which the fixed duty will be lowered to DKK 10 per GJ for certified companies.
- Pricing regulations, the model for which is set to be determined in the autumn of 2019.

The pricing regulation model will seek to cover three main areas; i) creating an economic incentive for companies to utilise their surplus heat, ii) ensuring consumers obtaining the cheapest possible heat, and iii) prevention of generation of "false" surplus heat.

Adoption of EU electricity market design rules

On 26 March 2019, the European Parliament adopted the four remaining pieces of legislation of the Clean Energy for All Europeans package as part of updating the energy policy framework of the European Union. It signifies an important step

KROMANN REUMERT

towards building an energy union.

The approved legislation consists of:

1. The new Electricity Regulation;
2. The new Electricity Directive;
3. The new Risk Preparedness Regulation; and
4. A new regulation on the Agency for the Cooperation of Energy Regulators (ACER).

A main objective of the new rules is to increase cross-border flow of electricity between member states. The aim is for at least 70% of trade capacity to cross borders freely, thereby making it easier to trade in renewable energy. In addition, ACER has received more tasks and more powers in order to improve the regulation of the EU electricity market.

The next step is for the Council of Ministers of the European Union to approve the new legislation. Once approved, the legislation will be published in the Official Journal of the Union and will, so the expectation goes, enter into force on 1 January 2020, after which the new rules will have to be transposed into Danish law.

Eniig and Verdo strengthen their core business in a dual transaction

Kromann Reumert has assisted the Eniig Group in a dual transaction with Verdo, whereby Eniig divested its heat supply business to Verdo and at the same time acquired Verdo's electricity supply business in Randers, Hobro, and Hillerød.

The transaction will strengthen the core businesses of both companies. Upon completion of the transaction, Eniig will increase its total number of electricity supply customers by 55,000, and Verdo will increase its total number of heat supply customers by 19,000.

The transaction is contingent upon approvals by the Competition Authority, the Energy Agency, and the committee of shareholders of each company.

Kromann Reumert team: Christian Richard Ibsen, Partner, and Peter Barslev, Attorney.

Holte Fjernvarme and Norfors combine their district heating management and operations

Holte Fjernvarme A.m.b.a. and I/S Norfors have agreed on a new close cooperation for management and operation of their district heating activities. Kromann Reumert has assisted Holte Fjernvarme in the process.

With effect from 1 June 2019, the district heating management and operations of Holte Fjernvarme and Norfors will be combined. The combination is intended to strengthen the role of district heating in the future of energy supply, to contribute to the green transition, and to achieve economies of scale for the benefit of district heating consumers.

Kromann Reumert team: Anders Stubbe Arndal, Partner, Maria Holst Levin, Director, Attorney, and Rikke Holmgaard-Poulsen, Attorney.