The Renewable Energy Sources Act (EEG) and Clearingstelle EEG

Dr. iur. Martin Winkler
– Member of the Panel of Clearingstelle EEG –

October 21, 2011
Contents

1 Introduction Into EEG 2009
   - Priority Obligations
   - Feed-In Tariffs
   - Equalisation Scheme

2 Clearingstelle EEG
   - Background
   - Procedures (ADR options) of Clearingstelle EEG
   - Further Information
Scope Of Application

- installations generating electricity from renewable energy sources and from mine gas within the territory of the Federal Republic of Germany, including its exclusive economic zone (incl. wind power plants „offshore“)
- irrespective of origin of renewable energy sources → electricity generation in Germany
The Renewable Energy Sources Act (EEG) and Clearingstelle EEG

Dr. iur. Martin Winkler – Member of the Panel of Clearingstelle EEG –

Introduction

Priority Tariffs
Equalisation

Clearingstelle EEG

Background Procedures
Further Information

Core Elements (1)

- obligation of grid operators to
  - connect RE installations to their grids with priority
  - purchase, transmit and distribute RE electricity with priority
  - pay for such electricity fixed feed-in-tariffs

- incentives for and various means of „direct selling“ of RE by plant operators (intensified by EEG 2012 → „market bonus“)

- nationwide equalisation scheme (cost-sharing arrangement) for electricity and payments (EEG with Ordinance on the Further Development of the Nationwide Equalisation Scheme)
Core Elements (2)

- basically no implementation by public administration or regulator → no „public-permission-for-payment-procedure“
- plant operators entitled by the law (legal obligation)
- disputes settled by civil courts (Landgericht, Oberlandesgericht, Bundesgerichtshof) or Clearingstelle EEG
- exceptions (i.a.):
  - implementation of sustainability criteria for energetic use of biomass (Directive 2009/28/EC) by Federal Office for Agriculture and Food (BLE)
  - registration of new PV-installations (Federal Network Agency, BNetzA)
  - special equalisation scheme for electricity-intensive enterprises and rail operators (Federal Office of Economics and Export Control, BAFA)
Priority Obligations

- security of investment by obligation of access to the grid with priority
- NB(1): *no access with priority*, if necessary to optimise, boost or expand the grid system *and* if this is economically unreasonable
- NB(2): *no feeding-in, not transmission* but exceptional right of grid system operators to take technical control over installations connected to their grid system, in case of grid overload (*„feed-in management“*)
Feed-In Tariffs

- security of investment by guaranteed minimum feed-in tariffs
- tariffs vary in relation to energy source, technology or local surrounding and year of commissioning („degression“)
- for tariffs and sample degression rates pursuant to EEG as of August 11, 2010 in english see http://www.erneuerbare-energien.de/inhalt/42033/42934/
- NB: further amendments for PV meanwhile; new provisions with EEG 2012 from January 1, 2012
- tariffs paid for 20 years plus year of commissioning (as remaining)
Equalisation Scheme (1)
Equalisation Scheme (2)

- equalisation grid operator → TSO
- equalisation TSO → TSO
- RE electricity sold by TSOs at EEX
- equalisation of spread between EEX proceeds and payments to grid operators by equal shares of utilities
- utilities pass on their share to consumer
  - 2011: 3.53 ct/kWh
  - 2012: 3.592 ct/kWh
- limitation of cost-sharing to 0.05 ct/kWh for electricity-intensive enterprises and rail operators
Reasons for Clearingstelle EEG

- need of RE actors for
  - quick, competent, neutral and unbiased clarification of the EEG
  - ADR options and bypassing of court action
- aim: security of investment, legal certainty
- means: „The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may establish a clearing house to settle any disputes and issues of application arising under this Act.“
  (sec 57 EEG 2009, EEG 2012 likewise)
- kick-off in Oct. 2007
- fully funded by BMU until end of 2012
The Renewable Energy Sources Act (EEG) and Clearingstelle EEG

Dr. iur. Martin Winkler – Member of the Panel of Clearingstelle EEG –

Introduction
Priority Tariffs Equalisation

Clearingstelle EEG

Background Procedures Further Information

Staff

- 5 legal experts as „members of the panel“ of Clearingstelle EEG (including Chair)
- 1 technical engineer as „technical coordinator“
- 1 legal expert as „legal coordinator“
- 1 engineer as „scientific assistant“
- 6 office employees, 1 IT support
Procedures of Clearingstelle EEG

- options for individual dispute settlement
  - Conciliation Action (Einigungsverfahren)
  - Vote Action (Votumsverfahren)

- options for general clarification of the law
  - Recommendation Action (Empfehlungsverfahren)
  - Indication Action (Hinweisverfahren)
Conciliation Action (Einigungsverfahren)

- 1+ Member mediates between parties
- fully confidential
- proceedings subject to the disposition of the parties
- quick settlement
- ended by agreement between parties
- typical questions solved: metering arrangements; grid connection
Vote Action (Votumsverfahren)

- 3 Members (+2 assessing members from lobby associations, if the case is of fundamental relevance)
- assessment of matters of fact and legal situation
- findings published anonymised on homepage of Clearingstelle EEG
- example: Is plant operator entitled to receive higher fee for BIPV (sec. 33 EEG 2009) or just minimum fee for free-range PV (sec. 32 EEG 2009)?
Recommendation Action (Empfehlungsverfahren)

- no parties, abstract issue of interest for most or all RE sources
- 3 Members + 2 assessing members
- all accredited associations may issue a statement
- findings published on HP
- example: Legal outlines for finding the „right“ grid connection point (sec. 5 EEG 2009).
Indication Action (Hinweisverfahren)

- no parties, abstract issue of interest for specific RE sources
- 3 Members
- selected associations are invited to issue a statement
- published on HP
- example: What means „building“ according to sec. 33 par. 3 EEG 2009?
(Non-) Binding Legal Effect

- all output of Clearingstelle EEG (Empfehlung, Hinweis, Votum) is legally non-binding
- however
  - parties of Vote Action may mutually agree on binding themselves
  - result of Conciliation Action as contract binding *ipso iure*
  - binding effect by certification of payments by a chartered or certified accountant in accordance with, *i.a.*, findings of Clearingstelle EEG (sec. 50 EEG 2012)
  - legal „upgrading“: sec. 4 par. 2 EEG 2012, sec. 37 EEG 2012
  - binding effect *ipso facto* (acceptance; impartiality; power of arguments; ...)

*The Renewable Energy Sources Act (EEG) and Clearingstelle EEG*  
Dr. iur. Martin Winkler – Member of the Panel of Clearingstelle EEG –
Statistics of Clearingstelle EEG

- total requests: 3,760 (Oct. 2007 to Oct. 2011)
- requests in progress: ca. 1,000
- shares of requests per energy source: 66% PV; 19% biomass; 3% hydro
- question raised: 30% tariffs; 14% grid connection; 10% metering; 10% plant commissioning; 10% „direct selling“ or „self consumption“
- current data base clicks: > 300,000 monthly
Additional Activities

- data base: http://www.clearingstelle-eeg.de
- conferences: http://www.clearingstelle-eeg.de/fachgespraech
- newsletter: http://www.clearingstelle-eeg.de/rundbrief

sorry, all German only...
Further Information in English

- EEG 2009 (as amended August 11, 2010):
  http://www.erneuerbare-energien.de/inhalt/42934/

- Ordinance on the Further Development of the Nationwide Equalisation Scheme:
  http://www.erneuerbare-energien.de/inhalt/45112/43720

- Renewable energy sources in figures - national and international development:
  http://www.erneuerbare-energien.de/inhalt/5996/42456

- Development of renewable energy sources in Germany in 2010 - Graphics and tables:
  http://www.erneuerbare-energien.de/inhalt/39831/42456

- National Biomass Action Plan for Germany:
  http://www.erneuerbare-energien.de/inhalt/44591/42722/

- Legal sources on RE:  http://www.res-legal.eu/
Thank You For Your Attention! –
Questions Welcome!

Dr. iur. Martin Winkler
– Mitglied der Clearingstelle EEG –
Charlottenstraße 65
10117 Berlin
Tel. 030 2061416–0
Fax 030 2061416–79
post[...]clearingstelle-eeg.de

http://www.clearingstelle-eeg.de