



# CoRDIS' activity

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# Admissibility and authority

In its first year of existence, five cases were referred to CoRDIS, only three of them resulting in decisions, the other two ending in withdrawal of one of the parties. The three decisions taken in 2007 were important in that they helped clarify CoRDIS' regulatory authority, the notion of access to electricity or gas networks, as well as the conditions of admissibility for requests.

These decisions concerned a dispute relating to access to the electricity distribution grid (CRE, CoRDIS, 28 June 2007, Ventura), a dispute relating to access to the gas distribution network (CRE, CoRDIS, 26 September 2007, Poweo) and a dispute relating to the DSO-supplier contract.

## I. Admissibility

In its Ventura decision, CoRDIS highlighted a constructive approach on the conditions of admissibility for requests. CoRDIS explained that the existence of a dispute was the basic condition for admissibility of submitted requests. The dispute involved a producer, Ventura, and a DSO, SICAP (Pithiviers regional agricultural cooperative). The latter refused to satisfy Ventura's requests to connect its wind electricity generation facilities.

CoRDIS defined the notion of formalised dispute, considering that it was not on the grounds that Ventura had accepted two technical and financial proposals for connection to the EDF public distribution grid that it waived all contractual relations with SICAP and hence there could not be a dispute between the two companies.

## II. Authority

Article 38 of the Law of 10 February 2000 provides that CoRDIS has the authority to settle the technical and financial aspects of disputes between users and system operators when they involve access to or use of the network.

It follows that two cumulative criteria must therefore be met for CoRDIS to have the authority to settle a dispute:

- a structural criterion relating to the capacity of the parties: the dispute must involve system operators and network users;
- a material criterion relating to the object of the dispute: it must involve access to or use of the network.

CoRDIS' decisions, like those taken by CRE before it was set up, have clarified the committee's authority.

### 1. Limit of authority

In accordance with CRE's previous "case law", the Ventura decision was an opportunity for CoRDIS to recall that it is not competent to handle requests for penalties relating to both reparation of damages suffered and payment by a DSO of additional costs and losses incurred by a producer due to connection restrictions (CRE, CoRDIS, 28 June 2007, Ventura).

### 2. The structural criterion of authority

The Poweo decision was an opportunity for CoRDIS to clarify that it is competent to rule on a dispute involving suppliers and DSOs. In this decision it considered that "as a supplier, Poweo enjoys a right of access to the natural gas distribution network it operates to supply its final customers, by virtue of Article 2 of the Law of 3 January 2003, relating to gas and electricity markets and to the public energy service. In this regard, it is a network user [...]". The opportunity it might seek to develop its customer base by means of addresses and numbers of metering and estimation points does not take away from this dispute the fact that it involves network access in the meaning of the aforementioned Article 38" (CRE, CoRDIS, 26 September 2007, Poweo).

### 3. The material criterion of competence: access to and use of the network

CoRDIS clarified the obligations that electricity DSOs must fulfill when connection requests are referred to them. It also specified the scope of the notion of information needed for effective access to the gas network and gave its opinion on the normative value of working groups. Lastly, CoRDIS clarified the contractual relationships between suppliers and system operators within the framework of opening the market to competition.

#### 3. 1. DSO obligations in investigating connection requests (electricity)

In its decision of 28 June 2007, CoRDIS recalled that DSOs are obliged to offer a connection solution to any producer that requests it, whether or not the latter is situated outside its service area, in accordance with the stipulations of Article 8-3 of the specifications of the concession to EDF of the electricity grid.

CoRDIS also explained that a DSO could only refuse connection of generation facilities under the conditions provided for in the provisions of Article 23 of the Law of 10 February 2000 relating to modernisation and development of the public electricity service.

Under this article "Any refusal to conclude a contract for access to a public grid shall be justified and communicated to the applicant and to CRE. Refusal criteria are objective, non-discriminatory and published and may only be based on requirements relating to the proper accomplishment of public service missions and on technical grounds relating to the security and safety of grids, and quality of their operation".

#### 3. 2. Clarification of the notion of information required for effective access to the gas network

On 26 September 2007, CoRDIS ordered Gaz de France Réseau Distribution to provide Poweo with a complete list of the metering and estimation points in its distribution network.

The dispute referred to CoRDIS involved

Poweo, a new entrant to the gas market, and Gaz de France, a DSO. The latter refused to communicate the numbers and addresses of all the metering and estimation points in its distribution network, claiming that this was commercially sensitive information.

It based its argument on the provisions of the Decree of 18 February 2004, under the terms of which "information liable to breach the rules of fair competition, the confidentiality of which must be protected by the gas operators mentioned in Article 9 of Law of 3 January 2003, is information exchanged for the preparation and application [of] contracts and protocols, relating to the identity of the parties [...]."

CoRDIS recalled that access to networks is necessary for suppliers to carry out their business. In application of Article 13 of the Law of 9 August 2004 relating to public electricity and gas service and electric and gas companies, it is up to the gas system operator to make available to all suppliers all the information required for effective access to the network.

CoRDIS considered that the requested list constituted such information, as the entire territory is not served by natural gas, not all potential customers are physically connected to a distribution network and this list gives information on the sites, buildings or parts thereof, that are physically connected to it.

Consequently, to enable suppliers to access the network and carry out their business, system operators must provide them with the addresses and numbers of all metering and estimation points in the distribution networks. CoRDIS considered that this list was devoid of personal information and therefore could not constitute commercially sensitive information that must be protected.

Gaz de France sent the information concerning all the metering and estimation points in its distribution network to Poweo.

#### 3. 3. The Poweo decision: clarification of the normative value of GTGs (Gas working groups)

In order to prepare, develop and enable the smooth operation of energy markets, CRE

set up working groups – GTC (consumers), GTE (electricity) and GTG (gas) – which bring together consumers, installers, suppliers, system operators and public authorities. These working groups are responsible for drafting the practical operating terms for markets. These rules are subject to validation twice a year by a communication from CRE.

These procedures could be compared with trade practices, i.e. "constant, well-known and generally accepted professional behaviour", which help supplement and clarify regulations. Drawing their authority from consensus or arbitration between professionals, these procedures are similar to widespread practices in the energy sector.

In commercial law, the existence of trade practices with legal value is attested by the issuance, by chambers of commerce or professional associations, of a *parère* (written statement confirming the presence of a trade practice).

A given practice could be taken into account by the judge within the framework of legal proceedings, on condition that the applicant is able to establish that it actually exists. Communications by CRE referring to procedures defined by working groups are not far different from issuing *parères* in the energy sector.

Operators include these rules in their general sales conditions. These procedures have also been applied through contracts between system operators and suppliers, which themselves deal with relations between system operators and customers.

In its decision of 26 September 2007 (Poweo vs. Gaz de France Réseau de Distribution), CoRDIS explicitly recalled that "the procedure drafted by GTG 2007 [...] constituted a practice commonly accepted by the profession which was not therefore devoid, in this regard, of normative value". Later, CoRDIS and the courts would be able to legally base their decisions on these practices.

### 3. 4. Clarification on the DSO-supplier contract

CoRDIS recently dealt with a case that lasted several months, involving alternative suppliers and ERDF, a DSO. In its decision of 7 April 2008 (Direct Énergie, Gaz de France, Electrabel France and Poweo vs. Électricité Réseau Distribution France), CoRDIS ordered ERDF to amend its DSO-supplier draft contract.

Since 1 July 2007, all consumers have the right to choose their electricity or natural gas supplier.

To facilitate opening the market to competition, legislators wanted to simplify the process required for consumers to enter into a contract with an energy supplier.

Thus, the “single contract” was established, so that consumers wishing to enter into a market-based contract for network access do not have to negotiate directly with an energy supplier at the same time. This allows them to conclude just one contract covering both supply and distribution of electricity or natural gas.

In order to be able to offer this single contract, suppliers had to enter into a contract with the DSO so that energy trans-

portation could actually take place. For electricity, this contract has come to be known as the “DSO-supplier contract”.

Initial studies of the DSO-supplier contract began in 2003 as part of the consultation procedures set up by CRE, in particular by the Electricity working group (GTE). The first DSO-supplier contracts were signed in the second half of 2004.

In view of the market opening up to household consumers on 1 July 2007, suppliers approached ERDF seeking to amend this contract.

Since they were unable to reach an agreement with ERDF, four suppliers, Direct Énergie, Gaz de France, Electrabel France and Poweo, asked CoRDIS to settle their dispute in February 2008.

The suppliers wanted many aspects of the DSO-supplier contract to be amended, but their main request focused on the sharing of responsibilities between the suppliers and the DSO within the framework of the single contract. Resolving this issue involved analysing whether or not a contractual relationship existed between the DSO and the consumer.

Suppliers criticised ERDF for trying to use the DSO-supplier contract to free itself of its obligations as system operator by excluding any contractual liability on its part towards final customers who had signed a single contract.

CoRDIS recalled that ERDF could not use the DSO-supplier contract to transfer to a third party or a contracting party all or part of its obligations as a DSO.

It then emphasised that neither the purpose nor the effect of the single contract was to modify the contractual liabilities of the system operator, supplier or final customer, the latter having the same rights and obligations as if he or she had concluded a network access contract or had kept a regulated tariff contract.

CoRDIS deduced from this that the DSO-supplier contract, forming an integral part of the single contract, necessarily creates a contractual relationship between the DSO and the final customer, enabling the latter to directly call on the DSO's contractual liability.

Observing that certain clauses in the DSO-supplier contract were contrary to these principles, CoRDIS asked ERDF to propose a new contract.

