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DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market

B.1 - Internal Market I: Networks & Regional Initiatives

Mrs. Catharina SIKOW-MAGNY - Head of Unit

In CC to: Mr. Olgerts VIKSNE, Mr. Adam Romanowski, Mrs. Martina Doppelhammer, Mr. Georges Kremlis;

Vienna, 30th March 2015

Public Consultation on the list of proposed Projects of Common Interest 2015: Statement on candidate project Nr. 222 Extension of the hydro-pumped storage power plant Kaunertal.

Dear Mrs. Sikow-Magny,

We thank the Commission for the opportunity to comment on the PCI candidate list[1] and to participate in the whole PCI designation process. Sound decisions can only be taken by conducting comprehensive dialogue and taking substantive arguments for and against a decision into due account. In this respect in the past year recommendations for a more inclusive and transparent PCI designation process were already brought forward to the Commission by several civil society initiatives.[2]

However, the present consultation on PCI candidates has a very limited scope as it addresses only the compliance with the energy economic criteria of PCI candidates as set out in the TEN-E Regulation. The question raised is: *"In your opinion, is a proposed project significantly contributing to market integration/sustainability/security of supply/competition and therefore needed from an EU energy policy perspective?"* The TEN-E Regulation[3] provides for several more reasons, why a project must or must not be designated as PCI and thus also the consultation should have allowed giving a statement on more than just the PCI selection criteria as provided for by Art 4 TEN-E Regulation.

Generally we support the idea of modernising and expanding Europe's energy infrastructure and to interconnect networks across borders with the aim to enforce energy security, make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and to develop renewable energy sources in competition with traditional sources – This all in order to help to achieve Europe's energy and climate objectives. Consequently we recognise the need for energy infrastructure development throughout Europe[4] – particularly for renewable electricity transmission – and we basically support the PCI approach. On the other hand, given the big dimension of infrastructure projects which are considered as PCI and the respective benefits for the project promoters a thorough assessment of candidate projects shall be guaranteed.

[1] See: https://ec.europa.eu/eusurvey/runner/a260e50b-4b70-2ff6-f8eb-dff8771fae06

[2] J&E/BWN PCI Process Recommendations 2014: http://www.justiceandenvironment.org/_files/file/2014/JaE_Bankwatch_PCI%20Process%20Recommendations%202014.pdf and Joint EEB/RSPB Briefing – Connecting Energy, Protecting Nature: http://www.birdlife.org/sites/default/files/attachments/20141007_EnergyInfrastructure_report.pdf

[3] REGULATION (EU) No 347/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009

[4] See purpose and goals of the TEN-E Regulation.

Several PCI candidates may have considerable negative impacts on the environment and it should be guaranteed by the European Commission as a whole that potential PCIs meet European environmental objectives and standards, including on biodiversity and climate change. Apart from the achievement of the Union's Energy and Climate goals the EU is equally committed to the protection of biodiversity, and halting biodiversity loss within its territory.[5] Therefore it is not only upon the Member States to strive towards the achievement of the aforementioned goals but also upon the EU and its institutions and related bodies to respect these goals and act in accordance with them when taking decisions. To this end the ENTSO-E takes environmental costs of electricity projects (transmission and storage) into account when elaborating EU wide Ten Year Network Development Plans (TYNDP). In our view strategic planning and parallel environmental assessments carried out in a transparent and inclusive process are basic requirements for the timely and proper achievement of both the EU's energy and environmental goals.[6] The PCI designation process under the TEN-E Regulation is based on the TYNDP process. Naturally the former should have equally regard on environmental aspects of candidate projects when assessing their eligibility and qualification. Even if this is not explicitly stated by the TEN-E Regulation itself, it is a logical consequence deriving from the TYNDP process and the fact that the System wide Cost-Benefit-Analysis (CBA) is elaborated beneath others to enable assessments of PCIs in the TYNDP preparation (cp. Art 11 TEN-E Regulation).

Already in the run of the last PCI designation process we raised our concerns as regards the legality of the Kaunertal extension project (see also BirdLife/EEB/WWF Position and Letter to European Commission).[7] Our reservations against this project are still valid. And as the current public consultation on the candidate list of Projects of Common Interest[8] does not allow for a comprehensive commenting on the candidate projects, **J&E, EEB, ÖKOBÜRO, WWF, Greenpeace CEE and Friends of the Earth Austria (GLOBAL 2000)** herewith submit a supplementary statement on the Project: Extension of the pumped storage power plant Kaunertal, PCI Candidate Project Code: 222, Corridor: NSI West[9] (in the following: Kaunertal Extension Project). In our view this project in its current form cannot be awarded PCI status due to the following reasons:

Summary[10]

1. Missing PCI eligibility

Separable parts of the project are electricity production and capacity increase of the existing hydro storage power plant, which are not needed for to pump storage construction and operation: This is not in compliance with the eligibility criteria in Art 2 in conjunction with Annex II TEN-E Regulation.

The Kaunertal extension project will not only transform the existing hydro storage power plant into a mixed hydro storage and pumped storage power plant but will also increase the electricity generation from renewable energies through a doubling of natural inflows from water intakes. However, from an electricity system point of view the new pumped storage power plant Versetz, the additional water intakes into the existing reservoir Gepatsch and the new hydro storage power plant Prutz 2 can be considered as individual elements with different system functionalities (i.e. electricity storage, generation of electricity from renewables and dispatch optimization). Consequently, the implementation of the pumped storage power plant Versetz does not necessarily require any additional water intakes or increased hydro storage capacities at the power station Prutz.

The extension project Kaunertal is the only pumped storage PCI project, where not only the storage functionality but also additional water intakes and hydro storage generation capacity w/o

[5] EU biodiversity strategy to 2020 /COM/2011/0244 final.
[6] J&E/BWN PCI Process Recommendations 2014: http://www.justiceandenvironment.org/_files/file/2014/JaE_Bankwatch_PCI%20Process%20Recommendations%202014.pdf and Joint EEB/RSPB Briefing – Connecting Energy, Protecting Nature: http://www.birdlife.org/sites/default/files/attachments/20141007_EnergyInfrastructure_report.pdf
[7] See letter to Commissioner Oettinger in 2013: http://www.eeb.org/EEB/?LinkServID=3AE45BAE-5056-B741-DBF188A00C893230&showMeta=0
[8] https://ec.europa.eu/eusurvey/runner/a260e50b-4b70-2ff6-f8eb-dff8771fae06
[9] https://ec.europa.eu/energy/sites/ener/files/documents/pci_candidates_for_electricity.pdf
[10] See the comprehensive statement in the Annex to this letter.

pumping option are part of the project. Thus, the Kaunertal extension project as a whole does not fully comply with the criteria for electricity infrastructure priorities as defined in Annex II of the TEN-E Regulation. Neither the additional electricity generation from renewable energies through new water intakes nor the increased hydro storage capacity at the new station Prutz 2 can be considered as electricity storage facilities, which would be an obligatory prerequisite to obtain a PCI status.

These projects or separable elements of the Kaunertal extension project have to considered as inadmissible by the regional groups and the decision making body.

It might even be justified to remove the whole Kaunertal Extension project from the current PCI Union list based on Art 5/8 TEN-E Regulation.[11] The project promoter TIWAG describes the Kaunertal Extension project as homogenous - the "extension of the pump storage". The corresponding information in the project implementation plan[12] and the project fiche[13] which are published on the EC transparency portal leads to the impression that the water intakes (1) and the new power station Prutz 2 (2) are integral parts of, and needed for the operation of the pump storage system. The same impression is created in the National Water Management Framework Plan where the project is outlined as well. And as we presume that the homogeneity of the project described by the project promoter was also a determining factor for admitting project (part) 2 and 3 to the last and current PCI designation process (in any other case inadmissibility would have been declared already in 2012/13 by the regional groups and the decision making body) even a removal from the current PCI Union list may be required.

2. Kaunertal Extension project is not admissible on national level

In its judgement from the 18th December 2014 the Austrian Highest Administrative Court[14] decided that development consent for the Kaunertal Extension Project (PCI Nr. 2.18[15]) must not be granted:

> *"the currently suspended permitting procedure must not be continued to the extent as it impeded the realization of the prioritized project "hydropower plant Gurgler Ache". The application (of TIWAG) is to be dismissed."* (see recital 9.3 of the judgement)

The water rights for parts of Kaunertal extension project were awarded to a competitor - the municipality of Sölden. Based on this judgment the EIA authority will have to deny the construction and operation permit for the Kaunertal Extension Project and reject the corresponding application in the months to come.

3. The project causes significant negative impacts on the environment

Electricity storage projects have not been evaluated on environmental costs so far. All the other linear energy infrastructure projects, which were included in the Ten Year Network Development Plan (TYNDP), on the other hand have indeed been assessed on their environmental and social costs. As the data provided in the TYNDP is the main information basis for the PCI designation process the data on electricity storage projects is deficient. A case by case analysis of environmental and social aspects in the run of the PCI designation process seems more than justified in order to generate and depart from a complete data basis.

Kaunertal Extension project goes along with quite significant impacts on the water status of Tyrolean rivers and it's construction and operation negatively affects a Austrian Natura 2000 site. In its

[11] Art 5/8 TEN-E Regulation *"A project of common interest may be removed from the Union list according to the procedure set out in Article 3(4) if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion, or the project does not comply with Union law."*
[12] See: https://ec.europa.eu/energy/sites/ener/files/documents/pci_annex_2_18_en.pdf
[13] See: https://ec.europa.eu/energy/sites/ener/files/documents/pci_2_18_en.pdf
[14] VwGH, 18.12.2014, 2014/07/0033-6.
[15] Delegated Regulation 1391/2013 (PCI Unionlist 2013): http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1391&from=EN

current form the project contravenes the aims of Water Framework Directive (WFD16) and the Fauna-Flora Habitats Directive (FFH-Directive17). In the run of the Austrian EIA procedure even the concerned independent experts doubted the project's permissibility due to its negative impacts on the environment.

Thus we call upon the European Commission and the respective Regional Group to have a thorough assessment of the environmental impacts (or costs) of the project. Consultation of independent experts is advisable.

4. PCI status for all project parts possibly leads to infringement of electricity market and competition rules

A possible PCI designation of the independent and divisible electricity production part of Kaunertal Extension project is not in compliance with the procedural principles of the Electricity Market Directive.

Obviously there is no objective justification for having electricity production facilities treated as PCI. These kinds of projects are simply not eligible for PCI designation. In any case, the integration of selected electricity generation projects into the PCI regime – and application of the TEN-E Regulation to these projects - would contravene the criteria for an authorization procedure as prescribed by the Electricity Market Directive – objectiveness, transparency and non-discrimination. This results in a considerable competitive disadvantage of all other electricity generation projects, which are treated differently.

Further better conditions in authorization procedures in comparison to other electricity generation projects, as regards EU financial assistance and triggered by different state aid rules for RES production projects and energy infrastructure projects18 might even lead to the infringement of general EU competition rules.

We would like to ask the European Commission to assess and consider our arguments in the ongoing designation process and take them into due account. Further we would like to ask you for the opportunity to have the raised arguments assessed and discussed in a personal meeting with you.

Best regards,

Thomas ALGE

Director ÖKOBÜRO

On behalf of the supporting Organizations

[16] DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2000 establishing a framework for Community action in the field of water policy.

[17] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

[18] Guidelines on State aid for environmental protection and energy 2014-2020, 2014/C 200/01, Chapter 3.3.1 and 3.8.3.

Annex I

Public Consultation on the list of proposed Projects of Common Interest 2015

Statement on candidate project Nr. 222 Extension of the pump storage power plant Kaunertal

Ad 1) Missing PCI Eligibility

Separable parts of the project are electricity production and not needed for to pump storage construction and operation: This is not in compliance with the eligibility criteria in Art 2 in conjunction with Annex II TEN-E Regulation

The TEN-E regulation aims at modernising and expanding the European energy infrastructure and to connect networks across borders in order to achieve the key objectives of its energy policy.[19] Therefore it defines 12 strategic energy infrastructure priority corridors and areas. In order to realize the infrastructure corridors projects of common interests are to be identified and determined. Consequently a PCI shall be needed for the realization of one of the EU infrastructure priority corridors and the achievement of the EU energy policy goals (cp. recital 4 TEN-E Regulation). So only an **infrastructure project** (Art 2 in conjunction with Annex II TEN-E Regulation) can be assessed by applying the respective criteria (see Art 4) and in the following designated as project of European public interest. Exclusively projects which fall under one of the infrastructure categories set out in Annex II are eligible for PCI designation. Electricity storage projects fall under the infrastructure categories of the TEN-E Regulation:

> *"Annex II (…)*
>
> *(c) electricity storage facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;*
>
> *(…)*
>
> *(e) any equipment or installation, both at transmission and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;"*

The Austrian public enterprise and Tyrolean Energy Provider Tiroler Wasserkraft AG (TIWAG) is Tyrol's main hydropower supplier. It operates nine large (above 10 MW) and approximately 40 small hydropower plants. The extension of the "hydro power plant Kaunertal" is only one project in the range of the company's comprehensive hydropower extension plans in the Tyrolean region for the upcoming decade.[20] However the extension of the existing Kaunertal hydro power plant does not only contain the construction of a pump-storage. This is described in the following from a technical perspective:

[19] See TEN-E Regulation, Recital 1ff.
[20] See TIWAG Water Management Framework Plan: https://www.tirol.gv.at/fileadmin/themen/umwelt/wasser/wasserkraft/WWRP%20Tiroler%20Oberland.pdf

Kaunertal extension project consists of three separable projects

The hydro storage power plant Kaunertal was built in the early 1960's and has been operating on the basis of long-term contracts jointly with the German utilities RWE AG and E.ON AG, hence the power plant has been serving mainly the German market. Figure 1 shows the principle system configuration of the existing hydro storage power plant Kaunertal.

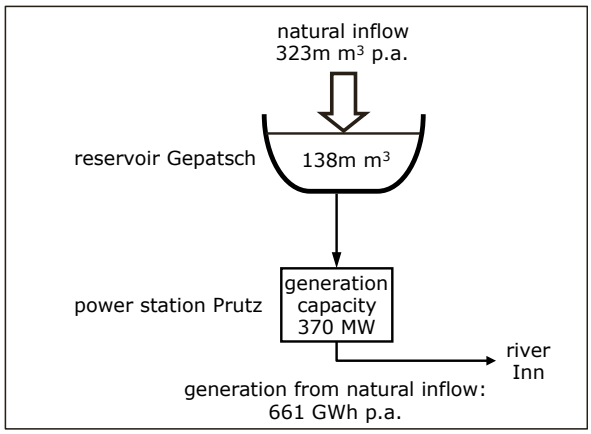

Figure 1: System configuration of existing hydro storage power plant Kaunertal[21]

The hydro storage power plant consists of the reservoir Gepatsch with a volume of 138 million cubic meters (m^3) and the power station Prutz with an average nominal electric capacity of 370 MW. The natural inflows are on average 323 million m^3 p.a., i.e. the reservoir Gepatsch can be filled about 2.3 times per year. The inflows are equivalent to an average annual electricity output of the Prutz power station of 661 GWh. Accordingly, the hydro storage power plant Kaunertal can be operated for about 1,800 full load hours annually. However, about half of the electricity has to be generated in a relatively short period during the summer months since almost 70% of the natural inflows happen in June, July and August.

While the existing Kaunertal hydro storage power plant has no pumped storage option the extension project will transform the mere hydro storage power plant into a mixed hydro storage and pumped storage power plant. However, the extension project is not only focused on an additional pumping functionality but pursues a threefold approach (cf. figure 2):

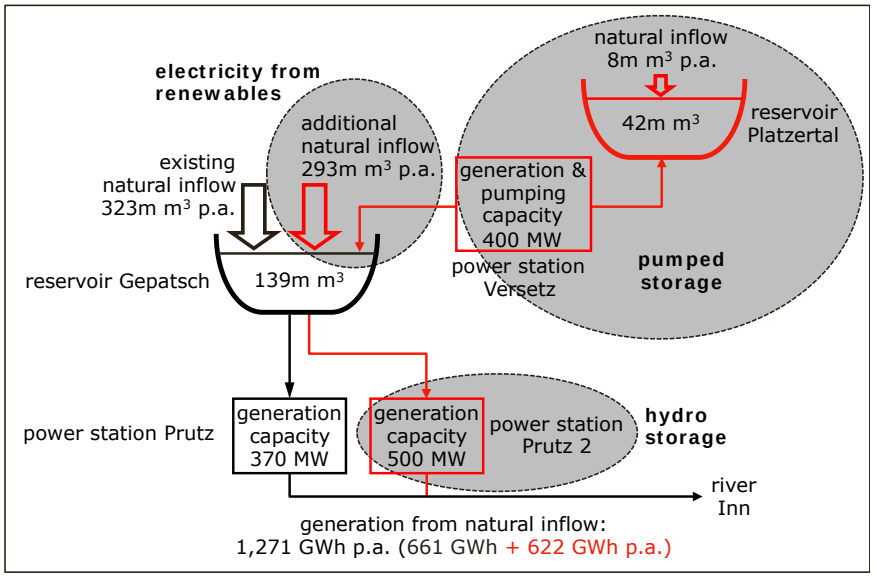

Figure 2: System configuration of existing and extension project hydro power plant Kaunertal[21]

[21] data: Tiroler Wasserkraftwerke AG

- First, an additional reservoir with about 42 million m^3 of storage volume will be built. The new reservoir Platzertal will be situated with an altitude difference of some 650 m above the existing reservoir Gepatsch. The new **pumped storage** power plant Versetz with a rated pumping and generation capacity of 400 MW will connect the two reservoirs. Since the natural inflows of the new reservoir Platzertal will be very small (8 million m^3 p.a. or 30 equivalent full load hours p.a.), the reservoir Platzertal can only be filled with pumped water from the existing reservoir Gepatsch (i.e. the power station Versetz can be considered as a "pure" pumped storage power plant). However, only 12% of the already existing annual natural inflows of the reservoir Gepatsch are required to completely fill the reservoir Platzertal.
- Second, additional water intakes of 293 million m^3 p.a. will almost double the annual output of **electricity from renewables** to a total of 1,271 GWh.[22] The additional natural inflows will be discharged to the existing reservoir Gepatsch, i.e. the reservoir (139 million m^3) will be filled 4.4 times if the already existing water intakes are taken into account. However, the additional natural inflows are also concentrated in June, July and August, i.e. only short storage periods for most of the additional water intakes are possible. Figure 3 shows the natural inflows into the reservoir Gepatsch for the existing hydro power plant and the extension project.

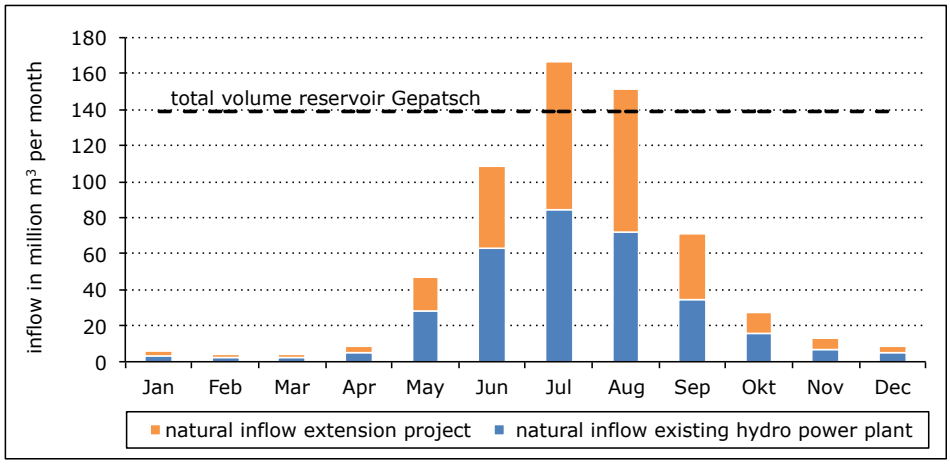

Figure 3: Monthly natural inflows to reservoir Gepatsch for existing hydro storage power plant and extension project[23]

- Third, another 500 MW of generation capacity of the power station Prutz 2 will increase the dispatch flexibility of the overall **hydro storage** power plant. While full load hours of the existing power plant Prutz are about 1,800 h p.a. the hydro storage power stations Prutz and Prutz 2 will have some 1.460 full load hours p.a. together, if the additional water intakes are taken into account. Just as for the existing power station Prutz the "combined" power stations Prutz and Prutz 2 would have to discharge about 50% of the natural inflows in a relatively short period during the summer months, since only minor seasonal storage is possible for the additional water intakes.

Generally, the pumped storage power plant Versetz, the additional water intakes into the reservoir Gepatsch and the hydro storage power plant Prutz 2 can be considered as individual elements with different power system functionalities (i.e. electricity storage, generation of electricity from renewables and dispatch optimization). Hence, they can in principle be implemented independently from each other. The pumped storage power plant Versetz does not necessarily require any additional water intakes into the reservoir Gepatsch since the volume of the new reservoir Platzertal is very small (12%) compared to the already existing natural inflows. Consequently, no additional water intakes would be required for an efficient operation of the new pumped storage power station Versetz. Additionally, the pumped storage power plant Versetz and the hydro storage power plant

[22] Natural inflows into the new reservoir Platzertal will only account for some 28 GWh p.a. (power station Versetz and power station Prutz, respectively).
[23] Own estimations based on hydrological data and information from Tiroler Wasserkraftwerke AG

Prutz can be dispatched independently from each other, i.e. no extension of the generation capacity of the power station Prutz is required for the operation (and hence construction) of the pumped storage power plant Versetz. However, this also applies vice versa, i.e. the implementation of the additional water intakes into the reservoir Gepatsch and the power station Prutz 2, respectively, do not necessarily require the construction of the pumped storage power plant Versetz.

Furthermore, the implementation of the additional water intakes into the reservoir Gepatsch and the new power station Prutz 2, respectively, are at least to some extend independent from each other. On the one hand additional water intakes could be discharged in the existing power station Prutz, although operational constraints could occur during the summer months (i.e. only simultaneous discharge of inflows w/o major storage management possible). On the other hand the construction of the power station Prutz 2 does not necessarily require additional water intakes because an increased capacity of the power station Prutz would allow electricity generation from renewables to be more focused in hours with e.g. high power prices and balancing requirements of the grid operators, respectively.

Besides the option of a separate implementation of the three individual elements of the Kaunertal extension project with different power system functionalities the three-fold approach of the Kaunertal extension project is unique compared to the other PCI pumped storage projects. Table 1 shows a list of qualified PCI pumped storage projects including an assessment of submitted system elements.

Table 1: PCI hydro pumped storage projects as published on 14 October 2013

PCI	country	pumped storage	hydro storage	electricity from renewables
Kaunertal	AT	x	x	x
Obervermuntwerk II	AT	x		
Limberg III	AT	x		
Yadenitsa	BG	x		
Muuga	EE	x		
Riedl	DE	x		
Amfilochia	GR	x		
North West Ireland	IE	x		
Glinsk	IE	x		
Kruonis	LT	x		
Mloty	PL	x		

The extension project Kaunertal is the only pumped storage PCI project, where not only the storage functionality but also additional water intakes for the generation of electricity from renewables and additional hydro storage generation capacity w/o pumping option are part of the project. Thus, the overall Kaunertal extension project is the only pumped storage PCI project that does not fully comply with the criteria for electricity infrastructure priorities as defined in Annex II of the TEN-E Regulation.[24] Only the pumped storage power plant Versetz can be considered as an

> *(c)* ***electricity storage facilities*** *used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;*

as defined in Annex II (1). In contrast, the water intakes for electricity generation from renewables as well as the hydro storage station Prutz 2 cannot be considered as electricity storage facilities,

since they are technically not able to store electricity. Additionally, only the pumped storage power plant Versetz and to some extend the hydro storage station Prutz 2 but not the water intakes are equipment or installation for the management of electricity generation as defined in Annex II (1)

> *(e) any **equipment or installation**, both at transmission and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and **management of electricity generation**, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;*

Table 2 gives a summary of the assessment of the individual elements of Kaunertal extension project according to relevant criteria for electricity infrastructure priorities as defined in Annex II of the TEN-E Regulation. Only the pumped storage power plant Versetz fully complies with the criteria.

Table 2: Assessment of individual elements of Kaunertal extension project according to relevant criteria for electricity infrastructure priorities as defined in Annex II

Annex II (1) concerning electricity	**short description**	**pumped storage Versetz**	**hydro storage Prutz 2**	**water intakes**
(c)	electricity storage facilities	yes	no	no
(e)	equipment or installation for management of electricity generation	yes	partly	no

Conclusion

As mentioned above, we already let you know of the controversy as regards the Kaunertal Extension Project in 2013. In your response to the BirdLife/EEB/WWF letter (PP/cg Ares (2013) 2723447 you indicate, that the TEN-E Regulation *"clearly define(s) (Article 2) and set(s) out criteria (Article 4) for projects of common interest"*. Further you assure that the projects included in the draft list have been assessed against, and found to meet those criteria. Considering the technical assessment above the Kaunertal Extension project does not fulfil these clearly defined eligibility criteria as set out in Article 2. Only the project part containing the construction and operation of the pump storage can be awarded PCI status. Parts 2 (additional water intakes) and 3 (Power station Prutz 2) must not be considered under the PCI designation process due to their missing eligibility – they have to considered as inadmissible.

It might even be justified to remove the whole Kaunertal Extension project from the current PCI Unionlist based on Art 5/8 TEN-E Regulation.[25] The project promoter TIWAG describes the Kaunertal Extension project as homogenous - the "extension of the pump storage". The corresponding information in the project implementation plan[26] and the project fiche[27] which are published on the EC transparency portal leads to the impression that parts 2 and 3 are integral parts of and needed for the operation of the pump storage system. The same impression is generated in the National Water Management Framework Plan where the project is outlined as well. And as we presume that the homogeneity of the project described by the project promoter was also a determining factor for admitting project (part) 2 and 3 to the last and current PCI designation process (in any other case inadmissibility would have been declared already in 2012/13 by the regional

[25] Art 5/8 TEN-E Regulation *"A project of common interest may be removed from the Union list according to the procedure set out in Article 3(4) if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion, or the project does not comply with Union law."*
[26] See: https://ec.europa.eu/energy/sites/ener/files/documents/pci_annex_2_18_en.pdf
[27] See: https://ec.europa.eu/energy/sites/ener/files/documents/pci_2_18_en.pdf

groups and the decision making body) even a removal from the current PCI Unionlist may be required.

Ad 2) Kaunertal Extension project is not admissible on national level

The Austrian Highest Administrative Court ruled that the project is inadmissible

In its judgement from the 18th December 2014 the Austrian Highest Administrative Court[28] decided that development consent for the Kaunertal Extension Project (PCI Nr. 2.18[29]) must not be granted:

> *"the currently suspended permitting procedure must not be continued to the extent as it impeded the realization of the prioritized project "hydropower plant Gurgler Ache". The application (of TIWAG) is to be dismissed."* (see recital 9.3 of the judgement)

A competing hydropower project (Hydropower plant "Gurgler Ache"/small scale/15 MWh, project promoter: municipality of Sölden) is planned at the same place where TIWAG intends to divert the waters from Venter and Gurgler Ache via a 25km long tunnel system in the frame of the Kaunertal Extension Project. The competition only refers to the electricity production part of the "Kaunertal Extension Project" and does not affect the construction of the pump storage. Since 2009 an administrative competition procedure is ongoing (in accordance with Art 17 Austrian Water Management Act). This procedure is necessary in case two project promoters are competing for the use of the same water sources.

With the abovementioned judgement issued by the Highest Administrative Court the water right is granted to the municipality of Sölden. This is legally binding and may not be reversed by any other judicial instance. Based on this judgment the EIA authority will have to deny the construction and operation permit for the Kaunertal Extension Project and reject the corresponding application in the coming months.

The before mentioned decision and its consequences might lead to the definite breakdown of the extension plans: According to media reports TIWAG director Mr. Wallnöfer himself stated that without the water from Ötztal (= from Gurgler and Venter Ache) the expansion of the Kaunertal power plant could not be realized.[30] This comment is to be seen very critical with respect to the project's current PCI status: The status is to be dedicated to energy infrastructure projects (=exclusively power lines and storage) fulfilling the respective criteria (Art 4 TEN-E Regulation). These preconditions might not be fulfilled if the whole project (pumped storage plus additional electricity production) is not economically viable without the electricity production part.

Ad 3) The project causes significant negative impacts on the environment

The Kaunertal Extension project – especially part 2 (generation of additional water intakes via diversion of two rivers) has significant negative impacts on the environment

The TEN-E Regulation as such does not explicitly provide the basis for an assessment of candidate PCIs on their potential environmental impacts. In the case of Kaunertal Extension project we would like to raise and explain the argument that an assessment of environmental aspects in the run of the PCI designation procedure is justified and needed.

The system wide Cost Benefit Analysis (CBA) is intended to allow an assessment of all Ten Year Network Development Plan (TYNDP) projects and provides an important input and main basis for the PCI selection process by the Regional Groups (cp. also Art 11 TEN-E Regulation). CBA identifies a number of indicators, beneath others an environmental and social indicator (S.1 and S.2) have been introduced to measure the respective environmental and social costs (or benefits) of a specif-

[28] VwGH, 18.12.2014, 2014/07/0033-6.
[29] Delegated Regulation 1391/2013 (PCI Unionlist 2013): http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1391&from=EN
[30] Cp. ORF News, 11.01.2014: http://tirol.orf.at/news/stories/2624801/

ic project. The TYNDP 2014 contains the Kauenrtal Extension project (under the third party projects). The environmental and social indicators have been elaborated for linear infrastructure projects. Thus they cannot be transferred one to one to electricity storage projects which have a completely different character and awaited impacts. Consequently the TYNDP 2014 does not contain information on the environmental and social costs of electricity storage projects (information on Kaunertal: "NA", i.e. "not assessed"). ENTSO-E stated that these indicators must be redefined specifically for storage projects in the next version of the CBA. [31] In order to have a comprehensive view on the overall costs (not only economic) and benefits of the project an assessment of environmental and social aspects of electricity storage projects in the run of the PCI designation process may be required:

In its current form the project contravenes the aims of Water Framework Directive (WFD[32]) and the Fauna-Flora Habitats Directive (FFH-Directive[33])

The rivers affected by the project are listed in the National Water Management Plan (NGP 2009)[34] with best ecological status according to the WFD. Damming and redirection of these rivers would adversely affect the ecological status of these rivers. This constitutes an infringement of the prevention of deterioration according to Art 4 WFD. Gurgler and Venter Ache (two of the affected rivers) have been nominated to river sanctuaries of Austria in 1998 by the Ministry of Environment and the WWF.

For the realization of the project about 25 km of large tunnel systems (with a diameter up to 6m) need to be constructed through the Natura 2000 area "Ötztal Alps" and the natural park "Ötztal" this threatens the established nature conservation objective for the mentioned areas. Furthermore the damming of Platzertal would destroy a previously undeveloped mountain valley, which manifests itself through unique cultural and ecological features. The valley is part of an "alpine wilderness area network " and stated as an important refuge zone for typical alpine species.

These arguments are even supported by independent experts opinions issued in the run of the EIA procedure. They detected **various deficiencies** in the project application – doubting its permissibility in the current form. Deficiencies were found in human medicine/environmental health, noise, emissions, air pollution, nature protection and water management as well as in hydraulic engineering.[35]

Ad 4) PCI status for all project parts (1,2 and 3) will possibly lead to the infringement of EU electricity market and competition rules

The Directive concerning common rules for the internal market in electricity (Electricity Market Directive)[36] aims at introducing common rules for the generation, transmission, distribution and supply of electricity. The Directive promotes the development of a competitive, secure and environmentally sustainable market in electricity.[37] Art 7 para 1 of the Directive obliges Member States to adopt an authorisation procedure (for electricity generation), which shall be conducted in accordance with objective, transparent and non-discriminatory criteria.[38]

[31] ENTSO-E, TYNDP PUBLIC CONSULTATION REPORT ON RECEIVED COMMENTS, 30.10.2014
[32] DIRECTIVE 2000/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2000 establishing a framework for Community action in the field of water policy.
[33] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.
[34] http://www.bmlfuw.gv.at/wasser/wasser-oesterreich/wasserrecht_national/planung/NGP.html
[35] Preliminary Report on the project in the EIA proceedings (German): http://www.eeb.org/tasks/sites/EEB/assets/File/Kaunertal.pdf
[36] 2009/72/EC.
[37] Cp. Recital (6) and (8): „A well-functioning internal market in electricity should provide producers with the appropriate incentives for investing in new power generation, including in electricity from renewable energy sources"
"In order to secure competition and the supply of electricity at the most competitive price, Member States and national regulatory authorities should facilitate cross-border access for new suppliers of electricity from different energy sources as well as for new providers of power generation."
[38] *„For the construction of new generating capacity, Member States shall adopt an authorisation procedure, which shall be conducted in accordance with objective, transparent and non-discriminatory criteria."*

PCI designation of the independent and divisible electricity production part of Kaunertal Extension project is not in compliance with the procedural principles set up by the Electricity Market Directive which aims at the liberalization of the European electricity market.

The authorization procedure for PCIs varies considerably from the authorization procedure for common electricity generation projects. The main difference in permitting:

- PCIs are considered by national authorities as being in public interest
- PCIs is given 'priority status' on national level – rapid administrative treatment and additional timeframes for the permit granting process
- Different competences as in normal permitting procedures (cp. Chapter III TEN-E Regulation)

Obviously there is no objective justification for having electricity production facilities treated as PCI. These kinds of projects are simply not eligible for PCI designation. In any case, the integration of selected electricity generation projects into the PCI regime – and application of the TEN-E Regulation to these projects - would contravene the criteria for an authorization procedure as prescribed by the Electricity Market Directive – objectiveness, transparency and non-discrimination. This results in a considerable competitive disadvantage of all other electricity generation projects which are treated differently.

Even projects to which Chapter III of the TEN-E Regulation is not applicable (cp. Art 19 TEN-E Regulation) are treated preferably in planning and permitting procedures in comparison to regular electricity generation projects.

The main objective of the Regulation and the Art 5ff TEN-E is to implement the priority corridors and the therefore necessary projects as fast as possible by:

- streamlining permit granting procedures to significantly reduce their duration for projects of common interest
- facilitating the regulatory treatment of projects of common interest in electricity and gas
- ensuring implementation of projects of common interest (PCIs) by providing necessary market-based and direct EU financial support.[39]

Art 5 sets up a special monitoring of the implementations of PCIs which is meant to accelerate their realization – E.g. TSOs, distribution system operators and other operators have to cooperate with each other in order to facilitate the development of projects of common interest in their area (cp. Art 5 para 2).

Better conditions in authorization procedures in comparison to other electricity generation projects, as regards EU financial assistance and triggered by different state aid rules for RES production projects and energy infrastructure projects[40] might even lead to the infringement of general EU competition rules.

[39] 2011/0300(COD) - 19/10/2011 Legislative proposal.
[40] Guidelines on State aid for environmental protection and energy 2014-2020, 2014/C 200/01, Chapter 3.3.1 and 3.8.3.