Disputes arising out of the coal phase-out - what to expect?

Energy Community Dispute Resolution Forum

Dr. Richard Happ
Vienna, 19 September 2019
To begin with:

Disclosure
What this is about: a vision

CLIMATE NEUTRAL

EUROPE

2050

#EU2050
How to realize the vision

Coal-Fired Power Plants 2008

Global coal power
Drag the slider to explore coal capacity changes since 2000.

Year: 2008

- Operating
- New
- Under construction
- Planned

Region: EU28  Map: Light

Operating: 193,285 MW

Data courtesy of CoalSwarm. Interactive by Rosamund Pearce with data arranging by Simon Evans for Carbon Brief. Licensed under Creative Commons.
Coal-Fired Power Plants 2018

Global coal power

Year: 2018

Operating: 154,790 MW

Region: EU28

Map: Light
The Reason: Coal Phase-Out In Europe

Different plans and time schedules

- Denmark: by 2030
- Finland: by 2029
- France: by 2021
- Germany: by 2038

- Poland: building 5 new plants
- Romania: building new plant
- Turkey: plans to build 30GW new capacity
- Balkans: 6GW new build planned
Caught in the Climate Conundrum

Germany Plans Boom in Coal-Fired Power Plants – Despite High Emissions

Everyone in Germany is talking about climate protection – everyone, that is, except for energy companies. They’re planning to build dozens of new coal-fired power plants – with the support of the governing coalition in Berlin.

By Roland Nelles

March 21, 2007 04:48 PM
Netherlands risks first treaty claim over closure of coal plants

09 September 2019
Cosmo Sanderson

The Uniper plant in Rotterdam (Credit: Wikimedia Commons)

A German energy company is reportedly preparing the first-ever investment treaty claim against the Netherlands over draft legislation that would phase out the use of coal in electricity production.

The CEO of the Dutch arm of Germany’s Uniper, Hans Schoenmakers, told local newspaper De Telegraaf on 5 September that the company would bring a legal claim if the law was passed.

The article said that a possible venue for the claim would be The Hague or an international court in Washington, DC, and that Uniper may invoke the Energy Charter Treaty.

Uniper – which split off from Germany’s E.ON in 2016 – has instructed Allen & Overy as legal counsel.

The dispute arises from the Dutch government’s proposal of a bill in 2018 that would eventually ban the use of coal-fired power plants.
Main Questions

- Who bears the financial risk if a State makes a fundamental change of policy?

- Is the prohibition of burning coal a fundamental change of policy – at least for an investor who has valid permits for coal-fired power plants?

- What would be the effect if compensation is denied to such investors?

- How can disputes be avoided?
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