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Legal Bulletin



Energy

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Participation of legal entities from Member States of the European Union on the Romanian electricity markets

Order No. 91/2015 of the National Energy Regulatory Authority (“ANRE”) approving the Procedure for the acknowledgement of the right of foreign legal entities with their headquarters in a Member State of the European Union to participate on the Romanian electricity markets (the “Procedure”), was published in the Official Journal of Romania, Part I, No. 458 of 25 June 2015, on which date it became effective.

The Procedure was adopted with a view to ensure the legislative framework necessary to carry into effect the provisions of Article 10 (5) of the *Regulation for granting licenses and authorizations in the electricity field, approved by ANRE Order No. 12/2015* (the “**Licensing Regulation**”), according to which the supply and trading of electricity can be carried out in Romania by a legal person from a Member State of the European Union without holding a license granted by ANRE, if it holds a valid license or a similar document for such activity, issued by the Member State. Although the Licensing Regulation became effective as of 17 March 2015, the abovementioned principle has not yet been applied by ANRE due to the absence of regulations for the carrying into effect thereof.

Thus, the operators having their registered headquarters in the Member States of the European Union and holding valid supply/trading licenses issued by such States may carry out supply/trading

activities in Romania, if they request from ANRE the acknowledgement of the right to participate on the Romanian electricity markets in observance of the provisions of the Procedure.

- **Conditions for requesting and being granted the acknowledgement of the right to participate on the Romanian electricity markets**

In order to obtain the acknowledgement of the right to participate on the Romanian electricity markets, the operator having its registered headquarters in a Member State of the European Union must submit to ANRE a standard application (Appendix 1 to the Procedure), along with the following:

- a) The supply/trading license or the similar document issued by the relevant authority of the State where its registered headquarters is located;
- b) An affidavit authenticated by a public notary, whereby the applicant undertakes to observe the technical norms applicable to the National Energetic System and the regulations applicable to the activity for which the acknowledgement is requested (including the commercial regulations on the Romanian electricity markets), in observance of the template provided under Appendix 2 to the Procedure;
- c) The indication of the expected turnover from the activity for which it requests the acknowledgement;
- d) The indication of the sole identification code allocated in the Centralised European Register of Energy Market Participants (information requested as of 7 October 2015); and
- e) The evidence attesting to the payment of the documentation review fee.

Within 60 days following the submission of the complete documentation, ANRE shall issue a decision for the acknowledgement of the right to participate on the Romanian electricity markets. Such decision shall be valid throughout the entire validity term of the license or of the similar document issued by the relevant Member State.

- **Consequences for obtaining the acknowledgement of the right to participate on the Romanian electricity markets**

The operators having obtained the acknowledgement of the right to participate on the Romanian electricity markets based on the license issued by the Member State may participate on the Romanian electricity markets under the same conditions as the holders of a license issued by ANRE, and they have the same obligations as such latter holders.

New framework agreements for the electricity distribution service

The framework agreements for the electricity distribution service (the “**New Distribution Agreements**”) approved by ANRE Order No. 90/2015 (“**Order 90/2015**”) were published in the Official Journal of Romania, Part I, No. 462 of 26 June 2015. Such replace the distribution framework agreements approved by ANRE Order No. 43/2004. The order became effective on 1 July 2015.

Order 90/2015 approves:

- The framework agreement for the electricity distribution service between the distribution operator and the supplier; and
- The framework agreement for the electricity distribution service between the distribution operator and the user.

The New Distribution Agreements incorporate the amendments brought to the legislation in the electricity field after 2004 and comprise an appendix which includes the general terms of the distribution service performance.

The distribution operators are under the obligation, within maximum 6 months following the coming into force of Order 90/2015, to submit the New Distribution Agreements to suppliers/users in order to be signed, the deadline for the conclusions thereof being 31 March 2016. The failure to meet such deadline constitutes a breach of the general terms associated to the license and may trigger the liability for misdemeanor offenses of the operator at issue.

The distribution framework agreements entered into before the coming into force of Order 90/2015, shall be effective until the date of the replacement thereof by the New Distribution Agreements. However, in the event that they comprise conflicting clauses, the clauses of the New Distribution Agreements shall apply automatically.

New framework agreements for the supply of electricity to the customers of the last resort suppliers

ANRE Order No. 88/2015 approving the framework agreements for the supply of electricity to household and non-household customers of the last resort suppliers (the “New Supply Agreements”), the general terms for the supply of electricity to end customers of the last resort suppliers, the electricity invoice template, and the electricity consumption template agreement (the “New Consumption Agreement”), used by the last resort suppliers (“Order 88/2015”), was published in the Official Journal of Romania, Part I, No. 88/2015.

As a general rule, Order 88/2015 became effective on 1 July 2015, except for the electricity invoice template, which must be applied by the last resort suppliers as of 1 March 2016.

Order 88/2015 approves:

- The framework agreement for the supply of electricity to household customers of the last resort suppliers;
- The framework agreement for the supply of electricity to non-household customers of the last resort suppliers;
- The electricity invoice template;
- The general terms for the supply of electricity to the end customers of the last resort suppliers; and
- The electricity consumption template agreement.

Order 88/2015 also comprises provisions with regard to the electricity supply agreements entered into by the last resort suppliers with their clients, ongoing at the date of its coming into force.

Thus, within 24 months from the entering into force of Order 88/2015, the last resort suppliers are under the obligation to communicate to their own customers the New Supply Agreements and the New Consumption Agreements. The New Supply Agreements and the New Consumption Agreements shall be deemed as concluded as of the 1st day of the month following the expiry of a 30-day term from communication, unless the end customer, during such time interval, requests the amendment of the proposed clauses or expressly refuses to sign them.

The deadline for the conclusion of the New Supply Agreements is 1 October 2017, and in the case of end customers having requested the amendment thereof or refusing to sign them, the last resort suppliers shall submit a notice of termination of the agreements in force. If the New Supply Agreements are not concluded within 30 days following the submission of the notice, the supplier may terminate the supply agreements in force and, implicitly, cease the electricity supply.

The framework supply agreements concluded prior to the coming into force of Order No. 88/2015, shall be effective until they are replaced by the New Supply Agreements, however, if they comprise conflicting provisions, such clauses shall automatically be deemed replaced by the clauses of the New Supply Agreements.

New rules for setting the zonal tariffs for the electricity transmission service

ANRE Order No. 87/2015 amending and supplementing the Methodology for setting the tariffs related to the electricity transmission service approved by ANRE Order No. 53/2013 (“Order 87/2015”) was published in the Official Journal, Part I, No. 417/12 June 2015, and became effective on 15 June 2015. According to ANRE’s press release of 15 June 2015, such order was adopted based on the recommendations made by the Agency for the Cooperation of Energy Regulators (ACER).

The amendments brought by Order 87/2015 lead to the significant decrease of the annual tariffs related to the transmission service.

Thus, as of the date of the coming into force of Order 87/2015, the zonal transmission tariff for feeding the electricity into the generation node shall be set solely as the sum of (i) the marginal nodal cost related to the own technological consumption in the transmission grid and (ii) the marginal nodal cost related to the removal of congestions on the grid section. Therefore, ANRE, upon setting the ANRE zonal transmission tariffs, shall no longer take into consideration the average cost nodal tariff component.

Moreover, the formula for setting the average cost nodal component was also modified, in the sense that the calculation thereof does no longer take into consideration the total amount of energy fed into the generation (zonal) nodes.

Modification of the annual zonal transmission tariffs and the average tariff for feeding electricity into the grid

Based on the amendments brought by Order 87/2015 on the modality to set transmission tariffs, ANRE issued *Order No. 89/2015 on the approval of zonal transmission tariffs for feeding electricity into the grid (TG) and of the average tariff for feeding electricity into the grid applied by electricity companies ("Order 89/2015")*. Order 89/2015 was published in the Official Journal of Romania, Part I, No. 434 of 18 June 2015 and became effective on 1 July 2015.

According to Order 89/2015, the annual tariffs for the electricity transmission service were decreased, on the average, by approx. 80% compared to those provided by previous ANRE Order No. 51/2014.

As a result of the comments made by the market participants during the public debates on draft Order 89/2015, the version published in the Official Gazette contains transitory provisions applicable to the sale-purchase agreements executed before the effective date of Order 89/2015.

Thus, the new tariffs will also apply to the electricity sale/purchase agreements executed on the centralized markets managed by the Electricity and Natural Gas Market Operator "Opcom" - S.A. ("**Opcom**") before the effective date of Order 89/2015. The parties to these agreements have the obligation to amend by addenda the electricity sale price so as to include the value of the new tariffs. The addenda become effective on 1 July 2015.

Such provision was necessary because, by maintaining the old tariffs with regard to the electricity purchase agreements concluded prior to the coming into force of Order 89/2015 would have created an unfair situation for the electricity suppliers, considering that, according to the *Regulation for the supply of electricity to end customers*, as approved by ANRE Order No. 64/2014, the new tariffs are immediately applicable with regard to the supply agreements entered into by such suppliers with the end customers.

Order 89/2015 also regulates the situation of transactions to be made on Opcom platform from the date when Order 89/2015 is published in the Official Journal until the date when such order comes into force, and which concerns the electricity to be supplied after 15 July 2015. Thus, electricity sale-purchase offers to be submitted on Opcom during such period must expressly stipulate the value of the zonal tariff for the transmission service for feeding electricity into the grid / the average tariff for feeding electricity into the grid, approved in accordance with Order 89/2015. To this effect, Opcom published new templates of electricity sale/purchase offers on its website and temporarily amended the standard agreement for the centralized market of bilateral electricity agreements by extended auction.

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