

Chapter 23

Energy

1. General

The first steps taken for the deregulation of the Romanian energy sector were marked by the reorganization of Regia Nationala de Electricitate (“RENEL”), entity which, in 1998, used to control the whole energy sector. This reorganization consisted in establishing Compania Nationala de Electricitate („CONEL”), Compania Nationala „Nuclearelectrica” and Regia Autonoma pentru Activitati Nucleare. Further on, in 2000, CONEL restructuring process began.

Adopting EGO no. 63/1998 on the electric and thermal power, as well as EGO no. 29/1998 on the establishment, organization and functioning of the National Electricity and Heat Regulatory Authority represented a turning point for the creation of the legal framework for later development in the energy sector. EGO no. 63/1998 was the first legal instrument after 1990 issued with the purpose to unitarily regulate the electric and thermal power sector in Romania.

During the past years, regulation in the energy sector has seen substantial changes by the passing of Government Ordinance no. 325/2006 on the organization and operation of public services of central thermal energy supply and Electricity Law no. 13/2007. Such enactments have regulated the separation of electricity-related activities (including CHP Combined Heat and Power-co-generated thermal energy), where the National Authority of Energy Regulation (“ANRE”) is the regulatory authority, from central thermal energy, where the National Authority for Regulation of Public Community Services (“ANRSC”) is the regulatory authority. Mention should be made that although this separation has been clearly operated, many pieces of secondary legislation are still to be passed.

Despite the notable efforts made for the deregulation of the national energy system, a multitude of issues are still pending, awaiting so far to be addressed by the competent authorities, in order to reach the final goal: the fulfillment of sector deregulation.

The energy market became gradually accessible to competitors. Currently – starting with July 1st, 2007, the electricity supply was fully liberalised.

2. Main regulations

- Law no. 13/2007 (“Electricity Law”) as amended to date;
- Law no. 51/2006 which came into force in March 2007 on public community services, subsequently completed and amended („ Law No. 51/2006”);
- Law no. 325/2006 on the public service for thermal power supply („Law 325/2006”);

- Government Ordinance 22/2008 on the efficient energy use and promoting the employment of the regenerable energy sources by final consumers, republished („Law no. 199/2000”);
- Law no. 111/1996, on the safe carrying out of nuclear activities, with subsequent amendments, republished („Law No. 111/1996”);

3. Electricity and thermal power

3.1. General

Electricity Law regulates the activities in the energy sector, i.e. generation, transmission, distribution and supply, operation of the energy market, as well as the construction and exploitation of relevant installations, and the import and export of electricity.

3.1.1. Generation, transmission, distribution and supply

a) Generation of electricity

Electricity and thermal power generation may be carried out by business entities with domestic or foreign capital, licensed according to the law.

The main obligations of the electricity generators are as follows:

- (i) to ensure the electricity delivery in compliance with the licenses, contractual clauses and regulations in force;
- (ii) to offer under non-discriminatory terms the entire electric power available, as well as the system technological services;
- (iii) to maintain satisfactory fuel/water (as the case may be) reserves in order to comply with its obligations of generation and continuous supply of electricity;
- (iv) to comply with the operational requirements of the transmission and system operator and to establish its own levels of operative management.

Electricity generators have mainly the following rights:

- (i) to have access to the electricity networks of public interest according to the law;
- (ii) to obtain passageway for their own electric lines;
- (iii) to trade the electricity and system technological services on the regulated and competition market;
- (iv) to establish and maintain their own telecommunication systems for the connection to their generation units, costumers or the operative management levels.
- (v) to trade the co-generated thermal energy.

b) Electricity transmission

The electricity transmission is carried out by the transmission and system operator. The transmission and system operators must draft prospect transportation plans, in compliance with the current stage and the future trends of energy consumption and sources, by encompassing the relevant financing sources and achievement means of transmission installations investments, taking in account the territorial planning applicable to the areas crossed by their transmission installations. The plans are subject to the competent authorities' endorsement - ANRE - and to the relevant ministry's approval.

The electricity transmission network (network with nominal voltage of more than 110 kV) is of national and strategic interest, being in the public property of the State. The land where the transmission network is placed belongs to the State for the entire existence period of the network, except for those belonging to the network operator (i.e. Transelectrica). The transmission and system operator provides the transmission public service for the whole transmission network users, under non-discriminatory conditions, ensuring access to transmission networks to any applicant meeting the requirements of the Electricity Law .

The transmission and system operator ensures the transport and transit public system on the entire Romanian territory, in accordance with the concluded contracts.

c) Electricity distribution

Distribution represents the transport of electricity through distribution networks of high, medium or low voltage, with a nominal voltage of 110 KV in view of delivering electricity to customers without including the supply activity. The electricity distribution networks are developed on the grounds of economic efficiency principles, in compliance with the urbanism plans, rights in real property, environmental protection, health and life of the individuals and energy saving principles and regulations, according to the technical and safety norms included in the technical prescriptions.

Distribution operators are licensed entities, having the following main powers:

- (i) to ensure the users' access, under technical connection conditions;
- (ii) to operate, upgrade, rehabilitate and develop electricity distribution networks, observing the technical regulations in force;
- (iii) to ensure the operative management in accordance with the distribution license;
- (iv) to perform works for the development of electricity distribution networks through optimum development programs, based on perspective studies, upon consultation, as the case may be, with the transportation and system operator and through specific upgrading programs for installations.
- (v) to ensure the transit of electrical energy through electric distribution networks, at the demand and by informing the transport and system operator, for such country areas where there is not enough capacity in the distribution networks for the evacuation of the energy from the electrical generators, including co-generation electrical generators, in view of connecting to neighbouring countries energy systems, based on bilateral agreements, provided that incidents in the operation of national energy system or refurbishing and maintenance works occur..
- (vi) to monitor the safe functioning of the electric distribution networks along with the distribution service performance indicators.
- (vii) to make available information regarding its own activities, information that are useful to the network users, without revealing confidential commercial information obtained via its activities.

d) Electricity supply

Electricity power supply represents an activity by which a licensed legal entity sells electricity to customers. The contract concluded between the supplier and customer for this purpose should include at least the minimal clause set up by the competent authority in standard contracts set forth for different customers. In this respect, Law no 13/2007 regulates two consumer categories:

- a) eligible consumers: the consumer that may choose the supplier and conclude a contract for necessary electricity supply, directly with the generator or other supplier, having access at the transmission and/or distribution networks; and
- b) captive consumers: the consumer which due to technical, economic or regulatory reasons, cannot choose its supplier as well as the eligible consumer who does not exercise its right to choose a supplier. The so-called implicit suppliers must conclude contracts with captive consumers located within their licensed area.

Mention should be made that, through Government Decision no.638/2007, the energy market and the natural gas market must be equally open for all consumers.

Suppliers are liable for all damages caused to the consumer due to their fault, under the conditions set up by the supply contract. Suppliers are in turn entitled to recover their damages caused to the consumers by the distribution operator, the transmission and system operator or the generator, which are proved to have been caused by the fault of either of the aforementioned.

3.1.2. Prices and tariffs

The necessary costs required for the operation of the companies in the field of electricity generation, transmission, distribution and supply as well as the co-generated thermal energy, the development and environmental protection costs including a reasonable profit rate are covered by the electricity prices. The prices and tariffs for electricity may include the cost of the units and services financed by the entities aiming at the power and fuel consumption reduction at the consumer-end level which represent a feasible option meant to avoid ungrounded costs, in order to build new energy sources or networks.

As regards electricity generated and sold on the domestic market, the following price and tariff categories are applied:

- a) the prices resulting from the competitive market mechanisms;
- b) regulated tariffs for co-generated thermal energy for public use, generated in co-generation plants;
- c) regulated tariffs for electricity transmission, system and distribution services;
- d) regulated tariffs/prices for electricity supply to captive consumers until the complete opening of the energy market as well as for household consumers and consumers with an approved maximum power of up to 100KvA after the complete opening of the energy market;
- e) regulated tariffs for acquiring system technological services until the creation of a competitive market;
- f) regulated tariffs for network connection;
- g) prices/tariffs used by the last option suppliers after the complete opening of the energy market;
- h) tariffs used by the transportation and system operator and by the electricity market operator for the services provided to market participants.

The tariffs for captive electricity consumers are the same all over the country until the complete opening of the electrical energy market and they are set by ANRE. The proposals of regulated prices and tariffs are set up by the entities acting on the electricity market, in compliance with the methodologies set up by ANRE and are communicated to the latter

together with their substantiation. They must transfer to the authority all the necessary data used in the substantiation process and must allow access to this information to any representative delegated by the relevant authority.

The principles that are applicable when establishing the prices and tariffs for electric energy are:

- (i) prices/tariffs must be based on objective criteria, and must be determined in a transparent method, excluding any and all discriminations;
- (ii) prices/tariffs must cover economically justified expenses;
- (iii) prices must ensure a reasonable rate for the profitability rate of the invested capital;
- (iv) the connection tariff may only include costs regarding connection works;
- (v) the prices and tariffs for the captive consumers must allow them to choose the type of price most favorable to their needs.

3.1.3. Authorization and licenses

Developing new energetic capacities and refurbishment of existing ones are subject to authorization. Electricity generation, transmission, system service, distribution and supply, as well as the activities of the electricity market operator and those for the supply of system technological services are performed under licenses granted in accordance with the law and the Regulation for granting authorizations and licenses, adopted by Government Decision no. 540/2004 as amended to date .

ANRE issues:

- a) authorizations for:
 - (i) building of new energetic capacities for the electricity and thermal power in cogeneration, or the refurbishment of existent capacities performance of electricity lines and transmission stations and/or refurbishment of existent ones;
 - (ii) performance and/or refurbishment of electricity lines and distribution stations with nominal tension of 110 kV.
- b) licenses for:
 - (i) commercial exploitation of electric and thermal co-generated production capacities;
 - (ii) performing electric transmission services;
 - (iii) performing system services;
 - (iv) performing electricity distribution services;
 - (v) electricity market operator activity;
 - (vi) electricity supply activity.

For the low voltage distribution installations, the criteria applicable in order to issue authorizations takes into consideration the limited capacity to generate electricity and the potential impact on the safe functioning of the distribution network. Network distribution installations of medium voltage are authorized based on an annual program.

In order to ensure fairness in the electricity transactions, the license for electricity supply may not be granted to companies operating as transmission operators and/or system operators.

In case of a fundamental change of the conditions existing on the date of the authorization or license issuance, as well as in case of certain events substantially affecting power generation, transmission or distribution on the electricity market, ANRE may decide the amendment of authorizations or licenses in order to adjust to the constraints imposed by such circumstances, with the observance of the equal treatment and the damage proportionality principles.

In case of changes in the authorization or license holder status - resulting from split-up, merger, transformation, change of the activity object, registered offices, modification of the registered capital, etc. - or adjustments of its patrimony that affect the issued authorization or license, the holder shall notify ANRE on the adjustment request, within 30 days as of the occurrence of the such event.

In case the authorization or license holder fails to meet its legal obligations, or if the conditions, limitations, restrictions or duties set out by the authorization or the license are breached, ANRE shall order a term for compliance or the suspension or withdrawal of the authorization or license, as the case may be.

ANRE suspends the holder's authorization or license, in case the legal reorganization or bankruptcy procedure starts against the holder. ANRE will withdraw the authorization or license in case of the holder's inability or bankruptcy, as well as upon the cessation of the concession or lease of the energetic capacity, or upon the sale of the energetic capacity by the holder.

3.1.4. Concession/Expropriation

The land necessary for setting up and operation of the energetic capacity may be the authorization holder's property, a third party's private property or public property. If the land needed for setting up and operating the energetic capacity is the private property of a third party, the establishment authorization applicant may either initiate the legal procedure for land expropriation by virtue of public use and obtain its concession over the duration of the energetic capacity existence, or buy such land.

State public or private properties, as well as public activities and services of national interest, may make the object of an energetic concession in consideration of a royalty paid to the conceding authority. The relevant ministry for the State public or private properties or for the public activities or services of national interest acts as conceding authority.

The specific procedure for the granting of such concession was approved by Government Decision no. 1048/2004 as further amended approving the terms of reference, of the concession framework agreement and of the procedure for granting of the concession of the electricity distribution public service¹ ("**Distribution Service Concession Procedure**").

Individuals or legal entities interested to tender with a view to obtain a concession must get a temporary authorization from a competent authority regarding the activity to be granted under concession. Pursuant to winning the tender, the temporary authorization of the selected bidder shall be changed into a permanent authorization.

¹ Published in the Official Gazette, Part I, no. 727 of August 12, 2004.

3.1.5. Authorities and Powers

The national energetic strategy is set forth by relevant ministry and approved by the Government, by consultation of the non-governmental organizations. The national energetic strategy defines the objectives of the electric energy sector on a medium and long term and also the optimum means of reaching these objectives, while assuring a durable development of the national economy.

The competent ministry elaborates the national energetic policy and ensures its fulfillment, according to the provisions of Law no. 13/2007, by exercising the following main powers:

- a) drafting programs and plans for the implementation of the Government policy in the electricity sector, including energy efficiency plans and plans for the promotion of renewable energy sources;
- b) drafting bills or enactments for the energetic sector;
- c) drafting the program for the constitution of safety fuel stocks and export promotion programs;
- d) endorsing together with the Ministry of Labor, Social Solidarity and Family the relevant labor protection norms;
- e) development of the international cooperation in the energy sector;
- f) supervising on a regular basis the performances and the quality of the technology and installations from the energetic system and initiating measures in order to increase their level.

The National Energy Regulatory Authority (“**ANRE**”) is the competent authority in the energetic field, autonomous public institution of national interest, with legal personality, functioning in the coordination of the competent ministry, its activity being fully financed from extra-budgetary incomes, obtained from tariffs for licenses and authorizations granting as well as from contributions of the international bodies or of legal entities. ANRE has, inter alia, the following powers:

- a) issues mandatory norms and instructions regarding the operation of the electro energetic system, as well as authorizations and licenses stipulated by Law no. 13/2007;
- b) sets up the tariffs applicable to captive consumers, as well as the calculation methodologies required for the set up of prices and tariffs by the “last option” suppliers;
- c) sets up frame supply agreements;
- d) supervises the enforcement of specific electricity regulations;
- e) creates and manages a data base at a national level;
- f) approves technical and commercial rules for the economical operators in the area;
- g) sets up the electrical energy supply regulations, approved by the Government.

3.1.6. Renewable and unconventional power sources

ANRE, according to Law no. 13/2007, regulates the technical usage conditions, from the energetic point of view, of the renewable electricity sources, such as: solar energy, hydro-electric energy, wave energy, geothermal energy, wind energy, biomass, biogas, fuel alcohol.

The development and use of these sources are encouraged by incentives granted by Government decision, upon ANRE's proposal (such as so-called green certificates).

3.1.7. Efficient energy use

Government Ordinance no. 22/2008 sets up the general framework for efficient energy use. Its purpose is to create the necessary legal framework for the elaboration and application of a national policy for efficient energy use, regarding energetic efficiency and environmental-related aspects, and the principles supporting its sustainable development.

The Romanian Agency for Energy Conservation ("ARCE") was established as a result of Government Decision no. 941/2002, as further amended, as a national specialized body in the energy efficiency field, with legal status and functional, organizational and financial autonomy, subordinated to the Ministry of Economy and Finances.

According to this law, efficient energy use means taking steps for products, services or goods being produced/rendered without lowering quality standards, and by cutting energetic consumption needed for such a product, good or service being produced/rendered.

In order to comply with the efficient energy use national policy, companies using annual energy quantities exceeding a threshold of 1,000 tones energy in oil equivalent are bound to draft programs of energetic efficiency, to perform an annual audit elaborated by a person authorized by ARCE with respect to the law and to delegate an energy director, approved by ARCE or to conclude an energy management contract with an individual or a legal person.

Also, local public authorities in towns with over 20,000 inhabitants are bound, by law, to draft programs of energetic efficiency. The summary of this program in the national economy framework, elaborated by ARCE, is annually approved by the Government, upon the proposal of the Ministry of Economy and Trade.

According to this law, obligations and incentives for energy producers and consumers are instituted, meant for the efficient use of energy. Energy consumers, legal entities, are bound to:

- (i) comply with the technical regulations in force regarding the setting up, operation, maintenance, repair of their own installations and energy receiver units, as well as the acquisition of measuring/control devices and respect efficiency enhancement programs imposed by law;
- (ii) have their own recording and monitoring system of energetic consumption and offer the competent institutions information regarding energetic consumption and energetic efficiency indicators.

Companies acting in the field of production, transport and distribution of fuel and energy are bound to take steps meant to:

- (i) reduce own fuel and energy consumption;
- (ii) promote solar, aeolian, geothermal, biomass, biogas energy and the energy produced from domestic waste.

3.2. Special regime of thermal power produced at a centralized level

By virtue of Law no. 51/2006 that included in the area of the local administration public services the generation, transmission, distribution and supply of thermal power in a centralized system, Law no. 325/2006 was issued. Under this enactment, the public services

for the generation, transmission, distribution and supply of thermal power in a centralized system (called according to Law no.325/2006 "energetic services of local interest") cover all actions taken and activities performed locally, under the supervision, coordination and control of the local administrative authorities, with a view to providing a centralized supply of thermal power for heating and preparation of hot water for domestic consumption or for consumption in institutions, social-cultural establishments and companies.

These services are established and organized in all the cities/towns having a centralized public system for thermal power supply, irrespective of their size.

The local systems designated for production, transport, distribution and supply of thermal power are part of the local zoning infrastructure and are part of the local public property.

3.2.1. Authorities and competencies

The power to get forth, organize, manage, coordinate and control the operation of the energetic services of local interest is an exclusive right of the local public administration authorities. The public service which manages the thermal power supply is accomplished by the centralized system of thermal power supply ("SACET"). SACET is formed by an unitary technological and functional ensemble consisting of constructions, installations, equipments, means of transport, distribution, supply of thermal power. Additionally, these public authorities have the power and the responsibility to monitor and control the management of public services, as well as the operation and exploitation of the related infrastructure.

The operators managing, using and operating the energetic systems of local interest, irrespective of their organization, property or subordination form, that perform one or several activities specific to the energetic services of local interest, fall under the jurisdiction of the ANRSC. Exceptionally, operators that perform activities in cogeneration thermal power production, exclusively or together with other activities specific to the energetic services of local interest, fall under the jurisdiction of ANRE.

ANRSC is an autonomous public institution of national interest with legal status, coordinated by the Ministry of Internal Affairs and Administrative Reform. Its main task is to regulate and control the operators' activity regarding their compliance with the service performance indicators, substantiation of prices and tariffs, users' protection, and the efficient operation of the public and/or private property of the local administrative authorities, related to such services. Licensing/ authorization of the energetic services operators of local interest is granted by ANRSC, except for operators acting in the production of thermal power in cogeneration. The latter operators category needs to be authorized by ANRE.

3.2.2. Management of thermal power supply

The management of urban energetic services via SACET may be organized as follows:

- a) direct management;
- b) indirect or delegated management.

The management form is chosen by county or local council decision or by community development associations, as the case may be, according to the law.

The local public authorities may associate with other local public authorities or with third parties, Romanian or foreign legal entities, to establish public or joint companies, in order to manage the public service of supplying thermal energy via SACET.

In case of direct management, the local public administration authorities or community development associations shall undertake all tasks and responsibilities regarding the

organization, leadership, administration and financing the public service of supplying thermal energy via SACET. Direct management is ensured either by specialized departments organized within the county or local council, as the case may be, or by community development associations authorized according to the Law no. 51/2006, as amended up to date.

In case of delegated management, the local public administration or community development associations may fully or partially transfer their services management responsibilities, as well as the management and operation of SACET to one or several supplier/provider operators, a company with public, private or mixed shareholding by delegating to them, by means of concession or by public-private partnership by concluding a management delegation contract, the right to operate the energetic services of local interest. During the period of management delegation contract, the public and/or private movable and immovable assets belonging to the local administrative authorities, destined for certain services, will be entrusted to the operator who was granted the management delegation contract. The latter shall pay royalties to the local public administration authorities, at a rate agreed upon the contract execution.

Delegation of the energetic services of local interest management may be performed by:

- a) direct negotiation, a procedure via which public administration authorities, or, the case may be, the intercommunity development associations in the name and on behalf of the members public administration authorities, negotiate the agreement with one or several interested licensed operators;
- b) public tender in case of different operators, irrespective of the capital form or their organization form.

Mention must be made that the authorities can directly conclude a delegation contract with:

- (i) regional operators created by territorial-administrative unities, members of a community development association that has as main target public utility services;
- (ii) operators created as commercial companies after the administrative restructuring of the former "regie autonome" of local interest or public services existent at the time of the creation of this law which had as main target public utility services.

According to Law no. 325/2006, management delegation must comply with the standard regulations for energetic services of local interest delegation approved by ANRSC' President order no. 91/2007.

If the contract is terminated, the service operator must ensure continuity of the public service for a determined period of time, i.e. no longer than 12 months.

3.2.3. Prices and tariffs

Prices and tariffs are calculated, adjusted or modified with respect to the methodology approved by the relevant authority.

Prices and tariffs shall provide cover for the production, transmission, distribution, supply, exploitation, maintenance, modernizing and refurbishment costs, as well as a 5% maximum profit margin. The competent regulatory authorities will set the prices and tariffs for thermal power produced and supplied to the users, based on the proposal of the economic operators that produce, transport, distribute and provide thermal power to end consumers, based on the prior endorsement of the involved local public administration authorities.

The prices for thermal power produced by renewable sources, used through SACET are approved by A.N.R.S.C.

The prices for thermal power produced in cogeneration, used through SACET are approved by A.N.R.E.'s chairman except if methodologies of calculation and adjustment of the price have been adopted in concession contracts or partnership contracts.

Based on Law no. 325/2006 the national reference price for thermal energy delivered to the population has been established in accordance with which the local prices for thermal power supply are the same for consumers in similar supplying conditions. The local prices for thermal power must be approved by local public administration authorities or community development associations as the case may be.