



SALE OF ENERGETIC CAPACITIES TO CONCESSIONAIRE DISTRIBUTION OPERATORS

1. Introduction

By means of recent changes to the Energy and Gas Law no. 123/2012 (the “**Energy Law**”), the operators holding concession over the electricity distribution grid (the “**Distribution Operators**”) have been compelled to take over the ownership over private electricity distribution grids and related energetic capacities (the “**Energetic Capacities**”) in specific cases set out thereby. In addition, the amendments to the Regulation for the connection of users to the public interest electricity grids (the “**Connection Regulation**”) which will enter into force in January 1, 2021 changed the ownership regime over the Energetic Capacities built for connecting new users (such as power producers), by recognizing the ownership right of such users and their right to sell the capacities to the Distribution Operators.

In order to create the secondary legal framework necessary for implementing the above principles, the Romanian Energy Regulatory Authority (“**ANRE**”) recently issued Order no. 205 of October 28, 2020 approving the Methodology regulating the conditions for taking over the ownership over the electricity distribution capacities, published in the Official Gazette no. 1037 of November 6, 2020 (the “**Methodology**”).

2. Energetic Capacities subject to the Methodology

The Methodology regulates two scenarios in which the Distribution Operators are bound to purchase the Energetic Capacities, as follows:

- (i) the Energetic Capacities are owned by a grid user but operated by the Distribution Operator (“**Scenario 1**”), and the owner intends to sell such assets; this scenario applies, for example, to the renewable power producers operating power plants which were developed after January 1, 2021 and which, according to the Connection Regulation, will become the owners of the connection

installations built for connecting such plant to the grid (to the extent such were financed by the producers); and

- (ii) the Energetic Capacities are owned and operated by an entity different from the Distribution Operator which either is unable to continue providing the electricity distribution service to its grid users or to increase the evacuation/absorption capacity requested by such users, or simply intends to sell such assets (“**Scenario 2**”).

3. Sale-purchase procedure

Irrespective of the scenario, the transfer procedure is commenced upon the seller’s initiative, by submitting a sale offer to the Distribution Operator. As to the latter’s flexibility to oppose to the purchase once a sale offer is received, while in the first scenario no such flexibility exists, in Scenario 2 the Distribution Operator is compelled to accept the purchase only to the extent the Energetic Capacities are necessary for ensuring the continuity of the distribution service and no alternative more cost-efficient solutions for developing the grid in that area have been identified.

In brief, the sale procedure consists in the following main stages:

- (i) submission by the seller to the Distribution Operator of a sale offer indicating the proposed assets and corresponding price, and a specific documentation (described below);
- (ii) negotiation by the parties of the sale price; and
- (iii) execution of the sale agreement and delivery-receipt of the Energetic Capacities.

Along with the sale offer, the seller must submit to the Distribution Operator specific documentation and information regarding the capacities offered for sale, such as:

- (i) the list of energetic capacities offered for sale (including relevant technical data, commissioning date, justified value according to evaluation/net book value),
- (ii) list of users connected to the relevant distribution grid;
- (iii) ownership documents;
- (iv) statement issued by the seller whereby agreeing to the change of the patrimonial delimitation of the he agreement of the seller
- (v) documents attesting the ownership status over the land affected by the Energetic Capacities and seller’s notarized agreement for granting to the Distribution Operator the right of use and servitude over the land.

4. Price

The sale price is established by means of negotiations conducted between the parties, with the observance of specific limits set out by the Methodology.

Thus, in Scenario 1, the price may not exceed the net book value of the assets (according to the seller's accountancy records) or the value certified by an independent authorized expert (if the seller is not bound by the obligation to keep accounting for its fixed assets). In case of Scenario 2, the price is established based on the justified value of the Energetic Capacities certified by an independent authorized expert, without exceeding the net book value of the assets (according to the seller's accountancy records).

5. Timing

As to the timing for performing the sale, whereas no specific deadline is provided for Scenario 1, in case of the second scenario, the Distribution Operator has the obligation to perform the purchase within 120 days from being informed on the certified value of the assets.

6. Other expected changes

In close relation to the Methodology, ANRE has launched for public debate an additional draft of order for supplementing the Procedure regarding the substantiation and the criteria for approving the investment plans of the transmission and system operator and of the electricity distribution operators, approved by the Order of the ANRE President no. 204/2019.

The draft sets out additional requirements to be observed by the Distribution Operators for ensuring that the costs incurred for purchasing the Energetic Capacities are recognized by ANRE:

- (i) the cumulated value of all Energetic Capacities purchased by the Distribution Operator should not exceed 10 per cent of the value of the investments provided in the yearly investment plan, for the respective voltage level, the Distribution Operator being allowed to schedule the purchase for multiple years; such cap may be exceeded, however, for the purchase of the Energetic Capacities under Scenario 2, this derogation being explained by the 120 days limit which must be observed by the Distribution Operator for closing the purchase;
- (ii) the acquisition price is recognized in the regulatory asset base subject to evidencing that the purchase is justified by its necessity, opportunity and efficiency and that it reflects the market price, by reference to the standards set out by the Procedure.

This article contains general information and should not be considered as legal advice.



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