

**Procedure of 2015 confirming the right to participate in the Romanian electricity/gas markets of foreign legal entities having their registered office in a Member State of the European Union**

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**Procedure of 2015 confirming the right to participate in Romanian electricity/gas markets of foreign legal entities having their registered office in a Member State**

**of the European Union**

Date of act: 17-June-2015

**Issuer: National Energy Regulatory Authority**

**Chapter I: General provisions**

**SECTION 1: The purpose and scope of application**

**Art. 1**

This procedure establishes:

- a) The conditions under which ANRE confirms to a foreign legal person having its registered office in a Member State of the European Union other than Romania, hereinafter referred to as the *applicant*, the right to participate in the electricity markets or in the natural gas markets in Romania;
- b) the conditions to be met by the foreign legal entity having its registered office in a Member State of the European Union, which has received confirmation from ANRE on the right to participate in electricity markets or in natural gas markets in Romania, during the confirmed right;
- c) conditions for the termination of the right to participate in electricity markets or in natural gas markets in Romania confirmed in accordance with this procedure.

**Art. 2**

**(1) This procedure shall apply to any economic operator, legal person, registered in a Member State of the European Union, other than Romania, if that operator meets the following conditions cumulatively:**

- a) holds, in the State in which its registered office is registered, a valid licence or other similar document, under which he/she has the right to carry out the activity of the supply of electricity/gases or the activity of the trader of electricity/gas, issued by the energy regulator or, as the case may be, another public authority of that State;
- b) asks ANRE to confirm that it can carry out the activity of supplying electricity/natural gas or the activity of the trader of electricity/natural gas on the Romanian electricity/gas markets, in compliance with the provisions of this procedure.

**(2) The applicant shall be responsible for submitting the documents referred to in paragraph (1) letter a) to ANRE.**

**(3) ANRE shall grant the applicant, by decision, the confirmation of the right to carry out one of the following activities in Romania: electricity/gas supply activity, or the activity of the trader of**

electricity/natural gas, corresponding to the type of activity covered by the licence or similar document issued by the public authority of that Member State of the European Union.

#### Art. 3

Economic operators, foreign legal entities, registered in a Member State of the European Union holding a license granted by ANRE for the activity of supplying electricity/natural gas or for the activity of the trader of electricity/natural gas may request ANRE to confirm the right to participate in the electricity/gas markets in Romania under this procedure, if they fulfil the conditions laid down in this procedure and if their respective licence has been withdrawn.

### Section 2: Definitions and abbreviations

#### Art. 4

(1) The terms used in this procedure are defined in:

- a) Law of electricity and natural gas no. 123/2012, as amended and supplemented;
- b) Regulation for licensing and authorisations in the electricity sector, approved by the Order of the President of the National Energy Regulatory Authority no.12/2015, as amended and supplemented;
- c) Regulation for granting authorisations to set up and licenses in the natural gas sector, approved by the Order of the President of the National Energy Regulatory Authority no.34/2013, as amended and supplemented.

(2) The abbreviations used in the text of this procedure are the following:

- a) [The text of Article 4(2), point A. of Chapter I, Section 2 was repealed in 21-ian-2019 by Article I, point 10 of Order 3/2019]
- b) ANRE – National Regulatory Authority for Energy.

#### Art. 5

For the purposes of this procedure, the annual contribution means the amount of money collected annually by ANRE from any economic operator, legal entity, registered in one of the Member States of the European Union which has been confirmed by ANRE the right to participate in the electricity/gas markets in Romania under the conditions of this procedure.

### Chapter II: Conditions for requesting and granting confirmation by ANRE

#### Art. 6

(1) In order to obtain confirmation of the right to participate in the electricity/gas markets in Romania, a foreign legal entity having its registered office in one of the other states

**Members of the European Union shall submit the following to ANRE:**

- a) an application containing the data and information of the model set out in Annex No 1;
- b) the licence or similar document issued by a public energy regulatory authority or, as the case may be, by another public authority of the State of the European Union, other than Romania, in which the applicant has its registered office, which proves that he enjoys the right provided for in Article 2 (1) (a), in copy, as well as an uncertified translation of it into the Romanian language;
- c) a self-declaration, in accordance with the model set out in Annex No 2;
- d) specifying the estimated turnover to be made in Romania from the activity for which confirmation

is requested for the field of electricity/natural gas, as well as the original written declaration, under his own responsibility, of the legal representative/manager/general director of the applicant regarding the estimated quantity to be supplied in Romania in the year in which confirmation is requested, i.e. for the year in which the confirmation for the natural gas sector is granted, expressed in MWh;

e) Specifying the unique identification code allocated in the European Centralised Register of Energy Market Participants requested from 7 October 2015, as provided for in Article 12(2) of Commission Implementing Regulation (EU) No 1.348/2014 of 17 December 2014 on data reporting, for the implementation of Article 8(2) and (6) of Regulation (EU) No 1.227/2011 of the European Parliament and of the Council on the integrity and transparency of the wholesale energy market, published in the Official Journal of the European Union, 363, 18.

f) proof of payment of the fee for analysing the documentation according to the order of the ANRE president to set the tariffs and contributions of ANRE.

(2) ANRE shall start the process of resolving the application referred to in paragraph (1) letter a) only if the applicant has provided the complete contact details, i.e. the address of the registered office, the e-mail address, telephone and fax numbers of the applicant from the respective premises, as well as those of a legal representative of the latter or of a person authorised under the law and if the amount related to the analytical fee referred to in paragraph (1) letter f) was actually transferred to ANRE account.

(3) If it is found that the amount related to the analysis tariff was not actually transferred to the ANRE account, the request received shall be registered with a correspondence nature and shall not be included in the work plan.

(4) The application shall be terminated if no proof of payment has been furnished within 10 days of the date of registration, notifying the applicant of the completion of the application and the possibility to request the refund of the documentation attached to the application.

(5) The analysis fee shall not be returned to the applicant if ANRE refuses to grant the right to participate in the Romanian electricity/gas markets or if it ranks the documentation under the provisions of Art. 7 par. (4).

(6) During the process of resolving the application referred to in paragraph 1 (a), ANRE shall have the right to request information to the public authority issuing the documents referred to in Article 2(1)(a) of the Member State of the European Union in which the applicant is established.

#### **Art. 7**

(1) The application and the documents attached to it shall be analysed by ANRE in accordance with the provisions of this procedure. Within 30 days of the date of registration of the application, a notification shall be provided to the applicant, where appropriate, informing the applicant of the supplements or clarifications necessary for the successful settlement of his or her request.

(2) The application and documents referred to in Art. 6 par. (1) lett. a), c) and d), as well as correspondence between the applicant and ANRE shall be drawn up in Romanian.

(3) The documents referred to in paragraph 1 shall be signed on each page by the applicant's legal representative or by a person empowered by him.

(4) If the submitted documentation is not complete within 90 days of the date of registration of the application, it shall be closed and the applicant notified thereof.

#### **Art. 8**

If it is found that the applicant meets the requirements of the form and content referred to in Art. 2 par.

(1) and Art. 6, the specialised department within ANRE shall draw up a report proposing to the Regulatory Committee of ANRE confirming the right of participation of the applicant in the electricity/gas markets in Romania.

#### **Art. 9**

(1) Based on the decision of the ANRE Regulatory Committee, adopted in public session, the ANRE president issues a decision confirming the applicant's right to participate in the electricity/gas markets in Romania.

(2) The confirmatory decision referred to in paragraph 1 shall be issued within 60 days of the date on which the documentation annexed by the applicant is complete and complies with the provisions of this procedure.

(3) **The confirmatory decision referred to in paragraph 1 shall contain, in particular:**

- a) data on the applicant for the right to participate in the Romanian electricity/gas markets;
- b) subject matter of the decision: confirmation of the right to carry out the activity of supplying electricity/gases or the right to carry out the activity of the trader of electricity/natural gas;
- c) the period of validity of the decision;
- d) rights and obligations of the applicant to participate in the electricity/gas markets in Romania;
- e) conditions for suspension or withdrawal of the right to participate in Romanian electricity/gas markets;
- f) the conditions under which ANRE is entitled to apply sanctions to the applicant.

(4) The confirmatory decision referred to in paragraph 1 shall be communicated to the applicant within 5 days of its issue.

#### **Art. 10**

If, through the report/report drawn up by the specialised directorate within ANRE, it is found that the applicant does not fully or partially fulfil the requirements of the form and content referred to in art. 2 par. (1) and art. 6, ANRE shall issue a decision on the refusal to grant the applicant the right to participate in the electricity/gas markets in Romania, which contains the reasons for the non-granting of the right and which may be challenged in administrative disputes at the Court of Appeal Bucharest, under the law.

#### **Art. 11**

The confirmation decision provided for in Article 9 shall be valid for the entire duration of the validity of the licence or similar document issued by the public energy regulatory authority or, where applicable, by another public authority in the State of the European Union other than Romania, in which the applicant has its registered office, which was the basis for the issuance by ANRE of the confirmation decision, unless ANRE decides to suspend or withdraw the right to participate in the electricity/gas markets in Romania.

#### **Art. 12**

(1) The foreign legal entity economicoperator may request ANRE to amend the confirmation decision in order to extend its validity period, at least 60 days before its expiry date; the request shall be accompanied by the documents provided under Art. 6 par. (1) lett. a), b) and f).

(2) If the documentation extending the validity of the decision confirming the right to participate in the electricity/gas markets in Romania as a supplier of electricity/natural gas is not complete at least 20

days before its expiry date, ANRE has the right to start the process of taking over by the suppliers of last resort the final customers of the economic entity foreign legal entity, according to the regulations in force.

**(3) ANRE shall examine the application for amendment referred to in paragraph 1 and shall provide, where the documentation annexed thereto is complete and satisfies the form and content requirements laid down in this procedure, as appropriate:**

- a) the granting of a new confirmatory decision;
- b) amendment of the confirmatory decision granted.

### **Chapter III: Rights and obligations**

#### **Art. 13**

(1) The economic operator, a foreign legal entity, registered in a Member State of the European Union, other than Romania, which obtained from ANRE the confirmation decision provided for in Article 9, shall have the right to participate in the electricity/gas markets in Romania, throughout the validity of the document issued by ANRE, under the same conditions as any other holder of a license granted by ANRE for the performance of the activity provided for in the confirmation decision issued by ANRE, being applicable to all the regulations approved by ANRE, which shall apply to them.

**(2) By exception to the provisions of paragraph 1, the foreign legal entity economic operator no longer has the right to participate in the Romanian electricity/gas markets starting with:**

- a) the date of withdrawal of the licence or similar document issued by a public energy regulatory authority or, where applicable, by another public authority in the State of the European Union other than Romania, in which it has its registered office;
- b) the date of suspension of the licence or similar document referred to in point (a) until the date of termination of such suspension.
- c) the date from which the condition relating to the existence of the registered office of the foreign legal entity economic operator in a Member State of the European Union is no longer fulfilled.

#### **Art. 14**

(1) The economic operator referred to in Article 13 shall have all the obligations of a license holder granted by ANRE for the activity of supplying electricity/natural gas or, where applicable, for the activity of the trader of electricity/gas.

**(2) In applying the provisions of par. (1), the economic operator referred to in Article 13 shall have the following obligations:**

- a) comply, under the same conditions as any holder of a license granted by ANRE for carrying out the activity provided for in the confirmation decision issued by the President of ANRE, throughout its duration, the general conditions associated with the licence for the activity of the electricity supply activity or, where applicable, the general conditions associated with the license for the activity of the trader of electricity, i.e. the validity conditions associated with the license for the license for the activity of the natural gas supply or, where applicable, the respective licensing terms for the activity of the trader for the activity of the natural gas, and for any authorised natural gas activity, and to the respective regulatory provisions of the respective NERA, and to the relevant NERAs.
- b) inform ANRE of the modification of any data or information of the applicant contained in the application in Annex no. 1, within the terms of the General Conditions of License for Electricity Supply Activity or, where applicable, in the General Conditions of License for the activity of the trader

of electricity, i.e. in the License Conditions associated with the license for the activity of the natural gas trader or, where applicable, the validity conditions associated with the license for the activity of natural gas trader, approved by order of the president of ANRE;

c) to pay ANRE an annual contribution established and levied according to the provisions of the ANRE President's order setting the tariffs and contributions of ANRE, related to the turnover realised in Romania or the quantity of natural gas supplied in Romania, expressed in MWh;

d) to submit to ANRE, by the end of the second decade of February each year, by official letter signed by his legal representative or by a person authorised by him, the value of the turnover realised in the previous year from transactions performed on the electricity/gas markets in Romania, respectively the amount of natural gas estimated for the current year, from the activity for which it has the confirmation issued by ANRE.

#### **Art. 15**

(1) In addition to the obligations referred to in Article 14, the economic operator referred to in Article 13 shall inform ANRE, within 10 calendar days, of the modification/suspension/withdrawal of the license or similar document issued by the public regulatory authority in the field of energy or, as the case may be, by another public authority in the State of the European Union, other than Romania, in which the applicant has its registered office, which was the basis for the issuance by ANRE of the confirmation decision.

(2) On the basis of the data and information regarding the modification/suspension/withdrawal of the license or similar document referred to in paragraph 1, ANRE shall decide, as appropriate, to suspend or withdraw the right to participate in the Romanian electricity/gas markets or to amend the confirmation decision.

### **Chapter IV: Final provisions**

#### **Art. 16**

(1) ANRE has the right to control the activity of economic operators, foreign legal entities, to whom it confirmed their right to participate in the electricity/gas markets in Romania based on the provisions of this procedure.

(2) If following the control action undertaken by ANRE it is established that the foreign legal entity economic operator referred to in paragraph (1) has failed to comply with the provisions of the confirmation decision provided for in Art. 9, ANRE shall apply sanctions under the law, which may include the measure of suspension or withdrawal of its right to participate in the electricity/gas markets in Romania.

#### **Art. 17**

ANRE shall publish on its website the list of economic operators legal entities to whom it confirmed their right to participate in the electricity/gas markets in Romania based on the provisions of this procedure.

#### **Art. 18**

The provisions of this procedure are supplemented with the provisions of the Regulation for granting licenses and authorisations in the electricity sector, approved by the Order of the President of the National Energy Regulatory Authority no. 12/2015, as amended and supplemented, respectively with the provisions of the Regulation for granting authorisations for establishment and licenses in the

natural gas sector, approved by the Order of the President of the National Energy Regulatory Authority no. 34/2013, as amended and supplemented.

**Art. 19**

Annexes 1 and 2 form an integral part of this procedure.

**Annex 1:**

Mr. President,

I, ..... the undersigned, first name and name... , acting as ..... (director) general/shareholder/associate holder of the control of the applicant/administrator, etc.) ..... of the economic operator registered at the office of the trade register with the name ..... (name of economic operator)....., registered at..... (institution similar to the office) Country of origin trade register)....., under no ....., tax code ..... , with registered office in..... (full address of registered office) ..... , telephone ..... number....., fax number..... (fax number) ..... , and ..... the account (IBAN No.) .....opened with the bank ..... (name of bank)....., holder of..... (licence/authorisation/other document) Similar) ..... , for the ..... activity (licensing object activity) ....., Issued by .... (name of issuer of the document, public institution/regulatory authority, etc.) ..... ..from...(Member State of the European Union other than Romania)

I request confirmation by the National Energy Regulatory Authority of the right to conduct in Romania, on the basis of the said document, according to the provisions of Art. 10 par. (5) of the Regulation for the granting of licences and authorisations in the electricity sector, approved by the Order of the President of the National Regulatory Authority in the field of energy no. 12/2015, with subsequent amendments and additions to the amendments to the electricity sector, respectively to the Electricity Regulation for the granting of authorisations for establishment and of the authorisations for the activity of the National Energy Regulation, to the National Gas Authority, to the National Gas Authority.

In order to communicate with the National Energy Regulatory Authority, I inform you of the following contact details:

a) contact details of the economic operator:

Phone .....(no phone)....., fax ..... (fax) ..... and e-mail address .....(address) E-mail) .....

b) contact details of the legal representative of the economic operator or of a person empowered under the terms of the law:

Phone .....(no phone)....., fax ..... (fax) ..... and e-mail address .....(address)

E-mail) .....

c) unique identification code allocated in the European Centralised Register of Energy Market Participants\*).

The application shall be accompanied by specific documents, the list of which is annexed to this.

Knowing the provisions of Law no. 286/2009 on the Criminal Code, with subsequent amendments and additions, regarding forgery in declarations, I certify on my own responsibility the veracity and authenticity of all documents submitted.

Date.....

Signature .....

Information requested as of 7 October 2015

**Annex no. 2: DECLARATION OF RESPONDATION**

I, ..... the undersigned [forename and name] ....., acting as  
director  
general/shareholder/associate holder of the control/administrator, etc.] ..... of the economic operator  
..... [name of economic operator] ....., registered with.....the similar institution  
The Office of the Trade Registry of the country of origin] under No....., tax code.....,  
Knowing the provisions of Law no. 286/2009 on the Criminal Code, as amended and supplemented  
subsequently, concerning the forgery in the declarations, I declare on his own responsibility that the  
economic operator .....  
[name of economic operator]....., of which I am legal representative, will comply with the  
rules  
technical and commercial in Romania, issued by the National Energy Regulatory Authority, as well as  
other regulations or legal provisions applicable to the activity for which it requests confirmation,  
throughout the period of validity of this activity in Romania, based on the confirmation received from  
the National Energy Regulatory Authority.

Date

Signature

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