

Physical Power Trading in Romania

The physical electricity in Romania can be traded on the following markets:

1. the Wholesale Electricity Market regulated by the Commercial Code of Wholesale Electricity Market of 2004, which includes the Bilateral Agreements Energy Market, the Day-Ahead Market (“DAM”), the Balancing Market, and the Ancillary Services Market; and
2. the Retail Energy Market;
3. the Green Certificates Market.

The regulatory authority regarding the physical gas market in Romania is the Romanian Energy Regulatory Authority (“RERA”).

There is not yet a derivatives market. The draft regulations were submitted for approval to RERA. There is not yet a regional market for the Balkans, but the plans are to organize such a market in the near future.

Activities in the electricity field are subject to licences for electricity supply activities issued by RERA according to Art. 15 (2) (f) of Electricity Law no. 318 of 2003 (“Electricity Law”). The issuance of licences is subject to the provisions of Government Decision no. 540 of 2004 for the Approval of the Regulations on Issuance of the Licences and Authorisations in the Electricity Sector (“Licence Regulations”).

According to the Licence Regulations, in order to obtain the licence for electricity trading activities, the applicant must submit to RERA, along with the documentation provided by Arts. 15 and 22 (2) of the Licence Regulations:

1. a business plan for the activity subject to licensing, for the current year and the next two years; and
2. proof that the applicant has the necessary financial resources in order to participate to electricity trading activities; in this respect, the capital and/or bank deposits and/or available bank credit lines of the applicant must amount to at least EUR 100,000 at the exchange rate of the National Romanian Bank on the date of the application for the licence.

In order to carry out electricity trading activities, a foreign company needs to establish in Romania a branch or subsidiary for the entire duration of validity of the licence necessary for the performance of its activities according to Art. 14 (3) of the Electricity Law. The legal vehicles used by foreign investors for setting up subsidiaries in Romania are the limited liability company, and less frequently the joint stock company. If the subsidiary will be a sole shareholder vehicle we would recommend the use of the simplest form, i.e. the limited liability company.

According to the provisions of the Electricity Law, all the participants to the electricity market must be provided regulated access to the public interest transmission and distribution electricity networks on a non-discriminatory basis.

The license holder and the consumer have a regulated access to the public interest electricity networks. The access to the networks represents a mandatory public service, which must be provided by the transmission and system operator, as well as by the distribution operator.

Different regulations apply depending on the market where the electricity trader operates:

1. Wholesale Electricity Market

The Commercial Code of the Wholesale Electricity Market regulates the following markets:

- i. Bilateral Agreements Electricity Market, which includes:
 - a. non-regulated agreements which are negotiated by the parties; and
 - b. regulated agreements based on the following agreements approved by RERA:
 - portfolio frame agreement for the sale-purchase of electricity;
 - frame agreement for the sale-purchase of electricity concluded on a long term basis between S.N. Nuclearelectrica S.A. and the suppliers of captive consumers;
 - frame agreement for the purchase of electricity from auto-producers (co-generation producers) or independent producers;
 - option agreement between Hidroelectrica S.A. and the electricity producers (appointed by RERA), in order to diminish the risk resulting from lack of producing the electricity agreed upon firm by portfolio sale-purchase agreements.

The Settlement Administrator may offer, upon request settlement services regarding the multilateral settlement of entries.

- ii. Day-Ahead Market (“DAM”) – in order to participate on the market, the licence holder must be registered with the Market Operator (“OPCOM”) as a Participant.

The Participant must submit to the Market Operator a financial guarantee and pay the tariff of access to DAM. The participant will be listed in the Trading Register upon signing the DAM Agreement.

The sale offer and the purchase offer may contain up to 25 price-quantity pairs and one single offer may be issued for one trading zone. An offer represents a firm undertaking of the respective participant.

Offers may be transmitted until the closing hour of the DAM, which is 11.00 a.m. on the trading day prior to the delivery day. Offers may be transmitted maximum a week prior to the delivery day and only within the trading hours. Offers may be modified by

other offers referring to the same delivery day, trading interval and trading area, or may be annulled.

Offers are verified and then deemed valid by a Procedure issued by the Market Operator. The Market Operator will establish the initial Market Clearing Price, the contractual exchange for the Border Trading Zones, and the final Market Clearing Price.

The confirmation of the transaction is issued by the Market Operator no later than at 12.00 a.m. of the trading day. No later than 13.30 p.m. of the trading day, the Market Operator will establish the physical notification and submit it to the Balance Responsible Party (“BRP”) of each participant to the DAM.

Each physical notification must cover all the dispatch intervals of the respective delivery day.

Each holder of a licence must take responsibility towards the Transmission System Operator (“TSO”) for its entire production, purchase, import, demand, sale or export of electricity and in this respect register as a BRP with the TSO. Only licence holders assigned to only one BRP are allowed to conclude bilateral transactions including block exchanges, import and export.

Each BRP must plan the production and purchase, including the import, for each dispatch interval, so that it corresponds to the anticipated demand and sale, including the export, for each participant to the Wholesale Electricity Market for which it takes responsibility, including itself.

Each BRP must issue physical notifications, and takes responsibility towards TOS for the imbalance of the production, purchase, import, demand, sale and export carried out by the licence holders for which it takes responsibility. BRP must submit a guarantee prior to its registration as BRP.

The registration as BRP is approved by TSO following a written application in respect thereof and the signing of a Responsibility Agreement. The licence holders may transfer the responsibility to another BRP.

The clearing of the transactions concluded on the DAM is the responsibility of the Settlement Operator (“SO”). The following clearing accounts are established by SO:

- a. Market Clearing Accounts, for each participant to the DAM;
- b. Balancing Account, for each participant to the Balancing Market;
- c. BRP Clearing Accounts, for each BRP; and
- d. Information Imbalance Clearing Accounts, for each producer of electricity which operates one or more dispatchable units.

All the licence holders which want to be registered as Participants on the DAM must open a cash account with a commercial bank agreed by SO. SO and the licence holder will conclude an agreement whereby it will be stated that the clearing bank shall operate the respective account on the basis of the settlement statements issued by SO.

SO is entitled to ask the licence holders to submit guarantees in order to be registered as participants to the DAM, respectively as BRP. The guarantee may limit the total financial volume of the offers, which a Participant to the DAM may transmit, or the maximum capacity of the BRP, and/or related block exchanges, import and exports.

For each participant to the DAM, and for each delivery day, SO drafts a daily settlement statement regarding the value which must be credited or charged in the Market Clearing Account of the respective participant to the DAM.

For each BRP, SO shall issue an Settlement Statement, whereby all the amounts to be cashed or paid for imbalances will be mentioned.

- iii. Balancing Market – whereby the TSO purchases/sells active electricity from licence holders which operate with dispatchable units and/or own dispatchable loads.
- iv. Ancillary Services Market, whereby TSO and the Distribution Operator purchase primary and secondary reserves, voltage and reactive power control, other ancillary services regulated by the Grid Code, and electricity for covering the network losses.

The producer, supplier and eligible consumer holding a trading licence, as participants on the Wholesale Electricity Market, may take part to an auction in order to obtain access to the Available Transfer Capacity (“ATC”).

TOS will determine the ATC and the auctioning periods, and will propose the assignment of the ATC for each auctioning period, and for the DAM.

2. Retail Energy Market

The sale of electricity to the consumers is regulated by Government Decision no. 1007 of 2004 (“Trading Regulations”). The participants on the retail energy market are: the supplier, TSO, Distribution Operator, Consumers and Subconsumers.

There are two types of consumers: captive consumers and eligible consumers.

Captive consumers are those consumers which may not deal directly with a competitive supplier, e.g. residential consumers. The eligible consumers may choose their supplier.

Eligible consumers may contract directly the transmission and/or distribution services.

The frame-agreements for the supply of electricity to the consumers are established by RERA Decision no. 57 of 1999.

Consumers may resell the electricity to subconsumers, if they obtain the prior approvals of the Distribution Operator and of the supplier. The contractual relationships between consumers and subconsumers are regulated by RERA Order no. 16 of 2005.

The electricity sold to consumers is purchased by suppliers from the wholesale electricity market. In order to sell electricity to the consumers, the suppliers must conclude a distribution agreement with the Distribution Operator and, by case, with TSO.

3. Green Certificates Market

Renewable Energy Sources (“RES”) are defined as wind power, solar power, wave and tides power, geo-thermal power, hydroelectric power, power contained in the bio-degrading fraction of the products, waste and residual material of agriculture (including vegetal substances and residual material of an animal origin), forestry and connected industries, as well as in the bio-degrading fraction of the industrial and communal, city and municipal wastes, named bio-mass, power contained in the fermentation gas of the wastes, also named deposit gas, power contained in the fermentation gas of the mud from the waste water treatment installation, power contained in secondary gaseous products, obtained by fermenting from organic residual materials, power contained in liquid products obtained by distillation of the fermented organic matter, forming the liquid fuel category, named fuel alcohol, and power obtained from other regenerating sources, currently not explored.

The RES power can be sold on the energy market like any other form of energy at the market price. For each 1 MWh of power supplied to the power grid, the producer receives a Green Certificate. Green Certificates are issued by the TSO, according to a procedure approved by RERA. All RES power producers receive annually a certain number of green certificates according to the quantity of power they provide.

The RES power producers may sell the Green Certificates on the Green Certificates Market.

All RES power producers must be in possession of a certificate of origin, a document indicating the renewable energy source from which the power was produced, which must show the date, production place and installed power of the production capacity.

Regulations on derivative trading were drafted and await approval by RERA. The goal is to have them effective by January 1, 2007. However, it is estimated that there will be delays.

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