

THE CROATIAN PARLIAMENT

Pursuant to Article 88 of the Constitution of the Republic of Croatia, I hereby pass the

DECISION

PROMULGATING THE ACT ON THE REGULATION OF ENERGY ACTIVITIES

I hereby promulgate the Act on the Regulation of Energy Activities, adopted by the Croatian Parliament at its session on 3 December 2004.

No: 01-08-04-3761/2
Zagreb, 10 December 2004

The President
of the Republic of Croatia
Stjepan Mesić, *m.p.*

ACT ON THE REGULATION OF ENERGY ACTIVITIES

I. GENERAL PROVISIONS

Article 1

This Act regulates the establishment and implementation of the system for the regulation energy activities, the procedure for establishing the energy regulatory body and other matters of importance for the regulation of energy activities.

Article 2

(1) The terms used in this Act shall have the meanings laid down in the Energy Act and laws governing the performance of energy activities.

(2) For the purpose of this Act, other terms also used have the following meanings:

- "Croatian Energy Regulatory Agency" – the body competent for the regulation of energy activities,
- "regulation of energy activities" – a system of rules and measures regulating the operation of energy undertakings for the purpose of meeting the goals of regulation specified in this Act.

Article 3

Regulation of energy activities shall be established in order to implement a system of regulated operation of energy undertakings in the carrying out of energy activities, and especially those energy activities which are performed as public services and are in the public interest on the one hand, and in order to establish and regulate the energy market on the other hand, all pursuant to the provisions of the Energy Act and laws governing the carrying out of individual energy activities.

Article 4

- (1) The basic goals of the regulation of energy activities shall be as follows:
- to ensure objectivity, transparency and non-discrimination in the carrying out of energy activities,
 - to look after the implementation of the principle of regulated access to the network/system
 - to set the methodology for determination of tariff elements of tariff systems,
 - to establish an efficient energy market and market competition,
 - to protect energy customers and energy undertakings.
- (2) Regulation of energy activities shall promote the following:
- efficient and rational use of energy,
 - entrepreneurship in the energy sector,
 - investment in the energy sector,
 - environmental protection.

Article 5

(1) Regulation of energy activities shall be conducted with respect to regulated energy activities and with respect to market energy activities.

(2) Regulated energy activities and energy activities which are performed as public services shall be regulated on the principles of objectivity, transparency and non-discrimination, taking into account justified costs of business operation, plant operation, maintenance, replacement, construction and reconstruction of facilities so as to enable energy undertakings to receive a reasonable and socially acceptable return on assets invested for the purpose of carrying out energy activities prescribed by law.

(3) Market energy activities shall be regulated according to the principles of market competition and encouragement of entrepreneurship in the energy market.

II. ENERGY REGULATORY AGENCY

Article 6

(1) The Croatian Energy Regulatory Agency - CERA (hereinafter referred to as: the Agency) is founded under this Act as an autonomous, independent and non-profit public institution, for the purpose of establishing and implementing the regulation of energy activities.

(2) The seat of the Agency shall be in Zagreb.

(3) The work of the Agency shall be public.

(4) The Statute and other general acts of the Agency shall regulate matters of significance for the activities, organisation and work of the Agency.

(5) The Statute of the Agency shall regulate the internal organisation, representation, work and operations, supervisory bodies, establishment and scope of work of advisory and professional

bodies, competence and method of decision-making, general acts, confidentiality of data, public nature of the work, and other matters of importance for the work of the Agency.

(6) The Statute of the Agency shall be adopted by the Steering Council subject to prior approval of the Government of the Republic of Croatia.

Article 7

(1) The founder of the Agency shall be the Republic of Croatia and the founding rights shall be exercised by the Government of the Republic of Croatia.

(2) The Agency shall report to the Croatian Parliament.

Article 8

The duties of the Agency are of special interest for the Republic of Croatia and the Agency shall perform them on the basis of public authority.

Article 9

(1) The scope of activities of the Agency shall include:

- issuing licenses for the carrying out of energy activities, temporary or permanently revoking the licenses,
- adopting the methodology for the determination of tariff elements of tariff systems,
- giving opinions to the Ministry on the proposed tariff systems for production of electricity from renewable sources and cogeneration, on compensation for providing incentives for renewable sources and cogeneration and on compensation for stranded costs,
- giving opinions to the Ministry on the proposed amount of tariff elements,
- giving opinions to the Ministry on the proposed amount of compensation for organisation of the electricity market,
- giving opinions to the Government of the Republic of Croatia on the proposed amount of compensation for connection to the network and for increase in connected load,
- supervising the application of all tariff systems and prescribed compensations,
- giving opinions to the Ministry on the general conditions of energy supply,
- giving opinions to the Ministry on the procedures and criteria for approval and construction of generating facilities,
- taking decisions on the calling for tenders and on selecting the most advantageous tenderer for construction of generating facilities up to 50 MW,
- taking decisions on the construction of new electricity generating facilities up to 50 MW
- giving proposals to the Government of the Republic of Croatia on the calling for tenders and on selecting the most advantageous tenderer for construction of generating facilities of 50 MW and above,
- organising and carrying out of tendering procedure for construction of generating facilities,
- issuing of preliminary approval for construction of a heat generating facility for tariff customers,
- issuing decisions granting the status of eligible producer,
- giving approval to energy undertakings for construction of direct lines,
- approving development and network construction plans,
- passing regulations in the energy sector for which the Agency is authorised under this Act and laws regulating the carrying out of certain energy activities, and giving opinions or approvals on –rules and regulations in the energy sector,
- supervising energy undertakings, pursuant to the provisions of the Energy Act and laws governing the carrying out of individual energy activities,

- supervising the quality of services provided by energy undertakings,
- publishing information and data on energy efficiency and the use of energy,
- participating in the energy policy design,
- co-operating with the ministries and competent inspection services in accordance with special laws,
- collecting and processing of data related to the activities of energy undertakings,
- submitting requests for instigation of misdemeanour procedures.

(2) The Agency, in establishing and implementing the system of regulation of energy activities which are performed as public services, through advisory bodies in which representatives of consumer associations take part, shall apply measures for protection of basic rights of consumers in accordance with special laws.

(3) Pursuant to the provisions of this Act and other regulations regulating the carrying out of energy activities, the Agency shall perform its activities in such a way that energy markets function in an objective, transparent and non-discriminatory manner, taking into account the interests of energy undertakings and customers.

(4) Energy undertakings shall reply to the queries of the Agency relating to the activities referred to in paragraph 1 of this Article, in accordance with Article 27 of this Act.

(5) The Agency shall resolve disputes relating to the carrying out of regulated energy activities, in particular those relating to:

- denial of connection to the transmission network/transport system,
- determination of the compensation for connection to and use of transmission network/transport system.

(6) The decision of the Agency in resolving disputes referred to in paragraph 5 of this Article shall be final and a dissatisfied party may initiate an administrative dispute against it.

Article 10

(1) The Agency, in establishing and implementing the system of regulation of energy activities which are performed on market principles, shall apply the rules and a system of measures for protection of market competition, with respect to matters which fall exclusively under the competence of the Agency.

(2) The Agency shall monitor in particular:

- rules on managing and allocating interconnection capacity in co-operation with regulatory bodies of neighbouring countries to which the electric power system and the gas system are connected,
- congestion management within the national transmission network/system,
- time periods within which the Transmission System Operator or the Distribution System Operator makes repairs and connections,
- provision of appropriate information by the Transmission System Operator or the Distribution System Operator to stakeholders as regards connections, transmission network/system and distribution network and the allocation of the transmission capacity of interconnection, taking into account confidentiality of certain information,
- separation of accounts, as provided for in the Energy Act and laws regulating individual energy activities, to prevent cross-subsidising among generation, transmission, distribution and supply,
- objective, transparent and non-discriminatory conditions and tariffs for connection of new electricity producers, especially taking into account costs and benefits of renewable energy sources, distributed generation and cogeneration,
- extent to which the Transmission System Operator or the Distribution System Operator fulfils its tasks pursuant to the Energy Act and laws governing individual energy activities,
- degree of transparency and market competition.

(3) The Agency shall publish annual reports on the results of the monitoring referred to in paragraph 2 of this Article and shall be authorised, where necessary, to demand implementation of specific measures in order to comply with the principles of transparency, objectivity and non-discrimination.

(4) For matters relating to the carrying out of energy activities on the market, which are not regulated by this Act and which relate to prevention, restriction or distortion of market competition, it is necessary to apply the Act on Protection of Market Competition, and the Agency is obligated to provide technical assistance in the form of professional opinions and analyses to the Agency for Protection of Market Competition.

Article 11

(1) The Agency shall set out the methodologies for:

- tariff systems, without amounts of tariff elements,
- determination of the compensation for the connection to the transmission and distribution networks, and for increase in connected load,
- provision of energy balancing services in the electric power system,
- provision of natural gas balancing services in the gas pipeline system,
- access to natural gas storage, quantity of gas in the pipelines and other ancillary services in the gas pipeline system.

(2) The methodologies referred to in paragraph 1, subparagraph 1 of this Article must enable investments to be made as are necessary for network development and for other requirements in accordance with the Energy Act and laws governing individual energy activities.

(3) The Agency shall adopt the tariff system for oil transportation by oil pipeline and transportation of oil products by product line.

Article 12

(1) The Agency shall be authorised, where necessary, to request that the Transmission System Operator or the Distribution System Operator change the conditions, rules and organisation set out in Article 10, paragraph 2 of this Act in order to ensure their equal and non-discriminatory application.

(2) A dissatisfied party may submit a complaint to the Agency concerning:

- the work of the Transmission System Operator or Distribution System Operator regarding matters referred to in Article 10 of this Act,
- the decision on methodologies taken in accordance with Article 11 of this Act.

(3) The complaint referred to in paragraph 2, subparagraph 1 of this Article may be submitted within 30 days from the day on which the irregularity in the work of Transmission System Operator or Distribution System Operator occurs, and the complaint referred to in paragraph 2 subparagraph 2 of this Article may be submitted within 60 days from the day on which the methodology is adopted.

(4) The Agency shall take a decision on the complaint within 60 days from the receipt thereof.

(5) The decision of the Agency referred to in paragraph 4 of this Article shall be final and a dissatisfied party may file an administrative dispute against it.

(6) The provisions of paragraphs 1 - 4 of this Article which relate to electricity transmission and electricity distribution shall apply under the same terms to other regulated energy activities.

Article 13

In addition to the obligations, authorities and responsibilities referred to in Articles 9 to 12 of this Act, the Agency shall have the obligations, authorities and responsibilities arising from certain provisions of the Energy Act and laws governing the carrying out of individual energy activities.

Article 14

The Agency shall be independent in taking any organisational and other measures required for the proper carrying out of its functions and fulfilment of obligations in accordance with this Act, the Energy Act and laws governing the carrying out of individual energy activities.

Article 15

(1) The Agency shall be managed by the Steering Council comprising five members, from which one shall be chairperson of the Steering Council and one shall be deputy chairperson.

(2) The chairperson, deputy chairperson and other members of the Steering Council shall be appointed by the Croatian Parliament upon proposal of the Government of the Republic of Croatia, for a five-year period, with the possibility of one reappointment.

(3) The Steering Council shall adopt and oversee the implementation of documents necessary for the work and operation, work and development programmes and shall decide on the financial plan and annual accounts, in accordance with the goals laid down in Article 4, paragraph 1 of this Act.

(4) The chairperson of the Steering Council shall manage the work of the Steering Council.

(5) The chairperson of the Steering Council shall represent the Agency, take all actions required by law on behalf and for the Agency and be responsible for the legality of the Agency's work.

(6) In the absence of the chairperson of the Steering Council, the chairperson shall be replaced by the deputy chairperson.

Article 16

(1) A member of the Steering Council must be a citizen of the Republic of Croatia, domiciled in the Republic of Croatia, with at least a university degree in a technical, legal or economic profession, good command of the English language and at least seven years of work experience, five of which shall be in the field of energy.

(2) A member of the Steering Council may not be a person convicted of a criminal offence that makes a person unworthy of the position of a member of the Steering Council, or who has a position of a representative in the Croatian Parliament or a member of a representative body of units of local or regional self-government or executive authority or in main bodies of political parties or who is employed in an energy undertaking to which the provisions of this Act apply.

(3) The function of a member of the Steering Council shall be performed as an only employment.

Article 17

Members of the Steering Council and their family members shall not own or hold shares or stakes in any energy undertaking exceeding 0.5% of the capital stock, or be members of the management board or supervisory board or any other bodies in any energy undertaking, and shall not hold any material interest in the area of energy activities or perform any other work in any energy undertaking to which this Act applies, which may lead to the conflict of interests.

Article 18

(1) The Croatian Parliament shall discharge a member of the Steering Council before the expiration of the term of office for which the member has been appointed, upon the proposal of the Government of the Republic of Croatia, in the event that:

1. the member himself requests so,
2. serious breach of a duty specified in the Statute of the Agency,
3. inability to perform duties for a period exceeding six months,
4. permanent loss of ability to perform duties,
5. final judgement by a court of law for a criminal offence making the member unworthy of the position,
6. occurrence of circumstances specified in Article 17 of this Act.

(2) The Steering Council shall notify the Government of the Republic of Croatia of the existence of reasons for the discharge of any member of the Steering Council before the expiration of the term of office for which the member has been appointed.

(3) The member of the Steering Council shall not perform any work in energy undertakings to which this Act applies for one year following the date of discharge of the member, except in the event referred to in paragraph 1, subparagraphs 3 and 4 of this Article.

(4) The member of the Steering Council shall be entitled to a compensation equal to the salary he earned as a member of the Steering Council, except in the events of discharge specified in paragraph 1, subparagraphs 2, 5, and 6 of this Article, from the date of discharge to the date of entitlement to a salary elsewhere or to a pension under general regulations, but no longer than for one year following the date of discharge.

(5) The Steering Council may be discharged as a complement if it successively and repeatedly fails to take decisions related to Article 11 in the manner described in Article 19, paragraph 4 of this Act.

Article 19

(1) Decisions by the Steering Council shall be made during sessions convened by the chairperson of the Steering Council.

(2) The sessions shall be public. Exceptionally, the Steering Council may decide that a session or discussion on a particular item should be closed for the public.

(3) The Steering Council shall take decisions in accordance with the provisions of Articles 10 and 11 of this Act.

(4) The Steering Council shall take decisions by the majority of votes of all members of the Steering Council.

(5) With respect to taking decisions referred to in Article 11 of this Act and other important decisions and with respect to giving opinions to the Government of the Republic of Croatia and the Ministry, the Steering Council shall take decisions subject to the proposal of the director of the Agency who is obligated to attend the sessions of the Steering Council at the invitation of the Steering Council, without the right to vote. The Steering Council shall also decide on other matters within the scope of work of the Agency, in which case the Steering Council may request opinion from the director of the Agency.

(6) In all proceedings before the Agency, initiated under this Act, the Agency shall provide opportunity for each party in the proceedings, prior to taking a decision, to state any facts relevant to the case and to submit all necessary documentation or other evidence that the party considers of relevance for the decision.

(7) If a party fails to comply with the final decision of the Steering Council within the specified period, the Agency may cause or enforce compliance or initiate a misdemeanour procedure under the Misdemeanours Act.

(8) Decisions of the Steering Council shall be signed by the chairperson of the Steering Council.

(9) Decisions of the Steering Council shall be published in the Official Gazette, and individual decisions taken by the Steering Council in the exercise of public authority and other decisions as may be chosen by the Steering Council shall be published in the Agency's bulletin.

(10) Matters relating to the Agency's work not covered by this Act shall be regulated by the Institutions Act and General Administrative Proceedings Act.

Article 20

(1) The director of the Agency shall be appointed by the Steering Council, based on a public tender for the position, for a period of four years with the possibility of re-appointment.

(2) The appointment and discharge of the Agency's director shall be regulated by the relevant provisions of Articles 16 and 17 of this Act, and the person that may be appointed director must have work experience in management positions in the energy sector of at least three years.

(3) The Steering Council shall discharge the director of the Agency in the events and following the procedure specified in the Institutions Act and shall notify thereof the Government of the Republic of Croatia.

(4) In the event of the director being discharged, the Steering Council shall appoint an acting director of the Agency and advertise the position within the legal time-limit.

Article 21

(1) The director of the Agency shall organise and lead the professional work of the Agency.

(2) The director of the Agency shall perform other work as specified in the Statute of the Agency.

(3) The director of the Agency shall report to the Steering Council of the Agency.

(4) The director of the Agency shall prepare for the Steering Council proposals for the taking of the decisions referred to in Article 11 of this Act and other important decisions, proposals for giving opinions to the Government of the Republic of Croatia and the Ministry, and proposals for those decisions that the Steering Council, in accordance with this Act and other laws and subordinate legislation, proposes to the Government of the Republic of Croatia for adoption.

Article 22

The Steering Council of the Agency may not, without approval from the Government of the Republic of Croatia, acquire, encumber or dispose of any real or other property or enter into any other legal act exceeding one half of the budget of the Agency.

Article 23

Central state administration bodies shall request the opinion of the Agency on draft proposals of acts and other regulations relating to carrying out energy activities.

Article 24

(1) The Agency shall have its own budget the revenue of which will be compensations for carrying out the regulation of energy activities.

(2) The Agency shall adopt the budget for the following year, with prior opinion of the Government of the Republic of Croatia.

(3) The Government of the Republic of Croatia shall take a decision on the amount of compensations referred to in paragraph 1 of this Article at the proposal of the Steering Council which has obtained prior opinion of the Ministry.

Article 25

(1) The Agency shall submit a report once a year on its work to the Croatian Parliament, in particular:

- observations that are of importance to the development of the energy market and public services in the energy sector,
- analysis of the energy sector,
- budget performance of the Agency in the previous year.

(2) The Agency shall submit to the Croatian Parliament or to the Government of the Republic of Croatia, at their request, a report on its professional and financial operations, and reports on specific issues from its scope of work also for periods shorter than one year.

(3) After acceptance of the reports referred to in paragraph 1 of this Article, the Agency shall publish such reports in the Agency's bulletin in the Croatian language, in Latin script, and the English translation thereof.

Article 26

(1) Expert tasks within the scope of work and operations of the Agency shall be performed by the Agency's employees.

(2) The rights and obligations of the Agency's employees deriving from employment and related from employment shall be governed by general labour regulations.

(3) Conditions referred to in Article 17 of this Act shall equally apply to the Agency's employees.

(4) The members of the Steering Council, the director of the Agency and other employees of the Agency shall act conscientiously and in accordance with the rules of the profession.

Article 27

(1) The Agency shall be authorised to request from energy undertakings data, reports and other documents necessary for the carrying out of the work that is under the Agency's authority on the basis of this Act and laws regulating the carrying out of energy activities.

(2) Energy undertakings shall respond within the prescribed period to the Agency's request and supply the data, reports or other documentation in accordance with the Agency's request referred to in paragraph 1 of this Article.

(3) The Agency shall respond within 60 days at the latest to a written request from the energy undertaking concerning matters related to regulation of its energy activity and which are important for its business operations.

III. PENAL PROVISIONS

Article 28

(1) An energy undertaking shall be fined for misdemeanours in the amount of HRK 10,000.00 to 50,000.00 if it fails to act in accordance with the Agency's request (Article 27 paragraph 2)

(2) A fine in the amount of HRK 300.00 to 5,000.00 shall be imposed on the responsible person in the energy undertaking for the misdemeanour referred to in paragraph 1 of this Article.

IV. TRANSITIONAL AND FINAL PROVISIONS

Article 29

(1) The Government of the Republic of Croatia shall propose members of the Steering Council within 30 days from the day of entry into force of this Act.

(2) The appointed members of the Steering Council shall constitute the Steering Council within 10 days from the date of appointment.

(3) The Energy Regulatory Council established under the Act on the Regulation of Energy Activities (Official Gazette No. 68/01 and 109/01) shall continue to carry out regulation of energy activities until the appointment of the members of the Steering Council.

(4) The Government of the Republic of Croatia shall appoint a temporary director of the Agency within 30 days from the day of entry into force of this Act. The temporary director shall be authorised to take actions and make preparations for the beginning of the Agency's work.

Article 30

The Steering Council shall request prior approval from the Government of the Republic of Croatia on the Statute of the Agency within 30 days from the date the Steering Council is constituted. The Steering Council shall within 30 days from the adoption of the Statute of the Agency submit the request for deletion of the Energy Regulatory Council from the court register and submit the request for registration of the Agency in the court register of institutions.

Article 31

(1) The members of the Energy Regulatory Council and employees of the Energy Regulatory Council's technical services shall continue to work in their respective positions as the Agency's employees on the basis of work contracts in accordance with the Statute of the Agency.

(2) The employees of a non-profit legal person which prepares and carries out professional work of the Energy Regulatory Council may continue to work in their respective positions as the employees of the Agency based on work contracts in accordance with the Statute of the Agency.

Article 32

The Steering Council shall advertise the vacancy for the director of the Agency within 30 days from the date of adoption of the Statute of the Agency.

Article 33

(1) General and specific documents of the Energy Regulatory Council adopted before the date of appointment of the Steering Council referred to in Article 29 of this Act as well as all applications for licenses or approvals or other requests received by the Energy Regulatory Council, and movable and immovable property, archives and other documentation, office equipment,

financial resources, rights and obligations of the Energy Regulatory Council shall be taken over by the Agency as the legal successor to the Energy Regulatory Council.

(2) Subordinate legislation of the Government of the Republic of Croatia relating to the work and financing of the work of the Energy Regulatory Council shall apply to the Agency until the day of entry into force of new regulations, unless contrary to the provisions of this Act.

Article 34

All decisions on issuing or revoking licenses for carrying out energy activities that have been issued prior to the day of entry into force of this Act shall be valid until the expiry of the period for which they were issued.

Article 35

Administrative and court proceedings, initiated prior to the day of entry into force of this Act, shall be completed in accordance with regulations in force until the day of entry into force of this Act, and may be completed in accordance with the provisions of this Act only if more beneficial for a party in the proceedings.

Article 36

On the day of entry into force of this Act, the Act on the Regulation of Energy Activities (Official Gazette No. 68/01 and 109/01) shall cease to apply.

Article 37

This Act shall enter into force on the eighth day from its publication in the Official Gazette.

Class: 310-02/04-01/04
Zagreb, 3 December 2004

THE CROATIAN PARLIAMENT
The President
of the Croatian Parliament
Vladimir Šeks, *m.p.*