

ENERGY REGULATORY OFFICE

**INFORMATION PACKAGE
(CHP)**

FOR COMPANIES INTENDING TO CONDUCT BUSINESS IN THE
FIELD OF GENERATING ELECTRICITY IN COGENERATION (CHP)
UNITS WHICH ARE NOT RES INSTALLATIONS

WARSAW, January 2020

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Licensed business activity in the area of generating electricity

(Who should hold the licence?)

Pursuant to Article 32 item 1 section 1 subsections b, c and d of the Energy Law Act of 10 April 1997 [1], hereinafter referred to as the “Energy Law Act“, business activity in the area of generation of electricity requires obtaining a licence, **excluding** generation of electricity:

- in sources with total installed capacity not exceeding 50 MW **that are not renewable energy sources installations or cogeneration units**,
- in microinstallations or small installations,
- from agricultural biogas, exclusively from agricultural biogas in co-generation, and exclusively from bioliquids within the meaning of the Act of 20 February 2015 on Renewable Energy Sources [2], hereinafter referred to as the RES Act.

The term of cogeneration is defined as simultaneous generation of heat and electric or mechanical power during the same technological process (Article 3 item 33 of the Energy Law Act). Therefore, according to the foregoing provision, each business activity in the area of generating electric power in cogeneration (referred to as CHP – combined heat and power) is subject to licensing, regardless of the installed generation capacity of the source or the amount of energy generated from the source. **The exception are:** RES microinstallations, or RES small installations and units generating electricity from agricultural biogas, exclusively from agricultural biogas in cogeneration and exclusively from bioliquids, which are subject to entry in the register of regulated activity:

- a register of electricity producers in a small installation (kept by the President of ERO; detailed information at <https://bip.ure.gov.pl/bip/rejestr-y-bazy-wytworcy-energii-w-male/2138,Rejestr-wytworcow-energii-w-malej-instalacji.html> – information in Polish),
- a register of producers of agricultural biogas and register of bioliquids producers (kept by the Director General of National Support Centre for Agriculture).

IMPORTANT: Units generating electricity in highly efficient cogeneration referred to in Article 3 section 38 of the Energy Law Act, which are not licensed or entered in the respective register of regulated activity (if required), have no right to benefit from must-take obligation and priority transmission/distribution of electricity by operator, to whose grid they are directly connected.

Moreover, only licensed energy companies and companies entered in the registers of regulated activities (if licence or entry is required) may benefit from mechanisms and instruments supporting electricity generation in highly efficient cogeneration provided for in the Act of 14 December 2018 on promotion of electricity from highly efficient cogeneration (3), hereinafter: CHP Act. It should be borne in mind that in order to benefit from the mechanisms and instruments supporting the production of electricity from high-efficiency cogeneration, the producer shall meet the requirements set out in the CHP Act and implementing regulations issued thereunder.

IMPORTANT: Verification of compliance with the abovementioned requirements will be carried out under separate individual proceedings, in the course of which the President of ERO will decide (in relevant decisions issued on the basis of the CHP Act) on admission to the support system, including its type and volume.

Promise of licence /promise of licence modification

Pursuant to Article 43 item 1 of the Energy Law Act, anyone that intends to conduct licensed activity e.g. in the field of electricity generation, or to modify the scope of the licence, may apply for a promise of licence or a promise of licence modification. A promise is a document promising granting or modification of a licence. During the validity term of the promise, the licence for the activity specified in the promise or licence modification cannot be denied unless the factual or legal status specified in the application to issue the promise has changed (Article 43 item 4 of the Energy Law Act). **A promise of licence shall specify its term of validity, however it cannot be shorter than six months** (pursuant to Article 43 item 3 of the Energy Law Act). The Energy Law Act does not specify the maximum limit of the validity term of the promise of licence, however, considering the purpose of this document, in practice it is issued for a predicted investment project implementation term.

The promise of licence does not give the right to conduct activity in the scope which requires the licence. Therefore, on that basis it is not possible to apply for payments of guaranteed premium or individual cogeneration premium referred to in CHP Act, or effectively demand electricity offtake. The promise may be the document which facilitates the company to acquire financing for the planned investment project and also to obtain the licence in the future, because the entrepreneur must gather the specified documents when applying for the promise of licence. More details on this may be found below.

Pursuant to Article 43 item 7 of the Energy Law Act, a technical and economic description of the planned investment project for which works will begin after 25 January 2019, shall be attached to an application for issuing a promise of a licence/ licence modification for business in the field of generation of electricity in CHP units. A template for such a description is available on the ERO's website (testing the "incentive effect").

On the basis of the technical and economic description of the planned investment project, the President of ERO issues a decision on granting a promise of a licence/ licence modification, stating whether the investment project would be implemented in the case when electricity generated in this installation was not eligible for:

- 1) guaranteed premium – in relation to small new built CHP installations and small substantially refurbished CHP unit, referred to in Art. 5 item 1 of the CHP Act;
- 2) individual cogeneration premium – in relation to new built CHP installations with installed electrical capacity not lower than 50 MW or substantially refurbished CHP units with installed electrical capacity not lower than 50 MW, as referred to in Art. 6 item 1 point 1 of the CHP Act.

Importantly, a producer of electricity that does not obtain such an acknowledgement, can not apply to the President of ERO for admission to:

- 1) **guaranteed premium system** referred to in Art. 30 item 1 of the CHP Act – in the case of new built small CHP unit and substantially refurbished small CHP unit, for electricity generated in that installation;
- 2) **participation in selection process** – in the case of installations referred to in Art. 6 item 1 point 1 of the CHP Act, for electricity generated, fed into the grid and sold from that installation (Article 43 items 9 and 10 of the Energy Law Act).

However, according to the new wording of Art. 43 items 7 -10 of the Energy Law Act, granted by the CHP Act, in the case of a new or substantially refurbished CHP unit with an installed electrical capacity of not less than 1 MW and less than 50 MW, obtaining a statement (in the decision issuing a promise of license or promise of licence modification) that the investment would not be carried out if electricity generated in this unit was not entitled to support under the CHP Act, is not a condition for benefiting from support system in the form of cogeneration premium (there is no obligation to confirm the so-called incentive effect).

Therefore, in the case of construction or significant refurbishment of CHP unit with an installed electrical capacity of not less than 1 MW and less than 50 MW, prior to starting works (making an investment decision) it is not required to submit to the President of ERO an application for a promise of a licence/promise of licence modification together with the attached form referred to in art. 43 item 7 of the Energy Law Act (i.e. form for technical and economic description of planned investment project).

However, in the case of planned modernization of CHP unit (irrespective of the installed electrical capacity), having in mind the decision of the European Commission of 15 April 2019 in the case SA.51192 (2019 / N) - Poland - CHP support, it is recommended to attach to the application for a promise of licence/licence modification the form of technical and economic description of proposed investment project, to confirm the so-called "Incentive effect".

Necessary conditions which should be met by an Applicant

Entrepreneurs applying for a licence must meet the premises for securing it specified in Article 33 of the Energy Law Act. Pursuant to Article 33 item 1 of this Act, the President of the ERO grants a licence to an applicant that:

- 1) has its registered office or place of residence in the territory of the European Union Member State, Swiss Confederation or a member state of the European Free Trade Agreement (EFTA) – a party to the European Economic Area agreement or Turkey;
- 2) has sufficient financial means to ensure correct performance of its activity or is capable of documenting the ability to acquire the same;
- 3) has the technical capabilities ensuring the correct performance of its activity;
- 4) will guarantee that it will employ staff with the adequate professional qualifications referred to in Article 54 of the Energy Law Act;
- 5) has obtained a decision on the conditions of land development (if the need to obtain such a decision is due to the conditions of the applicant) or a decision on the location of investment in the construction of a nuclear power facility, as referred to in the Act of 29 June 2011 on the preparation and realization of investments in nuclear power facilities and accompanying investments [4];
- 6) is in no arrears with payment of taxes which constitute income of the state budget, except for cases when the applicant obtained tax release, deferral, rescheduling the payment of tax arrears or tax on instalments or withholding the execution of a decision issued by a relevant tax authority or fiscal control body, as stipulated by the legal provisions in force.

Circumstances preventing securing the licence

Pursuant to Article 33 item 3 of the Energy Law Act, the licence cannot be issued to the applicant:

- 1) that is in the course of bankruptcy proceedings or liquidation;
- 2) whose licence for the activity specified in the Act was revoked within the last three years for the reasons specified in Article 41 item 3 of the Energy Law Act or who within the last 3 years was deleted from the regulated activity register because of decision prohibiting the applicant from activities specified in the register entry due to:
 - a) submitting a declaration on compliance with legal requirements for conducting the activity, which was inconsistent with facts ,or
 - b) non-remedying a breach of legal requirements for conducting the activity within the deadline specified by the authority, or
 - c) flagrant breach of legal requirements for conducting the activity;
- 3) convicted for a crime or fiscal crime related to the business activity conducted with a valid court decision;
- 4) that is not registered as VAT payer;
- 5) if another entity having a material impact on it or exercising or co-exercising control over it, within the meaning of Article 3 item 1 sections 34, 35 and 36 subsections a, b, e and f of the Accounting Act of 29 September 1994 [5], hereinafter referred to as “the Accounting Act”, was convicted for a crime or fiscal crime related to the business activity conducted, as determined in the Act, with a valid court decision within the last three years.

IMPORTANT: Pursuant to Article 33 item 3a of the Energy Law Act, in the case of an applicant which is:

- 1) a legal person,
- 2) an organizational unit without legal personality,
- 3) a foreign entrepreneur,
- 4) a foreign entrepreneur conducting activity in the territory of the Republic of Poland as a branch with a registered office in the territory of the Republic of Poland, established under the terms and conditions specified in the Act of 6 March 2018 on the rules of participation of foreign entrepreneurs and other foreign persons in the economic trade on the territory of Poland,

the condition referred to in Article 33 item 3 section 3 (i.e. clean criminal record) also applies to persons authorized to represent them and members of supervisory boards.

It should also be borne in mind that pursuant to Article 33 item 3c of the Energy Law Act the President of ERO shall suspend the licence granting proceedings in case of an **applicant** with respect to which a decision was issued to present charges of committing a crime or a fiscal crime related to the business activity it conducts, or when such a decision was issued with respect to **persons and members referred to in Article 33 item 3a** until the preparatory and court proceedings are completed.

In addition, pursuant to Article 41 item 2 section 4 of the Energy Law Act, the President of ERO shall revoke a licence in the case of failure to meet any of the conditions referred to in Article 33 item 1 or of occurrence of the circumstances referred to in Article 33 item 3 sections 2-6 or item 3a.

Modification and extension of the granted licence (promise of licence)

Entrepreneurs applying for the modification of the licence (promise of a licence or promise of a licence modification) should attach to the application documentation on the subject of modification to the issued licence. Modifications in the licence (promise of a licence or promise of a licence modification) in principle can be divided into two types, that is concerning formal legal situation of the licensee (e.g. change of the name, address or registered office or company's or partnership's partners, etc.) and concerning extension of the scope of activity, which is associated with technical capabilities available to the licensee (e.g. intention to extend/limit the scope of a licence/promise of a licence/promise of licence modification). In the first case, the application should include formal legal documents concerning the situation of the licensee, while in the second case it is of particular importance to demonstrate technical capabilities at the disposal of the licensee.

The list of the necessary documents to be submitted in both cases is included in the further part of the information package.

It should be highlighted that pursuant to Article 37 item 2c of the Energy Law Act, **in the case of a change of the data referred to in Article 37 item 1 sections 1 and 7 of the Act (that is the designation of the entity, its registered office or place of residence and their address, the number assigned in the Register of Entrepreneurs kept by the National Court Register, provided that the entrepreneur has such a number, or a number of an equivalent register of the Member States of the European Union, Swiss Confederation, Member State of the European Free Trade Agreement (EFTA) – a party to the agreement on the European Economic Area or Turkey, and the tax identification number - NIP), the energy company shall apply for a modification of the licence not later than within seven days** of the occurrence of these changes.

Pursuant to Article 39 the Energy Law Act, the entrepreneur shall submit an application for an extension of the licence **not later than 18 months before its expiration date** (determined by the date of posting the application in a Polish post office managed by an operator specified within the meaning of the Postal Act of 23 November 2012). Extension of the licence is equivalent to recognition by the licensing authority that the entrepreneur meets the conditions for the exercise of the licensed activity specified in the Act. This involves the necessity to examine whether the company which has applied for an extension of the licence still meets the conditions specified in Article 33 of the Energy Law Act for exercising business activities covered by the licence and if the formal legal status as of the licence granting date has not changed.

After the expiration of the abovementioned deadline for submitting the application for an extension of a licence, an entrepreneur intending to continue the activities covered by the licence shall apply for reissuing the licence. It is important to note that such a request should be submitted in time allowing to process it and issue a decision on granting a new licence before the expiration date of the previous licence in accordance with the terms set out in the Act on the Administrative Proceedings Code of 14 June 1960 [6], hereinafter referred to as the "Administrative Proceedings Code". Both when applying for licence extension and for reissuing of the licence, the documents required for submitting an application for issuing a licence shall be attached to it.

Preparing the application

When preparing the application to grant a licence (promise of a licence or promise of licence modification), the applicant should be aware of the fact that the better and more completely the application is prepared (it contains all the necessary exhibits), the smoother the licensing process will run. The scope of the presented documentation should make it possible to determine that the Applicant fulfils all of the conditions required for securing the licence (promise of a licence or promise of a licence modification) and that there are no circumstances pertaining to the Applicant which justify refusal of granting the licence (promise of a licence or promise of a licence modification).

The application to grant a licence (or a promise of a licence or promise of licence modification, respectively – see Article 43 item 5 of the Energy Law Act) should contain in particular the following (Article 35 item 1 of the Energy Law Act):

- 1) designation of the applicant and its registered office, registered office of its branch in the territory of the Republic of Poland or place of residence and their address, and if proxies are appointed to perform the legal transactions on the applicant's behalf, it should also include their first and last names and their addresses;
- 2) specification of the subject matter and scope of the conducted activity for which the licence (promise of a licence or promise of a licence modification) is to be issued;
- 3) information about the applicant's previous activity, including its financial statements for the last three years if the entity is conducting business activity;
- 4) specification of the term for which the licence (promise of a licence or promise of a licence modification) is to be granted and specification of the start date of the activity;
- 5) specification of the resources available to the entity applying for the licence (promise of a licence or promise of a licence modification), for the purpose of ensuring a correct performance of the activity covered by the application;
- 6) number in the register of entrepreneurs kept by the National Court Register, provided that the entrepreneur has such a number, or a number of an equivalent register of the Member States of the European Union, Swiss Confederation, Member State of the European Free Trade Agreement (EFTA) – a party to the agreement on the European Economic Area or Turkey, and the tax identification number (NIP).

The President of ERO shall deny granting a licence (promise of a licence or promise of licence modification) to an Applicant failing to meet the conditions prescribed by the law, pursuant to Article 35 item 3 of the Energy Law Act.

Pursuant to Article 35 item 2a of the Energy Law Act, if the application to grant the licence or promise of a licence does not contain all the necessary information or documents required by the provisions of the Act, the President of ERO shall immediately request the applicant to deliver the missing documents not later than within 30 days of the request delivery date. Whereas pursuant to Article 35 item 2b of the Energy Law Act, failure to provide the missing documents for an application for granting a licence (promise of a licence) within a set deadline in line with all the conditions required by the Act **shall result in the application not being processed**. This results in the procedure being closed and requires the application to be resubmitted with all the required documents, while the documents previously submitted to the Energy Regulatory Office may be used in that new procedure provided that they are still valid.

The detailed list of documents that should be attached to the application to grant the licence (a promise of licence or a promise of licence modification) for generating electricity in CHP may be found in the later part of this information package.

A sample of application to grant a licence (a promise of licence or a promise of a licence modification) forms an exhibit to this information package.

Addressee of the application

The entrepreneur's written application to grant a licence (promise of licence or a promise of a licence modification) should be sent to the relevant Branch Office of the Energy Regulatory Office **with jurisdiction over the area, considering the company's registered office, except for** an application concerning a CHP unit which is not an installation of a renewable energy source using:

- a) biomass or biomass with other fuels,
- b) bioliquids with other fuels,
- c) biogas with other fuels,
- d) agricultural biogas with other fuels,

for generating electricity, **which should be sent to the following address:** Energy Regulatory Office, Aleje Jerozolimskie 181, 02-222 Warsaw (Building A).

The territorial coverage, and a list of addresses of the Branch Offices may be checked on the ERO's website: <http://www.ure.gov.pl>

Duration of the procedure

The duration of the licensing procedure mostly depends on completeness of the submitted application, possibly the party's activity in delivering the necessary documents and the necessity to obtain in each case the opinion of the voivodship board with jurisdiction over the area. Pursuant to Article 23 item 3 of the Energy Law Act, the opinion of the voivodship board with jurisdiction over the area is necessary in the matters related to granting and withdrawing licences (promise of licence or a promise of licence modification). **The President of ERO has a statutory obligation to ask for an opinion, and the 14-day deadline for issuing it cannot be abridged.**

It should be kept in mind that pursuant to Article 35 items 2a and 2b of the Energy Law Act only submitting a complete application, that is containing all the required documents and information, results in initiating an administrative procedure for granting a licence.

If the application contains all the necessary exhibits or has been completed and the voivodship board issues a positive opinion or does not issue it by the statutory deadline of 14 days, the case will be examined within the deadline specified in the Code of Administrative Procedure. Pursuant to Article 30 item 1 of the Energy Law Act, the provisions of the Administrative Proceedings Code, which sets the deadlines for closing the case apply to the proceeding before the President of ERO. Article 35 § 1 of the Code stipulates that the public administration authorities are obligated to handle the cases without unnecessary delay, and pursuant to § 3 of the aforementioned Article, a case that requires clarification should be handled no later than within one month, and very

complicated cases – no later than within two months from the date of launching the proceeding. Nevertheless, it should be remembered that pursuant to Article 35 § 5 of the Code, the deadlines set forth in the provisions of law for performing the specified actions and the periods of delay resulting from a party's fault or from reasons beyond the regulatory authority's control **are not included** in the deadlines for handling the case. Therefore, a party's failure to take actions in compliance with the regulatory authority's written request may cause the proceeding to be handled in a correspondingly longer period of time.

Fees associated with licence (promise of licence or promise of licence modification) granting procedure

Pursuant to Article 6 item 1 sections 1-4 of the Stamp Fee Act of 16 November 2006 [7], hereinafter referred to as the "Stamp Fee Act", the obligation to pay the stamp fee for issue of the licence (promise of licence or a promise of a licence modification) arises at the moment of **submitting the application** to issue the licence (promise of licence or a promise of a licence modification).

The stamp fee rates, determined in an exhibit to the aforementioned Act, for the activities associated with the scope of actions of the President of the ERO, are as follows:

- for a promise to issue a consent (promise of licence or a promise of a licence modification) – **PLN 98** (part I item 20 of an exhibit to the Stamp Fee Act);
- for an extension of the validity term or change of conditions of the promise to issue a consent (promise of licence or a promise of a licence modification) – **PLN 44** (part I item 21 of an exhibit to the Stamp Fee Act);
- for issuing a consent (licence) – **PLN 616** (part III item 44 of an exhibit to the Stamp Fee Act);
- for an extension of the validity term or change of conditions of the issued consent (licence) if:
 - it concerns an extension of the validity term or broadening of the scope of activity – **50%** of the rate for issuing a consent (licence) i.e. **PLN 308** (part III item 46 of an exhibit to the Stamp Fee Act);
 - the change involves another type of activity – **100%** of the rate for issuing a consent (licence) i.e. **PLN 616** (part III item 46 of an exhibit to the Stamp Fee Act).

If the document confirming the granting of a power-of-attorney or attorney-in-fact rights or its excerpt, extract or copy is submitted (which applies also to submitting a certificate of the National Court Register (KRS) confirming granting of a power-of-attorney or proxy), the stamp fee in the amount of **PLN 17 should be paid on each power of attorney or proxy under given administrative proceedings** (part IV of an exhibit to the Stamp Fee Act). That fee is not collected in the case of submitting a document confirming granting of a power-of-attorney as well as its excerpt, extract or copy:

- certified by a notary public or an authorized authority, authorizing to collect the documents;
- if the power-of-attorney is granted to a spouse, a descendant, an ancestor or a sibling;
- if the principal is the entity specified in Article 7 sections 2 and 3 of the Stamp Fee Act.

Pursuant to Article 12 item 2 of the Stamp Fee Act, the tax authority with geographic jurisdiction in stamp fee matters:

- a) on performance of an office duty, issuing a certificate, a licence (a promise of licence or a promise of a licence modification) – is the tax authority with geographic jurisdiction over the authority's seat;

Due to the fact that **the seat** of the central administration authority – the President of the Energy Regulatory Office – is the **capital city of Warsaw**, the stamp fee for granting a licence (a promise of a licence or a promise of a licence modification) should be paid to the account of the Mayor of the capital city of Warsaw to the relevant account of Municipal Office of the Capital City of Warsaw, Taxpayer Service Centre, ul. Obozowa 57, 01-161 Warsaw, with a note: “opłata skarbową – wydanie decyzji o udzieleniu koncesji/promesy koncesji”, account no.: **21 1030 1508 000 0005 5000 0070**.

Caution: As of January 1, 2020 the bank account number for stamp fee payments has been changed.

- b) on submitting a document confirming granting of a power-of-attorney or attorney-in-fact rights or its excerpt, extract or copy – is the tax authority with geographic jurisdiction over the place of submitting the document.

For a submitted document confirming the granting of attorney or proxy and its copy, extract or copy, the stamp duty shall be paid to the account of the relevant local tax authority according to the place of submitting the document (Branch Office of the ERO with jurisdiction over the area).

If the **original (or in respect of charges for the power-of-attorney - a certified copy)** of the stamp fee payment receipt is not attached to the application, which is tantamount to preventing performance of an official act, the entrepreneur will be summoned to make the relevant payment. If the stamp fee payment receipt is not provided despite the fact that the summons to send it was dispatched, this will be a premise for returning the application pursuant to Article 261 item 2 of the Code of Administrative Procedure.

In case of missing confirmation of the stamp fee payment receipt for the power-of-attorney or proxy, pursuant to Article 11 items 1 and 3 of the Stamp Fee Act, the President of ERO shall provide information to the competent tax authority in order to initiate administrative enforcement due to non-payment of stamp duty for the power-of-attorney or proxy.

The confirmation of the stamp fee payment receipt may take a form of printout from the computer system (confirmation of the transaction execution).

Stamp duty exemptions

Pursuant to Article 7 sections 2 and 3 of the Stamp Fee Act, state budget units and local self-government units are exempt from paying a stamp fee.

The list of documents, which should be attached to the application to grant the licence for generating electricity in cogeneration

documents necessary to obtain a promise of licence or a promise of licence modification are marked with "P"

I. Documents showing that the entrepreneur meets the organizational and formal legal requirements:

- 1) excerpt from the register of entrepreneurs kept by the National Court Register (KRS), obtained not earlier than 3 months prior to submitting to licensing authority¹ (C or O)* (P);
- 2) in the case of an applicant that is a legal person or an organizational unit without legal personality or a foreign entrepreneur or a foreign entrepreneur conducting activity in the territory of the Republic of Poland as a branch with its registered office in the territory of the Republic of Poland, established under the terms and conditions specified in the Act on the rules of participation of foreign entrepreneurs and other foreign persons in the economic trade on the territory of Poland:
 - list of all:
 - a) persons authorized to represent the applicant²;
 - b) members of the supervisory board (O)* (P)**;
 - current information from the National Criminal Register about lack of a criminal record of all:
 - a) persons authorized to represent the applicant;
 - b) members of supervisory board^{3 4 5}(O)* (P)**;
 - current information from the National Criminal Register about lack of criminal records of applicant's enterprise (as a collective entity)⁴ (O)*; (P);
- 3) for entrepreneurs that are natural persons – current information from the National Criminal Register about lack of a criminal record of the entrepreneur^{3 4 5} (O)*; (P);
- 4) for partnerships - current information from the National Criminal Register about lack of a criminal record of all partners^{3 4 5} (O)* (P);
- 5) for partnerships – the articles of association or statute (C)* (P);
- 6) a list of all entities having a material influence on the applicant or exercising or co-exercising control over it, within the meaning of Article 3 item 1 sections 34, 35 and 36, subsections a, b, e and f of the Accounting Act (O)*; (P);
- 7) current information from the National Criminal Register of no criminal record of entities referred to in item 7^{4 5} (O)*; (P);
In the case of an entity registered abroad or that is not a Polish citizen, it is **also** required to send an appropriate notice issued by the competent authority of the registration country or a

¹ Applies to entrepreneurs on which the legal provisions impose an obligation of an entry to the National Court Register (KRS).

² Applies to persons authorized to represent entrepreneur according to Code on Commercial Partnerships and Companies

³ If an entrepreneur, partner or Board member is not a Polish citizen, it is also required to send an appropriate notice issued by the competent authority of the country of which the above person is a citizen, with a translation by a sworn translator into Polish;

⁴ All above documents should be obtained not earlier than three months prior to submitting to the licensing authority.

⁵ Please note the information in the further part of the Package with respect to confirming the compliance of the submitted foreign documents with the legal provisions valid at the place of their issuance.

country of which of which the above entity is a citizen, with a translation **by a sworn translator** into Polish;

- 8) entrepreneur's declaration that there is no pending application for declaring the entrepreneur's **bankruptcy** and that the enterprise is not **in liquidation** /in case of partnerships – of every partner (O)* (P);
- 9) entrepreneur's declaration that in the last 3 years the entrepreneur has not been deleted from the register of regulated activities because of decision prohibiting the applicant from activities specified in the register entry due to:
 - a) submitting a declaration on compliance with legal requirements for conducting the activity, which was inconsistent with facts, or
 - b) non-remedying a breach of legal requirements for conducting the activity within the time limit specified by the authority, or
 - c) flagrant breach of legal requirements for conducting the activity (in the case of civil law partnerships - declaration of every partner) (O)* (P) **;
- 10) current certificate confirming that the entrepreneur is registered as a VAT payer (O)* (P)**;
- 11) declaration of:
 - a) an entrepreneur (in the case of civil law partnerships – of every partner),
 - b) persons and members referred to in Article 33 item 3c in connection with item 3a of the Energy Law Act,confirming that there are no grounds to suspend the proceedings pursuant to Article 33 item 3a, which stipulates that the President of ERO shall suspend the proceedings in case of an entrepreneur or the above mentioned persons with respect to whom a decision was issued to present charges of committing a crime or a fiscal crime related to the business activity the conduct (O)* (P);
- 12) a technical and economic description of the planned investment project, for which works will begin after the entry into force of the CHP Act (that is after 25 January 2019), along with a date of starting the investment project implementation (start of construction works or the first binding obligation to order equipment or another binding obligation making the investment project irreversible) along with an explanation whether an Entrepreneur has benefitted/will benefit from subsidy/co-financing for this investment project; this document is required only in the case of an application for issuing a promise of a licence, or a promise of licence modification (O)*; (P)
A model form is available from the ERO's website: www.ure.gov.pl
- 13) in the case of performing actions through a proxy, the power-of-attorney to perform legal actions on the applicant's behalf or its copy (along with the original receipt or its certified copy for payment of the stamp duty of PLN 17) (C or O)* (P);
- 14) **receipt for payment** of the stamp duty due for issuing a licence, amounting to **PLN 616** (the fee does not apply to the entities exempted from this fee, specified in the "Stamp duty exemptions" section) or for issuing a promise of licence or a promise of modification of a licence, amounting to **PLN 98** (O)* (P).

II. Documents showing that applicant has technical capability ensuring adequate performance of business activities in electricity generation:

- 1) documents confirming the entrepreneur's legal title to the facilities and installations necessary to perform the licensed activity /for instance a notarial deed, a certified copy of the land and

mortgage register, an excerpt from a register of land, a lease agreement, a contract of lending for use, an invoice of purchase of equipment to generate electricity, equipment handover report, etc./ (C or O)*;

- 2) Entrepreneur's notice on networks, equipment and installations (determined in the Ordinance of Minister of Economy, Labour and Social Policy of 28 April 2003 on detail rules for confirmation of professional qualifications of people operating networks, equipment and installations; Journal of Laws of 2003, No. 89, item 828, as amended) which will be used for conducting licensed activity and on number of people which are/will be employed for their operation, along with reference numbers of qualification certificates – in line with a table annexed to this information package⁶ (in case of civil partnerships – each partner) (O)*;
- 3) description of the technical condition and parameters of the equipment to be used for generation of electricity (boilers, engines, turbines, generators), including a description of the type of fuel used (C or O)* (P);
- 4) simplified technological flowsheet of power plant/CHP plant to determine number of CHP units (C or O)* (P);
- 5) decision on the conditions of land development (an outline planning permission), or the decision on the location of a public interest investment (or a document confirming the admissibility of locating the planned investment on the given land site – in case of promise of licence or a promise of licence modification) (C)* (P);
- 6) decision granting the building permit for the equipment, installations and network (K)*;
- 7) documents confirming completion of construction and launching operation of the facilities (depending on the terms specified in the building permit):
 - a) permission to operate (C)*;
 - b) notification to the relevant building supervisory authority about completing the construction (submitted at least 14 days in advance of the planned date of launching operation). If the relevant building supervisory authority does not raise any objections to the investment, within 14 days **of delivery** of the aforementioned notification, an applicant's statement about this fact should be attached to the procedural documentation (C)*;
 - c) if there is no possibility to present a permission to operate, or the decision granting building permit along with the notice of completion of the construction, the entrepreneur shall present:
 - the decision on the conditions of land development (the outline planning permission), or
 - the decision on the location of a public interest investment, or
 - information about compliance with the local land development plan,**along with the information** obtained from the architectural-construction authority, building supervisory authority, or the municipal office about the date of building's foundation and confirming the lack of possibility to obtain a copy of abovementioned permissions, or information about the release of these permissions **and the information from building supervisory authority confirming that the investment in question is not an unauthorized construction and meets the requirements of the law** (C or O)*;

⁶ If submission of above mentioned listing in the printed version is cumbersome due to large number of employees or information, it is possible to submit it on CD record.

- 8) decisions of the Technical Supervision Office regarding commissioning for operation of equipment for generation of electricity along with technical inspection reports which are attached to a decision (if required) (C)*;
- 9) a decision granting an integrated permit, and in the case when it is not required: an air permit and a waste generation permit (C)*;
- 10) results of test run (around 3 pages) confirming that a given type of fuel can be used in the applicant's CHP installation;
- 11) documentation proving the installed capacity of CHP unit, in particular:
 - a) pictures of electric generators' nameplates (C or O)* or
 - b) operation and maintenance manual of electric generators technical parameters section) (C)*

According to Article 2 item 12 of the CHP Act, installed electric capacity means nominal active capacity of:

- a) generator
- b) fuel cell
 - expressed in [W] or multiples of this unit, obtained with rated power factor $\cos \varphi_n$
- 12) documents issued by the electricity system operator to whose grid a CHP installation was connected:
 - a) a decision specifying the technical requirements for connection to the power grid - so-called grid condition conditions or so-called connection agreement (C)*;
 - b) a report of technical inspection, acceptance and commissioning for operation of the power equipment (C)*;
 - c) a report of testing operation of measurement and settlement systems (a report on commissioning detailed technical service) (C)*;

III. Documents confirming that the applicant has financial means ensuring adequate performance of the business activities covered by the licence, or is capable of acquiring them:

- 1) specification of planned annual revenues and costs connected with the activities for which the licence is sought, covering at least three full calendar years (schedule for financing the investment project along with a specification of the sources of its financing – in the case of a promise) (O)* (P);
- 2) financial statements for the last three years (annual PIT returns for natural persons or partners to civil law partnerships, balance sheets and profit & loss accounts for other entities), and should the entrepreneur be in business for less than three years – the same documents for the time period since launching the business (C or O)*; (P);
- 3) other documents confirming ownership or the ability to raise sufficient funds for the proper performance of licensed activities (such as bank guarantees, insurance guarantees, guarantee agreements, credit agreements, loan agreements, etc.) (C or O)*; (P);
- 4) current certificate from the relevant Tax Office, issued no earlier than 3 months before submitting to the licensing authority, confirming that the entrepreneur is not in arrears in payment of liabilities to the State Budget or stating the balance of possible arrears (in the case of civil law partnerships it is necessary to present certificates separately for every partner and for the partnership), containing also the following information:
 - a. on pending enforcement proceedings in administration and tax offence cases,

- b. on titles and periods from which potential arrears arise (C or O)*; (P);
- 5) current certificate from the relevant branch of the Social Insurance (ZUS) issued no earlier than 3 months before submitting to the licensing authority, confirming that the entrepreneur is not in arrears with payment of social security premiums or that it does not appear in the records of contribution payers (in the case of the entrepreneur conducting business activity for which no obligation to report it to the Social Insurance (ZUS) has arisen); in the case of civil law partnerships, it is necessary to present the certificates from the Social Insurance separately for each shareholder and the partnership (C or O)*; (P);
- 6) certificate from the bank keeping the entrepreneur's main account, specifying the entrepreneur's volume of dr/cr turnover, payment and creditworthiness status, with information about credits extended to the entrepreneur and information whether the account is free of enforcement titles, obtained not earlier than 3 months before submitting to the licensing authority (C or O)*; (P).

Additional comments for the entrepreneurs whose registered offices or places of residence are located in the EU Member States, Swiss Confederation or EFTA member states – parties to the European Economic Area agreement or Turkey, applying for the licence.

- 1) the entrepreneurs from the EU Member States, Swiss Confederation, EFTA member states – parties to the European Economic Area agreement or Turkey, may conduct a licensed activity in Poland directly, not through a branch. In such a case, entrepreneurs should submit a copy of an appropriate equivalent of the Polish National Court Register in the country of company's registration (of course only if the planned business activity is to be conducted directly, without opening a branch);
- 2) certificate of no criminal record for **the persons authorized to represent the applicant and the members of the supervisory board** should be issued by the Polish National Criminal Register and its equivalent in the country where the company is registered (along with a translation into Polish **by a sworn translator**) and obtained not earlier than **3 months** before submitting to the licensing institution (O)*(P);
- 3) additionally, if the above mentioned persons are not citizens of the country of the company's registration, it is **also** required to send an appropriate notice issued by the competent authority of the country of which the above persons are citizens, along with a translation **by a sworn translator** into Polish, and obtained **not earlier than 3 months** prior to submitting to the licensing authority (O)* (P);
- 4) information regarding criminal record of **the company (as a collective entity)** should come from the Polish National Criminal Register and equivalent register from the country of registration of the company (if such records exist), along with a translation **by a sworn translator into Polish**, and obtained not earlier than **3 months** prior to submitting to the licensing authority (O)*(P);
- 5) information of no criminal record of **entities having material influence over the applicant or exercising or co-exercising control over it within the meaning of Article 3 item 1 sections 34, 35 and 36, subsections a, b, e and f of the Accounting Act** should come from the Polish National Criminal Register, an equivalent register from the country of registration of the applicant (if such records exist) and an equivalent register from the country of registration or citizenship of the above mentioned entities, along with a translation **by a sworn translator into Polish**,

- and obtained **not earlier than three months** prior to submitting to the licensing authority, (O)*(P);
- 6) decision of tax authority on the issue of the Tax Identification Number may come from the country of the company's registration (a document certifying the issue of the Polish Tax Identification Number by a Polish tax authority will also be accepted) (C)*(P);
 - 7) a document certifying registration of the entrepreneur as VAT payer for the needs of intracommunity transactions (EU VAT) may originate from the country of the company's registration or the entrepreneur may submit a document certifying its registration for the VAT needs in Poland (C)* (P);
 - 8) the accordance of the submitted documents with the law of the place of their issue should be confirmed in the manner specified in Article 3 sentence 1 of the Hague Convention of 5 October 1961 which abrogates the requirement to legalize foreign official documents, i.e. with the application of **the apostille clause**. Pursuant to Article 3 sentence 2 of the Convention, adding the apostille cannot be required when (...) the agreement between two or more countries abrogated or simplified the legalization or waived the legalization;
 - 9) documents submitted in a foreign language **must be translated into Polish by a sworn translator**. All the pages of the submitted documentation should be signed by the persons authorized to represent the entrepreneur;
 - 10) If an entrepreneur that has no place of residence or stay or registered office in the Republic of Poland or another EU Member State, Swiss Confederation or member state of the European Free Trade Agreement (EFTA) – a party to the European Economic Area, has not established attorney to pursue the case of the entrepreneur in the country nor acts by intermediation of a consul of the Republic of Poland, is obliged to indicate the country representative for the correspondence purposes, unless the correspondence is delivered by electronic means. If there is no indication of such a representative, all documents for the entrepreneur will stay in act files with effect of delivery according to the Article 40 §5 of the Administrative Proceedings Code.

document marked with "O" – documents provided to the ERO must be **originals or copies certified as **consistent with the original, pursuant to Article 76a § 2 of the Code of Administrative Procedure**, by a **notary public** or by an attorney of a party to a case, who is a **lawyer, legal counsel, patent attorney or tax advisor**, or copies officially certified by a relevant authority or entity, pursuant to Article 76a § 1 of the Code of Administrative Procedure;*

document marked with "C" – pursuant to Article 75 § 1 of the Code of Administrative Procedure, copies of documents provided to the ERO may be evidence of what has been indicated therein after they have been signed by the Entrepreneur or persons authorized to represent it (on every page of the document), while such a proof will be examined against the entire collected evidence and in the case of doubt, the President of the ERO may request the party to present the original document or its certified copy as specified in Article 76a § 1 or 2 of the Code of Administrative Procedure.

OTHER KEY INFORMATION

- I. The documents directory included in this package **does not have a closed character**, which means that individual factual and legal situation of the Applicant may require taking of additional

explanatory steps by the President of ERO. This may include requesting the entrepreneur during the proceedings on granting/changing/extending a licence (promise of licence or promise of licence modification) to generate electricity, to provide additional information and documentary evidence assuring that the entrepreneur meets the conditions laid down by law to conduct business activity in the field of electricity generation.

A sample application form, list of attachments and declarations in electronic form are available on the [ERO website](#).

Obtaining a licence (promise of licence or promise of licence modification) to generate electricity does not release from the obligation to obtain other licences and permits required under separate legal provisions. It should be noted that an energy company operating a cogeneration unit whose **total installed heat capacity exceeds 5 MW** should apply to the President of ERO for a licence **to generate heat**.

- II. In the case of submitting an application for granting a licence/licence modification by an Entrepreneur that has a valid promise of licence/licence modification, it is necessary to provide documents which were not required when submitting an application for granting a promise of licence/licence modification, and provide again the documents whose validity term has expired.
- III. According to Article 37 item 1 section 5 of the Energy law Act, licence determines *inter alia* detail requirements for conducting licensed activity, hence the licensing authority in the course of proceeding on granting a licence will provide an interested applicant with information on particular requirements of conducting business activity covered by licence, which will be determined in licence by the President of ERO.
- IV. **Pursuant to Article 37 item 2c of the Energy Law Act, in the case of change of data referred to in item 1 section 1 (designation of the entity, its registered office or place of residence and their address) and section 7 (the number assigned in the Register of Entrepreneurs kept by the National Court Register, provided that the entrepreneur has such a number, or a number of an equivalent register of the Member States of the European Union, Swiss Confederation, Member State of the European Free Trade Agreement (EFTA) – a party to the agreement on the European Economic Area or Turkey, and the tax identification number - NIP), the energy company shall apply for a modification of the licence not later than within seven days of the occurrence of these changes.**

In addition, pursuant to Article 41 item 4 section 3 of the Energy Law Act, the President of ERO may withdraw the licence or modify its scope in the case of the entrepreneur's failure to fulfil the obligation referred to in Article 37 item 2c with respect to Article 37 item 1 sections 1 and 7 of the Energy Law Act.

Furthermore, pursuant to Article 56 item 1 section 49 of the Energy Law Act, anyone failing to fulfil the obligation referred to in Article 37 item 2c is subject to financial penalty.

- V. Moreover, the obligation to comply with the terms and conditions of performing licensed activity (determined in the obtained licence), with respect to support systems for electricity generation in CHP installations, as well reporting and disclosure of information, should be borne in mind.

The annual licence fees

Entrepreneurs, who have obtained the licence are obliged to calculation and payment of the annual fee to the state budget, which is included in the cost of their operations. This obligation arises under

Article 34 item 1 of the Energy Law Act and the Ordinance of the Council of Ministers of 9 November 2018 on the licence fee [8].

Obligation to pay a licence fee arises on the last day of the calendar year in which energy enterprise gained income greater than or equal to zero from each type of activity covered by the licence (Art. 34 item 4 of the Energy Law Act). The licence fee should be paid by 15 April of the year following the year in which obligation to pay licence fee arises (paragraph 4 of the Ordinance of the Council of Ministers) to the account of Energy Regulatory Office.

Obligation to pay licence fee also applies to entrepreneurs whose licence expired or was revoked within the year in which obligation to pay licence fee arises.

The licence fee for each type of licensed activities cannot be lower than PLN 1,000 and not higher than PLN 2,500,000 (article 54 item 3 of the Energy Law Act).

Execution of business activity without a licence

Pursuant to Article 60¹ of the Code of Petty Offences Act of 20 May 1971 (9), executing business activity without the required licence or a required registration in a register of regulated activity is subject to restriction of liberty or a fine.

Information on processing of personal data

Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC⁷ (hereinafter: GDPR regulation), I inform that:

- 1) Personal data of natural persons, collected by the President of ERO, are processed by the President of ERO, 02-22 Warsaw, Al. Jerozolimskie 181, which is a personal data controller.
- 2) Personal data are processed on the basis of Article 6 item 1 letter b, c and e of GDPR regulation and other acts, wherein the obligations and duties of the President of ERO were enlisted, in particular: Energy Law Act, RES Act, Act on biocomponents and liquid biofuels, Energy Efficiency Act, Capacity Market Act, Act on stocks of crude oil, petroleum products and natural gas, the principles of proceeding in circumstances of a threat to the fuel security of the State and disruption on the petroleum market, Act on electromobility and alternative fuels.
- 3) Personal data are processed in order to fulfil statutory duties by the President of ERO.
- 4) Personal data collected in relation to fulfilment of statutory duties by the President of ERO, will not be transferred to a third country or international organisation.
- 5) Personal data will be kept for time period resulting from Subject File Index and Office Procedures Manual, binding in the Energy Regulatory Office.
- 6) Natural person has a right to request from personal data controller an access to its personal data, their rectification and a right to lodge a complaint with national supervisory authority – President of the Personal Data Protection Office.

⁷ OJ L 119, 4.5.2016, p. 1

- 7) The recipients of the personal data will be solely entities entitled to obtain personal data on the basis of legal regulations.
- 8) Personal data will not be subject to profiling (automated processing consisting in using personal data for evaluating the personal aspects relating to a natural person).
- 9) In matters connected with personal data protection, please contact the Data Protection Officer by iod@ure.gov.pl or in writing, by sending correspondence to Energy Regulatory Office, Al. Jerozolimskie 181, 02-22 Warsaw, with a note: "Data Protection Officer".
- 10) Provision of personal data is obligatory when resulting from above mentioned legal grounds.

List of legal acts

- [1] Energy Law Act of 10 April 1997 (Journal of Laws of 2018, item 755, as amended)
- [2] Act on Renewable Energy Sources of 20 February 2015 (Journal of Laws of 2018, item 1269, 2389, as amended)
- [3] Act on promoting electricity from highly efficient cogeneration of 14 December 2018 (Journal of Laws of 2019, item 42)
- [4] Act on the preparation and realization of investments in nuclear power facilities and accompanying investments of 29 June 2011 (Journal of Laws of 2017, item 552)
- [5] Accounting Act of 29 September 1994 (Journal of Laws of 2018, item 395, as amended)
- [6] Act of 14 June 1960 entitled the Administrative Proceedings Code (Journal of Laws of 2018, item 2096, as amended)
- [7] Stamp Fee Act of 16 November 2006 (Journal of Laws of 2018, item 1044, as amended)
- [8] Ordinance of the Council of Ministers of 9 November 2018 on the licence fee (Journal of Laws of 2018, item 2277)
- [9] Code of Petty Offences Act of 20 May 1971 (Journal of Laws of 2018, item 618, as amended)

Other legal acts associated with licensing the business activity

- [a] Ordinance of the Minister of Economy, Labour and Social Policy of 28 April 2003 on the detailed principles of verifying the qualifications held by the persons operating the equipment, installations and networks (Journal of Laws of 2003, No. 89, item 828, as amended)
- [b] Ordinance of the Minister of Economy of 4 May 2007 on the detailed conditions for operation of the electric power system (Journal of Laws of 2007, No. 93, item 623, as amended)
- [c] Ordinance of the Minister of Energy of 23 September 2019 on the method of calculating data provided for the purposes of the support system and the detailed scope of the obligation to confirm data on the amount of electricity generated in high-efficiency mode (Journal of Laws of 2018, item 1596).