

ENERGY REGULATORY OFFICE
DEPARTMENT OF ELECTRICITY AND HEAT MARKETS

INFORMATION PACKAGE

FOR COMPANIES INTENDING TO CONDUCT BUSINESS ACTIVITIES
IN THE FIELD OF ELECTRICITY TRADING

WARSAW, January 2020

HOW TO SECURE A LICENCE FOR ELECTRICITY TRADING?

Licensed business activity in the area of electricity trading

(Who should hold the licence?)

Pursuant to Article 32 section 1 item 4 of the Energy Law Act of 10 April 1997 – (Journal of Laws of 2019, item 755, as amended), hereinafter referred to as the “Energy Law Act“, conducting business activity in electricity trading requires securing a licence, excluding:

- 1) electricity trading using installations of voltage lower than 1 kV owned by the user,
- 2) electricity trading carried out on the commodity exchange within the meaning of the provisions of the Act on Commodity Exchanges of 26 October 2000, or organized market by the entity maintaining a regulated market on the territory of Poland, within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments by commodity brokers or brokerage firms conducting brokerage activities in the field of commodities trading, and by the company running commodity exchange, exchange clearing house or the National Depository for Securities, or by the company to which the National Depository for Securities has delegated the performance of the activities related to the tasks referred to in Article 48 item 2 of the Act of 29 July 2005 on Trading in Financial Instruments, which purchase electricity for to the execution of the tasks set out in the Act of 26 October 2000 on Commodity Exchanges;
- 3) electricity trading other than specified under item 2, performed by an exchange clearing house or by the National Depository for Securities, or by the company to which the National Depository for Securities has delegated the performance of the activities related to the tasks referred to in Article 48 item 2 of the Act of 29 July 2005 on Trading in Financial Instruments, which purchase or sell gaseous fuels or electricity, due to the execution of the tasks set out in the Act on Commodity Exchanges of 26 October 2000, with respect to the transactions concluded outside the commodity exchange or market referred to in item 2.

It should be emphasized that pursuant to Article 3 section 6 of the Energy Law Act, trading in electricity shall mean business activity consisting in wholesale or retail trading in electricity.

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 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 the 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 (Journal of Laws of 2018, item 1537, as amended);
- 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 (Journal of Laws of 2019, item 351, as amended), 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.

Moreover, in the case of an applicant which 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 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 (Journal of Laws of 2019, item 1079, as amended), the condition referred to in Article 33 item 3 section 3 also applies to persons authorized to represent them and members of supervisory boards (see Art. 33 item 3 section 3 of the Energy Law Act).

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, it should be highlighted that 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.

Promise of licence

Pursuant to Article 43 item 1 of the Energy Law Act, each person who intends to conduct business activity involving trading in electricity, which is subject to licensing, or to modify its scope, may apply for a promise of licence or a promise of licence modification, which is a form of a promise to grant/modify a licence. The licence validity term specified in the promise may not be shorter than six months (Article 43 item 3 of the Energy Law Act).

During the promise validity term, granting a licence for the activity specified in the promise or its 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). **The promise of licence does not give the right to conduct business activity** in the scope which requires the licence. Therefore, licensed activity may not be performed under a promise. The promise may, however, be the document which makes it easier for the company to acquire financing for the planned investment project and also to secure the licence in the future because the entrepreneur must gather the specified documents applying for the promise of licence. More details on this may be found below.

Pursuant to Article 43 item 5 of the Energy Law Act, the provisions of Article 35 shall apply accordingly to the application for issuing a promise.

Modification and extension of the granted licence

Entrepreneurs applying for the modification of the licence should attach to the application documentation on the subject of modification to the issued licence. Modifications in the licence 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 the scope of a licence with a new area of activity). 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 and financial means 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. However, in the situation when the modification is limited solely to updating the name, registered office or address of licence holder, such modification may be done based on current information from National Court Register (KRS), depending on factual and legal situation in a given case.

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.** The deadline begins to run on the day following the day on which the entry into National Court Register was announced in the Court and Economic Monitor (Monitor Sądowy i Gospodarczy) (see: *Communication of the President of Energy Regulatory Office of 11 August 2017 No. 56/2017 on way and date of fulfilling, by commercial companies registered in the National Court Register, an obligation to apply for licence modification in case of change in name, address, registered office, National Court Register Number, Tax Identification Number or the EU VAT number, and fulfilling the notification obligation in case of change in data of partner, shareholder or authorized person or a member of the body authorized to represent, as well as notification obligations determined in licence requirements*).

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, Journal of Laws of 2018, item 2188). 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 (Journal of Laws of 2018, item 2096, as amended), 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 /a promise of licence to trading in electricity, 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 and that there are no circumstances pertaining to the Applicant which justify refusal of granting the licence.

The application to grant a licence (or a promise of licence, 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 (*if several proxies are appointed, it is necessary to indicate one proxy for correspondence delivery*);

- 2) specification of the subject matter and scope of the conducted activity for which the licence/promise of licence 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 is to be granted and specification of the start date of the activity;

The licence is granted for a definite term not shorter than 10 years and not longer than 50 years unless the entrepreneur requests a licence for a shorter term (Article 36 of the Energy Law Act). A promise of licence is granted for a definite term, not shorter than six months (Article 43 item 3 of the Energy Law Act);

- 5) specification of the resources available to the entity applying for the licence/promise of a licence, 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);
- 7) appendices according to the specification presented in the following part of this compilation.

The President of ERO shall deny granting a licence/promise of a licence to an Applicant failing to meet the conditions prescribed by the law, pursuant to Article 35 item 3 of the Energy Law Act. Furthermore, pursuant to Article 38 of Energy Law Act, granting the licence may depend on the submission of collateral on property by an applicant in order to satisfy any third party claims that may occur as a result of improper licensed business conduct, including damage to the environment.

Pursuant to **Article 35 item 2a of the Energy Law Act**, if the application to grant the 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 within a set deadline in the manner meeting 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.

If the applicant's address is not specified in the application and it is not possible to determine that address on the basis of available data, the application will not be processed (Article 64 § 1 of the Code of Administrative Procedure).

Addressee of the application to grant a licence (promise of licence)

The entrepreneur's written application to grant a licence (promise of licence) for trading in electricity should be sent to the President of ERO, to the following address: : Aleje Jerozolimskie

181, 02-222 Warsaw, with the exception of the application to grant a licence (promise of licence) for trading in electricity when the entrepreneur is simultaneously executing electricity distribution activity in the range specified in Article 16 item 6 section 2 of the Energy Law Act, which should be sent to the relevant Branch Office of the Energy Regulatory Office with jurisdiction over the area. Territorial jurisdiction and contact data of Branch Offices are available on the ERO's website:

http://www.ure.gov.pl/portal/pl/419/Oddzialy_Terenowe.html

Additional information in this case may be obtained from the ERO Department of Electricity and Heat Markets, rooms 204, 208 and 209, phone +48 (22) 487-57-21; (22) 487-57-22, (22) 487-57-16 or (22) 487-57-27, e-mail: dre@ure.gov.pl – with the note: WOSE or Unit for Licences and Electricity System Operators.

Duration of the procedure

The duration of the licensing procedure mostly depends on completeness of the submitted application, possibly the party's activity in supplementing the necessary documents and information. It is recommended to submit the application duly in advance before the intended date of launching the licensed activity.

If the application contains all the necessary attachments or will be completed, the case will be processed in accordance with Article 35 § 1 of the Code of Administrative Procedure.

It is important that under Article 35 § 5 of the Code of Administrative Procedure, the deadlines envisaged 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 summons may cause the administrative case to be handled in a correspondingly longer period of time.

It should be kept in mind that according 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 (promise) and the time limit for processing the case runs from this date.

Fees associated with securing the licence (promise of licence)

According to Art. 43aa of the Energy Law Act, a stamp fee is charged for granting a licence or its modification as well as granting a promise of licence or its modification.

Pursuant to Article 6 item 1 section 1-4 of the Stamp Fee Act of 16 November 2006 (Journal of Laws of 2019, item 1000, as amended), hereinafter referred to as the "Stamp Fee Act", the obligation to pay the stamp fee for issue of the licence (promise of licence) arises at the moment of **submitting the application** to issue the licence (promise of licence).

Pursuant to Article 8 item 1 of the Stamp Fee Act, the payment of the stamp fee should be made at the cash desk of an appropriate tax authority or into its bank account.

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) – **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) – **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). If there are several simultaneously ongoing proceedings, the stamp duty must be paid on each power of attorney or proxy used in given proceedings. 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 1-5 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) – is the tax authority with geographic jurisdiction over the authority's seat;
- 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.

Due to the fact that **the seat** of the central administration authority – the President of Energy Regulatory Office – is the **capital city of Warsaw**, the stamp fee in the cases mentioned in sections a) and b) in matters falling within the scope of competence of Department of Electricity and Heat Markets should be paid to the tax authority with geographic jurisdiction – the Mayor of the capital city of Warsaw.

If the payments are not made in cash, they should be paid to the bank account of Municipal Office of the Capital City of Warsaw, Taxpayer Service Centre, ul. Obozowa 57, 01-161 Warsaw, 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.

For a submitted document confirming the granting of attorney or proxy and its copy, extract or copy, the stamp duty shall be paid in cash at the counter of tax authority or by transfer to the account of the relevant local tax authority according to the place of submitting the document (**Branch Office of the Energy Regulatory Office 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, 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.

Pursuant to Article 3 of the Stamp Fee Act, the following actions are not subject to a stamp fee: performance of office duties, issuance of a certificate and consent (permit or license) if, pursuant to separate provisions, they are subject to other civil law fees or are exempt from those fees. Such exemption is envisaged under the Energy Law Act.

The list of documents, which should be attached to the application to grant the licence (promise of licence) for electricity trading

**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 “K” – 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.

**** documents necessary to obtain a promise of licence are marked with “P”.**

If an entrepreneur that has a promise of licence submits an application for a licence, it will be necessary to provide the documents which were not required when the application for a promise of licence was submitted and it will be necessary to send again the documents the validity of which has expired (for instance a copy of the entry to the National Court Register (KRS), a certificate of no criminal record of an entrepreneur from the National Criminal Register).

I. Documents showing that the entrepreneur meets the organizational and formal legal requirements ensuring adequate performance of the business activity covered by the licence (the promise of licence):

- 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 (K or O)* (P)**;
- 2) certificate of assigning a tax identification number (NIP) – if there is no information about the NIP number in other provided documents and the excise number assigned by a relevant head of a tax office, if the applicant has such a number (K or O)* (P)**;
- 3) current certificate confirming that the entrepreneur is registered as a VAT payer - obtained not earlier than 3 months prior to submitting to licensing authority (O)* (P)**;
- 4) in the case of an applicant that is not a natural person conducting business activity – current articles of association or statute (K)* (P)**;
- 5) in the case of an applicant that is a natural person conducting business activity – a declaration containing information on the validity date, series and number of the identity document (O)* (P)**;
- 6) 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:
 - a) list of persons authorized to represent the applicant and members of the supervisory board (O)* (P)**,
 - b) current information from the National Criminal Register about lack of a criminal record of all persons authorized to represent the applicant, as well as of members supervisory board - obtained not earlier than 3 months prior to submitting to licensing authority (O)* (P)**,
 - c) current information from the National Criminal Register about the lack of a criminal record of applicant's enterprise (as a collective entity) - obtained not earlier than 3 months prior to submitting to licensing authority (O)* (P)**.

If an applicant, person authorized to represent the applicant or member of the supervisory board is an entity registered abroad or a person without Polish citizenship, it is also required to send an appropriate notice issued by the competent authority of the country in which the above entity is registered or of which above person is a citizen, with a translation by a sworn translator into Polish (O)* (P) **;

- 7) 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, along with an indication of which of the relation types mentioned above occurs between the entrepreneur and a given entity and an indication of the basis for entering the above mentioned entities to the register (O)* (P)**;
- 8) current information from the National Criminal Register 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 - obtained not earlier than 3 months prior to submitting to licensing authority (O)* (P)**;

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

In the case of an entity registered abroad or a person 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 country of which the above entity is a citizen, with a translation by a sworn translator into Polish (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 (O)* (P) **:
 - a) submitting a declaration on compliance with legal requirements for conducting the activity, which was factually inconsistent with fact, 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);
- 10) entrepreneur's declaration that there is no pending application for declaring the entrepreneur's bankruptcy and that the enterprise is not in liquidation (in the case of civil law partnerships - declaration of every partner) (O)* (P)**;
- 11) declaration of an entrepreneur (in the case of civil law partnerships – of every partner) and declarations of 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 when toward an entrepreneur or the above mentioned persons a decision was issued to present charges of committing a crime or a fiscal crime related to the conducted business activity (O)* (P)**;
- 12) description of the insofar activities and the business plan for activity for which the licence is to be granted, including in particular following information:(O)* (P)**
 - selected option of financing the activity and a detailed plan for its financing, along with an analysis of the financial profitability of the activity for which the licence is to be granted,
 - characteristics of providers and customers,
 - financial projection assumptions,
 - determination of Balance Responsible Party,
 - amount of expenditure necessary to undertake the activity covered by the licence application, and information on how to finance it;
- 13) in the case of performing actions through a proxy, the power-of-attorney to perform legal actions on the applicant's behalf (along with the original receipt or its certified copy for payment of the stamp duty) (K or O)* (P)**;
- 14) receipt for payment of the stamp duty due for issuing a licence /a promise of licence (O)* /(P)**.

II. Documents confirming that the applicant has financial means ensuring adequate performance of the business activities or is capable of acquiring them:

- 1) specification of planned annual revenues and costs for the activity for which the licence is sought, projected balance and profit and loss account, as well as cash flow account, liquidity plans - connected with the activities for which the licence is sought, covering at least three full calendar years (O)* (P)**;
- 2) basis for determining expected costs and revenues for the licensed activity covered by the application, for a minimum period of three full calendar years, in the form of numerical

- data - in particular, the following cost items should be provided: purchase of electricity, purchase of certificates of origin, taxes and fees, remuneration, depreciation, balancing costs, own costs, insurance, interests, legal expenses, debt collection (O)*;
- 3) specification of planned electricity sales in MWh covering at least three full calendar years (O)*;
 - 4) financial statements for the last three years (annual PIT returns for natural persons or partners to civil law partnerships), and if the entrepreneur has been conducting business activity for less than three years – the same documents for the time period since starting the business activity (K or O)* (P)**;
 - 5) other documents confirming the possession or possibility to acquire the financial means sufficient for a proper conduct of a licensed business – bank guarantees, insurance guarantees (K or O)*;
 - 6) current 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 credit facilities extended to the entrepreneur and information whether the account is free of enforcement titles - obtained not earlier than 3 months prior to submitting to licensing authority (K or O)* (P)**;
 - 7) current certificate from the relevant branch of the Social Insurance (ZUS) 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 - obtained not earlier than 3 months prior to submitting to licensing authority (K or O)* (P)**;
 - 8) current certificate from the relevant Tax Office 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 criminal or tax offence cases,
 - b) on titles and periods from which potential arrears arise (K or O)* (P)**.- obtained not earlier than 3 months before submitting to the licensing authority.

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 Confederacy, 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 3 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 or may be issued by Polish tax authority (K)*(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 (K)* (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.

CAUTION

The documents directory included in this package does not have a closed character, which means that individual factual and formal legal situation of an applicant may require undertaking additional explanatory measures by the President of the Energy Regulatory Office; this may include summoning the entrepreneur during the proceedings on granting/changing/extending a licence (promise of licence), 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 trading**.

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 by the President of ERO in the licence.

At the same time it should be underlined that in the case of applying to President of ERO for modification of a licence by a licence holder, the President of ERO ex officio adjusts the requirements determined in the licence to those currently applied to other licence holders, in order to ensure their equal and non-discriminatory treatment.

Disclosure obligations

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 change 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.

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.

With respect to the other data, in particular referring to the nature and extent of the business activity for which the licence was granted, changes shall be notified to the licensing authority within 14 days of their occurrence.

In addition, the obligation to comply with the terms and conditions of performing the licensed activity, specified in the licence granted to the entrepreneur, with respect to reporting and disclosure of information, should be borne in mind.

The annual licence fees

Entrepreneurs, who have been granted the licence are obliged to the 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 2019 on the licence fee (Journal of Laws of 2018, item 2277).

The amount of licence fee is a ratio of company's revenues from sale of goods or services provided within the licenced activity, earned in the year when the obligation to pay the fee arises, and the relevant coefficient determined in secondary legislation.

Licence fee for each type of licensed activity 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 (Journal of Laws of 2015, item 1094, as amended), executing business activity without the required licence 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/EC² (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.

² 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.

Appendix:

Table: Listing of employees having professional qualifications - template (the same for all information packages)