ENERGY REGULATORY OFFICE

DEPARTMENT OF GASEOUS FUELS MARKET

INFORMATION PACKAGE

REGARDING DESIGNATION OF

HYDROGEN DISTRIBUTION SYSTEM OPERATOR (DSOh)

WARSAW, FEBRUARY 2025

How to acquire the status of a hydrogen distribution system operator?

Basic legal regulations

On 20 January 2025, the Act of 21 November 2024 amending the Energy Law Act and Certain Other Acts (Journal of Laws of 2024, item 1881; hereinafter: “the Hydrogen Act") entered into force, which introduced into the Act of 10 April 1997 - Energy Law (Journal of Laws of 2024, item 266, as amended; hereinafter: “the Energy Law Act” or "the EL") the institution of a **hydrogen distribution system operator (DSOh)**.

As it is apparent from the explanatory statement to the Hydrogen Act, the legislator has decided to exclude hydrogen distribution (the exercise of economic activity in the distribution of hydrogen) from the licensing obligation. The legislator has indicated that, considering the current stage of development of the hydrogen market, the introduction of such an obligation would be an excessive regulation. While the hydrogen distribution licence has been abandoned, a substantial part of the legal requirements and standards for the licence has been incorporated into the designation procedure for the hydrogen distribution system operator in order to safeguard the essential state interests. The purpose of combining the licensing and designation proceedings for the hydrogen distribution system operator is to accelerate the formation of these operators, reduce the operators' operating costs, and facilitate their day-to-day operations. These benefits are expected to accelerate the development of the hydrogen economy.

Pursuant to Article 9h para.1c of the Energy Law Act, the President of URE[1], **upon the application of the owner of a hydrogen distribution network**, shall designate, by way of a decision, for a definite period of time, a hydrogen distribution system operator and shall specify the area, networks or installations on which the economic activity will be conducted, taking into account para. 1d and 2[1].

Pursuant to Article 3 para. 89 of the EL, a **hydrogen distribution system operator** is an energy company distributing hydrogen, responsible for network traffic on the hydrogen distribution network, the current and long-term operational security of the network, the operation, maintenance, repair and necessary development of the hydrogen distribution network, including interconnections with other hydrogen systems.

As provided for in Article 3 item 83 of the EL, **hydrogen distribution** is the transport of hydrogen via hydrogen distribution networks for the purpose of supplying it to customers directly connected to hydrogen distribution networks or the transport of hydrogen via geographically limited hydrogen networks, excluding the sale of hydrogen.

[1] President of Energy Regulatory Office

Whereas, pursuant to Article 3 item 3 subitem 78 of the EL, a hydrogen distribution network is a hydrogen network, excluding a geographically limited hydrogen network, the network operation of which is the responsibility of the hydrogen distribution system operator, and which:

a) is not directly connected to a hydrogen storage facility, and
b) is used to supply hydrogen to customers directly connected to that network.

Under Article 9h para. 3^2 of the Energy Law Act, the hydrogen distribution system operator may be:

1) an owner of the hydrogen distribution network, if the requirements as specified in para. 7a have been met;
2) an energy company meeting the requirements as specified in para. 7a, with which the owner of the hydrogen distribution network is linked by an agreement entrusting that company with the performance of the obligations of a hydrogen distribution system operator with the use of that network.

The owner of the hydrogen distribution network shall apply to the President of URE for the designation of a hydrogen distribution system operator within 6 months from:

a) the expiry of the deadline of 14 days from the date of delivery of the notification to the construction supervision authority on the completion of the construction of the hydrogen distribution network for that authority to raise objections, or
b) the issuance of a decision authorising the use of the hydrogen distribution network, or
c) any transfer of ownership of the hydrogen distribution network (Article 9h para. 6a of the EL).

Pursuant to Article $4e^3$ of the Energy Law Act, **hydrogen distribution services can only be provided by a hydrogen distribution system operator** or a hydrogen combined system operator. Thus, an entrepreneur will only be entitled to conduct business activity in the field of hydrogen distribution after it has been designated by the President of URE as the operator of this system. Furthermore, under Article 56 para. 1 item 24a of the EL, a fine is imposed on anyone who, without being a hydrogen distribution system operator or a hydrogen combined system operator designated under Article 9h, provides hydrogen distribution services, except for the distribution of hydrogen through a geographically limited hydrogen network.

Necessary conditions to be fulfilled by an entity applying to be designated as a system operator

Pursuant to Article 9h para. 7a of the Energy Law Act, the President of URE, when designating the hydrogen distribution system operator at the request of the owner of the hydrogen distribution network, takes into account:

1) its economic efficiency;
2) safety of hydrogen supply;
3) compliance of this operator with the conditions and criteria of independence referred to in Article 9d, para. 1^3-2;
4) the proposed duration of the designation.

Terms and conditions for the entrustment of the obligations of a system operator by the owner of a hydrogen distribution network to another energy company

The framework scope of the agreement entrusting an energy company with the obligations of a hydrogen distribution system operator is set out in Article 9h para. 5 of the Energy Law. The **entrustment agreement** specifies in particular:

1) the area in which the hydrogen distribution system operator will perform its economic activity (item 1 of the cited provision);
2) the rules for the performance of the obligations referred to in Article 9c, in particular the obligations entrusted to be performed directly by the hydrogen distribution system operator or the hydrogen combined system operator (item 2 of the cited provision).

In accordance with the regulations currently in force, the hydrogen distribution system operator is responsible for the network traffic on the hydrogen distribution network, the current and long-term security of operation of the network, the operation, maintenance, repair and necessary development of the hydrogen distribution network, including interconnections with other hydrogen systems. The detailed scope of the basic obligations of this operator is set out in Article 9c para. 1e and 1g of the Energy Law Act (while noting the other obligations of the operator as defined by law).

In consideration of the above, the President of URE, when designating a hydrogen distribution system operator, shall take into **account the security of hydrogen supply and the guarantee of efficient management of the hydrogen network or system**.

An analysis of the cited provisions concerning the designation of the operator and its obligations leads to the conclusion that (in the event of entrusting the "operatorship" by way of an agreement) these obligations should, as a rule, be performed by the entity

undertaking the function of operator. Indeed, it should be noted that the tasks of the operator set out in Article 9c of the EL are inherent in the essence of the activity performed by the operator and - as a rule - are assigned strictly to the operator. It is the operator that is responsible for the correct performance of the aforementioned obligations, for which it is held accountable. The applicant for designation as an operator must therefore have the real and objective capacity to effectively fulfil its obligations, as defined by law. It cannot just be a "*pro forma* operator"*.* At the same time, the standard arising from Article 9h of the EL indicates that the agreement should precisely specify the tasks assigned to the operator and those functions which the network owner reserves for itself. The resolution of the above issues between the stakeholders in the agreement in question entrusting the performance of operator's obligations will be subject to an in-depth analysis performed by the President of URE during the proceedings on the designation of the system operator. For example, in the assessment of the President of URE, the performance of the operator's obligations, also in the event that this function is entrusted by the owner of the network or installation under an agreement, cannot be limited to authorising the entity applying for designation as the operator to perform only purely technical activities, but should extend to the performance of all functions assigned to the operator, including, for example: disposal of the network for the purposes of implementing the TPA principle and non-discriminatory access to it, or repairs under an approved (agreed between the parties to the agreement) financial plan.

Circumstances precluding the status of a system operator

Pursuant to Article 9h para. 8a of the Energy Law Act, the President of URE refuses to designate as the hydrogen distribution system operator the energy company specified in the application of the owner of the hydrogen distribution network if, respectively:

1) this company does not have adequate economic or technical resources;
2) this company does not guarantee the efficient management of the hydrogen network or system;
3) this company does not fulfil the conditions and criteria for independence referred to in Article 9d para.1[3]-2, subject to Article 9d para. 7a;
4) this company is not established in the territory of a Member State of the European Union, the Swiss Confederation, a Member State of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or Turkey;
5) this company fails to ensure the employment of persons with the appropriate professional qualifications referred to in Article 54 para. 1;

6) this company has had its licence for the activities referred to in this Act withdrawn in the last 3 years for the reasons set out in Article 41 para. 3, or the designation of a hydrogen transmission system operator, a hydrogen distribution system operator, a hydrogen storage system operator or a hydrogen combined system operator has been withdrawn, or this company has been deleted from the register of regulated activities in the last 3 years because of a decision prohibiting it from performing the activity covered by the registration, due to:
    a) submitting a declaration of compliance with the conditions required by law for performing that activity which is not compliant with the facts, or
    b) failure to remedy breaches of the conditions required by law for the performance of that activity within the period prescribed by the authority, or
    c) flagrant breach of the conditions required by law for the performance of that activity;
7) this company is not registered as a taxpayer of goods and services tax (VAT);
8) any other entity exercising control or joint control over the company or exercising material influence over it as defined in Article 3 para. 1 item 34, 35 and 36 (a), (b), (e) and (f) of the Accounting Act of 29 September 1994 (Journal of Laws of 2023, item 120, as amended), hereinafter referred to as "the Accounting Act", has been, within the last 3 years, validly convicted of an offence or a fiscal offence related to the business activity specified in the Act;
9) this company is in arrears with the payment of taxes constituting the income of the state budget, except where it has obtained an exemption, deferral, payment in instalments of tax arrears or tax or suspension in full of the execution of a decision of a competent tax authority as provided for by the law;
10) this company, persons responsible for its management, persons authorised to represent it or members of its supervisory board have been convicted by a final court judgement of an offence or a fiscal offence related to the business activity performed.

Designation of the hydrogen distribution system operator by the President of URE ex officio

Under Article 9h para. 9a of the Energy Law Act, the President of URE is granted the right to designate a hydrogen distribution system operator **ex officio**, by way of a decision, in the event that it has refused to designate an operator that would perform the activity using the networks specified in the application of the owner of the hydrogen distribution network.

In issuing this decision, pursuant to Article 9h para. 10^1 of the EL, the President of URE shall specify the area, the networks on which the hydrogen distribution system operator will perform its activity, the conditions for the fulfilment of the independence criteria referred to in Article 9d para. 1^3-2, necessary for this operator to perform the tasks referred to in Article 9c para. 1e and 1g.

At the same time, pursuant to Article 9h para. 11 of the EL, the owner of the hydrogen distribution network is obliged to make available to the operator designated in accordance with para. 1c or 9a the information and documents necessary for the performance of the operator's tasks and to cooperate with that operator. On the other hand, pursuant to Article 56 para. 1 item 26 of the EL, a fine is imposed on anyone who fails to comply with the obligation referred to in Article 9h para. 11 of the EL.

Change in the designation of the system operator and extension of the deadline for the designation of the system operator

Owners of a hydrogen distribution network or electricity companies applying for a change in the designation of the system operator should attach documentation concerning the subject matter of the change to the application. Changes in designation can in principle be divided into two types, namely those relating to the formal legal situation of the hydrogen distribution network owner or energy company (e.g. change of name, registered office, registered office address, partner in a civil partnership or partnership, etc.) and those relating to a change in the subject matter and scope of the activity covered by the designation, which is related to the technical possibilities available to the DSOh (e.g. intention to extend the scope of designation to a new area or hydrogen distribution networks). In the first case, documents concerning the formal legal situation of the owner of the hydrogen distribution network or of the energy company should be attached to the application, while in the second case, it is important to demonstrate adequate economic or technical resources and financial means at the disposal of the DSOh. The list of documents required is presented later in the package. However, in a situation where the change is limited to updating the details of the name, registered office or address of the DSOh, the change may be made on the basis of current information from the National Court Register (KRS), depending on the factual and legal circumstances of the case.

What is important, as stipulated in Article 9h para. 7h of the Energy Law, **in the event of a change of the data referred to in Article 9h para. 7f item 1 and 7 of the Energy Law**, that is identification of the entity, its registered office or place of residence and their address, as well as the number in the Register of Entrepreneurs of the National Court Register, if the entrepreneur has such a number, or the number of an equivalent register of the Member States of the European Union, the Swiss Confederation, a Member State of

the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or Turkey, as well as the Tax Identification Number (NIP), **the energy company is obliged to submit an application for a change in the designation of the operator within 7 days from the date of the occurrence of these changes**.

On the other hand, an application for an extension of the deadline for the designation of the hydrogen distribution system operator should be submitted by the owner of the hydrogen distribution network before the lapse of the deadline for the designation of a DSOh on its distribution network. The Energy Law Act does not specify a deadline for the submission of this application, but it should be noted that such an application should be submitted within a timeframe allowing the President of URE to consider the case and issue a decision before the lapse of the specified period for the designation of a DSOh, in accordance with the deadlines set out in the Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2024, item 572, as amended), hereinafter referred to as "the Code of Administrative Procedure". The extension of the deadline for the designation of the DSOh is tantamount to the President of URE recognising that the DSOh meets the conditions set out in the Act for fulfilling the function of the operator (Article 9h para. 7a and 8a of the Act).

Documents required for the submission of an application for an extension of the deadline for the designation of the hydrogen distribution system operator should be attached to the application.

In addition, it should be noted that pursuant to Article 9h para. 8c of the Energy Law Act, the President of URE may amend the terms and conditions for the designation of a hydrogen distribution system operator or a hydrogen combined system operator, in particular where it is necessary to adjust these terms and conditions to the legal status in force or to prevent practices detrimental to the interests of customers or jeopardising the development of competition.

Preparation of an application

When preparing an application for the designation of a hydrogen distribution system operator, the applicant (the owner of the hydrogen distribution network) should be aware that the better the application is prepared and the more complete it is (it includes all the necessary information and appendices), the more efficient the process of designating the operator will be. The scope of the submitted documentation should make it possible to establish that the owner of the hydrogen distribution network or the energy company fulfils all the conditions necessary to be designated as the operator and that there are no circumstances justifying a refusal to designate it as the operator.

An application for the designation of a hydrogen distribution system operator should include in particular (Article 9h para. 7b of the Energy Law):

1) the identification of the applicant, its registered office, the registered office of its branch in the territory of the Republic of Poland or its place of residence and their address, as well as the names and surnames of the attorneys authorised to perform legal actions on behalf of this applicant;
2) a specification of the subject matter and scope of the activity to be performed by the designated operator;
3) information on the applicant's past performance, including financial statements for the last 3 years, if the operator is conducting a business activity;
4) specification of the period for which this operator is to be designated, including the date of designation.
   The President of URE shall designate a hydrogen distribution system operator or a hydrogen combined system operator for a period not shorter than 10 years and not longer than 50 years, unless the owner of the hydrogen distribution network applies for designation for a shorter period (Article 9h para. 7e of the EL);
5) specification of the economic or technical resources which the entity applying for designation has at its disposal to ensure the proper performance of the activity covered by the application;
6) the number in the Register of Entrepreneurs of the National Court Register, if the entrepreneur has such a number, or the number of an equivalent register of the Member States of the European Union, the Swiss Confederation, a Member State of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area, or Turkey, and the Tax Identification Number (NIP);
7) identification of the area, network or installation on which the activity covered by the application will be performed;
8) attachments according to the list presented further in the information package.

The energy company specified in the application of the owner of the hydrogen distribution network, which does not meet the conditions required by the regulations, will be refused to be designated as the operator, pursuant to Article 9h para. 8a of the Energy Law Act.

In addition, pursuant to Article 9h para. 7c of the Energy Law Act, if the application of the owner of the hydrogen distribution network does not contain all the information or documents required by the Act, certifying that the applicant meets the conditions set out in the law, required to perform a certain business activity, the President of URE shall immediately call on the applicant to supplement the application within not less than 21 days from the date of delivery of the call.

On the other hand, pursuant to Article 9h para. 7d of the EL, an application of the owner of a hydrogen distribution network that is not completed within the prescribed deadline in a manner fulfilling all the conditions required by the Act **shall not be examined**. This results in the closure of the case and the necessity to resubmit the application with all the required documents, however, documents submitted to the Office earlier may be used in the new proceedings, provided that they remain valid.

In addition, if the applicant's address is not indicated in the application and it is not possible to determine this address on the basis of the data held, the application shall not be examined (Article 64 § 1 of the Code of Administrative Procedure).

Addressee of the application for the designation of the system operator

A written application from the owner of the hydrogen distribution network should be sent to the President of URE at the address of the Energy Regulatory Office for e-delivery: AE:PL-25259-52521-UECUJ-18 or via the ePUAP platform[2] to the following address: /ERO/SkrytkaESP or to the address: Department of Gaseous Fuels Market of the Energy Regulatory Office, 25a Towarowa Street, 00-869 Warsaw.

Additional information on the designation of the hydrogen distribution system operator can be obtained from the Department of Gaseous Fuels Market of the Energy Regulatory Office, telephone numbers: +48 22 487-55-81, +48 22-487-57-49, +48 22-487-57-51, +48 22-487-55-80, +48 22-487-57-52, +48 22-487-51-21, e-mail address: drg@ure.gov.pl – with the annotation DRG-1 or the Licences and Gas System Operators Division.

Duration of proceedings

The duration of the proceedings for the designation of a hydrogen distribution system operator is primarily related to the completeness of the application submitted, or possibly the party's activity in supplementing the necessary documents and information. It is advisable to submit applications sufficiently in advance of the intended date of commencement of business activity in the area of hydrogen distribution.

If the application contains all the necessary attachments or is supplemented, the case is considered in accordance with Article 35 § 1 of the Code of Administrative Procedure.

It is important to note that pursuant to Article 35 § 5 of the Code of Administrative Procedure, the deadlines for processing a case do not include, among others, the time limits provided for in the provisions of law for the performance of certain activities, periods of service using the public hybrid service referred to in Article 2 para. 7 of the Act of 18 November 2020 on Electronic Delivery (Journal of Laws of 2024, item 1045, as amended), periods of suspension of proceedings and periods of delays caused by the fault

[2] via the ePUAP platform – until 31 December 2025.

of a party or for reasons beyond the control of the authority. Therefore, the party's failure to take action in accordance with the call of the administrative authority may result in the administrative case being processed respectively longer.

It should be borne in mind that in the light of the above-referenced Article 9h para. 7b and 7c of the Energy Law Act, only a complete application, that is containing all the required documents and information, triggers the initiation of administrative proceedings to designate a hydrogen distribution system operator.

Fees related to the designation of the system operator

Pursuant to Article 1 para. 1 item 1 of the Stamp Duty Act of 16 November 2006 (Journal of Laws of 2023, item 2111, as amended), hereinafter referred to as the "Stamp Duty Act", stamp duty is payable in individual cases in the field of public administration for performance of an official act upon request.

Pursuant to Article 6 para. 1 item 1 of the Stamp Duty Act, the obligation to pay stamp duty on the performance of an official act arises **at the time of filing an application for an official act**.

Pursuant to Article 8 para. 1 of the Stamp Duty Act, the payment of stamp duty is made at the cash desk of the competent tax authority or to its account.

The stamp duty rate for the issuance of a decision by the President of URE on:

- the designation of a hydrogen distribution system operator;
- a change of the subject and scope of the activity covered by the designation;
- a change of the deadline for the designation of the hydrogen distribution system operator

is PLN 10 (a decision other than the one listed in the appendix to the Stamp Duty Act, to which the provisions of the Code of Administrative Procedure apply – part I, item 53 of the appendix).

In the case of submission of a document confirming the granting of a power of attorney or a power of authorised signatory or an extract or copy or certified copy thereof (**this also applies to the submission of a document obtained from the National Court Register confirming the granting of a power of attorney or a power of authorised signatory),** a stamp duty of **PLN 17 shall be paid on each power of attorney/authorised signatory relationship within the given administrative proceedings** (Part IV of the Appendix to the Stamp Duty Act). If several proceedings are pending at the same time, a stamp duty shall be paid on each power of attorney or authorised signatory relationship used in the

given proceedings. This fee is not charged in the case of submitting a document stating the granting of a power of attorney and its copy, extract or certified copy:

- certified by a notary public or by an authorised body, authorising the receipt of documents;
- if the power of attorney is granted to a spouse, ascendant, descendant or sibling;
- if the principal is an entity specified in Article 7 items 1-5 of the Stamp Duty Act.

Pursuant to Article 12 para. 2 of the Stamp Duty Act, the tax authority with territorial jurisdiction over stamp duty:

1) on the performance of an official act – is the tax authority competent for the seat of the authority that performed the official act;
2) on the submission of a document confirming the granting of a power of attorney or a power of authorised signatory and its copy, extract or certified copy – the tax authority competent for the place where the document was submitted;
3) on the submission of the document referred to in item 2 in electronic form via the ICT system:
   a) a tax authority competent for the place of residence or registered office of the principal, and in the case of granting a power of attorney or power of authorised signatory by more than one principal in one document – the tax authority competent for the place of residence or registered office of the principal indicated in this document as the first one who has a place of residence or registered office in the territory of the Republic of Poland,
   b) the Mayor of the Capital City of Warsaw, if neither the principal nor any of the principals establishing a power of attorney or power of authorised signatory in a single document has a place of residence or registered office in the territory of the Republic of Poland.

Due to the fact that **the seat** of the central government administration body – the President of the Energy Regulatory Office is the **Capital City of Warsaw**, the payment of the stamp duty on the designation of the hydrogen distribution system operator should be made to the locally competent tax authority – the President of the Capital City of Warsaw. In the case of non-cash payments, they should be made to the account of the Office of the Capital City of Warsaw – Taxpayer Service Centre, 57 Obozowa Street, 01-161 Warsaw, account number:

21 1030 1508 0000 0005 5000 0070.

For foreign payments:

account number/IBAN: **PL 21 1030 1508 0000 0005 5000 0070;**

SWIFT**: CITIPLPX**.

A stamp duty on the submitted document confirming the granting of a power of attorney or authorised signatory and its copy, extract or certified copy is paid in cash at the cash desk of the tax authority, or transferred to the account of the locally competent tax authority, in accordance with the instruction resulting from Article 12 para. 2 of the Stamp Duty Act.

If a proof of payment of the due stamp duty for the performance of an official act covered by the application is not attached thereto, the Applicant will be requested to pay the due fee and send the original or a certified copy of the proof of payment of this fee. Failure to pay the amount due within the prescribed period (and to present the proof of payment) is a prerequisite for returning the application or abandoning the action, under Article 261 § 2 of the Code of Administrative Procedure.

In the absence of the confirmation of the payment of the stamp duty on account of the granted power of attorney or power of authorised signatory, the President of URE, pursuant to Article 11 para. 1 and 3 of the Stamp Duty Act, is obliged to provide the competent tax authority with information on cases of failure to pay the due stamp duty on the granted power of attorney or power of authorised signatory, in order for the authority to initiate administrative enforcement.

A confirmation of the payment of the stamp duty may also be in the form of a printout from the IT system (a confirmation of the completed transaction) prepared in accordance with Article 7 of the Act of 29 August 1997 – Banking Law (Journal of Laws of 2024, item 1646, as amended).

Exemption from stamp duty

Pursuant to Article 7 items 2 and 3 of the Stamp Duty Act, the following are exempt from the stamp duty:

- budgetary units;
- local government units.

Pursuant to Article 3 of the Stamp Duty Act, the following are not subject to stamp duty: performance of an official act, issuance of a certificate and permit (authorisation, licence), if, on the basis of separate regulations, they are subject to other fees of a public law nature or are exempt from these fees.

List of documents and information to be attached to the application for the designation of a hydrogen distribution system operator

1. Documents and information indicating that the application for the designation of a system operator meets the formal and legal conditions:

1) specification of the entity (full registration data of the entity) to be designated as a DSOh: hydrogen network owner **or** energy company (O)*;

2) in the case of entrusting the performance of the tasks of the DSOh to an energy company – **an entrustment agreement**, which should in particular include:

   a) the area in which the operator will conduct its business activity;

   b) the rules for the performance of the obligations set out in Article 9c para. 1e and 1g of the Energy Law Act, with a specification of which obligations of the operator will be performed directly by the energy company with which the network owner has concluded the entrustment agreement;

   c) the date of conclusion of the agreement;

   d) the duration of the agreement;

   e) agreement termination conditions (O)*;

3) a proof of payment of the due stamp duty for performing an official action on request, that is a designation of DSOh (O)*;

4) in the case of actions performed by an attorney, a power of attorney to perform legal actions on behalf of the Applicant (together with the original or a certified copy of the proof of payment of the due stamp duty), (C or O)*;

2. Documents indicating that the entity applying for designation as a system operator (the owner of a hydrogen distribution network or an energy company; hereinafter: "the Candidate") meets the formal, legal and organisational conditions ensuring effective performance of DSOh tasks:

1) an extract from the register of entrepreneurs – the National Court Register (KRS) obtained not earlier than 3 months before submission to the President of URE[3)] (C or O)*;

2) a certificate of assignment of a Tax Identification Number (NIP) – if there is no information about the NIP on other documents provided (C or O)*;

3) in the case of a Candidate who is not a natural person conducting business activity – the current text of the Candidate's articles of association, statute or organisational

[3] applies to entrepreneurs on whom the law imposes the obligation to obtain an entry in the National Court Register (KRS).

regulations, including the internal structure and indication of the functions performed by individual organisational units (C)*;

4) location of DSOh in the organisational structure of the Candidate (O)*;

5) a description of the system for the protection of confidential information and legally protected information that could violate the trade secrets of users of the hydrogen system or could be used in a manner other than for the management of the hydrogen system (O)*;

6) specification of shares held in other business entities, if any, along with a description of the activities of these entities (O)*;

7) adopted solutions and measures leading to the avoidance of discriminatory behaviour among system users, in particular for the benefit of subsidiaries (O)*;

8) the Candidate's statement, made under penalty imposed in Article 233 § 1 of the Act of 6 June 1997 – the Penal Code (Journal of Laws of 2024, item 17, as amended; hereinafter referred to as "the Penal Code"), that it meets the conditions set out in Article 9d para. 7a of the Energy Law Act. If these conditions are not met, the following should also be submitted with the application:

    a) statements of persons responsible for the management of DSOh, made under penalty imposed in Article 233 § 1 of the Penal Code, that **they do not participate** in the management structures of a vertically integrated enterprise involved in the transmission, production or manufacturing of gaseous fuels, or trading in these fuels, or transmission or generation of electricity, or trading in this electricity, or transmission of hydrogen or production of hydrogen, or trading in hydrogen, that **they are not** directly or indirectly **responsible** for day-to-day activities in this area and that **they are guaranteed** the opportunity to act independently;

    b) information on whether and how – in order to ensure the independence of persons responsible for the management of DSOh – the procedures for the possible dismissal of these persons from the DSOh management board have been regulated;

    c) a scheme specifying the undertakings taken to ensure non-discriminatory treatment of system users, referred to in Article 9d para. 4 of the Energy Law Act. In the absence of such a scheme, please specify the date of its development and submission to the President of URE for approval by way of decision (O)*;

9) information of the Candidate on the networks, devices and installations specified in the Regulation of the Minister of Climate and Environment of 1 July 2022 on the Detailed Rules for Determining the Qualifications of Persons Involved in the

Operation of Equipment, Installations and Networks (Journal of Laws of 2022, item 1392), which will be used to perform the activities covered by the application and the number of persons who are/will be employed in their operation, together with the numbers of qualification certificates (in the case of civil partnerships - of each partner) - in accordance with Table No. 1 or No. 2, constituting appendices to this package[4)] (O)*.

If the persons referred to in Article 9h para. 8a item 6 of the Energy Law Act have not yet been employed, the Candidate shall present a statement on ensuring their employment along with the list of the above-mentioned infrastructure.

Pursuant to Article 14 para. 1 of the Hydrogen Act, within 12 months from the date of entry into force of the regulations issued on the basis of Article 54 para. 6 and 7 of the EL as amended by the Hydrogen Act, persons holding certificates of qualification to perform activities related to the operation or supervision of equipment, installations and gas networks generating, transmitting, storing and consuming gaseous fuels before the date of entry into force of these provisions may also perform activities related to the operation or supervision of hydrogen equipment, installations and networks;

10) the Candidate's statement that the Candidate has not been deleted from the register of regulated activities in the last 3 years due to the issuance of a decision on the prohibition of performing the activity covered by the entry, due to:

a) submission of a statement on meeting the conditions required by law to perform this activity inconsistent with the facts, or

b) failure to remedy the breaches of the conditions required by law to perform this activity within the time limit set by the authority, or

c) gross violation of the conditions required by law to perform this activity (O)*;

11) a document confirming the Candidate's registration as a taxpayer of the tax on goods and services (VAT) (O)*;

12) a list of persons responsible for managing the Candidate, authorised to represent the Candidate and members of the supervisory board – in the case of a Candidate which is a legal person or an organisational unit without legal personality, or a foreign entrepreneur or a foreign entrepreneur conducting business in the territory of the Republic of Poland as part of a branch with its registered office in the territory of the Republic of Poland established on the terms and conditions set out in the Act on the

[4)] Where, due to the large number of employees and the amount of information, it would be difficult to present the above list in printout form, it is possible to present it in electronic form on a CD.

Rules for the Participation of Foreign Entrepreneurs and other Foreign Persons in Business Turnover in the Territory of the Republic of Poland (O)*;

13) current information from **the National Criminal Register** on the Candidate's criminal record (in the case of a Candidate which is a legal person or an organisational unit without legal personality, or a foreign entrepreneur or a foreign entrepreneur conducting business in the territory of the Republic of Poland as part of a branch with its registered office in the territory of the Republic of Poland established on the terms and conditions set out in the Act on the Rules for the Participation of Foreign Entrepreneurs and other Foreign Persons in Business Turnover in the Territory of the Republic of Poland – **persons responsible for managing the Candidate, authorised to represent the Candidate and members of the supervisory board**) and current information from the National Criminal Register on the **company's no criminal record (as a collective entity)**.

    If the Candidate, the person responsible for the management of the Candidate, authorised to represent the Candidate or a member of the supervisory board is a person who is not a Polish citizen, the appropriate information issued by the competent authority of the country of which the said person is a citizen, together with a translation **by a sworn translator** into Polish, should **also** be sent (O)*;

14) a list of all entities having material influence over the Candidate or exercising control or joint control over the Candidate as defined in Article 3 para. 1 item 34, 35 and 36(a), (b), (e) and (f) of the Accounting Act, along with an indication of which of the types of the above relations occurs between the Candidate and a given entity and an indication of what is the basis for the inclusion of the above-mentioned entities in the list (O)*;

15) current information from **the National Criminal Register** on the lack of criminal record of entities having material influence over the Candidate or exercising control or joint control over the Candidate as defined in Article 3 para. 1 item 34, 35 and 36 (a), (b), (e) and (f) of the Accounting Act.

    In the case of an entity registered abroad or not being a Polish citizen, it is **also** necessary to send the appropriate information issued by the competent authority of the country of registration or citizenship of the above-mentioned entity, together with a translation into Polish **by a sworn translator** (O)*.

2. Documents confirming that the Candidate for the system operator (the owner of the hydrogen distribution network or an energy company) has the conditions/technical means to ensure the performance of DSOh tasks:

1) specification of the assets that the Candidate will have at its disposal in order to properly perform the function of DSOh, along with its age structure, book value and information whether the book value of the distribution assets has been subject to revaluation and **a description of** the hydrogen distribution networks that will be used to conduct the activities covered by the application, in particular their location (schemes), technical parameters, length, pressure (in kPa), technical capacity (in MJ/s) and the value of the mole fraction of hydrogen that will be distributed through them.

   If, due to the scope of assets or the amount of information, it were troublesome to present this specification in the form of a printout, it is possible to present it in electronic form by means of electronic communication (to the address for electronic delivery: AE:PL-25259-52521-UECUJ-18 or via ePUAP[5] to the address: /URE/SkrytkaESP) or to present it on a CD/DVD. (O)*;

2) the Candidate's statement that the hydrogen network covered by the application is not directly connected to the hydrogen storage facility (O)*;

3) documents confirming the Candidate's legal title to the assets which the Candidate will dispose of in order to properly perform the functions of OSDh (e.g. a notarial deed, an extract from the land and mortgage register, an extract from the land register, rental agreements, lending agreements, lease agreements, purchase invoices, etc.) and, in particularly justified cases, an appropriate statement (C or O)*;

4) information on possible "doubtful" assets against which disputes or legal proceedings are pending (C or O)*;

5) characteristics of the entities to which the hydrogen distribution service will be provided, specifying the number of customers connected to the hydrogen distribution network covered by the application and the number of customers connected to the gas distribution system and the hydrogen distribution system of the vertically integrated undertaking of which the Candidate is a member (O)*;

6) a decision on land development conditions or a decision on the location of a public purpose investment or a document stating the possibility of locating the planned investment project on a given area (C or O)*;

7) a decision granting authorisation for the construction of hydrogen facilities, installations and networks (C or O)*;

[5] via ePUAP – until 31 December 2025.

8) information on the completion of construction and commencement of operation of equipment, installations and networks (depending on the conditions specified in the construction permit):

   a) an exploitation permit and a protocol for the technical inspection, acceptance and commissioning of equipment, installations and networks (C or O)*, or

   b) notification to the relevant building control authority of the completion of the construction and a protocol of technical inspection, approval and acceptance for operation of equipment, installations and networks; In the event that the relevant building control authority does not raise an objection to the investment, after 14 days from the date of delivery of the aforementioned notification, a statement to that effect should be included in the case file (C or O)*.

   If it is not possible to present a decision - *exploitation permit or construction permit* along with a notification of completion of construction, the Candidate shall present a decision on land development conditions or a decision on the location of a public purpose investment or information on compliance with the local spatial development plan along with information obtained from an architectural and construction administration authority, construction supervision authority or municipality on the date of construction of the facility and the impossibility of obtaining a copy - decision as above or information on its issuance as well as information of a construction authority confirming that the facility in question is not an unauthorised construction and meets the requirements imposed on it by law; (C or O)*;

9) principles of cooperation with other hydrogen system operators, gas system operators and electricity system operators or energy companies to ensure the reliable and efficient operation of the hydrogen system and to ensure the coordinated development of this system with the gas system and the electricity system (scope and procedures for exchange of information between operators) - in the absence of such documents, a timetable for their development and implementation (C or O)*;

10) technical terms and conditions for connection to the transmission or distribution networks (the so-called grid connection conditions) or the so-called connection agreement (C or O)*;

11) rules for the operation of network traffic on the hydrogen distribution network (C or O)*.

3. Documents proving that the Candidate for the system operator (either the owner of the hydrogen distribution network or an energy company) has the economic conditions/resources to effectively perform the tasks of the DSOh:

1) a description of the Candidate's activities until now and a business plan for the hydrogen distribution activity, specifying, in particular, the chosen option for financing the activity and a detailed plan for its financing, accompanied by an analysis of the financial viability of the activity over a minimum period of three full calendar years (O)*;

2) a specification of the planned hydrogen supply in physical or energy units for a period of at least three full calendar years (O)*;

3) financial statements for the last three years (in the case of natural persons or partners in civil partnerships - annual PIT statements), and if the Candidate has been self-employed for less than three years, the aforementioned documents for the period from the date of commencement of business activity (C or O)*;

   Pursuant to Article 45 para. 1f of the Accounting Act, the financial statements shall be prepared in electronic form and bear a qualified electronic signature, a trusted signature or a personal signature.

   Please send the financial statements electronically by electronic communication (to the electronic delivery address: AE:PL-25259-52521-UECUJ-18 or via ePUAP[6] to: /URE/SkrytkaESP) or submit them on CD/DVD.

4) a certificate from the bank in which the Candidate's basic account is kept, specifying the volume of turnover on the debit and credit sides (numerical values), the balance on the account, the payment and creditworthiness, including information on loans granted to the Candidate and whether the account is free of enforcement orders (C or O)*;

5) a certificate from a relevant branch of the Social Insurance Institution stating that the Candidate is not in arrears with the payment of social insurance premiums or is not entered in the register of premium payers (in the event that the entrepreneur conducts an activity for which there is no obligation to notify the Social Insurance Institution); in the case of civil partnerships, it is necessary to submit certificates from the Social Insurance Institution separately for each partner and for the partnership; (C or O)*;

6) a certificate from the relevant tax office stating that the Candidate is not in arrears with their obligations to the state budget or specifying the status of any arrears (in

[6] via ePUAP – until 31 December 2025

the case of civil partnerships, it is necessary to submit certificates for each partner and for the partnership separately), including also the following information:

a) pending administrative enforcement proceedings,

b) concerning the titles and periods from which any arrears originate (C or O)*.

7) a statement by the Candidate that no application for bankruptcy has been filed against the Candidate and that the Candidate is not in liquidation (O)*;

8) other documents proving the appropriate economic means at the Candidate's disposal (C or O)*;

The documents listed in item 1 subitem 13 and 15 and in item 3 subitem 4, 5 and 6 shall be **up-to-date**, that is, obtained not earlier than 3 months prior to submission to the President of URE.

The document obtained in the form of an electronic document should be forwarded to the President of URE also in the form of an electronic document (to the electronic delivery address: AE:PL-25259-52521-UECUJ-18 or via ePUAP[7] to: /URE/SkrytkaESP or on a CD/DVD). The printout of the electronic document is only a visualisation of the document and thus does not enable the President of URE to verify whether such document has been properly signed.

Additional remarks for Candidates with a registered office or place of residence in the Member States of the European Union, the Swiss Confederation, Member States of the European Free Trade Association (EFTA) - parties to the Agreement on the European Economic Area or Turkey:

1) Candidates from Member States of the European Union, the Swiss Confederation, Member States of the European Free Trade Association (EFTA) - parties to the Agreement on the European Economic Area and Turkey may perform the functions of DSOh and conduct business in Poland directly, that is, without a branch. In such a case, such Candidates should present an excerpt from the relevant counterpart of the Polish Register of Entrepreneurs of the National Court Register in the country of registration of the company (provided, of course, that the planned activity is to be conducted directly, without establishing a branch) (C or O)*;

2) information on the clean criminal record of the **persons responsible for the management of the Candidate, authorised to represent the Candidate and the members of the supervisory board** should be obtained from the Polish National Criminal Register and from the equivalent register kept in the country of registration

[7] via ePUAP – until 31 December 2025.

of the company and should be obtained not earlier **than 3 months** prior to the submission to the President of URE (O)*;

3) in the event that the aforementioned persons are not citizens of the country of registration of the company, the relevant information issued by the competent authorities of the countries of which the aforementioned persons are citizens shall **also** be sent, together with a translation into Polish **by a sworn translator**, obtained not earlier **than 3 months** prior to submission to the President of URE (O)*;

4) information regarding **the company**'s clean criminal record (**as a collective entity**) should originate from the Polish National Criminal Register or from an equivalent register kept in the Candidate's country of registration (if such registers exist), along with a translation into Polish **by a sworn translator**, and should be obtained not earlier **than 3 months** prior to submission to the President of URE (O)*;

5) information on the clean criminal record of **the entities having material influence over the Candidate or exercising control or joint control over the Candidate within the meaning of Article 3 para. 1 item 34, 35 and 36 (a), (b), (e) and (f) of the Accounting Act** should originate from the Polish National Criminal Register, from the equivalent of such register kept in the Candidate's country of registration (if such registers exist) and from the equivalent of such register kept in the country of registration or citizenship of the aforementioned entities, along with a translation into Polish **by a sworn translator** and be obtained not earlier **than 3 months** prior to submission to the President of URE (O)*;

6) the decision by the tax authority to assign a tax identification number may originate from the Candidate's country of registration or be issued by a Polish tax authority (C)*;

7) a document confirming the Candidate's registration as a taxpayer on goods and services for the purposes of intra-Community transactions (EU VAT) may come from the country of registration of the company or the entrepreneur may present a document confirming the Candidate's registration for VAT purposes in Poland (C)*;

8) the compliance of the documents submitted with the law of the place where they were issued should be certified in the manner set out in the first sentence of Article 3 of the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, namely by means of **an apostille**. Pursuant to the second sentence of Article 3 of the aforementioned Convention, an apostille cannot be required when (...) an agreement between two or more Contracting States have abolished or simplified it, or exempt the document itself from legalisation;

9) documents submitted in a foreign language **shall be translated into Polish by a sworn translator**. All pages of the submitted documentation shall be signed by persons authorised to represent the Applicant or Candidate;

10) a Candidate who does not have a place of residence or usual abode or a registered office in the Republic of Poland, another Member State of the European Union, the Swiss Confederation or a Member State of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area, if the Candidate has not appointed an attorney residing in the country and does not act through a consul of the Republic of Poland, is obliged to appoint an attorney for service in the country, unless service is effected by means of registered electronic delivery. If an attorney for service is not indicated, letters intended for that entrepreneur shall be left in the case file with the effect of service in accordance with Article 40 § 5 of the Code of Administrative Procedure.

* a document marked with an 'O' - documents delivered to URE shall be originals or copies certified as being true copies of the original pursuant to Article 76a § 2 of the Code of Administrative Procedure by a notary public or by a party's attorney who is an advocate, legal counsel, patent attorney or tax advisor appearing in the case, or copies officially certified by a competent authority or entity pursuant to Article 76a § 1 of the Code of Administrative Procedure;

A document marked with 'C' - copies of documents delivered to URE in the light of Article 75 § 1 of the Code of Administrative Procedure may constitute evidence of what has been indicated therein after they have been signed by the Applicant or the Candidate or persons authorised to represent them (on each page of the document), however such evidence will be assessed in the light of the entirety of the collected evidence, and in case of doubt the President of URE may call upon a party to present the original document or a certified copy thereof in the manner indicated in Article 76a § 1 or 2 of the Code of Administrative Procedure.

NOTE

The catalogue of documents included in this package is not closed, which means that due to an individual factual and formal-legal situation of the Candidate, the President of URE may need to perform additional explanatory activities, including calling the Candidate during the proceedings on the designation of the hydrogen distribution system operator (change or extension of the designation) to present additional explanations and documents confirming that the Candidate meets the legal conditions for conducting business activity concerning hydrogen distribution and performing the function of a hydrogen distribution system operator.

Pursuant to Article 9h, para. 7f item 5 of the Energy Law Act, the designation of a hydrogen distribution system operator includes specific conditions for the performance of the activity covered by the designation, therefore, the President of URE, in the course of the proceedings on the designation of a hydrogen distribution system operator, will provide the Candidate with information on the specific conditions for the performance of the activity covered by the designation.

Disclosure obligations

Pursuant to Article 9h para. 7h of the Energy Law Act, in the event of a change in the data referred to in Article 9h para. 7f item 1 [designation of the entity, its registered office or place of residence and their address] and item 7 [the number in the Register of Entrepreneurs of the National Court Register, if the entrepreneur has such a number, or the number of an equivalent register of the Member States of the European Union, the Swiss Confederation, a Member State of the European Free Trade Association (EFTA) - a party to the Agreement on the European Economic Area or Turkey, and the tax identification number (NIP)], the energy company shall file an application for a change in the designation of the operator **within 7 days from the date of the occurrence of these changes**.

In addition, pursuant to Article 9h para. 8f item 5 of the Energy Law Act, the President of URE may withdraw the designation of the hydrogen distribution system operator or change this designation in the event of failure to comply with the obligation referred to in Article 9h para. 7h of the Energy Law Act.

Provision of hydrogen distribution services without being a designated hydrogen distribution system operator

Pursuant to Article 56 para. 1 item 24a of the Energy Law Act, a fine shall be imposed on anyone who, without being a hydrogen distribution system operator or a hydrogen combined system operator designated under Article 9h, provides hydrogen distribution services, except for the distribution of hydrogen through a geographically limited hydrogen network.

Pursuant to Article 56 para. 3 of the EL, the amount of the aforementioned fine may not be lower than PLN 10,000 and higher than 15% of the fined entrepreneur's revenue generated in the previous tax year.

Information on personal data processed

In accordance with 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/EC (General Data Protection Regulation) (Official Journal of the EU L 119 of 04.05.2016, p. 1, as amended; hereinafter: "the GDPR"), I hereby inform you as follows:

1. Personal data of natural persons collected by the President of URE shall be processed by the President of URE, 00-869 Warsaw, ul. Towarowa 25a, who is the controller of the personal data.
2. Personal data shall be processed pursuant to Article 6(1)(b), (c) and (e) of the GDPR and other acts in which the tasks and obligations of the President of URE are listed, in particular in: the Energy Law Act, the Renewable Energy Sources Act, the Biocomponents and Liquid Biofuels Act, the Energy Efficiency Act, the Capacity Market Act, the Act on Stocks of Crude Oil, Petroleum Products and Natural Gas and the Rules of Procedure under the State Fuel Security Threat and Oil Market Disturbances, the Electromobility and Alternative Fuels Act.
3. Personal data shall be processed for the purpose of carrying out statutory obligations by the President of URE.
4. Due to the fulfilment of statutory obligations by the President of URE, personal data will not be transferred to countries outside the European Union or to international organisations.
5. Personal data will be kept for the period resulting from the Single List of Files and the Office Instructions in force in the Energy Regulatory Office.
6. A natural person has the right to request from the controller access to the content of his/her personal data, its rectification and the right to lodge a complaint with the national supervisory authority - the President of the Office for the Protection of Personal Data.
7. The recipients of personal data will only be entities entitled to obtain personal data under the provisions of the law.
8. Personal data will not be subject to profiling (automated processing involving the use of personal data to evaluate certain personal factors of a natural person).
9. In matters related to the protection of personal data, the Data Protection Officer should be contacted by e-mail to: iod@ure.gov.pl or in writing by sending correspondence to: Energy Regulatory Office, ul. Towarowa 25a, 00-869 Warsaw, with a note: „Data Protection Officer”.

10. Provision of personal data is mandatory where it arises from the legal grounds indicated above.

Attachments:

1. Table No. 1: List of employees with professional qualifications - Groups of devices, installations, networks, requiring qualification certificates, as referred to in **Appendix No. 1** to the Regulation of the Minister of Climate and Environment of 1 July 2022 on Detailed Rules for Ascertaining the Possession of Qualifications by Persons Engaged in the Operation of Devices, Installations and Networks (Journal of Laws of 2022, item 1392).
2. Table No. 2: List of employees with professional qualifications - Groups of devices, installations, networks, requiring qualification certificates, as referred to in **Appendix No. 2** to the Regulation of the Minister of Climate and Environment of 1 July 2022 on Detailed Rules for Ascertaining the Possession of Qualifications by Persons Engaged in the Operation of Devices, Installations and Networks (Journal of Laws of 2022, item 1392).