

THE CROATIAN PARLIAMENT

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

DECISION

PROMULGATING THE ACT ON THE PRODUCTION, DISTRIBUTION AND SUPPLY OF THERMAL ENERGY

I hereby promulgate the Act on the Production, Distribution and Supply of Thermal Energy adopted by the Croatian Parliament at its session on 18 March 2005.

No: 01-081-05-1136/2

Zagreb, 23 March 2005

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

THE ACT ON THE PRODUCTION, DISTRIBUTION AND SUPPLY OF THERMAL ENERGY

I. GENERAL PROVISIONS

Article 1

This Act regulates services relating to thermal energy production, distribution and supply.

Article 2

(1) The terms used in this Act have the meanings as defined in the Energy Act (Official Gazette, Nos. 68/01, 177/04).

(2) Other terms used in this Act have the following meanings:

1. distribution area – the area of services within a local self-government unit,
2. thermal energy distribution installations – installations and equipment for transmission of thermal energy to the consumer, from the measuring point of energy intake to the measuring point of energy sale (distribution network, pumping and thermal stations, thermal energy meters),
3. thermal energy production unit – a plant producing thermal energy, with total installed power exceeding 0.5 MW,
4. cogeneration unit – a plant where in a single process combined heat and power (CHP) are generated,
5. thermal energy supply – sale of energy to consumers
6. thermal energy – energy produced for indoor heating or for technological purposes (steam, heating water, service water),
7. heating system – a technical system consisting of installations and equipment for thermal energy production and distribution,

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8. shared heat meter – one which registers the quantity of supplied heat energy for two or more consumers connected to a joint central heating installation.

Article 3

Construction of cogeneration units, their maintenance and utilisation are of special interest to the Republic of Croatia.

II. PERFORMANCE OF ENERGY SERVICES

Article 4

- (1) Thermal energy production for and supply of eligible customers are subject to market rules.
(2) Thermal energy production for and supply of tariff consumers shall be regulated.
(3) Thermal energy distribution shall be performed as a public service.

Article 5

- (1) The Ministry shall take part in preparing the zoning plans adopted by the Parliament of Croatia.
(2) The state administration office of a county or the administrative body of the City of Zagreb competent for energy affairs shall participate in drawing up the zoning plans adopted by the representative bodies of local self-government units.
(3) The party responsible for drawing up the zoning plans referred to in paragraphs 1 and 2 of this Article shall obtain a previous opinion from the Ministry or state administration office of a county or the administrative body of the City of Zagreb competent for energy affairs.

Article 6

- (1) In the process of issuing the site licence for a building housing a thermal energy production unit, the special conditions of thermal energy production and distribution shall be defined by the state administration office of a county or the administrative body of the City of Zagreb responsible for energy affairs.
(2) By way of derogation from paragraph 1 of this Article, where the site licence is issued by the ministry responsible for physical planning, the special conditions of thermal energy production and distribution shall be defined by the Ministry.
(3) The special conditions referred to in paragraphs 1 and 2 of this Article shall apply to:
– type of primary fuels that the unit will use,
– methods and requirements regarding the production and supply of thermal energy, as well as the termination of these activities.
(4) The special conditions referred to in paragraphs 1, 2 and 3 of this Article shall also be appropriately applied in the process of issuing site licences for cogeneration units.
(5) The special conditions referred to in paragraphs 1, 2 and 3 of this Article shall be established in accordance with the Electricity Market Act (Official Gazette, No. 177/04).

A) Thermal energy production

Article 7

- (1) Thermal energy can be produced by an establishment which has obtained a thermal energy production licence from the Croatian Energy Regulatory Agency – CERA (hereinafter referred to as: the Agency).
(2) The thermal energy production licence is not required for production solely intended for one's own use or performed in plants with total installed power below 0.5 MW.
(3) An energy service company shall produce thermal energy in its own or leased units.

Article 8

Technical conditions for thermal energy production units shall be prescribed by the Minister by ordinance, subject to approval by the minister competent for construction.

Article 9

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- (1) The construction of a cogeneration unit shall have priority in the selection of proposed energy projects and in deciding on the construction of energy units.
- (2) An energy service company operating a cogeneration unit and using waste, biodegradable waste ingredients or renewable energy sources for thermal energy production in an economically justifiable way, in compliance with environmental protection measures, may gain the status of an eligible thermal energy producer.
- (3) The status of an eligible thermal energy producer shall be acquired by the energy service company referred to in paragraph 2 of this Article by virtue of a decision issued by the Agency and in compliance with the conditions prescribed by the Minister by ordinance.
- (4) The ordinance referred to in paragraph 3 of this Article shall also define the assurance of the origin of energy by the eligible thermal energy producer and the efficiency criteria, including the environmental impact.
- (5) The ordinance referred to in paragraph 3 of this Article shall also define interconnection with a system for power transmission and power and heat distribution for cogenerations.
- (6) The share of an eligible thermal energy producer in the energy system of the Republic of Croatia shall depend on the type, power and performance of the plant, the fuel used, the environmental impact, and the potentials of the plant in the years to come.
- (7) The parameters referred to in paragraph 6 of this Article, the amount and sources of financial support for the energy capacities of an eligible thermal energy producer shall be determined by the Government of the Republic of Croatia.

Article 10

- (1) The thermal energy production company may enter into a contract for the sale of thermal energy directly with the eligible customers.
- (2) The contract referred to in paragraph 1 of this Article may be concluded only after the parties have obtained approval from the thermal energy distribution company.
- (3) A party which has been denied approval referred to in paragraph 2 of this Article may lodge a complaint with the Agency. The decision of the Agency shall be final.

B) Distribution of thermal energy

Article 11

- (1) A local self-government unit which in its distribution area has thermal energy distribution installations shall ensure that the thermal energy distribution services are provided on a long-term basis.
- (2) A local self-government unit and the thermal energy distribution companies shall ensure the performance of quality distribution services based on the principles of sustainable development, the maintenance of energy installations in a state of satisfactory operability and the public transparency of their work.

Article 12

- (1) Thermal energy distribution shall be performed by virtue of a concession granted or a service contract concluded.
- (2) With a concession a right may be acquired to distribute thermal energy or to build thermal energy distribution installations.
- (3) An energy service company shall distribute thermal energy by using its own or leased energy distribution installations.
- (4) The nature and quality of energy distribution services shall not depend on the type of arrangements involved in using the energy distribution installations referred to in paragraph 3 of this Article.

Article 13

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(1) A thermal energy distribution concession shall be granted by the representative body or another authorised body of the local self-government unit after a conducted public tendering procedure.

(2) Two or more representative bodies or other authorised bodies of local self-government units may jointly conduct a tendering procedure and grant a thermal energy distribution concession for their entire territories or parts thereof.

Article 14

The thermal energy distribution concession shall specify the energy service company which will act as a concessionaire, the technical and geographic coverage, the scope of performing services, the period of concession and other matters prescribed by this Act.

Article 15

(1) The thermal energy distribution concession shall be granted for a period of up to 30 years. The concession period shall start as of the date of signing the concession agreement.

(2) Concession shall be granted after a conducted public tendering procedure comprising:

1. the purpose of the concession (a more detailed description of the services to be provided under the concession agreement);
 2. the area covered by the services;
 3. the period for which the concession is granted. If during the concession period the area covered by the thermal energy distribution service is being extended within the distribution area, time schedules for particular area extension phases shall be specified;
 4. the deadline within which the concessionaire has to connect the consumers to the distribution network and start supplying thermal energy to them, once the technical and concession requirements have been met;
 5. the amount and method of paying the concession fee;
 6. the method of determining the energy price by the concessionaire in compliance with the tariff system;
 7. the concessionaire's billing method;
 8. the indication of the guarantee for finances required for the provision of services, especially for the construction of thermal energy distribution installations;
 9. evidence of a licence held for providing thermal energy distribution services;
 10. evidence of the bidder's goodwill;
 11. environmental protection measures;
 12. other obligations of the concessionaire;
 13. requirements for cancellation of the concession agreement;
 14. time limit for the tendering procedure;
 15. information about venue, time and manner of collecting or reviewing the tender documents, the submission of bids and public opening of the bids;
 16. the share of the eligible thermal energy producer in utilisation.
- (3) The representative body or another authorised body of the local self-government unit shall launch and conduct a concession tendering procedure and shall decide on the best bidder.
- (4) The concession tendering procedure shall be published in the Official Gazette and in at least one daily newspaper normally sold in the distribution area for which the concession is granted.

Article 16

(1) In the concession decision a concessionaire is designated whose bid, based on his goodwill, the evaluation of his capability to perform under the concession, the price offered and the assessment of the share of the eligible thermal energy producer in utilisation, has been assessed as the most favourable.

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(2) On the basis of the decision referred to in paragraph 1 of this Article, the representative body or another authorised body of the local self-government unit and the bidder shall sign a concession agreement which shall contain all the elements listed in Article 15, paragraph 2 of this Act.

Article 17

The concession shall terminate:

1. upon expiry of the period of concession,
2. if the concessionaire ceases to exist;
3. in the cases referred to in Article 18, paragraph 1, item 2 of the Energy Act;
4. in case of cancellation of the concession agreement;
5. if so agreed between the parties.

Article 18

The concession may be terminated if the concessionaire:

1. fails to perform services in accordance with the provisions of the concession agreement;
2. fails to pay the concession fee within the period of time specified in the concession agreement;
3. fails to obtain a new licence upon expiry of the energy service licence;
4. in the case referred to in Article 18, paragraph 1, item 1 of the Energy Act.

Article 19

(1) If no bid is submitted or if no bid meets the requirements set out in Article 15, paragraph 2 of this Act, for the provision of thermal energy distribution services the local self-government unit may conclude a contract with a thermal energy distribution company held in majority ownership by the state or the local self-government unit.

(2) If in a distribution area there is no energy service company referred to in paragraph 1 of this Article, the local self-government unit shall establish it and thereby conclude the contract as provided in paragraph 1 of this Article.

(3) The provisions of Article 16, paragraph 2 and Articles 17 and 18 of this Act shall appropriately apply to the subject-matter and the termination of the service contract.

(4) The service contract shall be concluded for a period of up to 15 years, subject to the approval of the Agency.

Article 20

The thermal energy distribution company shall be responsible for:

1. development, construction, management, supervision, operation and maintenance of thermal energy distribution installations;
2. heating system construction and development planning, adjusted to the plans and programmes of the local self-government unit;
3. functionality and reliability of thermal energy distribution installations;
4. co-ordinated operation of different thermal energy distribution installations;
5. providing regulated access of third parties to the distribution network;
6. contracting of thermal energy according to the plan for the current year and in accordance with the installed power of the capacity;
7. regular briefing on future thermal energy needs and other information required by the Agency;
8. marketing, communication with clients, business statistics.

Article 21

The methodology of fair apportionment of thermal energy production and distribution costs among energy service companies by applying appropriate influential parameters (energy fuel prices and rate of exchange trends on money markets) shall be defined through the tariff system for the thermal energy production, distribution and supply services.

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Article 22

- (1) The thermal energy distribution company shall provide access to the distribution network in accordance with the general terms and conditions of thermal energy supply.
- (2) A party which is denied access to the distribution network, or which is not satisfied with the terms and conditions of access, may lodge a complaint with the Agency. The decision of the Agency shall be final.
- (3) The party referred to in paragraph 2 of this Article may finance the construction of a direct line being built by the thermal energy distribution company with the approval of the Agency.

Article 23

- (1) The tariff consumers of thermal energy shall not opt out of a heating system without prior approval of the energy distribution and supply companies.
- (2) The companies referred to in paragraph 1 of this Article shall give approval to a tariff consumer if permissible under current technical requirements and if the tariff consumer obtains approval of all the tariff consumers on a shared heat meter.
- (3) The companies referred to in paragraph 1 of this Article shall decide on granting approval for the opting out of the heating system within 60 days of the day of receiving the application to this effect.
- (4) The party which is refused approval referred to in paragraph 1 of this Article may lodge a complaint with the Agency within 15 days from the day of refusal. The decision of the Agency shall be final.

Article 24

- (1) The owners of the self-contained units of the buildings constructed before the entry of this Act into force may for more rational use of energy, subject to approval of the thermal energy distribution company, have their premises fitted with installations for local distribution of supplied thermal energy and with heat loss control installations and thermal energy meter.
- (2) The energy service company referred to in paragraph 1 of this Article shall decide on granting the approval referred to in paragraph 1 of this Article within 60 days from the day of receiving the application to this effect.
- (3) The party which is refused approval referred to in paragraph 1 of this Article may lodge a complaint with the Agency. The decision of the Agency shall be final.
- (4) The installation of the unit referred to in paragraph 1 of this Article and the modalities of distributing and billing of thermal energy shall be regulated in the Ordinance on the distribution and billing of thermal energy to be passed by the Minister.

Article 25

- (1) With the tariff system for thermal energy production, distribution and supply services, for the whole territory of the Republic of Croatia a common method is applied in establishing the type of consumers in terms of fuel, period of supply, quantity and rate of energy consumption, as well as the tariff items for calculating the price of thermal energy.
 - (2) The amount of tariff items depends on the costs of production, distribution and supply of thermal energy in a distribution area.
- C) Thermal energy supply to tariff consumers

Article 26

- (1) An energy service company which has been granted a thermal energy distribution concession or which has signed a service contract has the right to supply tariff consumers with thermal energy, provided that the company has previously obtained a thermal energy supply licence.
- (2) By way of derogation from the provision of paragraph 1 of this Article, a company producing thermal energy in a technological process in which there are no thermal energy distribution installations may provide thermal energy supply services if it has obtained a thermal energy supply licence from the Agency.

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Article 27

- (1) The thermal energy supply company shall guarantee the continuity and reliability of the thermal energy supply system in agreement with the thermal energy distribution company.
- (2) The thermal energy supply company shall be responsible for ensuring sufficient quantity and quality of thermal energy for the needs of tariff consumers and for ensuring the provision of thermal energy supply services in its area.

Article 28

- (1) Buildings erected without a building licence may not be connected to a thermal energy distribution installation, nor may be a building subjected to an inspection procedure aimed to stop its construction or to remove it by virtue of a special law.
- (2) Paragraph 1 of this Article shall not apply to buildings erected without a building licence which by virtue of a special regulation are considered to have been erected on the basis of a building licence.

III. ELIGIBLE CUSTOMER

Article 29

- (1) An eligible customer may freely choose the thermal energy production company.
- (2) On the day of entry into force of this Act, the status of an eligible customer shall be acquired by the categories of consumers spending more than 3700 peak hours a year of leased heating capacity or more than 15% of total distributed steam or heating water in the distribution area in the previous year.
- (3) An eligible customer shall not lose his status as long as he consumes at a rate on the basis of which the privileged status has been accorded to him.

IV. SUPERVISION

Article 30

- (1) The administrative supervision of the implementation of this Act and regulations adopted on the basis of this Act shall be conducted by the Ministry.
- (2) The inspectional supervision of the implementation of this Act shall be conducted under special regulations by the State Inspector's Office and other responsible inspectors.

Article 31

If during the performance of an inspectional supervision the officers of the State Inspector's Office find that the energy service company is failing to provide energy services and the thermal energy consumers are not using thermal energy as required by this Act and regulations adopted on the basis of this Act, they shall be authorised, in addition to their powers under general regulations, to issue a decision:

- ordering the elimination of established irregularities and omissions, with a time limit for such rectification specified,
- putting a ban on the construction of an energy unit, unless a building licence has been obtained,
- suspending continued construction or use of an energy unit, or suspending energy supply or use, unless the equipment for the energy unit is manufactured and the energy unit built, used or maintained in compliance with the approved or certified documentation according to special technical or other regulations, and if as a result of it an immediate risk is posed to the stability and safety of the energy unit, to human health or life or the safety of traffic or of adjacent buildings.

V. PENAL PROVISIONS

Article 32

- (1) A misdemeanour fine in the amount of HRK 10,000.00 to 50,000.00 shall be imposed on an energy service company which:
- signs a contract with an eligible customer for the sale of thermal energy without approval of the respective thermal energy distribution company (Article 10, paragraph 2),

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- provides thermal energy distribution services in an area for which another energy service company has been granted a concession or has won a service contract (Article 12, paragraph 1),
- provides thermal energy distribution or supply services without a concession or a service contract (Article 12, paragraph 1, and Article 26, paragraph 1),
- fails to provide services in accordance with the terms and conditions of the concession (Article 15, paragraph 2),
- fails to comply with Article 20, paragraph 1 of this Act,
- establishes and delimits the costs of thermal energy distribution by ignoring the Tariff System (Article 21),
- fails to provide access to the distribution network according to the general terms and conditions of thermal energy supply connection (Article 22, paragraph 1),
- has acquired the right to provide thermal energy distribution services, but has not secured thermal energy supply services (Article 26),
- provides thermal energy supply services without a licence issued by Agency (Article 26, paragraph 2),
- fails to comply with Article 27 of this Act,
- connects the building to the thermal energy distribution installation without a building licence or another appropriate document required for erecting a building (Article 28, paragraph 1),
- fails to comply with the decision of the inspector (Article 31),
- fails to comply with the provisions of Article 36, paragraphs 1 and 2 of this Act.

(2) For a misdemeanour referred to in paragraph 1 of this Article a fine in the amount of HRK 300.00 to 5,000.00 shall also be imposed on the responsible person of the energy service company.

(3) In addition to the misdemeanour fine, an energy service company which has committed more than one misdemeanour referred to in paragraph 1 of this Article or which over a year's time has repeated two or more times a misdemeanour referred to in paragraph 1 of this Article may be banned from providing energy services in the duration of up to one year, and the responsible person of the energy service company may be banned from engaging in the same services in the duration of up to one year.

Article 33

(1) A fine in the amount of HRK 10,000.00 to 15,000.00 shall be imposed on a legal person which is a tariff consumer of thermal energy and which has opted out of the heating system without previous approval of the thermal energy distribution company (Article 23, paragraph 1).

(2) A fine in the amount of HRK 1,000.00 to 2,000.00 shall be imposed on a natural person who is a tariff consumer of thermal energy and who has opted out of the heating system without previous approval of the thermal energy distribution company (Article 23, paragraph 1).

VI. TRANSITIONAL AND FINAL PROVISIONS

Article 34

(1) The energy service companies which on the day of entry of this Act into force are providing thermal energy distribution and supply services shall continue to do so in relation to tariff consumers pending the conclusion of concession or service contracts, but not longer than one year from the day of entry of this Act into force.

(2) If energy services referred to in paragraph 1 of this Article on the day of entry of this Act into force are provided by virtue of a concession, the concessionaire shall continue to provide these services until the validity of the concession has expired and under the terms and conditions agreed therein.

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Article 35

The construction of energy capacities commenced before the entry into force of this Act shall be continued and completed in accordance with the provisions of the law on the basis of which the construction works were initiated.

Article 36

(1) Connection to a thermal energy distribution installation for buildings constructed after the entry of this Act into force shall be so designed that each self-contained unit of the building is fitted with a separate thermal energy flow control instrument and a separate thermal energy meter.

(2) Within two years from the date of entry of this Act into force, the energy service company responsible for distribution of thermal energy shall at its own cost install the thermal energy flow control instruments and the heat meters in all thermal stations.

Article 37

(1) The regulations referred to in Article 9, paragraph 3 and Article 24, paragraph 4 of this Act shall be passed by the Minister within six months from the day of entry of this Act into force.

(2) The regulation referred to in Article 9, paragraph 7 of this Act shall be passed by the Government of the Republic of Croatia within one year from the day of entry of this Act into force.

Article 38

(1) Representative bodies or other authorised bodies of the local self-government units shall adjust their official acts to this Act within one year from the day of entry of this Act into force.

(2) The official acts of representative bodies or other authorised bodies of the local self-government units which are not adjusted to the provisions of this Act shall cease to apply upon expiry of the time limit specified in paragraph 1 of this Article.

(3) Article 6 of this Act shall apply as of the day of the adoption of the development plans of local and regional self-government units in accordance with the Energy Act.

Article 39

Procedures initiated before the entry of this Act into force shall be completed pursuant to the provisions of the Public Utilities Act (Official Gazette Nos. 36/95, 70/97, 128/99, 57/00, 129/00, 59/01, 26/03 – consolidated text 82/04, 110/04 and 178/04).

Article 40

Pending the entry into force of the subordinate legislation referred to in Article 38, paragraph 1 of the Energy Act (Official Gazette Nos. 68/01, 177/04), as well as Article 8, Article 9, paragraphs 3 and 7, and Article 24, paragraph 4 of this Act, subordinate legislation which regulates the thermal energy production, distribution and supply services shall apply, unless in contravention with the provisions of this Act.

Article 41

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

Class: 363/02/04-01/02
Zagreb, 18 March 2005

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