



IZMENE I DOPUNE ZAKONA O ENERGETICI
AMENDMENTS AND SUPPLEMENTS TO THE ENERGY LAW

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UVODNE NAPOMENE

Trenutno važeći Zakon o energetici je donet 2014. godine u cilju implementacije trećeg energetskeg paketa EU u pozitivno zakonodavstvo Republike Srbije. Međutim, proces transponovanja relevantnih odredbi u Zakon o energetici nije na najadekvatniji način urađen te pojedine odredbe zakona nisu najjasnije.

Stoga se javila i potreba za dodatnom implementacijom trećeg energetskeg paketa u domaće zakonodavstvo, kao i četvrtog energetskeg paketa koji je EU donela tokom 2019. godine i koji se odnosi samo na električnu energiju, ne i na prirodni gas, što je i učinjeno izmenama i dopunama Zakona o energetici koje je Narodna skupština usvojila 20. aprila 2021. godine

FOREWORD

Currently valid Energy Law was adopted in 2014 with a goal to implement third energy package of EU in legislation of the Republic of Serbia. However, process of transposing relevant provisions in the Energy Law was not performed in the adequate manner and certain provisions of the law are not clear.

Therefore, there was a need for additional implementation of the third energy package in domestic legislation, as well as fourth energy package rendered by EU during 2019 relating only to electric energy and not to natural gas, which was done through amendments and supplements of the Energy Law adopted by National Assembly on 20 April 2021.

IZMENE I DOPUNE ZAKONA O ENERGETICI

ELEKTRIČNA ENERGIJA

Izmene vezane za električnu energiju su pre svega usmerene radi stvaranja uslova za povezivanje sa evropskim tržištem električne energije, radi standardizacije tehničkih uslova za priključenje na prenosni sistem, što bi kao krajnju konsekvencu imalo i pozitivan uticaj u investicije u elektroenergetsku infrastrukturu.

U tom smislu su uvedena nova pravila priključenja na prenosni sistem. Prema izmenama Zakona o energetici, operator prenosnog sistema pored procedure priključenja na prenosni sistem, sada je u obavezi i da izradi pravila za priključenje objekata na prenosni sistem u kojima će se definisati, između ostalog, i tehnički zahtevi za priključenje. Prema zakonu, tehnički uslovi moraju da budu u skladu sa mrežnim pravilima koja će doneti Vlada implementirajući evropska pravila za priključenje na prenosni sistem, čime se stvara jedan od preduslova za priključenje domaćeg tržišta evropskom tržištu električne energije.

Uvodi se i novi učesnik na tržištu električne energije – nominovani operator tržišta električne energije (u daljem tekstu: „**NEMO**“). Osnovna uloga NEMO-a jeste spajanje dan-unapred i unutar dnevnog tržišta električne energije sa susednim organizovanim tržištima električne energije.

Pored domaćeg lica, omogućeno je da NEMO bude i lice sa sedištem u nekoj od zemalja EU ili članice Energetske zajednice, pod uslovom reciprociteta. Radi funkcionisanja NEMO-a neophodno je bilo uvesti i centralnu ugovornu stranu koja predstavlja zapravo lice nadležno za fizičku i finansijsku realizaciju transakcija zaključenih na organizovanom tržištu električne energije, kao i za finansijsku realizaciju transakcije između dve zone trgovanja.

AMENDMENTS AND SUPPLEMENTS TO THE ENERGY LAW

ELECTRIC ENERGY

Amendments relating to electric energy are directed mainly to create conditions for connection with the European market of electric energy, to standardize technical conditions for access to the transmission system, which will have, as a final consequence, positive impact on investment in electro-energetic infrastructure.

In this sense, new rules on connection to the transmission system are introduced. Pursuant to the amendments of the Energy Law, operator of transmission system now has the obligation to draft rules for connection of objects to transmission system in which will be defined, inter alia, technical conditions for connection. Pursuant to the law, technical conditions must be in line with the network code which will be rendered by the Government in the process of implementation of the European rules for connection to the transmission system, by which one of preconditions for integration of domestic market with European electricity market is created.

New participant on the electricity market is introduced – nominated operator of electricity market (hereinafter referred to as: “NOEM”). Main purpose of NOEM is integration of day-ahead and within-day electricity market with the adjacent organized electricity markets.

Apart from domestic entity, NOEM may be entity with the registered seat in EU countries or members of Energy Community, provided that reciprocity exists. In order for NOEM to function, it was necessary to introduce central contracted party, represented by a person competent for physical and financial realization of transactions executed on organized electricity market, as well as for financial realization of transaction between two trading zones.

Radi transponovanja četvrtog energetskeg paketa EU, došlo je do uvođenja novih instituta – skladišta električne energije, agregatori, agregiranje i kupac-proizvođač električne energije (u cilju harmonizacije sa Zakonom o upotrebi obnovljivih izvora energije). Skladištenje električne energije je uvedeno i kao nova energetska delatnost za koju nije potrebna licenca.

Agregiranje predstavlja objedinjavanje potrošnje i/ili proizvodnje električne energije većeg broja krajnjih kupaca radi kupovine, prodaje ili aukcija na tržištima električne energije, dok je agregator pravno ili fizičko lice koje pruža tu uslugu. Dodatno, napravljen je i osvrt na punjenje električnih vozila, gde je propisano da je pružalac usluge punjenja električnih vozila krajnji kupac i da je operator distributivnog sistema dužan da saraduje sa krajnjim licima vezano za punionice za električna vozila.

In order to transpose fourth energy package of EU, new institutes are introduced – storage of electric energy, aggregators, aggregating and buyer-producer of electric energy (in order to be harmonized with the Law on Utilization of Renewable Energy Resources). Storage of electric energy is new energy activity which does not require license.

Aggregation represents unification of consumption and/or production of electric energy of big number of final costumers for selling, purchasing or auctions on the electricity market, while aggregator is legal or natural person providing such services. Additionally, certain rules regulate charging of electric vehicles, prescribing that provider of services of charging electric vehicles is final costumer and operator of distribution system is obliged to cooperate with the final costumers regarding the stations for charging electric vehicles.

PRIRODNI GAS

U oblasti prirodnog gasa, došlo je do predstavljanja nove energetske delatnosti – snabdevanje na veliko prirodnim gasom, za čije obavljanje je potrebna licenca. Za razliku od drugih energetske delatnosti vezanih za prirodni gas koje mogu da obavljaju samo domaća pravna lica ili preduzetnici, ovu delatnost mogu da obavljaju i strana pravna lica.

Sa stanovišta transponovanja trećeg energetskog paketa EU koji se odnosi na prirodni gas, tačnije odredbi:

1. Uredbe komisije EU 2015/703 od 30. aprila 2015. godine o uspostavljanju pravila interoperabilnosti i razmene podataka (NC IDE),
2. Uredbe komisije EU 2017/459 od 16. marta 2017. godine o uspostavljanju mrežnih pravila za mehanizme raspodele kapaciteta u transportnim sistemima za prirodni gas (NC CAM),
3. Uredbe komisije EU 2017/460 od 16. marta 2017. godine o uspostavljanju mrežnih pravila o usklađenim strukturama transportnih tarifa za gas (NC TAR) i
4. Uredbe komisije EU 312/2014 od 26. marta 2014. godine o uspostavljanju mrežnih pravila o balansiranju transportnih mreža (NC BAL), to je izvedeno na jedan generalan način propisivanjem obaveze Vlade da donese akt o mrežnim pravilima kojim će se zapravo implementirati odredbe sadržane u ovim EU mrežnim pravilima. Na ovakav način će se postupiti i u oblasti električne energije.

NATURAL GAS

In the area of natural gas new energy activity is presented – wholesale natural gas supply for which license is required. As opposed to other energy activities relating to natural gas which may be performed only by domestic legal or natural persons, this activity may be performed by the foreign legal entities.

Regarding transposing third energy package of EU relating to natural gas, namely:

1. Commission Regulation (EU) 2015/703 as of 30 April 2015 establishing a network code on interoperability and data exchange rules (NC IDE),
2. Commission Regulation (EU) 2017/459 as of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems (NC CAM),
3. Commission Regulation (EU) 2017/460 as of 16 March 2017 establishing a network code on harmonized transmission tariff structures for gas (NC TAR) and
4. Commission Regulation (EU) 312/2014 as of 26 March 2014 establishing a Network Code on Gas Balancing of Transmission Networks (NC BAL), it is performed in a general manner, prescribing obligation of the Government to render act on network codes, in which will be actually implemented provisions contained in those EU network codes. In this manner, will be acted in the area of electric energy as well.



Dodatno, predviđena je i mogućnost izmene konačnog akta o izuzeću na osnovu zahteva za izmene, ali pod uslovom da u trenutku podnošenja zahteva nije otpočela izgradnja energetskog objekta.

Takođe, Agencija za energetiku se ovlašćuje da ukine akt o izuzeću u celini ili u delu pre isteka važenja izuzeća, ukoliko to stranka sama zahteva.

Ovde je nejasno samo zašto u delu Zakona o energetici koji se tiče prirodnog gasa se spominje ukidanje rešenja o izuzeću vezanog za električnu energiju, kada je to moglo da bude regulisano na drugom, više adekvatnom mestu.

Na kraju dela o prirodnom gasu treba se i osvrnuti na izmene koje su učinjene u članu 227. Zakona o energetici koji reguliše nezavisnog operatora sistema, gde prema tom članu stoji da se na nezavisnog operatora sistema ne primenjuje član 225. (koji reguliše način ostvarivanja nezavisnosti operatora sistema).

Additionally, possibility to amend final exemption act upon request for amendment is prescribed, provided that, at the moment of submission of request construction of energy object has not commenced.

Also, Energy Agency is authorized to revoke exemption act in whole or, in part before its validity period, if the party requests so.

It is not clear why in the Energy Law in the part governing natural gas is mentioned revocation of exemption act for electric energy, when it could be done on a different, more adequate place.

In a part governing natural gas it is noteworthy to mention the amendments made in Article 227 of the Energy Law regulating independent system operator, whereby pursuant to this Article on independent system operator does not apply Article 225 (governing manner of achieving independence of system operator).

Međutim, prilikom harmonizacije Zakona o energetici sa Gasnom direktivom (73/2009) nisu pravilno reflektovani uslovi koji se odnose na nezavisnog operatora sistema. Naime, članom 14. stav 1. Gasne direktive (koji reguliše nezavisnog operatora sistema) propisano je da se ne primenjuje član 9(1) ove Direktive. S druge strane, stavom 2. člana 14. Gasne direktive je propisano da nezavisni operator sistema mora da ispunjava uslove iz člana 9(1) (b), (c) i (d). Predmetni uslovi iz člana 9(1) (b), (c) i (d) su u Zakonu o energetici regulisani članom 225. stav 1.

Dakle, pravilo da se ne primenjuje član 9(1) Gasne direktive se odnosi na član 9(1) (a), koji propisuje da je operator transportnog sistema vlasnik transportnog sistema. Ovo pravilo je Zakonom o energetici regulisano u članu 224. stav 1. te stoga bi bilo ispravno da se član 224. stav 1. ne primenjuje a ne član 225. Zakona o energetici.

Međutim, Zakon o izmenama i dopunama Zakona o energetici nije ispravio ovu grešku, već je predloženo da se na nezavisnog operatora sistema ne primenjuje član 225. stav 2. do stav 5. čime je još više izazvana nedoumica vezano za način ostvarivanja nezavisnosti nezavisnog operatora sistema.

However, in the course of harmonization of Energy Law with the Gas Directive (73/2009), conditions relating to independent system operator were not adequately reflected. Namely, Article 14 paragraph 1 of the Gas Directive (governing independent system operator) prescribes that Article 9(1) of this Directive shall not be applicable. On the other hand, paragraph 2 of Article 14 of Gas Directive prescribes that independent system operator must fulfill conditions from Article 9(1) (b), (c) and (d). Subject conditions from the Article 9(1) (b), (c) and (d) are regulated in the Energy Law in Article 225 paragraph 1.

Therefore, rule that Article 9(1) of the Gas Directive is not applicable refers to Article 9(1) (a) which prescribes that operator of transmission system is the owner of transmission system. This rule is envisaged in the Article 224 paragraph 1 of the Energy Law, and consequently it will be correct that Article 224 paragraph 1 is not applicable and not Article 225 of the Energy Law.

However, Law on amendments and supplements of the Energy Law did not correct this mistake, but it is proposed that on the independent system operator, Article 225 paragraph 2 to paragraph 5 is not applicable, creating more confusion relating to achieving independence of independent system operator.

OSTALE IZMENE

Pored navedenih izmena koje se odnose na električnu energiju i prirodni gas, među značajnijim izmenama su i obaveza Ministarstva rudarstva i energetike (u daljem tekstu: „Ministarstvo“) da priprema Integrisani nacionalni energetski i klimatski plan, kao i da prati njegovo sprovođenje.

Izmenjena je i odredba koja reguliše energetski ugroženog kupca, pa tako sada energetski ugrožen kupac je lice kome bi se obustavom isporuke toplotne energije ugrozio život ili zdravlje, a ne samo obustavom isporuke prirodnog gasa ili električne energije.

Uvedena je mogućnost trgovine i biotečnostima i vodonikom što do sada nije bio slučaj, i nova energetska delatnost je takođe predstavljena – namešavanje biotečnosti sa gorivima naftnog porekla, za koju delatnost je obavezno posedovanje licence. Takođe, Ministarstvo je do sada imalo obavezu da izrađuje izveštaj o sigurnosti snabdevanja električnom energijom i prirodnim gasom, dok je ovim izmenama dodaje obaveza izrade izveštaja o sigurnosti snabdevanja i nafte i derivatima nafte.

U toku 2020. godine Narodna skupština je donela Zakon o posebnim postupcima radi realizacije projekata izgradnje i rekonstrukcije linijskih infrastrukturnih objekata od posebnog značaja za Republiku Srbiju („Službeni Glasnik RS“, br. 9/2020) kojim je predviđena olakšana i ubrzana procedura realizacije i izgradnje linijskih infrastrukturnih objekata. Međutim ovim zakonom nisu obuhvaćeni i linijski energetski objekti, pa je izmenama Zakona o energetici određeno da Vlada može posebnim aktom odrediti izgradnju energetskih objekata, uključujući i linijske energetske objekte (naftovod, gasovod itd.) kao projekte od posebnog značaja na koje će se primenjivati zakon koji reguliše postupak realizacije linijskih infrastrukturnih objekata.

Takođe, procedura za izdavanje energetske dozvole, licence za obavljanje energetske delatnosti i davanje saglasnosti za skladištenje je pojednostavljena u smislu da se dostavljanje zahteva, podnesaka i dokumenata nadležnim organima obavlja elektronskim putem.

OTHER AMENDMENTS

Apart from the stated amendments relating to electric energy and natural gas, among more important amendments are obligation of Ministry of Mining and Energy (hereinafter referred to as: “Ministry”) to prepare Integrated national energy and climate plan, as well as to monitor its realization.

Provision governing energy vulnerable customer is amended, so now energy vulnerable customer is person whose life or health will be jeopardized in case of cessation of deliverance of heat energy, not only deliverance of natural gas or electric energy.

Possibility to trade with bioliquids and hydrogen, which did not exist until now, is introduced as well as new energy activity – blending of bioliquids with fuels of oil origin for which license is required. Also, Ministry had obligation to draft report on security of supply of electric energy and natural gas, but this amendment stipulate obligation to draft report on security of supply of oil and oil derivatives as well.

During the 2020 National Assembly adopted Law on Special Procedures for Realization of Projects of Construction and Reconstruction of Linear Infrastructure Objects with a Special Significance to the Republic of Serbia (“Official gazette of the RS” no. 9/2020) which stipulates facilitated and fast procedure for realization and construction of linear infrastructure objects. However, this law does not encompass linear energy object, so amendments to the Energy Law envisage that Government may, with special act, determine construction of energy object, including linear energy objects (oil pipeline, gas pipeline etc.) as project of special interest on which will be applicable the law, governing procedure of realization of linear infrastructure objects.

Also, procedure for issuance of energy permit, licenses for conduction of energy activity and giving consent for storage is facilitated in a sense that submission of requests, letters and documents to the competent bodies, is being done in electronic form.

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Jelena is a highly regarded legal expert with over 20 years of experience, advising on landmark transactions and projects of strategic importance for Serbia and the SEE region. Jelena is also a Lecturer at the Faculty of Law, University of Belgrade, and Lecturer at the Bar Academy, Bar Association of the Republic of Serbia.

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Publisher: JPM Janković Popović Mitić
NBGP Apartmani, Vladimira Popovića 6
www.jpm.rs

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