Contractual rules in the energy retail markets and the volatile energy prices

Roundtable Discussion

ERRA Customer Protection Working Group Meeting

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Contractual rules in the energy retail markets and the volatile energy prices

- **Rules of offering a contract:** Any legal person who has an approved connection point in the Distribution or Transmission System Network has the right to submit a request for an offer of an electricity supply contract. The request for an electricity supply contract shall be submitted in writing at the offices of the Supplier. The supplier must provide in an easily available and free of charge to interested parties, the necessary written information on the procedures for signing an electricity supply contract, information which must be detailed, transparent and visibly reflected through various means of information near each representative office of the Supplier, including publications of this information in the form of brochures or in electronic form on the website of the Supplier and NRA. The parties contract the price and the length of the contract between them, but must follow the general rules of supply approved by ERE.
- The offer must include
- 1. The necessary documentation, which the applicant must submit at the time of submitting the request for signing the electricity supply contract such as identification and location proof, as well as any technical documentation that serves to finalize the contract signing;
- 2. The deadline for handling the applicant's request for entering in a contract;
- 3. The rights and obligations of the end customer;
- 4. Rights and obligations of the Supplier;
- 5. Location of the Supplier's offices, where the customer care service is provided; The procedure for filing a complaint and the deadlines for handling it;
- 6. Obligation of the Supplier not to release the customer's personal data.

How long are suppliers bound to their offers? Can a contract be unilaterally modified/terminated?

- **The supply contract is terminated for a period determined by the party itself, and may be terminated before this deadline**, only in the following cases:
- 1.1 With initiative of the Supplier, in case of violation by the Customer of essential obligations of the contract, where essential violations on the terms of the contract, on the part will be considered of the Client's, as the following cases: a- If the Customer does not pay the electricity obligations, including late interest, within 1 month from the interruption of electricity, as a result of non-payment of electricity. b- If it is proved by the Supplier that the Customer receives electricity in such an illegal way. c- If the Customer, repeatedly, does not create access to the Supplier for more than 3 months for reading and verification of meters and installations, when the metering is within the limits of its ownership.
- 1.2 At the Customer's request, after the liquidation of all monetary obligations and referring to the conditions defined in the supply contract, termination shall be executed.

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We are not facing this kind of problem, because, :

- The tariff is uniform throughout the national territory. It’s set by CREG (The last decision dates from 2016).
- We have only one supplier which is also the distributor.

Contractual rules in the energy retail markets and unstable energy prices

Contractual rules in the energy retail markets are applied within the universal service.

Universal service means the part of public service that guarantees connection and supply under reasonable prices, which can be easily compared and are transparent. The right to use it is given to a category of households, small enterprises and commercial customers, as defined by law. Rules of offering a contract are regulated in such a way that contracts are concluded after end customer/buyer receives a electricity power permit. These contracts are formal ones according the form prescribed by Genaral Conditions for Electricity Supply. Law on Obligations applies on it as supplementary rule as well.

Contractual rules in the energy retail markets and the volatile energy prices

- Relations between the DSO, supplier, end customers and power generators are regulated by the following types of contracts:

  a) a contract on connection/increase/reduction of the connection capacity,

  b) a contract on the use of distribution network,

  c) a power supply contract.

- Suppliers bound to their offers is related to the Power permit, which is valid for 1 year, and if no contracts are concluded within that period, the Power permit ceases to be valid and therefore, the contract offer is also ceases to be valid.
- Contract can be unilaterally modified/terminated from end customer (end customer means a customer who buys electricity for its own needs).

Everything mentioned above is applied in practice. Consumers do not have to make decisions in a short period of time.

Contractual rules in the energy retail markets and the volatile energy prices

ENERGY REGULATORY OFFICE
OF THE CZECH REPUBLIC

- Legal basis – Civil Code (CC), Energy Act (EA)
  - Private law with some regulation to protect consumers
- Each offer is generally binding (CC)
  - Period for acceptation – set in the offer/adequate (written, distantly) or immediately (oral, written to present person)
  - Revocability – not possible during the period for acceptation
- General rules for contract termination and notice periods (CC)
- Current practice – explicit note on supplier's website that presented price lists are NOT binding offer in the meaning of CC → consumer asking to close a contract is making offer and supplier can refuse any time

Contractual rules in the energy retail markets and the volatile energy prices

ENERGY REGULATORY OFFICE
OF THE CZECH REPUBLIC

- Consumer energy supply contracts (EA)
  - General right of supplier to unilaterally increase the price/change other terms **if already agreed in the contract**
    - Notification obligation min. 30 days ahead of the change
    - **ALWAYS** right of the consumer to refuse changes and terminate the contract (1 month notice period) without a penalty
  - Remote contracts (via phone/internet/outside the supplier's business premises)
    - ALWAYS consumer's right to terminate up until the 15th day after the supply beginns (+15 day notice period)
  - Contracts with „hidden" automatic renewal clause
    - ALWAYS consumer's right to terminate up to 20 days before the original expiration date of the contract
  - „Spot-price" contracts
    - ALWAYS consumer's right to terminate anytime (+1 month notice period)
    - Newly forbidden for consumers – by secondary legislation (governmental decree)

Energy prices in Egypt

- Fuel prices in Egypt are set by Prime Ministerial Decrees, and this is mentioned in the supply contracts that lasts for about 10 years, all consumers in Egypt buy fuel according to the regulations and prices approved and announced by a pricing committee that was established in 2019 by the petroleum ministry and tasked with adjusting local fuel prices in line with prices change in the global market.
- Egypt started implementing a quarterly price index mechanism on all petroleum products in July 2019. However, the price indexation is not applied on liquefied petroleum gas (LPG) cylinders and petroleum products used by the electricity sector and bakeries.
- For crude oil, the actual price formula is based on Egypt's share of the crude oil, the value of the partner's production, crude oil exports, the international crude oil prices as well as the current exchange rate.
- During the fiscal year 2019-20 Egypt has signed hedging contracts with two international banks, J.P. Morgan and Citibank to prevent higher oil prices from further straining the state budget, which assumes an average price of USD 67/bbl. During the Corona virus, Further hedging wasn't needed as the coronavirus took its toll on the oil markets.

Energy prices in Egypt – cont.

GASREG
Gas Regulatory Authority
جهاز تنظيم أنشطة سوق الغاز

- The period set for the pricing committee to review the prices of petroleum products was specified to be three months, for several reasons, first, the duration of the hedging contract was three months and then renewed. Second, the fact that the Egyptian General Petroleum Corporation (EGPC) issued tender to import crude oil and petroleum products every three months, the ceiling for the change would be 10% up or down the current prices at the time.
- For the gas sector, the committee sets and revises the price of gas in each sector referring to the nature of the drilling area , the cost of drilling as well as the economic, environmental, political and social variables in the local market in addition to the global price of the natural gas , regional and competitive markets; the costs of using the national gas network and any other relevant expenses. A price formula is used to calculate gas prices for different sectors. Prices are regularly reviewed every 6 months, or whenever needed.

Energy prices in Egypt – cont.

For now the natural gas prices in Egypt are as follows:

- Natural gas supplied for the fertilizer and chemical industry is determined according to the following price formula and in all cases, the minimum selling price shall not be less than 4.5 $/MMBtu.
- Gas price (US dollars / million British thermal units) = (sale price of a ton of urea supplied to the Ministry of Agriculture after tax deduction * the percentage of supply determined for the Ministry of Agriculture – 60) + (the selling price of a ton of urea exported according to the average price of international publications FOB Egypt (the market – fertcon) during the month preceding the accounting month) * (1- The percentage of supply determined by the Ministry of Agriculture) – 60).
- The selling price of natural gas supplied to the non-nitrogenous fertilizer industry is 5.75 $/MMBtu.
- Natural gas selling price for iron and steel industry is 5.75 $/MMBtu.
- Natural gas selling price for cement industry is12 $/MMBtu.
- Natural gas selling price for all other industrial activities is 4.75 $/MMBtu.
- Natural gas selling price to generate Electricity is 3.00 $/MMBtu

Energy prices in Egypt – cont.

- Natural gas selling price for Bricks industry 73 LE /BTU
- Natural gas selling price for subsidized bread bakeries, is 14.10 piasters per cubic meter
- The selling prices of natural gas supplied to households and the equivalent commercial activity are as follows:
- (Consumption from zero to 30 cubic meters) LE. 2.50 per cubic meter.
- (Consumption from 30 to 60 cubic meters) LE 3.25 per cubic meter.
- (Consumption from 60 cubic meters and above) LE 3.75 per cubic meter.

<u>This is a slight change from the prices of the last year, most of the prices were the same except for:</u>

- Natural gas supplied for the fertilizer and chemical industry was 4.5 $/MMBtu,
- Natural gas selling price for (cement) was 6$/MMBtu
- Natural gas selling price for Iron, steel, aluminum, copper, ceramic, and porcelain was 5.5 $/MMBtu

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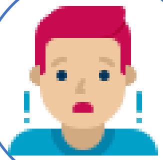
- There is no specific terms about the rules of offering a contract which are set by Elecricity Market Act or Natural Gas Act.
- Electricity and natrual gas markets are free and there are several suppliers.
- It gives to the consumer the opportunity to choose a more suitable offer.
- There are contracts with diferent conditions and terms.

Contractual rules in the energy retail markets and the volatile energy prices – The issues with the rules for giving offers that the crisis highlighted

Hungarian Energy and Public Utility Regulatory Authority

No obligation for suppliers on the competitive market to give offers. In case of consumers eligible for Universal Service Universal Service Providers are obliged to give offers.

Civil law allows the suppliers to determine on their own accord the duration of the time they are bound to their offers.



MEKH is aware of the tendency that supplier give offers with shorter and shorter binding periods (24 – 72 hours, especially when nearing to the start of the gas year (1st of October) and/or the electricity year (1st of January).

Contractual rules in the energy retail markets and the volatile energy prices – The issues with the rules for unilateral modification/termination of the supply contracts

Hungarian Energy and Public Utility Regulatory Authority

Unilateral modification of contracts are set in civil law

- In case of standard contract terms the unilateral modification cannot be against good faith and fair dealing, and cannot cause a significant and **<u>unjustified imbalance</u>** in contractual rights and obligations
- If the unilateral modification is unacceptable for the consumer, the consumer can terminate the contract.

Standard contracts terms in the energy sector

- Standard contracts terms are settled in the commercial codes of the suppliers, which are approved by the regulator.
- In case the regulator denies the approval of the commercial code, the supplier can go to court. In times of very volatile prices, it is very difficult to establish which modification is unfair.

New tendencies

- Suppliers provide themselves more room for unilateral changes in their commercial codes, in light of the market developments
- Suppliers started to demand deposit, guarantee, or payment in advance.
- The role of bilateral agreements between supplier and consumers has increased, as public offers decline.

Contractual rules in the energy retail markets and the volatile energy prices

- In the Republic of Moldova, most of the consumers are supplied by a regulated supplier. That's means that they are protected by the law and by the normative acts approved by ANRE, that contains mandatory clauses for supply contracts. Also, it supposes that in a regulated market, there are no offers from suppliers for new prices.
- According to the legislation of our state, the regulated supplier is not obliged to inform consumers about price changing. It is done because the prices are set by ANRE and the Decision of approval is published in the Official Gazette.
- At the same time, the legislation in the Republic of Moldova gives the possibility for suppliers to work on non-regulated market and to offer other prices than those that are approved by ANRE. In this case, the legislation is permissive and do not limit the suppliers in relation to consumers, reason why the clauses from the contract need to be negotiated based on national civil law.

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1. Mozambique has a single energy provider – Electricidade de Mozambique.
2. Consumer celebrates an adhesion contract with the energy provider, which weakens the consumer's right to negotiate.
3. The adhesion contract was approved by a Ministerial Order of December 29, 2006.
4. ARENE is the responsible regulator for defining the tariff applied to the final consumer which harms the consumer because there is no way to discuss the tariffs in force.
   - ✓According to the new Electricity Law, the final proposal of the negotiated contracts between provider and consumer must be approved by ARENE.
5. Electricity Law and Tariff Regulation were recently approved and we are currently working on legal framework related to consumer protection (such as claim management regulation and code of conduct of regulated entities) – all of them will reinforce consumer protection.

Contractual rules in the energy retail markets and the volatile energy prices

6. Supply contract foresee that only energy provider can terminate it unilaterally, only when agreed by law in such terms:
   - ✓ Consumer is in a difficult position because he depends on the energy provider.
   - ✓ energy diversion or theft;
   - ✓ non-payment of energy consumed.
7. Consumer is in a difficult position because he depends on the single energy provider.

Contractual rules in the energy retail markets and the volatile energy prices

In many countries the energy prices have become so volatile that supplier offer their offers with extreme short deadlines (24 – 72 hours) for to be accepted, and there are precedents for unilateral modification/termination of the energy supply contract (electricity, natural gas). Consumers face the situation they must bring a decision on their supply contracts in an extreme short time.

Roundtable Discussion: **Each member should prepare a short presentation about the rules of offering a contract, how long are suppliers bound to their offers, can a contract be unilaterally modified/terminated, what are the rules regarding those topics, and are there such experiences.**

- **General rules are set in the Law on Obligations, while detailed rights and responsibilities of suppliers and consumers are set in Electricity Supply Rules and Natural Gas Supply Rules as *lex specialis*;**
- **The instrument of offer validity is present in the Public procurement bids, while for the other contractual relations there isn't a strict obligatory rule on duration of the offer validity;**
- **Until now, in North Macedonia there isn't evidence of complaints about suppliers that are offering offers with extreme short deadlines;**
- **In Autumn 2021 there was a trend of supply contract breaches, mainly by electricity suppliers. ERC initiated several procedures against suppliers with such behavior. By the end of 2021, the situation stabilized.**
- **Due to price volatility, as of 2022, the retail electricity prices in almost all contracts on the free market are either 100% or dominantly pegged with the HUPX prices as most relevant regional power exchange.**

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Energy Regulatory Office

Significant difference between tariff offers and free market offers

- regulated (tarrif) offers:
  - one standard,
  - all essential terms of the contract, including price, decided
  - offer available to eligible consuers at any time
- free market offers
  - suppliers are free to present offers and there are no uniform rules for offerin, modify, nor terminate a contract,
  - the rules are defined in the terms of the product (offer) ts) and finally written down in the contract (ex. contract with a guaranteed price during the validity period).

Contractual rules in the energy retail markets and the volatile energy prices

Energy Regulatory Office

Both in the case of free market offers and tariff offers, the same rules resulting from the Civil Code apply as well as special rules set in Energy Law act, ex. regarding the termination of contracts:

- the energy consumer may terminate the contract concluded for an indefinite period of time without incurring costs,
- the Energy consumer may terminate the contract concluded for a definite period of time without incurring costs and damages other than those resulting from the contract provisions.

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- In Turkiye, there are a few offers from suppliers and these offers are just for non-household customers. Because elecricity market prices is so volatile upwards, suppliers act carefully in the market. As a result, growth of free electricity market in Turkiye has slowed down.
- In Turkiye, contracts can be offered in both physical and by internet but at first supplier must inform the consumer and get consumer approval about price comparison with regulated tariffs.
- Also there is no time limit for offers, but in practice, we see short time offers from suppliers because of volatility in the market.
- And also there are many offers with flexible prices. These prices depend on electricity market price.

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- According to Act. Of Consumer Rights in Electricity Market,

"In fixed-term bilateral agreements, no changes can be made to the detriment of the consumer during the agreement and its annexes. And all changes must be accepted by consumer before 15 days. "

- But in practice, suppliers have started to put a sentence to the contracts like "supplier can terminate the contract because of economic conditions." And they get consumer approval for this.
- By this way, suppliers do not change the terms of conracts but they terminate contracts and then they offer a new contract.