

RES DEPLOYMENT LEGAL INSIGHTS: PROPOSED OVERHAUL OF GRID CONNECTION RULES (II PHASE)

On 6TH June 2024 National Energy Regulatory Authority (the “ANRE”) has published for the second phase public consultation the *Draft Order approving the Methodology for the allocation of electricity network capacity for the connection of electricity generation sites, as well as amending and supplementing some orders of the President of the National Energy Regulatory Authority in the field of connection of users to the public electricity network (the “Draft Order”)*. The primary objectives of the Draft Order include the following:

- The revision of provisions of *the Regulation for the connection of the users to the public interest grid (the “Grid Connection Regulation”)*¹;
- The implementation of the provisions of Article 25(2²) of *the Law on Electricity and Natural Gas No. 123/2012* (the “Energy Law”)², which states that *“If network operators do not have sufficient capacity to connect all the electricity generation capacities for which connection has been requested, they may apply market-based methods of allocating existing capacity to networks, according to the regulations approved by ANRE”*. The new rules aim to allocate available grid capacity through market-based methods and promote a mechanism that ensures a competitive environment.
- Changes to the 2014 Grid Connection Approval: The *Order No. 74/2014 of the President of ANRE for Approving the Standard Content of Technical Connection Approvals*³, shall be modified and supplemented.
- Modifications to the 2022 Standard Grid Connection Contracts: The Standard Grid Connection Contracts for Public Interest Electrical Networks⁴, shall be modified and supplemented.

Stakeholders are invited to submit their comments on Draft Order to ANRE within a 10-day period as of the publication date.

A. PROPOSED AMENDMENTS FO THE GRID CONNECTION REGULATION

A.1.1. The minimum period for the evidence on the in rem right secured over the project’s lands

The draft order proposes a minimum validity period for the evidence of the in rem right. Previously, no such terms existed. According to the draft order, the in rem contract must now remain valid at least until the end of the year in which the user installation's final commissioning is requested. Establishing this term can be challenging as it depends on the permitting process. In practice, a reasonable estimate for such a term would be at least three years.

¹ Published in the Official Gazette, Part I No. 517a of 19 August 2013, as subsequently amended;

² Published in the Official Gazette, Part I No. 485 of 16 July 2023, as subsequently amended;

³ Published in the Official Gazette of Romania, Part I, No. 603 on August 13, 2014, with subsequent amendments

⁴ approved by Order No. 105/2022 of the President of ANRE and published in the Official Gazette of Romania, Part I, No. 781 on August 5, 2022, with subsequent amendments

A.1.2. Grid capacity allocation contract requirement among the documents attached to the connection request:

1. Investors must now include the grid capacity allocation contract among the documents attached to the grid connection request for production/consumption sites with installed capacities of 5MW or more.

A.1.3. Financial Guarantee for the ATR communicated along with the approved solution study

As per the currently applicable legal provisions of the Connection Regulation, in case of a production site with an installed capacity of more than 1MW and for the grid connection of which grid strengthening works are required, the investor has to provide a financial guarantee (the “**Financial Guarantee**”) in the amount stipulated in the ATR, where the amount represents a certain percentage (up to 20%) of the grid connection tariff (the “**Grid Connection Tariff**”).

As per the provisions of the Article 9 of the Methodology for setting the tariffs for connecting users to the public interest electricity networks, approved by means of the Order No. 11/2014⁵, the Grid Connection Tariff for consists of 3 (three) components TI, TR and TU as follows:

Grid Connection Tariff = TI + TR + TU, as follows:

- 1) **TI** is the share of participation in the financing of grid strengthening works on the electricity network, necessary for the discharge of the power approved to the investor, should such reinforcements be necessary (the “**Grid Strengthening Works**”); The Grid Strengthening Works represent the works in the installations of the network operator, necessary to ensure the technical conditions for the discharge of the additional power approved for the connection of the investor. The Grid Strengthening Works also include the automation equipment and the communication path foreseen in the installations of the network operator to achieve the operational limitation;
- 2) **TR** is the component corresponding to the realisation of the connection installation (the “**Grid Connection Installation**”); The Grid Connection Installation represents the electrical installation between the connection point⁶ to the public grid and the delimitation point⁷;
- 3) **TU** is the corresponding component: (a) checking the user's installation file and powering up the installation; b) verification and certification of the technical conformity of the PV Project with the requirements of the technical regulations in force (the “**Analyses Component**”).

Prior to the amendments of the Connection regulation by means of Order No. 4/2023⁸, the ATR has been valid until the issuance of the connection certificate, and could have early terminate its validity if, within 3 (three) months as of its issuance date, the investor did not constitute the Financial Guarantee.

⁵ Published in the Official Gazette, Part I No.145 of 27 February 2014 as subsequently amended;

⁶ The connection point is the physical point of the grid to which the power plant will be connected.

⁷ The delimitation point is the point delimitating the installations owned by the investor of the power plant from the installations belonging to the grid operator.

⁸ Published in the Official Gazette, Part I No. 95 of 3 February 2023.

As of 3rd February 2023, up to the present, the law lays down that the investor is required to provide the Financial Guarantee mentioned in the ATR until the execution of the grid connection agreement, which means that the term for providing such has been extended from 3 (three) months) to maximum 12 (twelve) months as of the ATR date.

At the present, the Draft Order aims to change the principles above in 3 main perspectives:

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| 1. scenarios in which the financial guarantee is required | <i>The Draft Order aims to establish the obligation for grid operators to require, when issuing ATR for generation sites/consumption sites and production sites with approved consumption and/or evacuation capacities greater than 1 MW, that applicants provide financial guarantees in favour of grid operators, regardless of whether or not the connection solution provides for reinforcement works to be carried out upstream of the connection point.</i> |
| 2. the percentage of the financial guarantee | <i>The Draft Order aims to establish a fixed percentage of 5% of the Grid Connection Tariff for the amount of the financial guarantee lodged by the applicants.</i> |
| 3. the due date for the financial guarantee payment | <i>The Draft Order aims to set the obligation for applicants to provide a financial guarantee <u>before the issue date of the ATR</u>;</i> |

Regarding temporary regulations, the provisions on the Financial Guarantee included in the Draft Order (if entered into force) will be applicable for the grid connection applications from investors for which, by the date of entry into force of the Draft Order, no ATR has been issued. In the converse, it is important to note that power plants for which an ATR has already been issued will not be obligated to furnish a Financial Guarantee up to the grid connection contract date. Consequently, should the Draft Order enter into force, projects lacking financial viability for which the ATR has already been issued will continue to block grid connection capacity until the expiration of the ATR or of building permit, potentially resulting in delays and uncertainties in the release of capacity.

Issuance of the ATR to the applicant is now also conditioned on the establishment of the financial guarantee in favor of the grid operator, as stipulated in Article 31 of the Grid Connection Regulation.

Grid operators are now obligated to communicate the amount of the financial guarantee that the investor must provide in favor of the operator, along with the approved solution study.

Conditions for executing the financial guarantee now include scenarios where the building authorization for the project at the consumption and/or production site is not submitted to the network operator within the timeframes specified in the connection contract.

A1.4. Payment of Allocated Capacity

Issuance of the ATR for production/consumption sites with capacities of 5MW or more is now contingent upon fulfilling all obligations regarding the payment for the allocated capacity, as per the capacity allocation contract.

A1.5. Application for Grid Connection Contract:

Investors are required to submit the application for entering into the grid connection contract at least 30 calendar days before the expiration of the ATR.

A1.6. Extension of Building Permit Deadlines

Deadlines for presenting the building permits to the network operator can be extended once, by up to 12 months, with the operator's written consent and competent authority notification. This extension requires the user to provide an additional financial guarantee of 5% of the connection fee value within

5 business days from receiving the operator's written agreement, provided that the delay reasons are beyond the user's control.

B. GRID CAPACITY ALLOCATION AUCTIONS TO BE IMPLEMENTED AS OF 2026, NOT 2025

The proposed order seeks to overhaul the grid connection process for projects surpassing 5 MW, moving away from the current first-come, first-served model to a capacity allocation system through auctions, where allocation is determined by the highest offered price. These auctions are planned to be held annually, guided by a methodology and a comprehensive global solution study conducted by the TSO to assess available capacity and grid enhancement requirements. The allocation period spans 10 years, starting from the second year after each auction. The implementation of this mechanism is slated to commence in January 2026.:

Transelectrica highlights a high volume of connection requests to public electric networks, resulting in significant uncertainty about the realization of many proposed generation projects. They advocate for delaying the implementation of the new methodology to 1st of January 2026, to allow a natural filtering of projects and ensure a clear understanding of available network capacities. Transelectrica also recommends requiring financial guarantees from project promoters to confirm serious commitments, aiming to avoid premature and potentially misleading capacity allocations that could discourage genuine investors and lead to unnecessary network enhancements.

C. PUBLIC CONSULTATION

Stakeholders are invited to submit their comments to ANRE within a 10-day period as of the publication date at anre@anre.ro and srpee@anre.ro

Further assistance at Fiodorov & Partners:



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