

NEWSLETTER
May 2011

HOTARAREA nr. 135 din 16.02.2011

Conform prevederilor Legii nr. 13/2007 – Legea energiei electrice, exercitarea drepturilor de uz si de servitute asupra proprietatilor private afectate de capacitatile energetice, se va realiza conform celor agreate intre titularul licentei sau autorizatiei si proprietarii terenurilor afectate printr-o conventie-cadru, care va trebui sa respecte modelul stabilit prin hotarare a Guvernului, la propunerea ministerului de resort; aceeasi lege stipuleaza ca titularii de licente si autorizatii sunt obligati sa procedeze la incheierea acestor conventii-cadru in termen de maximum 30 de zile de la solicitarea proprietarilor afectati.

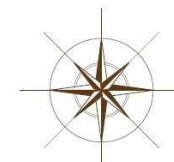
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Dupa o perioada de mai mult de 4 (patru)ani de la adoptarea Legii 13/2007, pentru a pune in aplicare dispozitiile mai sus mentionate, in Monitorul Oficial, Partea I nr. 236 din 05.04.2011, a fost publicata Hotararea nr. 135 din 16.02.2011 (denumita in continuare HG 135). pentru aprobarea regulilor procedurale privind conditiile si termenii referitori la durata, continutul si limitele de exercitare a drepturilor de uz si servitute asupra proprietatilor private afectate de capacitatile energetice, a conventiei-cadru, precum si a regulilor procedurale pentru

GOVERNMENT DECISION no. 135 as of 16.02.2011

According to the provisions of Law no. 13/2007 – Electricity Law, the usage and the access rights over the private properties affected by the generation capacities, shall be exercised in conformity with the terms and conditions settled between the holder of the license or authorization and the landlords by means of a framework-agreement, whereas the said framework agreement should comply with the template established through Government Decision, upon the proposal of the competent ministry; the same law further stipulates that the license and authorization holders have the obligation to conclude such framework-agreements within maximum 30 days as from the affected owners' request.

After more than 4 (four) years as of the entering into force of Law 13/2007, in order to secure the application of the before mentioned provisions of the Electricity Law, in the Official Gazette, Part I no. 236 dated 05.04.2011, it was published the Decision no. 135 as of 16.02.2011 (hereinafter referred to as GD 135) by means of which were approved the template of the framework agreement as the procedural rules relative to the determination of the amount and way of payment of the indemnities and compensations as the procedural rules regarding



determinarea cuantumului indemnizatiilor si a despagubirilor si a modului de plata a acestora

Conform prevederilor HG 135, clauzele cuprinse in conventia-cadru privesc capacitatile energetice realizate dupa intrarea in vigoare a Hotararii si pentru realizarea carora sunt afectate terenuri aflate in proprietatea privata a tertilor, precum si exercitarea efectiva a drepturilor de uz si servitute in vederea executarii lucrarilor de retehnologizare, intretinere, reparatii, revizii, interventii in caz de avarii si alte interventii necesare pentru asigurarea functionarii normale a capacitatii energetice amplasate pe terenuri aflate in proprietatea privata a tertilor.

1. Incheierea Conventiei-Cadru

Titularii dreptului de proprietate privata asupra terenurilor necesare realizarii de capacitati energetice pot solicita titularilor de licente si autorizatii, dupa intrarea in vigoare a HG 135, incheierea unei conventii-cadru, pentru durata de timp necesara realizarii capacitatii energetice.

In aceasta situatie, cuantumul indemnizatiei se va stabili prin negociere, fara a depasi nivelul chiriei minime pe metru patrat stabilite pentru folosinta unui teren din aceeasi categorie de catre administratia publica locala in a carei raza teritoriala se afla terenul si se calculeaza numai pentru suprafata de teren ce

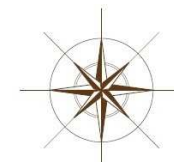
the terms and conditions referring to the duration, content and the limits of the exercise of usage and access rights over the private properties affected by the generation capacities, the framework-agreement,

According to the provisions of the GD 135, the clauses contained in the framework-agreement refer to the generation capacities realized after the entering into force of the Decision and for whose realization there are required lands which are owned by third-parties, as to the effective exercise of the usage and access rights in order to perform works of maintenance, restoration, revision, interventions in case of damages and other interventions necessary for the assurance of the normal running of the generation capacity located on the lands owned by third parties in private property.

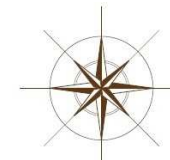
1. The conclusion of the Framework-Agreement

The landlords of the lands required for the realization of generation capacities may require, after the entering into force of the GD 135, to the license and authorization holders, to conclude a framework-agreement, which shall produce effects for the time needed to realize the generation capacity.

In such situation, the indemnity amount shall be determined through negotiation, without exceeding the minimum level of the rent for a square meter, established for the usage of a land of the same type by the public local administration in whose jurisdiction is situated the land and shall be calculated only for the land



<p>urmeaza a fi efectiv ocupata pentru realizarea capacitatii energetice.</p> <p>Mai mult, HG 135 prevede ca pot solicita incheierea conventiei-cadru si titularii dreptului de proprietate privata asupra terenurilor pe care au fost realizate capacitati energetice dupa intrarea in vigoare a Legii 13/2007, pentru exercitarea efectiva a drepturilor de uz si servitute ulterior realizarii capacitatii energetice.</p> <p>In acest caz, conventia-cadru se va incheia pentru durata de timp necesara executarii lucrarilor de retehnologizare, intretinere, reparatii, revizii, interventii in caz de avarii, precum si alte interventii necesare pentru asigurarea functionarii normale a capacitatii energetice.</p> <p>Cuquantumul indemnizatiei se va stabili conform regulilor de mai sus (prin negociere, fara a depasi nivelul chiriei minime pe metru patrat stabilite pentru folosinta unui teren din aceeasi categorie de catre administratia publica locala in a carei raza teritoriala se afla terenul) si se va calcula numai pentru suprafata de teren ce urmeaza a fi efectiv afectata de exercitarea drepturilor de uz si servitute pentru exercitarea lucrarilor prevazute mai sus.</p> <p>In situatia in care nu este posibila determinarea cuantumului indemnizatiei, intinderea acesteia va fi determinata de catre un evaluator autorizat in conditiile legii, ales de comun acord de catre parti, costurile evaluarii fiind suportate de titularii de licente</p>	<p>surface which will effectively be occupied for the realization of the generation capacity,</p> <p>Moreover, GD 135 provides that the conclusion of the framework-agreement can also be requested by the holder of the private ownership right over the lands on which there were built generation capacities after the entering into force of Law 13/2007, for the effective exercise of the usage and access rights after the building of the generation capacity.</p> <p>In such case, the framework-agreement shall be concluded for the period necessary for the performance of the works of maintenance, restoration, revision, interventions in case of damages and other interventions necessary for the assurance of the normal running of the generation capacity.</p> <p>The indemnity amount shall be established in conformity with the hereinbefore mentioned rules (through negotiation, without exceeding the minimum level of the rent for a square meter, established for the usage of a land of the same type by the public local administration in whose jurisdiction is situated the land) and shall be calculated only for the land surface which is going to effectively be affected by the exercise of the usage and access rights for the performance of the above mentioned works.</p> <p>In case the determination of the indemnity amount is not possible, its extent shall be determined by an assessor authorized under the law, jointly chosen by the parties, the evaluation costs being borne by the license and authorization holders, beneficiaries of</p>
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<p>si autorizatii, beneficiari ai drepturilor de uz si de sevitute.</p> <p>2. Continutul Conventiei-Cadru</p> <p>Conform modelului conventiei-cadru, prevazut in Anexa la HG 135, aceasta va trebui sa cuprinda printre altele: obiectul conventiei; obligatiile si drepturile partilor si quantumul si modalitatea de plata a despagubirilor.</p> <p>La conventia incheiata in conformitate cu dispozitiile legale se vor anexa urmatoarele documente:</p> <ul style="list-style-type: none">▪ titlul de proprietate, in copie, asupra terenului apartinand proprietarului;▪ procesul-verbal de negociere a quantumului indemnizatiei;▪ raportul de evaluare a quantumului indemnizatiei, daca este cazul;▪ breviarul de calcul al despagubirilor, daca este cazul (modelul breviarului de calcul este prevazut in Anexa la conventia-cadru).	<p>the usage and access rights.</p> <p>2. The content of the Framework-Agreement</p> <p>According to the framework-agreement template, provided in the Annex to GD 135, such agreement shall contain among others: the object of the agreement; the parties' rights and obligations and the amount and payment method of indemnities.</p> <p>The following documents shall be attached to the agreement concluded in conformity with the legal provision:</p> <ul style="list-style-type: none">▪ the ownership title, in copy, over the land held by the owner;▪ the negotiation of the indemnity amount protocol;▪ the evaluation report of the indemnity amount, if necessary;▪ the calculus method of the indemnities, if necessary (the template of the calculation abstract is provided in the Annex to the framework-agreement).
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Yours sincerely,
Almaj & Albu, attorneys at law