30 January 2015

ANRE ORDER NO. 78/2014

ANRE Order no. 78/2014 *on the approval of the Regulation for the execution of bilateral power purchase agreements via extended tender, continuous negotiation and processing contracts* (the "**Regulation**") entered into force on 1 January 2015.

As implied by its name, the Regulation provides for three different transaction methods for electricity trading:

- by extended tender ("**PCCB-LE**");
- by continuous negotiation ("**PCCB-NC**");
- by processing contracts ("**PCCBPC**").

1. GENERAL CONSIDERATIONS

The Regulation establishes a set of general rules, applicable to all three types of trading.

Offers on the centralized market must have "***firm characteristics***", meaning that the offer is precisely determined by the set of rules established for each trading method in the Regulation. Such rules determine accurate, fixed and constant values, throughout the entire duration of the power-purchase agreement ("**PPA**"). As a result, the total and hourly electricity quantity and electricity price never fluctuate during the entire contractual period.

Flexibility is essential to any long-term contract. In other words, the initial price remains the same regardless of subsequent developments like potential issues of the buyer or seller, inflation or currency fluctuations. Many market participants have expressed concerns on the fact that long-term PPAs will not be possible anymore due to the newly implemented restrictive regime implemented by the Regulation.

After the trading session is over, the parties execute standard PPAs that are either based on OPCOM's framework PPAs or by use of the standardized PPAs from OPCOM. After the public debates organized in December 2014 and January 2015, the draft framework PPAs were approved by ANRE and subsequently published on the OPCOM website.

It is possible to amend the framework agreements for PCCB-LE and PCCBPC but such modifications are very limited and the specific clauses must refer strictly to payment terms and methods. The Regulation strictly forbids amending the standard framework agreements with clauses that: (i) impact the hourly quantities, electricity price and duration of the PPA agreed during the trading process; (ii) stipulate the subsequent modification of the PPA or provide formulas that could alter characteristics of the offer (including the price) and (iii) add other services to the PPA.

All offers are checked by OPCOM prior to the trading session. Non-compliant offers will be rejected. Submission of non-compliant offers and/or refusal to sign the PPA after the trading session is sanctioned with a fine set by OPCOM by way of public consultation. Until the sanction is set, the respective market participant is banned from trading.

2. EXTENDED TENDER (PCCB-LE)

PCCB-LE trading is organized as a tender process by which both parties submit sale and purchase offers. Each offer must have "firm characteristics" with respect to: the supply period (minimum one month), total and hourly electricity quantity, delivery profile[1], minimum sale price (for sale offers), maximum purchase price (for purchase offers), option for trading entirely with one participant or partially with several participants, payment methods, deadlines and penalties.

The offer and the intention to sale/purchase are submitted by the participant to OPCOM for review. After the approval, an announcement is published with respect to the trading session and offer. Subsequently, the other participants send their respective answers to the offer or counterpart offers. The Regulation provides specific rules between sale and purchase offer correlations. Each correlated coupling leads to the obligation of the parties to execute a PPA that will also be submitted to OPCOM for conformity review.

3. CONTINOUS NEGOCIATION (PCCB-NC)

PCCB-NC is a trading method through which the price offered by each party may be modified through negotiation and transactions are finalized when two offers are correlated. The trading is done online at the terminals of the market participants. Trading sessions are organized every day. The identity of participants is anonymous throughout the entire trading session.

The standard offers provide the following elements: (i) the electricity offered during the delivery period – offers for 1 MW; (ii) the delivery profile[2] and (iii) delivery periods (1 week, 1 month, 1 year).

The offers are uploaded in the system by selecting: the standard pre-defined instrument, the offer type, the number of contracts and the proposed price. The sale and purchase offers are matched constantly and automatically based on the price. In order to be correlated, the price of a purchase offer must be at least equal or higher than the sale offer price.

[1] constant band delivery, constant power delivery during peak hours, constant power supply during empty load delivery;

[2] offers for band, peak hour and empty load delivery;

The correlation process ceases when there are no more matching offers or when the trading session expires. Results are published on the OPCOM website after each session. After the PPA is concluded and checked by the centralized market operator, electricity delivery may begin in five (5) days from the trading session at the earliest.

4. PROCESSING CONTRACTS (PCCBPC)

According to Law no. 123/2012 on electricity and gas, processing contracts are agreements by which a quantity of fuel belonging to an economic operator is processed within a producer's energy production facility, in exchange for the delivery of a certain quantity of electricity and the payment of a processing tariff to the producer.

Execution of processing contracts is permitted only when crisis situations occur on the electricity market. The participation is limited to supply license holders for initiating offers and production license holders for the respondent offers. The delivery period cannot exceed the duration of the crisis situation. The use of the framework agreement is mandatory.

The initiating offer, along with the trading session announcement is published on OPCOM three (3) days in advance. The offer stipulates the following: (i) the fuel type and characteristics, (ii) the total quantity and the hourly quantity[3], (iii) the processed fuel price, (iv) the highest electricity price resulting from the processing that the initiator is willing to pay, (v) the duration of delivery and (vi) other specific clauses.

The deadline for submitting a response is at least one (1) day prior to the trading session. The PPA must be concluded between the parties within three (3) days from the trading session.

[3] idem Footnote no. 2

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