Republika Srbija
Ministarstvo rudarstva i energetike
Ministarstvo poljoprivrede i zaštite životne sredine

IZGRADNJA POSTROJENJA I PROIZVODNJA ELEKTRIČNE/TOPLOTNE ENERGIJE IZ HIDROGEOTERMALNIH IZVORA U REPUBLICI SRBIJI

Vodič za investitore

CONSTRUCTION OF PLANTS AND ELECTRICITY/ HEAT GENERATION FROM HYDRO-GEOTHERMAL SOURCES IN THE REPUBLIC OF SERBIA

Guide for investors

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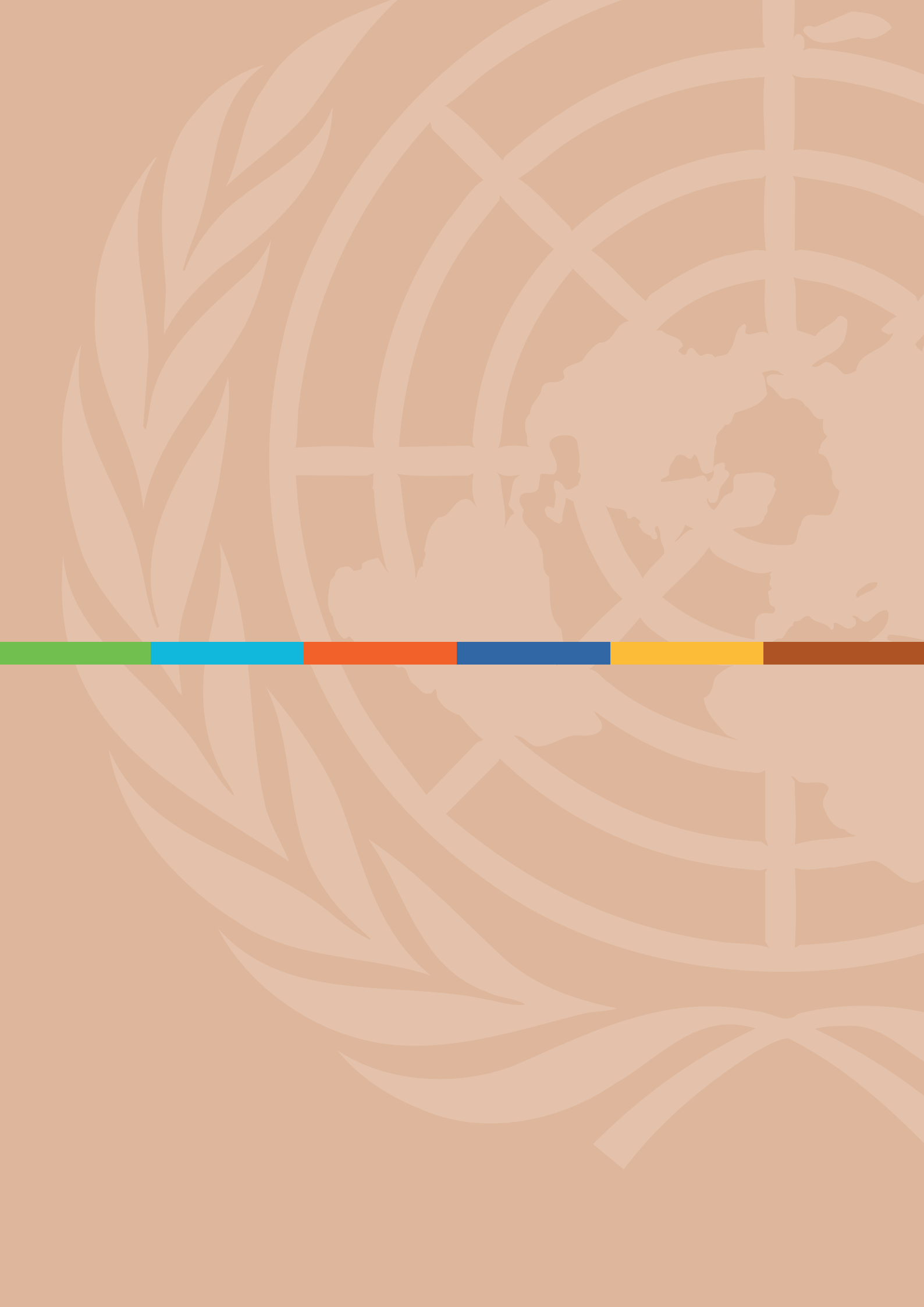

IZGRADNJA POSTROJENJA I PROIZVODNJA ELEKTRIČNE/TOPLOTNE ENERGIJE IZ HIDROGEOTERMALNIH IZVORA U REPUBLICI SRBIJI

Vodič za investitore

Sadržaj

Predgovor

Program Ujedinjenih nacija za razvoj (UNDP), kao implementaciona agencija Globalnog fonda za zaštitu životne sredine (GEF), sprovodi u partnerstvu sa Ministarstvom rudarstva i energetike i Ministarstvom poljoprivrede i zaštite životne sredine Republike Srbije GEF Projekat: „Smanjenje barijera za ubrzani razvoj tržišta biomase u Srbiji".

Cilj Projekta je da se poveća udeo energije iz obnovljivih izvora u energetskom bilansu Srbije, odnosno udeo biomase u proizvodnji energije.

Jedna od aktivnosti projekta je izgradnja kapaciteta svih aktera za identifikaciju, pripremu, finansiranje, izgradnju i upravljanje bankabilnim projektima korišćenja obnovljivih izvora energije u okviru koje je izvršena revizija šest postojećih zastarelih vodiča za investiture u postrojenja koja koriste obnovljive izvore energije:

1. IZGRADNJA POSTROJENJA I PROIZVODNJA ELEKTRIČNE/TOPLOTNE ENERGIJE IZ BIOMASE U REPUBLICI SRBIJI
2. IZGRADNJA POSTROJENJA I PROIZVODNJA ELEKTRIČNE ENERGIJE U MALIM HIDROELEKTRANAMA U REPUBLICI SRBIJI
3. IZGRADNJA POSTROJENJA I PROIZVODNJA ELEKTRIČNE ENERGIJE U VETROELEKTRANAMA U REPUBLICI SRBIJI
4. IZGRADNJA POSTROJENJA I PROIZVODNJA ELEKTRIČNE/TOPLOTNE ENERGIJE IZ HIDROGEOTERMALNIH IZVORA U REPUBLICI SRBIJI
5. IZGRADNJA POSTROJENJA I PROIZVODNJA ELEKTRIČNE ENERGIJE U SOLARNIM ELEKTRANAMA U REPUBLICI SRBIJI
6. IZGRADNJA SOLARNIH GREJNIH SISTEMA U REPUBLICI SRBIJI

Svi vodiči su dvojezični i, izuzev jednog, izrađeni su u dve verzije. U šest detaljnih vodiča opisane su celokupne složene procedure za izgradnju postrojenja i obavljanje delatnosti proizvodnje energije iz konkretnih obnovljivih izvora, uz upućivanje na odgovarajuće propise i navođenje nadležnih institucija. Detaljni vodiči namenjeni su, pre svega, investitorima i stručnjacima koji rade na razvoju projekata, ali i zaposlenima u različitim nadležnim državnim organima, s obzirom na međusektorski karakter procedura. U pet kratkih vodiča ova složena problematika prikazana je manje detaljno i na slikovit način, čime se tema približava i širem krugu zainteresovanih strana.

Cilj izrade vodiča bio je da se podstaknu i pomognu investitori da ulažu u obnovljive izvore energije u Srbiji, ali i da se, kroz detaljno sagledavanje složenih procedura za izgradnju postrojenja i obavljanje delatnosti proizvodnje energije iz obnovljivih izvora, uoče njihovi nedostaci i da se podstaknu nadležni da kroz zakonodavne i institucionalne aktivnosti ove procedure pojednostave i unaprede. Nadamo se da će ovi Vodiči pokrenuti konstruktivni dijalog između mnogobrojnih zainteresovanih strana i time doprineti boljoj informisanosti i međusobnom razumevanju, što u krajnjoj liniji treba da rezultira povoljnim okruženjem za investicije u sektoru obnovljivih izvora energije.

Sadržaj

1.

UVOD

1. UVOD[1]

Pod geotermalnom energijom podrazumeva se toplota akumulirana u suvim stenama i fluidima Zemljine kore, kao posledica neprekidnog zračenja toplote iz unutrašnjosti Zemlje. Geotermalna, odnosno toplotna energija, prema tome, može biti akumulirana u fluidima (vodi i gasovima) i onda se definiše kao hidrogeotermalna energija i u čvrstim stenama i onda se naziva petrogeotermalna energija.

Hidrogeotermalna energija uspešno se koristi već više decenija za različite svrhe. U poslednjih dvadesetak godina korišćenje petrotermalne energije iz plitkih tzv. geosondi sve više se koristi za zagrevanje i hlađenje velikih objekata.

Hidrogeotermalna energija je jedan od oblika obnovljivih izvora energije[2].

Hidrogeotermalna energija može da se koristi direktno, a može da se koristi za proizvodnju toplotne energije i za proizvodnju električne energije.

Energetski objekti za proizvodnju električne i/ili toplotne energije koji koriste hidrogeotermalnu energiju (u daljem tekstu postrojenja)[3], ukoliko ispune propisane uslove mogu steći status povlašćenog proizvođača i time pravo na određene podsticajne mere koje su utvrđene Zakonom o energetici i podzakonskim aktima ovog zakona.[4] Na taj način je iskazan značaj proizvodnje energije iz obnovljivih izvora.

Proizvodnja toplotne energije je delatnost od opšteg interesa. Sticanje prava na obavljanje ove delatnosti ostvaruje se pod posebno propisanim uslovima.

1.1. Izvori prava

Korišćenje geotermalnih izvora za proizvodnju toplotne, odnosno električne energije je veoma složeno i obavlja se u skladu sa brojnim propisima Republike Srbije. Ova aktivnost zadire u oblast prava rudarstva, prava energetike, korporativnog prava, prava građevinarstva, obligacionog prava i dr.

Pre svega je potrebno razlikovati proces istraživanja i eksploatacije geotermalnog resursa (rudnog blaga), zatim proces izgradnje objekta za korišćenje toplotne energije, proizvodnju toplotne, odnosno električne energije i proces obavljanja delatnosti proizvodnje toplotne, odnosno električne energije.

1 Potrebno je ukazati da se ovaj Vodič odnosi na sva postrojenja na hidrogeotermalnu energiju i da su u njemu opisane procedure pred nadležnim organima i institucijama, ali da pojedini elementi ovih procedura, kao i sprovođenje pojedinih procedura zavisi od veličine objekta, mesta na kome se gradi objekat, konkretne tehnologije za proizvodnju energije i drugih karakteristika samog objekta za korišćenje hidrogeotermalne energije. Ovaj Vodič sačinjen je prema propisima koji su u Republici Srbiji bili na snazi dana 1. jula 2016. godine.

2 Zakonom o energetici („Sl. glasnik RS" br. 145/14) u članu 2. tačka 47, utvrđeno je da je energija iz obnovljivih izvora energija proizvedena iz nefosilnih obnovljivih izvora kao što su: vodotokovi, biomasa, vetar, sunce, biogas, deponijski gas, gas iz pogona za preradu kanalizacionih voda i izvori geotermalne energije. U članu 3. tačka 5) Zakona o rudarstvu i geološkim istraživanjima („Sl. glasnik RS" br. 101/15) utvrđeno je da geotermalni resursi predstavljaju skup obnovljivih geoloških resursa koji obuhvata podzemne vode i toplotu stenskih masa iz kojih je moguće izdvajanje toplotne energije.

3 U članu 2. stav 1. tačka 1) Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije („Sl. glasnik RS" br. 56/16) propisano je da je geotermalna elektrana (postrojenje) je elektrana koja koristi podzemne vode i toplotu stenskih masa

4 Član 4. stav 2. Uredbe o podsticajnom merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije („Sl. glasnik RS" br. 56/16).

Izvori prava Republike Srbije mogu se podeliti na više grupa propisa, koje će biti razmotrene u daljim odeljcima ovog teksta.

Oblast istraživanja i eksploatacije hidrogeotermalnog izvora uređena je Zakonom o rudarstvu i geološkim istraživanjima[5] i podzakonskim aktima ovog zakona. Ovim zakonom utvrđeno je da se korišćenjem podzemnih voda smatra izvođenje radova na pripremi, buđenju i korišćenju podzemnih voda i hidrogeotermalnih resursa.

U grupu propisa kojima je uređena oblast planiranja i izgradnje objekata spadaju: Zakon o planiranju i izgradnji[6], Zakon o prostornom planu Republike Srbije[7], podzakonska akta ovih zakona i drugi propisi. Prostorni planovi (regionalni prostorni planovi, prostorni planovi jedinice lokalne samouprave i prostorni planovi područja posebne namene) i urbanistički planovi (generalni urbanistički plan, plan generalne regulacije, plan detaljne regulacije) su planski dokumenti. Zakonom o planiranju i izgradnji podzakonskim aktima ovog zakona kojima je uređena oblast izgradnje objekata propisan je postupak dobijanja informacije o lokaciji i lokacijskih uslova, građevinske dozvole i upotrebne dozvole, a planskim dokumentima su definisani ciljevi prostornog planiranja i razvoja, odnosno prostornog uređenja, tj. da li je planirano da se u određenom vremenskom periodu izgradi određeni objekat na određenom mestu u Republici Srbiji. Neophodan element za dobijanje navedenih dozvola je pribavljanje tehničkih uslova za priključenje na elektroenergetsku mrežu ili mrežu daljinskog grejanja, kao i drugih uslova.

U grupu propisa kojima je uređena oblast energetike spadaju: Zakon o energetici, prateći propisi ovog zakona, Strategija razvoja energetike Republike Srbije[8] i drugi propisi koji se odnose na izdavanje energetske dozvole, priključenje objekta na mrežu, sticanja različitih statusa proizvođača električne energije iz obnovljivih izvora energije i ostvarivanje podsticajnih mera za ove proizvođače i drugo o čemu će više biti reči u ovom Vodiču.

U grupu propisa kojima je uređena oblast zaštite životne sredine i korišćenja prirodnih resursa (osim mineralnih sirovina) spadaju: Zakon o zaštiti životne sredine[9], Zakon o proceni uticaja na životnu sredinu[10], Zakon o strateškoj proceni uticaja na životnu sredinu[11], Zakon o integrisanom sprečavanju i kontroli zagađenja[12], Zakon o zaštiti vazduha[13], Zakon o zaštiti prirode[14], Zakon o vodama[15], Zakon o šumama[16], podzakonski propisi doneti na osnovu ovih zakona, kao i drugi propisi kojima se uređuje zaštita životne sredine, kao i zaštita i korišćenje prirodnih dobara.

Ovde je potrebno napomenuti značaj propisa iz oblasti protivpožarne zaštite, koji su značajni kako u fazi izrade projektne dokumentacije i građenja postrojenja, tako i kada postrojenje počne da obavlja delatnost.

Postupci koji se odnose na dobijanje raznih dozvola koje izdaju državni (upravni) organi i drugi postupci neophodni za dobijanje prateće dokumentacije su upravni postupci, a rokovi za dobijanje ovih akata su utvrđeni samim merodavnim propisom kojim je regulisan postupak dobijanja konkretnog upravnog akta. U slučaju da ovi rokovi nisu utvrđeni konkretnim

5 Zakon o rudarstvu i geološkim istraživanjima („Sl. glasnik RS“ br. 101/15).
6 Zakon o planiranju i izgradnji („Sl. glasnik RS“ br. 72/09, 81/09, 64/10 - odluka US, 24/11, 121/12, 42/13 - odluka US, 50/13 - odluka US, 98/13 - odluka US, 132/14 i 145/14).
7 Zakon o prostornom planu Republike Srbije od 2010. do 2020. godine („Sl. glasnik RS“ br. 88/10).
8 Strategija razvoja energetike Republike Srbije do 2025. godine sa projekcijama do 2030. godine („Sl. glasnik RS“ br. 101/15).
9 Zakon o zaštiti životne sredine („Sl. glasnik RS“ br. 135/04, 36/09 i 14/16).
10 Zakon o proceni uticaja na životnu sredinu („Sl. glasnik RS“ br. 135/04 i 36/09).
11 Zakon o strateškoj proceni uticaja na životnu sredinu („Sl. glasnik RS“ br. 135/04 i 88/10).
12 Zakon o integrisanom sprečavanju i kontroli zagađenja(„Sl. glasnik RS“ br. 135/04 i 25/15).
13 Zakon o zaštiti vazduha („Sl. glasnik RS“ br. 10/13).
14 Zakon o zaštiti prirode („Sl. glasnik RS“ br. 36/09, 88/10, 91/10 i 14/16).
15 Zakon o vodama („Sl. glasnik RS“ br. 30/10 i 93/12).
16 Zakon o šumama („Sl. glasnik RS“ br. 30/10 i 93/12).

propisima, na rok za izdavanje konkretnog upravnog akta se primenjuje Zakon o opštem upravnom postupku.[17]

Posebnu grupu propisa čine propisi koji se odnose na sticanja prava na obavljanje delatnosti proizvodnje toplotne energije. Proizvodnja toplotne energije je delatnost od opšteg interesa i prema Zakonu o energetici i prema Zakonu o komunalnim delatnostima[18]. Zbog toga se sticanje prava na obavljanje delatnosti proizvodnje toplotne energije u postrojenju ostvaruje u dva koraka i to: 1) sticanje prava na obavljanje komunalne delatnosti od opšteg interesa i 2) sticanje prava na obavljanje energetske delatnosti - pribavljanje licence za obavljanje energetske delatnosti.

Neophodno je ukazati na činjenicu da je Zakon o javno privatnom partnerstvu i koncesijama[19] jedini propis Republike Srbije čijom primenom se može istovremeno ostvariti i pravo na eksploataciju geotermalnog izvora i pravo na obavljanje energetske delatnosti od opšteg interesa. Izgradnja postrojenja na hidrogeotermalnu energiju i obavljanje delatnosti proizvodnje električne i/ili toplotne energije u ovakvim postrojenjima je regulisana brojnim propisima Republike Srbije.

17 Članom 145. Zakona o opštem upravnom postupku („Sl. glasnik RS" br. 18/16), utvrđeno je da je rok za izdavanje rešenja nadležnog upravnog organa najkasnije 30 dana od dana pokretanja postupka u slučaju kad je postupak pokrenut u interesu stranke i kada se o toj upravnoj stvari odlučuje u postupku neposrednog odlučivanja, a ako se radi o slučaju kad je postupak takođe pokrenut u interesu stranke ali kada se o toj upravnoj stvari ne odlučuje u postupku neposrednog odlučivanja, organ je dužan da izda rešenje najkasnije u roku od 60 dana od dana pokretanja postupka. Opšti rok za žalbu je 15 dana od dana obaveštavanja stranke o rešenju, ako zakonom nije drugačije utvrđeno. Članom 153. stav 2. Zakona o opštem upravnom postupku, utvrđeno je da u slučaju da prvostepeni upravni organ ne izda rešenje u zakonom propisanom roku, žalba može da se podnese posle isteka tog roka, a najkasnije u roku od godinu dana od isteka tog roka.

18 Postoji nedovoljna usaglašenost između Zakona o energetici i Zakona o komunalnim delatnostima („Sl. glasnik RS" br. 88/11) u pogledu definisanja energetskih delatnosti u oblasti toplotne energije, kao i u pogledu načina regulacije ovih delatnosti. Zakon o energetici utvrđuje tri energetske delatnosti u oblasti toplotne energije: proizvodnja toplotne energije, distribucija i snabdevanje toplotnom energijom. Zakon o komunalnim delatnostima utvrđuje jednu komunalnu delatnost: proizvodnja i distribucija toplotne energije. Interesantno je da oba zakona ne izdvajaju delatnost distribucije toplotne energije kao mrežnu regulisanu delatnost od delatnosti proizvodnje, odnosno prodaje (snabdevanja) toplotnom energijom. U Zakonu o komunalnim delatnostima je ova delatnost od opšteg interesa, što se može odnositi samo na distribuciju toplotne energije, koja bi u svom biću trebala da bude regulisana delatnost. Delatnosti proizvodnje i prodaje toplotne energije su u svom biću tržišne delatnosti.
Nije poznato zašto je proizvodnja toplotne energije, kao posebna delatnost, ostala regulisana delatnost u Zakonu o energetici, dok je proizvodnja iste-toplotne energije u kombinovanom ciklusu neregulisana delatnost, kao i samo proizvodnja električne energije. Proizvodnja energije (električne i/ili toplotne) nije u svojoj prirodi regulisana delatnost.

19 Zakon o javno-privatnom partnerstvu i koncesijama („Sl. glasnik RS" br. 88/11 i 15/16).

2.

ISTRAŽIVANJA I EKSPLOATACIJA HIDROGEOTERMALNOG IZVORA

2. ISTRAŽIVANJA I EKSPLOATACIJA HIDROGEOTERMALNOG IZVORA

2.1. Geološka istraživanja

Radi utvrđivanja potencijala termalnih voda kao mogućih izvora geotermalne energije, vrše se geološka, odnosno hidrogeološka istraživanja. Ova istraživanja se vrše u skladu sa Zakonom o rudarstvu i geološkim istraživanjima, tehničkim i drugim propisima.

Zakonom o rudarstvu i geološkim istraživanjima utvrđeno je da su izvori hidro geotermalne energije vrsta mineralnih sirovina koje spadaju u geotermalne resurse. Geotermalni resursi predstavljaju skup obnovljivih geoloških resursa koji obuhvata podzemne vode i toplotu stenskih masa iz kojih je moguće izdvajanje toplotne energije. Geotermalni resursi obuhvataju: subgeotermalne resurse sa temperaturom vode i toplotom stenskih masa do 30 °C, resurse niske entalpije iz kojih je moguće izdvajanje toplotne energije temperature 30 °C - 100 °C i resurse srednje i visoke entalpije iz kojih je moguće izdvajanje toplotne energije temperature preko 100 °C.[20] Eksploatacionom bušotinom za geotermalne resurse se smatraju rudarski objekti u kojima se izvode rudarski radovi pri eksploataciji geotermalnih resursa visoke entalpije.

Radi ostvarivanja prava na geološka istraživanja, koje je preduslov za ostvarivanje prava za eksploataciju mineralnih sirovina, potrebno je ispuniti niz uslova utvrđenih Zakonom o rudarstvu i geološkim istraživanjima i podzakonskim aktima ovog zakona. Geološka istraživanja[21] mogu biti osnovna[22] i primenjena[23] geološka istraživanja.

Osnovna geološka istraživanja su poslovi od javnog interesa i finansiraju se iz budžeta Republike Srbije. Autonomna pokrajina vrši i finansira osnovna geološka istraživanja na svojoj teritoriji.

Potrebno je ukazati da se geološka istraživanja, eksploatacija rezervi mineralnih sirovina i geotermalnih resursa, korišćenje i održavanje rudarskih objekata, vrše na način kojim se obezbeđuje optimalno geološko, tehnički izvodljivo i ekonomski isplativo iskorišćenje ležišta mineralnih sirovina i drugih geoloških resursa, bezbednost ljudi, objekata i imovine, a u skladu

20 Član 3. tačka 5) Zakona o rudarstvu i geološkim istraživanjima.

21 Geološka istraživanja su kompleksan proces i niz aktivnosti koji obuhvataju primenu odgovarajućih metoda i tehničkih sredstava koji se izvodi sa ciljem da se upoznaju razvoj, sastav i građa zemljine kore, pronađu, ispitaju i geološko-ekonomski ocene mineralni i drugi geološki resursi, istraže i utvrde rezerve mineralnih sirovina i mogućnost njihove eksploatacije, utvrde i ocene geološke, inženjersko-geološke i hidrogeološke odlike terena koji se istražuje, posebno sa aspekta prostornog i urbanističkog planiranja, projektovanja i izgradnje objekata, kao i utvrde i eliminišu štetni uticaji geoloških i tehnogenih procesa na geološku i životnu sredinu i kulturna dobra i dobra koja uživaju prethodnu zaštitu, dok su geološki istražni radovi su sve vrste terenskih, laboratorijskih i kabinetskih istraživanja i ispitivanja koja se izvode u cilju pronalaženja i istraživanja mineralnih i drugih geoloških resursa i rezervi mineralnih sirovina i podzemnih voda, kao i istraživanja geološke sredine – član 3. tačka 12) i 15) Zakona o rudarstvu i geološkim istraživanjima.

22 Član 17. Zakona o rudarstvu i geološkim istraživanjima - Osnovna geološka istraživanja su istraživanja koja se izvode u cilju: proučavanja razvoja, sastava i građe zemljine kore; pronalaženja mineralnih resursa, resursa podzemnih voda i geotermalnih resursa i njihovih inicijalnih proučavanja; vrednovanja ukupnih potencijala geološke sredine kao prostora za potrebe prostornog i urbanističkog planiranja i utvrđivanja podobnosti za izgradnju objekata; utvrđivanja i eliminacije štetnih uticaja prirodnih i tehnogenih procesa na geološku i životnu sredinu.

23 Primenjena geološka istraživanja su skup procesa i aktivnosti koje se izvode radi otkrivanja i dobijanja relevantnih podataka o: geološkoj građi, genezi, kvalitativnim i kvantitativnim karakteristikama mineralnih i drugih geoloških resursa; hidrogeološkim i geotermalnim inženjerskogeološkim-geotehničkim karakteristikama i geodinamičkim svojstvima geološke sredine, kao dela terena od posebnog interesa za potrebe prostornog i urbanističkog planiranja, projektovanja i izgradnju građevinskih, rudarskih i drugih objekata - član 3. tačka 16) Zakona o rudarstvu i geološkim istraživanjima.

sa savremenim stručnim dostignućima i tehnologijama, propisima koji se odnose na tu vrstu objekata i radova i propisima kojima su utvrđeni uslovi u pogledu bezbednosti i zdravlja na radu, zaštite od požara i eksplozije i zaštita životne sredine i zaštite kulturnih dobara i dobara koja uživaju prethodnu zaštitu.[24]

Izvođenje geoloških istraživanja, izradu projekata geoloških istraživanja, elaborata o resursima i rezervama mineralnih sirovina, elaborata o resursima i rezervama podzemnih voda i geotermalnim resursima, izveštaja o rezultatima geoloških istraživanja, elaborata o inženjerskogeološkim-geotehničkim uslovima izgradnje i izveštaja o geotermalnim resursima, kao i izveštaja različitih specijalističkih ispitivanja, kao i poslove stručnog nadzora može da vrši samo privredno društvo, drugo pravno lice i preduzetnik ukoliko su: 1) upisani u odgovarajući registar privrednih subjekata ili drugi registar za obavljanje te delatnosti i 2) poseduju licencu za obavljanje tih poslova.[25][26]

U toku izvođenja geoloških istraživanja, nosilac istraživanja je dužan da obezbedi stručni nadzor nad izvođenjem geoloških istraživanja u skladu sa Zakonom o rudarstvu i geološkim istraživanjima.

U slučaju da se za detaljna geološka istraživanja koriste podaci osnovnih geoloških istraživanja koja su finansirana iz budžeta Republike Srbije, kao i podataka i dokumentacije koji su postali javna svojina-državna svojina po osnovu koncesionih ugovora, lice koje koristi ove podatke dužno je da plati naknadu od 5% od realne vrednosti izvedenih istraživanja na tom istražnom prostoru.

Kako bi se potencijalnim investitorima pružile što sveobuhvatnije informacije u oblasti geoloških istraživanja, ukazujemo da se na portalu „GEOLISS“, odnosno Geološki informacioni sistem Srbije[27], nalazi osnova za čuvanje geoloških podataka u digitalnom obliku i obezbeđuje pregled i evidenciju svih geoloških resursa na jednom mestu, kao i efikasno upravljanje i korišćenje svih geoloških resursa, tj. mineralnih sirovina, kao i olakšano projektovanje i eksploataciju svih mineralnih sirovina pa i hidrogeotermalnih izvora energije. Takođe, putem portala „GEOLISS“ moguće je izvršiti pretragu izdatih odobrenja za vodu, kao i izvršiti uvid u kartu istražnih prostora i eksploatacionih polja Srbije.

2.1.1. Projekat geoloških istraživanja

Geološka istraživanja se izvode prema projektu geoloških istraživanja koji naročito sadrži: 1) dokumenta o ispunjenosti uslova koje se odnose na pravno lice ili preduzetnika koji vrši geološka istraživanja, kao i na angažovana fizička lica koja konkretno preduzimaju određene radnje i aktivnosti u toku ovih istraživanja; 2) tekstualni deo; i 3) grafičke priloge. Uslovi, kriterijumi i sadržaj projekata za istraživanja hidrogeotermalnih resursa propisani su posebnim pravilnikom.[28]

Projekat geoloških istraživanja, kao i izmene i dopune istog projekta podležu tehničkoj kontroli.

24 Član 5. Zakona o rudarstvu i geološkim istraživanjima.
25 Član 22. Zakona o rudarstvu i geološkim istraživanjima.
26 Geološka istraživanja mogu da izvode i strana pravna lica pod uslovima i na način propisan Zakonom o rudarstvu i geološkim istraživanjima i zakonom kojim se utvrđuju prava stranih lica u pogledu korišćenja dobara od javnog interesa i u skladu sa zakonima kojima je uređena oblast odbrane i tajnost podataka - Član 22. stav 5 Zakona o rudarstvu i geološkim istraživanjima.
27 Portal „GEOLISS“ predstavlja deo portala Ministarstva rudarstva i energetike, i izrađen je pod pokroviteljstvom UNDP-a i JICA-e: http://geoliss.mre.gov.rs/. Portal je dostupan i na engleskom jeziku.
28 Pravilnik o sadržini projekata geoloških istraživanja i elaborata o rezultatima geoloških istraživanja („Sl. glasnik RS“ br. 51/96).

U toku izvođenja geoloških istraživanja, nosilac istraživanja je dužan da obezbedi stručni nadzor nad izvođenjem geoloških istraživanja.

Podnosilac zahteva za izdavanje odobrenja za primenjena geološka istraživanja je dužan da pre izrade projekta geoloških istraživanja od nadležnog zavoda za zaštitu prirode i nadležnog zavoda za zaštitu kulturnog nasleđa, ili drugog nadležnog organa, pribavi akt o uslovima za izradu projekta i izvođenje planiranih geoloških istraživanja. Ovaj akt je sastavni deo projekta geoloških istraživanja.

2.1.2. Odobrenje za istraživanje

Da bi se mogla vršiti geološka istraživanja hidrogeotermalne energije na određenom istražnom prostoru potrebno je pribaviti rešenje o odobrenju za istraživanje. Primenjena geološka istraživanja izvode se na osnovu rešenja o odobrenju za geološka istraživanja koje izdaje ministarstvo nadležno za poslove rudarstva, po zahtevu privrednog subjekta koje ispunjava uslove za obavljanje ovih poslova. Za primenjena geološka istraživanja koja se izvode na teritoriji autonomne pokrajine, odobrenje izdaje nadležni organ autonomne pokrajine rešenjem. Nadležni organ autonomne pokrajine dužan je da ministarstvu nadležnom za poslove rudarstva dostavlja izveštaje o izdatim odobrenjima za geološka istraživanja.

Rešenje ministarstva nadležnog za poslove rudarstva je konačno i protiv njega se može pokrenuti upravni spor. Protiv rešenja koje je izdao nadležni organ autonomne pokrajine u određenim slučajevima se može izjaviti žalba Ministru nadležnom za poslove rudarstva.

Minister nadležan za poslove rudarstva bliže određuje površinu istražnog prostora na kojem se može odobriti izvođenje primenjenih geoloških istraživanja, u zavisnosti od vrste mineralnih i drugih geoloških resursa koji se istražuju.

Zahtev za izdavanje odobrenja za primenjena geološka istraživanja sadrži podatke o: 1) nosiocu istraživanja; 2) vrsti geoloških istraživanja; 3) veličini istražnog prostora; 4) vrsti istražnih radova; 5) vremenu trajanja istraživanja i 6) dokaz o plaćenoj republičkoj, odnosno pokrajinskoj administrativnoj taksi.

Ukoliko nadležni organ povodom zahteva za izdavanje odobrenja za primenjena geološka istraživanja utvrdi da je istražni prostor slobodan i da postoje geološki i drugi uslovi za nesmetano vršenje istraživanja o istim obaveštava podnosioca zahteva, koji je dužan da u daljem roku od 90 dana dostavi: 1) izvod iz registra privrednih subjekata o registraciji podnosioca zahteva; 2) topografsku kartu u razmeri 1:25.000, sa ucrtanom granicom i koordinatama prelomnih tačaka traženog istražnog prostora; 3) projekat geoloških istraživanja, u dva primerka; 4) izveštaj i potvrdu o izvršenom tehničkoj kontroli projekta; 5) dokaz o pravu svojine na zemljištu ili službenosti na zemljištu na kome se planira izvođenje istraživanja; 6) dokaz o plaćenoj republičkoj administrativnoj taksi za izdavanje odobrenja.

Odobrenje za istraživanje se izdaje pod posebnim uslovima u slučaju objekata i prostora pod posebnom zaštitom i pod specijalnim režimom. Na području koje predstavlja zaštićeni prostor prirode, celinu od kulturno-istorijskog i graditeljskog značaja, turističko rekreativnu celinu, izvorište od posebnog značaja za regionalno snabdevanje vodom ili drugi zaštićen prostor, izvođenje geoloških istraživanja i eksploatacija rezervi mineralnih sirovina i geotermalnih resursa može se odobriti samo pod uslovima, koje u skladu sa posebnim zakonom izdaju nadležne organizacije za izdavanje uslova za uređenje prostora, zaštite prirode i životne sredine, kulturnog nasleđa, kao i druge organizacije nadležne za odgovarajuću oblast koja se odnosi na zaštićeni prostor.

Zakonom o vodama je propisano da su vodna akta neophodna za rudarske istražne i eksploatacione radove[29]. Shodno tome, uz zahtev za izdavanje odobrenja za geološko istraživanje podzemnih voda treba priložiti i vodne uslove i vodnu saglasnost.[30]

Zakonom o rudarstvu i geološkim istraživanjima propisani su uslovi kada će nadležni organ odbiti zahtev za izdavanje odobrenja za istraživanje S obzirom da navedenim zakonom nije propisan poseban rok za izdavanje odobrenja za istraživanje, na ovaj rok primenjuje opšti rok iz Zakona o opštem upravnom postupku[31].

Nosilac istraživanja i nosilac eksploatacije ne može biti privredno društvo ili drugo pravno lice koje ima dospele a neizmirene obaveze po sledećim osnovima: po osnovu javnih prihoda, javnih davanja u vezi ranijih istraživanja ili eksploatacije, nezakonitog istraživanja, odnosno nezakonite eksploatacije, kao i u slučaju da ima neispunjene obaveze u vezi sanacije i zaštite životne sredine i kulturnih dobara, odnosno dobara koja uživaju prethodnu zaštitu.

Rešenje o odobrenju za primenjena geološka istraživanja sadrži podatke o: 1) nazivu nosioca istraživanja sa adresom njegovog sedišta; 2) predmetu i vrsti istraživanja; 3) površini i koordinatama prelomnih tačaka istražnog prostora; 4) nazivu projekta geoloških istraživanja; 5) dužini istražnog roka u skladu sa zahtevom nosioca istraživanja.[32]

Odobrenjem za izvođenje primenjenih geoloških istraživanja određuje se istražni rok u dužini do dve godine. Ovaj rok se može produžiti dva puta u kontinuitetu, pri čemu dužina svakog od produženih istražnih rokova može biti do godinu dana.

Zahtev za produženje istražnog, podnosi se najkasnije 30 dana pre isteka istražnog roka određenog odobrenjem za istraživanje, pod uslovom da je izvršeno najmanje 75% od projektom planiranog obima i dinamike istražnih radova.

29 Član 117. tačka 18) i 24) Zakona o vodama.
30 Više o proceduri za izdavanje ovih akata u delu 2.2.1.1. ovog Vodiča.
31 O rokovima iz Zakona o opštem upravnom postupku više u fusnoti broj 15. ovog Vodiča.
32 Član 37. Zakon o rudarstvu i geološkim istraživanjima.

Uz zahtev za produženje roka trajanja odobrenja za geološko istraživanje podnosi se: 1) projekt geoloških istraživanja u dva primerka; 2) topografska karta u razmeri 1:25.000 ili odgovarajućoj razmeri, sa ucrtanom granicom i koordinatama prelomnih tačaka istražnog prostora za nastavak istraživanja; 3) izveštaj i potvrda o izvršenoj tehničko kontroli projekta; 4) završni izveštaj za prethodni istražni period; 5) dokaz o plaćenoj administrativnoj taksi.

Površina istražnog prostora za izvođenje primenjenih geoloških istraživanja podzemnih voda i geotermalnih resursa može da iznosi najviše do 10 km^2.[33]

U članu 47. Zakona o rudarstvu i geološkim istraživanjima su utvrđeni slučajevi kada nadležni organ može da ukine rešenje o odobrenju za istraživanje pre isteka određenog istražnog roka, između ostalog i ukoliko se pod vidom istraživanja vrši eksploatacija podzemnih voda i geotermalnih resursa. Organ koji je izdao odobrenje za istraživanje vodi evidenciju o odobrenim istraživanjima i katastar odobrenih istražnih prostora. U ovaj katastar se unose podaci o nosiocu istraživanja, istražnom prostoru, predmetu geoloških istraživanja i roku trajanja istraživanja. Zainteresovana i druga pravna lica imaju pravo uvida u katastar odobrenih istražnih prostora.

Za obavljanje primenjenih geoloških istraživanja podzemnih voda i geotermalnih resursa plaća se naknada.[34] Ova naknada se plaća jednom godišnje za period od godinu dana i to najkasnije u roku od 30 dana od dana dobijanja rešenja za vršenje primenjenih geoloških istraživanja i/ili rešenja o zadržavanju prava na istražni prostor, a u slučaju geoloških istraživanja odobrenih u prethodnim godinama, do 31. januara tekuće godine.

Ukazujemo da je privredno društvo, odnosno drugo pravno lice koje vrši geološka istraživanja, odnosno eksploataciju mineralnih sirovina ili drugih geotermalnih resursa bez potrebnih odobrenja, dužno da nadoknadi štetu vlasniku za zauzeto zemljište, a Republici Srbiji odnosno budžetu autonomne pokrajine duguje naknadu štete ukoliko se nedozvoljena geološka istraživanja i/ili eksploatacija vrše na njenoj teritoriji, kao i vrednost iskopane mineralne sirovine odnosno drugih geoloških resursa, i da izvrše sanaciju i rekultivaciju zemljišta na kojem je obavljeno geološko istraživanje i/ili eksploatacija geološkog odnosno geotermalnog resursa.

2.1.3. Izvođenje geoloških istraživanja

Nosilac istraživanja je dužan da početak radova na geološkim istraživanjima, prijavi pre početka izvođenja projektovanih istražnih radova nadležnom organu jedinice lokalne samouprave na čijoj teritoriji se nalazi istražni prostor i organu koji je izdao rešenje o odobrenju za istraživanje i geološkoj i/ili rudarskoj inspekciji. Ako se radovi izvode na području u nadležnosti zavoda za zaštitu prirode i u nadležnosti zavoda za zaštitu kulturnog nasleđa - prijavi tim telima.

33 Član 41. tačka 2) Zakona o rudarstvu i geološkim istraživanjima.

34 Visina naknade za vršenje primenjenih geoloških istraživanja za mineralne ili druge geološke resurse iznosi 10.000,00 dinara / km2 istražnog prostora, osim u slučaju istražnog prostora manjeg od 0,5 km2, kada naknade iznose 5.000,00 dinara. Način i rok plaćanja ove naknade su utvrđeni Uredbom o načinu i roku plaćanja naknade za primenjena geološka istraživanja mineralnih i drugih geoloških resursa i naknade za zadržavanje istražnog prostora („Sl. glasnik RS" br. 10/16).

Prilikom izvođenja radova geoloških istraživanja izvođač je dužan da: 1) obezbedi potrebna finansijska sredstva za izvođenje odobrenih geoloških istraživanja i preuzme sve druge neophodne mere i aktivnosti i pristupi izvođenju odobrenih istraživanja u skladu sa utvrđenom dinamikom; 2) pribavi dokaz o pravu korišćenja zemljišta na kojem planira da izvede projektovane istražne radove (istražne bušotine/raskope/istražne etaže/istražne rudarske prostorije i dr.); 3) vrstu i obim istražnih radova izvede prema projektu geoloških istraživanja, uz najveće moguće odstupanje u pogledu odobrenog obima i vrste radova do 25%; 4) prijavi početak radova na istraživanju; 5) obezbedi stručni nadzor nad izvođenjem geoloških istraživanja; 6) plaća naknadu za odobrena primenjena geološka istraživanja; 7) dostavlja Godišnji i Završni izveštaj o rezultatima istraživanja; 8) sprovodi propisane mere bezbednosti i zdravlja na radu, potrebne mere obezbeđenja imovine, zdravlja ljudi i zaštite životne sredine; 9) vrati u prvobitno stanje zemljište na kojem se izvode istražni radovi; 10) evidentira i druge mineralne sirovine i geološke resurse, ukoliko se pronađu u okviru odobrenog istražnog prostora i da o tome obavesti organ koji je izdao odobrenje za izvođenje geoloških istraživanja; 11) u toku trajanja istraživanja na propisan način čuva izveštaje i elaborate o rezultatima geoloških istraživanja i drugu geološku dokumentaciju, kao i jezgra istražnih bušotina i uzorke i analize iz svih istražnih radova i da iste po potrebi stavi na uvid ministarstvu nadležnom za poslove rudarstva, odnosno nadležnom organu autonomne pokrajine i jedinici lokalne samouprave radi provere rezultata istraživanja; 12) se tokom ispitivanja jezgra istražnih bušotina i drugih uzoraka pridržava pozitivne geološke prakse za ta ispitivanja i na način da omogući proverljivost dobijenih rezultata ispitivanja; 13) omogući geološkom inspektoru ulazak u poslovne i pogonske prostorije ili razgledanje projekata i planova, izveštaja i druge dokumentacije o stanju geoloških radova.

Nosilac istraživanja je dužan da u toku istraživanja pribavlja od nadležnog organa za poslove urbanizma na nivou lokalne samouprave informaciju o eventualnom ograničenju za izvođenje tih istraživanja u odnosu na prostorni ili urbanistički plan ili druga ograničenja.

Istražni radovi se vrše na istražnom prostoru koji ima površinu označenu na topografskoj karti oivičenu koordinatama. Veličina ovog prostora je utvrđena odobrenjem za istraživanje.

U toku izvođenja radova neophodno je da nosilac istraživanja obezbedi stručni nadzor nad izvođenjem geoloških istraživanja, koji vrši proveru kvaliteta radova, usklađenosti radova sa projektom i projektovanom dinamikom realizacije istraživanja i primene propisa iz oblasti geoloških istraživanja i tehničkog propisa, propisa o bezbednosti i zdravlju na radu, mera zaštite od požara i zaštite životne sredine. Stručni nadzor nosilac istraživanja može da vrši neposredno ili da vršenje ovog nadzora ustupi drugom privrednom subjektu, koji ispunjava uslove. Ovaj nadzor je neophodno obezbediti i za izradu geološke dokumentacije o svim radovima na pripremi, razradi i eksploataciji mineralnih sirovina, kao i pri izradi svih podzemnih objekata i objekata na površinama namenjenim korišćenju mineralnih sirovina. Po završetku projektom predviđenih geoloških istraživanja podzemnih voda i geotermalnih resursa izrađuje se završni izveštaj o rezultatima geoloških istraživanja. Nosilac istraživanja dostavlja jedan primerak

ovog izveštaja i elaborata o inženjerskogeološkim-geotehničkim uslovima izgradnje objekta organu koji je izdao odobrenje za istraživanje u pisanoj formi i u elektronskom *pdf* formatu, najkasnije 30 dana od dana isteka odobrenog istražnog roka, a u slučaju produženja istražnog roka – najkasnije do kraja prethodno odobrenog istražnog roka. Uz ovaj izveštaj se dostavlja jedan primerak izveštaja o stručnom nadzoru nad izvršenjem geoloških istraživanja.

Pravo korišćenja i raspolaganja rezultatima primenjenih geoloških istraživanja i dokumentima koji sadrža rezultate geoloških istraživanja ima nosilac istraživanja. Tri godine nakon prestanka primenjenih geoloških istraživanja, Republika Srbija može koristiti rezultate istih istraživanja, na način kojim ne ugrožava interes vlasnika podataka, uvažavajući propise kojima se uređuje zaštita podataka i to samo u slučaju: odbrane zemlje i podizanja nivoa opšte bezbednosti stanovništva, saniranja posledica od geoloških hazarda (zemljotresa, poplava, klizišta, odrona i dr.), izrade strateških studijskih istraživanja za potrebe utvrđivanja i vrednovanja ukupnih mineralnih potencijala geološke sredine ili drugih geoloških resursa, kao i potrebe prostornog planiranja i drugih dugoročnih strateških dokument od opšteg interesa.

Rudarski objekti nastali u procesu geoloških istraživanja koji nisu uknjiženi kao svojina nosioca istraživanja, ne smatraju se rezultatima istraživanja i po završetku istraživanja postaju svojina Republike Srbije i mogu ih koristiti nosilac odobrenja za istraživanja ili nosilac odobrenja za eksploataciju, na čijem istražnom ili eksploatacionom polju se isti objekti nalaze.

Nosilac istraživanja koji koristi podatke i rezultate istraživanja koji su rezultat geoloških istraživanja drugog privrednog subjekta ili su rezultat osnovnih i primenjenih geoloških istraživanja koja su finansirana iz budžeta Republike Srbije, obavezan je da dostavi dokaz o pravu korišćenja tih podataka pri izradi projekata geoloških istraživanja, izveštaja i elaborata o rezultatima istih istraživanja i/ili elaborata o resursima i rezervama.[35]

2.1.4. Klasifikacija podzemnih voda i geotermalnih resursa

Razvrstavanje resursa i rezervi podzemnih voda i geotermalnih resursa, vrši se u skladu sa odgovarajućim propisima i pravilnicima o izveštavanju i klasifikaciji podzemnih voda i geotermalnih resursa usaglašenim sa priznatim međunarodnim načinima izveštavanja i razvrstavanja. Istraženi resursi i rezerve podzemnih voda i hidrogeotermalnih resursa prikazuju se u elaboratu o resursima i rezervama podzemnih voda.

Elaborat o rezultatima geoloških istraživanja - o resursima i rezervama podzemnih voda se izrađuje po završetku projektom predviđenih geoloških istraživanja iz koga se mogu sagledati istraženi resursi i rezerve mineralnih sirovina i podzemnih voda, kao i geotermalni resursi za koje je dokazana tehnička izvodljivost i ekonomska isplativost eksploatacije izrađuje se u skladu sa Pravilnikom o sadržini projekata geoloških istraživanja i elaborata o rezultatima geoloških istraživanja. Nosilac istraživanja dostavlja primerak elaborata organu koji mu je izdao odobrenje za istraživanje. Nosilac istraživanja obezbeđuje čuvanje makroskopskih i mikroskopskih uzoraka stena i drugih zakonom propisanih elemenata od značaja za geološka istraživanja i građu.

Resursi i rezerve podzemnih voda i geotermalnih resursa utvrđuje se potvrdom o resursima i rezervama. Ovu potvrdu izdaje nadležni organ koji je izdao i rešenje o odobrenju za geološka istraživanja.

35 Član 49. Zakona o rudarstvu i geološkim istraživanjima.

Uz zahtev za izdavanje ove potvrde podnosi se: 1) odobrenje za istraživanje, odnosno odobrenje za eksploataciju; 2) pregledna karta u odgovarajućoj razmeri sa koordinatama prelomnih tačaka utvrđenih resursa i rezervi podzemnih voda ili geotermalnih resursa; 3) elaborat o resursima i rezervama mineralnih sirovina, podzemnih voda i geotermalnih resursa; 4) izveštaj kompetentnog lica geološke struke o stručnoj oceni – reviziji elaborata o resursima i rezervama podzemnih voda; 5) dokaz o plaćenoj republičkoj, odnosno pokrajinskoj administrativnoj taksi za overu podzemnih voda i geotermalnih resursa; 6) dokaz o pravu korišćenja podataka i rezultata istraživanja koji su rezultat geoloških istraživanja drugog privrednog subjekta ili su rezultat osnovnih i primenjenih geoloških istraživanja finansiranih iz budžeta Republike Srbije, ako su korišćeni u izradi elaborata.

Elaborat o resursima i rezervama mineralnih sirovina, podzemnih voda i geotermalnih resursa je dokument o rezultatima geoloških istraživanja određenog ležišta mineralnih sirovina ili podzemnih voda i geotermalnih resursa, količinama i kvalitetu istraženih sirovina ili resursa, njihovoj klasifikaciji, tehničkim mogućnostima i uslovima eksploatacije, kao i o očekivanim ekonomskim efektima.

Nosilac odobrenja za eksploatacioni prostor za korišćenje podzemnog voda svake pete godine od dana prethodno evidentiranog stanja utvrđenih resursa i rezervi podzemnih voda, dostavlja ministarstvu nadležnom za poslove rudarstva elaborat urađen na osnovu novoizvedenih – savremenih osmatranja hidrodinamičkog režima podzemnih voda i novih kontrolnih analiza kvaliteta istih voda radi utvrđivanja stvarnih količina i kvalitativnih svojstava eksploatabilnih rezervi podzemnih voda u ležištu, koje su predmet korišćenja.

Elaborat o rezervama podzemnih voda između ostalog sadrži: 1) podatke o geološkim i hidrogeološkim karakteristikama ležišta; 2) kvalitetu i količinama istraženih resursa podzemnih voda; 3) klasifikaciji resursa; 4) tehničkim mogućnostima i uslovima eksploatacije; 5) očekivanim ekonomskim efektima.

Nosilac hidrogeotermalnih istraživanja je dužan da vodi knjigu o stanju rezervi podzemnih voda i geotermalnih resursa na odobrenom istražnom prostoru, odnosno eksploatacionom polju i da o stanju resursa i rezervi svake godine dostavlja podatke ministarstvu nadležnom za poslove rudarstva, odnosno nadležnom organu autonomne pokrajine u slučaju da se radovi vrše na teritoriji autonomne pokrajine.

2.2. Eksploatacija hidrogeotermalnog izvora

Eksploatacijom geotermalnih resursa smatra se izvođenje rudarskih radova na pripremi, bušenju, eksploataciji i korišćenju geotermalnih resursa. Nakon izvršenih geoloških istraživanja i utvrđivanja potencijala određenog područja, odnosno konkretnog mesta za eksploataciju hidrogeotermalnih izvora, vrši se eksploatacija u skladu sa propisima kojima se uređuje eksploatacija mineralnih sirovina.

Odobrenje za eksploataciju se izdaje samo u slučaju kada se radi o eksploataciji geotermalnih resursa visoke entalpije i tada se moraju prema odredbama Zakona o rudarstvu i geološkim istraživanjima pribaviti: odobrenje za eksploataciono polje, odobrenje za izvođenje rudarskih radova i upotrebna dozvola.

Eksploatacija mineralnih sirovina - podzemnih voda i geotermalnih resursa iz kojih se dobija hidrogeotermalna energija u Republici Srbiji vrši se na osnovu rešenja kojima se izdaju sledeća odobrenja: 1) odobrenje za eksploataciono polje ili odobrenje za eksploataciju, 2) odobrenje za izgradnju rudarskih objekata i/ili izvođenje rudarskih radova i 3) odobrenje za upotrebu rudarskih objekata. Ova odobrenja izdaje ministarstvo nadležno za poslove rudarstva, a za teritoriju pokrajine, nadležni sekretarijat.[36]

Zahtev za izdavanje odobrenja za eksploataciono polje i/ili odobrenje za eksploataciju se može podneti istovremeno sa zahtevom za izdavanje odobrenja za izgradnju rudarskih objekata i/ili izvođenje rudarskih radova.

Rešenje koje je izdalo ministarstvo nadležno za poslove rudarstva je konačno i protiv njega se može voditi upravni spor, a protiv rešenja koje izdaje nadležni organ autonomne pokrajine se može podneti žalba ovom ministarstvu.

Eksploatacijom geotermalne energije se smatra izvršenje radova na pripremi i otvaranju ležišta, izvođenje drugih rudarskih radova u zemlji i na njenoj površini. Eksploatacijom mineralnih sirovina smatra se i izvođenje radova na pripremi mineralnih sirovina.

Eksploataciju hidrogeotermalne energije može da vrši svaki privredni subjekt koji ispunjava uslove da je nosilac istraživanja, odnosno korisnik potvrde o resursima i rezervama mineralnih sirovina i geotermalnim resursima. Potvrda se izdaje u skladu sa Zakonom o rudarstvu i geološkim istraživanjima.

Pre donošenja Zakona o rudarstvu i geološkim istraživanjima iz 2016. godine, postojala je obaveza privrednog subjekta koji vrši eksploataciju hidrogeotermalne energije plaća naknadu za korišćenje mineralnih sirovina - podzemnih voda iz kojih se dobija hidrogeotermalna energija u visini 2% od prihoda. Od stupanja na snagu ovog zakona, ova naknada se ne plaća na korišćenje podzemnih voda iz kojih se dobija hidrogeotermalna energije, što predstavlja podsticajni element za korišćenje ovih obnovljivih izvora energije.

Ovde je potrebno ukazati na odredbe Zakona o banjama[37]. Zakonom o banjama je utvrđeno da pravo korišćenja prirodnog lekovitog faktora u banji (termalna i mineralna voda, gas i lekovito blato) domaćem pravnom ili fizičkom licu daje opština na čijem području se nalazi banja, uz saglasnost Vlade Republike Srbije.[38] Takođe je utvrđeno da korisnik prirodnog lekovitog faktora u banji plaća naknadu za njegovo korišćenje. Ova naknada se plaća prema količini iskorišćenog prirodno lekovitog faktora. Predviđene su i kazne za lice koje koristi

36 Sekretarijat za energetiku i mineralne sirovine AP Vojvodine izdaje odobrenje za eksploataciju na teritoriji AP Vojvodine.
37 Zakon o banjama („Sl. glasnik RS" br. 80/92).
38 Članom 10. stav 2. Zakona o banjama utvrđeno je da se pravo korišćenja prirodnog lekovitog faktora u banji stranom lice se daje u skladu sa zakonom kojim se uređuje koncesija.

prirodni lekoviti faktor protivno odredbama Zakona o banjama. Potrebno bi bilo navesti da se ovaj zakon odnosi samo na eksploataciju termalne vode na području banje, čija granica se obeležava oznakama. Ova dozvola ne konsumira odobrenja predviđena Zakonom o rudarstvu i geološkim istraživanjima, već predstavlja dodatni akt za eksploataciju hidrogeotermalne energije na području banje.

2.2.1. Odobrenje za eksploataciju mineralnih sirovina

Zakonom o rudarstvu i geološkim istraživanjima utvrđeno je da su resursi podzemnih voda i geotermalni resursi, kao i drugi geološki resursi prirodno bogatstvo u svojini Republike Srbije i da se mogu koristiti pod uslovima i na način utvrđen Zakonom o rudarstvu i geološkim istraživanjima. Radi ostvarivanja geoloških istraživanja i eksploatacije mineralnih resursa, odnosno mineralnih sirovina od strateškog značaja za Republiku Srbiju može se vršiti eksproprijaciju nepokretnosti u skladu sa propisima.

Eksploataciju rezervi mineralnih sirovina, izvođenje rudarskih radova u sklopu izgradnje građevinskih objekata, izradu investiciono-tehničke dokumentacije za izvođenje rudarskih radova, tehničku kontrolu rudarskih projekata i vršenje stručnog nadzora može izvoditi privredno društvo, odnosno drugo pravno lice i preduzetnik koji je upisan u registar privrednih subjekata ili drugi registar za obavljanje te delatnosti i koji poseduje licencu za obavljanje tih poslova iz oblasti rudarstva. Nosilac eksploatacije je dužan da obezbedi stručni nadzor pri eksploataciji mineralnih sirovina i nadzor pri izvođenju rudarskih radova.[39]

Uz zahtev za izdavanje odobrenja za eksploataciono polje/eksploataciju podnosi se: 1) dokaz o plaćenoj republičkoj administrativnoj taksi; 2) situaciona karta u razmeri 1:2500 ili u odgovarajućoj razmeri sa ucrtanim granicama eksploatacionog polja, javnim saobraćajnicama i drugim objektima koji se nalaze na tom polju i jasno vidljivim granicama i oznakama katastarskih parcela u pisanoj i digitalnoj formi; 3) potvrda o resursima i rezervama mineralnih sirovina koja se izdaje na osnovu izvršenih istraživanja u skladu sa važećim propisima o klasifikaciji resursa i rezervi; 4) potvrda o registraciji i kopija odgovarajućeg akta u kojem se navode šire delatnosti za koje je podnosilac registrovan, matični broj privrednog subjekta i odgovarajuća licenca; 5) studija izvodljivosti eksploatacije ležišta mineralnih sirovina; 6) akt organa jedinice lokalne samouprave nadležnog za poslove urbanizma u pogledu usaglašenosti eksploatacije sa odgovarajućim prostornim, odnosno urbanističkim planovima. Podnosilac zahteva za izdavanje odobrenja za eksploataciju/eksploataciono polje, pre izrade studije izvodljivosti eksploatacije dužan je da pribavi: 1) akt o uslovima za izradu studije procene uticaja eksploatacije na životnu sredinu izdat od strane nadležnog organa ili organizacija za zaštitu prirode; 2) akt o uslovima nadležnog zavoda za zaštitu kulturnog nasleđa; 3) akt o uslovima ministarstva nadležnog za poslove vodoprivrede.

39 Član 67. Zakona o rudarstvu i geološkim istraživanjima.

Odobrenje za eksploataciono polje/eksploataciju sadrži: 1) poslovno ime nosioca odobrenja, matični broj i sedište; 2) vrstu mineralne sirovine koja je definisana potvrdom o rezervama i resursima; 2) položaj, površinu i koordinate prelomnih tačaka granice eksploatacionog polja, broj eksploatacionog polja u katastru eksploatacionih polja; 4) rok u kome se moraju završiti pripremni radovi i pribaviti odobrenje za izgradnju radarskih objekata i/ili izvođenje rudarskih radova, koji ne može biti duži od dve godine; 5) uslovi i obaveze u vezi vršenja eksploatacije u pogledu minimalnih i maksimalnih rastojanja kao i uslovima utvrđenim rešenjima drugih nadležnih organa; 6) propisan zaštitni prostor oko eksploatacionog polja potreban radi mogućeg proširenja polja po zahtevu nosioca eksploatacije, i to: (1) za eksploataciona polja površine do 25 ha zaštitni prostor u širini do 100 metara od odgovarajuće granice eksploatacionog polja, (2) za eksploataciona polja površine od 25 ha do 100 ha zaštitni prostor u širini do 250 metara od odgovarajuće granice eksploatacionog polja, (3) za eksploataciona polja površine veće od 100 ha zaštitni prostor u širini do 500 metara od odgovarajuće granice eksploatacionog polja.

Odobrenje za eksploataciju može da prestane da važi ili da se ukine u skladu sa Zakonom o rudarstvu i geološkim istraživanjima.[40]

Interesantno je da na eksploatacionom polju imalac odobrenja za eksploataciju može da eksploatiše i drugu mineralnu sirovinu i geotermalne resurse koji nisu obuhvaćeni datim odobrenjem, pod uslovom da ima odobrenje.

Eksploataciono polje obuhvata prostor u kome se nalaze rezerve mineralnih sirovina i geotermalnih resursa, kao i prostor predviđen za smeštaj jalovišta i drugog rudarskog otpada, za izgradnju objekata pripreme mineralnih sirovina, za izgradnju objekata održavanja, vodozahvata i drugih objekata, a ograničeno je odgovarajućim poligonim linijama na površini terena i prostire se do projektovane dubine eksploatacije.

Eksploatacija rezervi mineralnih sirovina i geotermalnih resursa se izvodi prema investiciono-tehničkoj dokumentaciji za izvođenje rudarskih radova.

40 Član 72. i član 73. Zakona o rudarstvu i geološkim istraživanjima.

2.2.1.1. Vodni uslovi, vodna saglasnost i vodna dozvola[41] `[42]

Vodni uslovi, vodna saglasnost i vodna dozvola se jednim imenom zovu vodna akta.

Zakon o vodama razlikuje opšte i posebno korišćenje voda. Korišćenje voda za potrebe eksploatacije hidrogeotermalne energije bi spadalo u posebno korišćenje voda, kada se radi o objektu koji koristi kanalizaciju za odlaganje iskorišćenog hidrogeotermalnog izvora ili na drugi način odlaže vodu iz iskorišćenog hidrogeotermalnog izvora.[43] Pravo na posebno korišćenje voda, stiče se vodnom dozvolom, a ako se posebno korišćenje voda vrši po osnovu koncesije, i u skladu sa ugovorom kojim se uređuje koncesija.

Zakon o vodama je uveo i posebna pravila koja su u vezi sa izvođenjem radova i projektovanjem i izgradnjom objekata (rudarskih, građevinskih). Izvođenje radova i projektovanje i izgradnju objekata vrši se tako da se: 1) omogući vraćanje vode u vodotok posle iskorišćenja energije; 2) ne umanji postojeći obim i ne sprečava korišćenje vode za snabdevanje stanovništva i drugih korisnika; 3) ne umanji stepen zaštite od štetnog dejstva voda; 4) ne pogoršaju uslovi sanitarne zaštite; 5) obezbeđuje njihovo višenamensko korišćenje.

Ovim zakonom se definišu sledeća vodna akta od značaja za izgradnju objekta: 1) vodni uslovi, 2) vodna saglasnost, 3) vodna dozvola. Vodna akta u konkretnom slučaju donosi ministarstvo nadležno za vodoprivredu, nadležni organ autonomne pokrajine, odnosno grada Beograda, u zavisnosti od mesta na kom će se nalaziti objekat.[44] Rok za izdavanje ovih akata je dva meseca od dana podnošenja zahteva.

Protiv rešenja donetog u postupku izdavanja vodne saglasnosti, odnosno vodne dozvole donete od strane nadležnog organa autonomne pokrajine, odnosno grada Beograda, može se izjaviti žalba ministru u roku od 15 dana. Kada je u postupku izdavanja vodnih akata rešenje doneto od strane nadležnog ministarstva, ono je konačno i protiv njega se može voditi upravni spor.

Pre izdavanja vodnih uslova (a koji su element lokacijske dozvole i neophodni su za izradu projektne dokumentacije) potrebno je pribaviti Mišljenje Republičke organizacije nadležne za hidrometeorološke poslove (Republički hidrometeorološki zavod - RHMZ) i Mišljenje javnog vodoprivrednog preduzeća (JVP Srbijavode – za teritoriju Republike Srbije osim Autonomne pokrajine Vojvodine, odnosno JVP Vode Vojvodine – za teritoriju Autonomne pokrajine Vojvodine, odnosno JVP „Beogradvode" u Beogradu, za objekte i radove na teritoriji Grada Beograda).

Mišljenje Republičkog hidrometeorološkog zavoda se dobija na osnovu podnetog Zahteva.

41 Izdavanje vodnih uslova, vodne saglasnosti i vodne dozvole regulisano je Zakonom o vodama. Potrebno je ukazati da u slučaju da će se izgrađivati objekat u kome će se obavljati delatnost proizvodnje toplotne, odnosno električne energije, vodna akta za eksploataciju hidrogeotermalne energije treba da obuhvate celinu posla. U tom slučaju ista akta će se podneti i prilikom podnošenja zahteva za pribavljanje građevinske dozvole za navedeni objekat. Vodna dozvola definiše i način ispuštanja otpadnih voda.

42 Izdavanje vodnih uslova, vodne saglasnosti i vodne dozvole regulisano je Zakonom o vodama i Pravilnikom o sadržini i obrascu zahteva za izdavanje vodnih akata i sadržini mišljenja u postupku izdavanja vodnih akata („Sl. glasnik RS" br. 74/10).

43 Napomena: U slučaju da korisnici geotermalnih voda, nakon njihovog iskorišćenja, izaberu mogućnost da ove iskorišćene vode ispuštaju u reke npr. Tisu, Dunav ili u kanale, za ispuštanje iskorišćenih voda korisnici moraju da raspolažu privremenim dozvolama, dobijenim od nadležnih vodoprivrednih organizacija. Uslov za dobijanje dozvole za ispuštanje geotermalne vode u vodotoke je da deponovana voda ne pogoršava kvalitet vode u vodotoku. Ukoliko se ne mogu obezbediti takvi uslovi, vodnom dozvolom se definišu uslovi za ispuštanje voda.

44 U zavisnosti od vrste objekta ili radova za koje se podnosi zahtev za izdavanje vodnih akata nadležno može da bude ministarstvo nadležno za vodoprivredu, nadležni organ autonomne pokrajine i nadležni organ jedinice lokalne samouprave (u zavisnosti od objekta, odnosno radova za koje se traži izdavanje vodnih akata). Vrste objekata/radova i nadležnost organa za izdavanje vodnih akata utvrđeni su članovima 117. i 118. Zakona o vodama.

U prilogu zahteva je potrebno dostaviti[45]: 1) topografsku kartu područja (1:25000) sa označenim dispozicijama objekata, 2) tehnički opis i, 3) u slučaju neizučenih slivova, hidrološku studiju (obično rađenu na osnovu meteoroloških podataka, kao i hidroloških podataka sa susednih slivova).

Mišljenje javnog vodoprivrednog preduzeća dobija se po podnošenju Zahteva za dobijanje mišljenja.

Uz zahtev se prilaže[46]: 1) kopija plana sa ucrtanim objektima, 2) izvod iz planskog akta-informacija o lokaciji, 3) tehnički opis rešenja (ukoliko postoji može se dostaviti generalni projekat).

Po dobijanju Mišljenja RHMZ i Mišljenja javnog vodoprivrednog preduzeća i ostalih priloga definisanog propisima, na propisanom obrascu O1 - podnosi se Zahtev za dobijanje vodnih uslova.

Vodne uslove izdaje isti organ koji izdaje sva vodna akta.[47]

Zahtev za izdavanje vodnih uslova sadrži: 1) opšte podatke o podnosiocu zahteva; 2) osnovne podatke o objektu, odnosno radovima, planskim dokumentima (prostorni plan jedinice lokalne samouprave i urbanistički (generalni i regulacioni) i plan gazdovanja šumama); 3) mesto, datum, potpis i pečat podnosioca zahteva.

Za izdavanje vodnih uslova obavezno je mišljenje javnog vodoprivrednog preduzeća. Pored navedenog, uz Zahtev za izdavanje vodnih uslova potrebno je obavezno dostaviti: 1) kopiju plana parcele; 2) izvod iz lista nepokretnosti; 3) informaciju o lokaciji (ili lokacijski uslovi) u skladu sa zakonom kojim se uređuje planiranje i izgradnja; 4) mišljenje javnog vodoprivrednog preduzeća; 5) mišljenje republičke organizacije nadležne za hidrometeorološke poslove; 6) mišljenje ministarstva nadležnog za poslove turizma za objekte i radove na teritoriji banjskog mesta; 7) tehnički opis objekta, odnosno radova; 8)

45 Ne postoji propisano šta treba da se podnese uz zahtev za dobijanje Mišljenja od RHMZ - navedeno u tekstu je okvirna procena autora, shodno razgovoru u navedenim organizacijama.

46 Ne postoji propisano šta treba da se podnese uz zahtev za dobijanje Mišljenja od javnih vodoprivrednih preduzeća - navedeno u tekstu je okvirna procena autora, shodno razgovoru u navedenim organizacijama.

47 Izuzetno, shodno članu 118. stav Zakona o vodama, nadležni organ za izdavanje vodnih uslova može podnosioca zahteva osloboditi obaveze da pribavi mišljenje republičke organizacije nadležne za hidrometeorološke poslove, a po potrebi može zahtevati da podnosilac zahteva pribavi mišljenje ministarstva nadležnog za poslove životne sredine i/ili specijalizovane stručne naučne institucije (zavodi, instituti i drugo). Za objekte i radove na teritoriji banjskog mesta podnosilac zahteva je dužan da pribavi mišljenje ministarstva nadležnog za poslove turizma. Ne postoji posebno propisana procedura za dobijanje ovih mišljenja.

grafičke priloge: generalnu situaciju, situaciju, osnove, profile i dr.; 9) ranije izdata vodna akta u slučaju izgradnje novog objekta u sastavu postojećeg ili njegove rekonstrukcije; 10) dokaz o rešenim imovinsko-pravnim odnosima; 11) prethodnu studiju opravdanosti sa generalnim projektom ili studiju opravdanosti sa idejnim projektom sa izveštajem revizione komisije o stručnoj kontroli.

Pored navedenog za postrojenje za koji se zahvata i dovodi voda iz podzemnih voda i za postrojenja, zahtev za izdavanje vodnih uslova sadrži i: 1) uslove javnog komunalnog preduzeća za priključak na javni vodovod ili javnu kanalizaciju; 2) informacija javnog komunalnog preduzeća o položaju objekta u odnosu na zone sanitarne zaštite izvorišta; 3) elaborat ili drugi dokument ovlašćenog pravnog lica o količini vode koja se zahvata, izrađen na osnovu prethodnih istraživanja sprovedenih od strane ovlašćenog pravnog lica tokom najmanje jedne hidrološke godine; 4) elaborat ili drugi dokument ovlašćenog pravnog lica o kvalitetu vode koja se zahvata, izrađen na osnovu prethodnih istraživanja sprovedenih od strane ovlašćenog pravnog lica tokom barem jedne hidrološke godine.

Vodnom saglasnošću se utvrđuje da je tehnička dokumentacija urađena u skladu sa vodnim uslovima. Zahtev za izdavanje vodne saglasnosti se podnosi na propisanom obrascu O3.

Zahtev za izdavanje vodne saglasnosti sadrži: 1) opšte podatke o podnosiocu zahteva; 2) osnovne podatke o objektu, odnosno o radovima i o planskim dokumentima (isti kao i za vodne uslove), kao i 3) mesto, datum, potpis i pečat podnosioca zahteva.

Zahtev za izdavanje vodne saglasnosti za postrojenje i radove za koje su izdati vodni uslovi, sadrži: 1) rešenje o izdavanju vodnih uslova; 2) lokacijske uslove izdate u skladu sa zakonom kojim se uređuje planiranje i izgradnja; 3) odgovarajući projekat (u skladu sa zakonom koji uređuje rudarstvo) sa odgovarajućom licencom za odgovornog projektanta; 4) izvod iz odgovarajućeg projekta (u skladu sa zakonom koji uređuje rudarstvo) koji se odnosi na hidrotehnički i tehnološki deo i deo koji se odnosi na objekte koji utiču na vodni režim; 5) izveštaj o tehničkoj kontroli odgovarajućeg projekta (u skladu sa zakonom koji uređuje rudarstvo) sa odgovarajućom licencom za lice koje je izvršilo tehničku kontrolu tog projekta.

Pored navedenog za objekat postrojenja za koji se zahvata i dovodi voda iz podzemnih voda i za postrojenja, zahtev za izdavanje vodnih uslova sadrži i: 1) rešenje ministarstva nadležnog za poslove zdravlja o određivanju zona sanitarne zaštite izvorišta; 2) rešenje ministarstva nadležnog za poslove

geoloških istraživanja o utvrđenim i razvrstanim rezervama podzemnih voda; 3) uslove javnog komunalnog preduzeća za priključak na javni vodovod ili javnu kanalizaciju; 4) informacija javnog komunalnog preduzeća o položaju objekta u odnosu na zone sanitarne zaštite izvorišta; 5) elaborat ili drugi dokument ovlašćenog pravnog lica o količini vode koja se zahvata, izrađen na osnovu prethodnih istraživanja sprovedenih od strane ovlašćenog pravnog lica tokom barem jedne hidrološke godine; 6) elaborat ili drugi dokument ovlašćenog pravnog lica o kvalitetu vode koja se zahvata, izrađen na osnovu prethodnih istraživanja sprovedenih od strane ovlašćenog pravnog lica tokom barem jedne hidrološke godine.

U slučaju da se ne otpočne sa vršenjem radova, odnosno izgradnjom objekta u roku od dve godine od izdavanja vodne saglasnosti, vodna saglasnost prestaje da važi.

Pre izdavanja vodnih uslova i vodne saglasnosti Investitor, po potrebi, za korišćenje vodnog zemljišta, korišćenje vodoprivrednih objekata i vršenje drugih usluga (u skladu sa Odlukom za tekuću godinu), zaključuje odgovarajući Ugovor sa javnim vodoprivrednim preduzećem ili ministarstvom nadležnim za vodoprivredu – Republička Direkcija za vode.

Kada je objekat izgrađen, a pre dobijanja upotrebne dozvole,[48] potrebno je podneti zahtev za dobijanje Vodne dozvole ministarstvu nadležnom za vodoprivredu, nadležnom organu autonomne pokrajine, ili grada Beograda. Vodna dozvola je potrebna za korišćenje i prirodnih i veštačkih vodotoka, jezera i podzemnih voda, za ispuštanje voda i drugih materija u prirodne i veštačke vodotoke, jezera, podzemne vode i javnu kanalizaciju, u slučaju povećanja ili smanjenja kapaciteta već postojećeg objekta – za povećanje ili smanjenje količine zahvaćenih i ispuštenih voda, izmenjene prirode i kvaliteta ispuštenih voda, kao i za druge radove kojima se utiče na vodni režim. Ova dozvola se izdaje za period od najduže 15 godina, tako da najkasnije dva meseca pre isteka treba produžiti važnost. Ukoliko postoji rešenje o vodnoj dozvoli, pravo stečeno na osnovu vodne dozvole ne može se preneti na treće lice bez saglasnosti izdavaoca, a ovo pravo prestaje: istekom roka, odricanjem prava i ne konzumiranjem prava bez opravdanih razloga duže od 2 godine. Zahtev za izdavanje vodne dozvole se podnosi na propisanom obrascu O6.

Zahtev za izdavanje vodne dozvole sadrži: 1) opšte podatke o podnosiocu zahteva; 2) osnovne podatke (administrativni, hidrografski i geodetski podaci) o objektu, odnosno radovima, kao i mesto, datum, potpis i pečat podnosioca zahteva. Pored navedenih elemenata, ovaj zahtev za objekat za koji je izdata vodna saglasnost ili vodna dozvola, sadrži: 1) rešenje o izdavanju vodne saglasnosti ili vodne dozvole; 2) izveštaj javnog vodoprivrednog preduzeća o ispunjenosti uslova iz vodnih uslova i vodne saglasnosti za izdavanje vodne dozvole; 3) izveštaj komisije o izvršenom tehničkom pregledu objekta; 4) odgovarajući projekat u skladu sa zakonom kojim se uređuje rudarstvo; 5) izvod

48 Upotrebna dozvola se izdaje i za rudarske i za građevinske (energetske) objekte. O upotrebnoj dozvoli za rudarske objekte vidi više u odeljku 2.2.4. ovog Vodiča. O upotrebnoj dozvoli za građevinske (energetske) objekte više u odeljku 3.2.1.10.2. ovog Vodiča.

iz odgovarajućeg projekta u skladu sa zakonom kojim se uređuje rudarstvo. Ukoliko je za objekat izdata upotrebna dozvola, a nije izdata vodna saglasnost, zahtev za izdavanje vodne dozvole sadrži i: 1) upotrebnu dozvolu; 2) izveštaj javnog vodoprivrednog preduzeća o spremnosti objekta za izdavanje vodne dozvole; 3) odgovarajući projekat u skladu sa zakonom koji uređuje rudarstvo; 4) izvod iz odgovarajućeg projekta u skladu sa zakonom kojim se uređuje rudarstvo.

Za objekte i radove za koje je izdata vodna saglasnost ili vodna dozvola i objekta za koje je izdata upotrebna dozvola, a nije izdata vodna saglasnost, pored već navedenih elemenata, zahtev za izdavanje vodne dozvole sadrži: 1) rešenje ministarstva nadležnog za poslove zdravlja o određivanju zona sanitarne zaštite izvorišta; 2) rešenje ministarstva nadležnog za poslove geoloških istraživanja o utvrđenim i razvrstanim rezervama podzemnih voda[49]; 3) saglasnost ministarstva nadležnog za poslove turizma za korišćenje voda sa prirodnim lekovitim svojstvom na teritoriji banjskog mesta; 4) ugovor ili drugi dokument da javno komunalno preduzeće vrši uslugu čišćenja objekta za ispuštanje otpadnih voda i uslugu čišćenja čvrstog otpada; 5) izveštaj ovlašćenog pravnog lica o ispitivanju kvaliteta voda (zahvaćenih i ispuštenih) iz prethodnog perioda; 6) potvrda ovlašćenog pravnog lica o ispravnosti objekata za sakupljanje, odvođenje i prečišćavanje otpadnih voda, uključujući i septičke jame; 7) izveštaj ovlašćenog pravnog lica o ispitivanju nivoa i kvaliteta voda u piezometrima, u zoni skladišnih objekata, kao i 8) baždarine tablice izdate od strane ovlašćenog pravnog lica samo za objekte za skladištenje.

Uz navedene priloge, uz zahtev za izdavanje vodne dozvole, dostavlja se i zapisnik vodnog inspektora.

2.2.2. Odobrenje za izgradnju rudarskih objekata i/ili izvođenje rudarskih radova

Eksploatacija rezervi mineralnih sirovina i geotermalnih resursa se izvodi prema investiciono-tehničkoj dokumentaciji za izgradnju rudarskih objekata i/ili izvođenje rudarskih radova.

Investiciono-tehničkoj dokumentaciji za izvođenje rudarskih radova izrađuje se na osnovu rezultata istraživanja, odnosno elaborata o resursima i rezervama, razvrstanih u skladu sa propisima o klasifikaciji resursa i rezervi i druge dokumentacije kojima se razrađuju i analiziraju tehnički, tehnološki i ekonomski uslovi izvođenja radova, uslovi bezbednosti i zdravlja na radu, zaštite od požara, zaštite životne sredine, zaštite kulturnih dobara i dobara koja uživaju prethodnu zaštitu, zaštite voda i drugi uslovi od uticaja na ocenu tehničko-tehnološke i ekonomske opravdanosti eksploatacije i izvođenja rudarskih radova.

Rudarski radovi van eksploatacionog polja izvode se prema rudarskom projektu za izvođenje rudarskih radova van eksploatacionog polja.

49 Zahtev za izdavanje vodne dozvole sadrži i rešenje ministarstva nadležnog za poslove geoloških istraživanja o utvrđenim i razvrstanim rezervama podzemnih voda, ukoliko se za potrebe procesa vrši zahvatanje voda bunarima.

Investiciono-tehničkom dokumentacijom smatra se: 1) prethodna studija opravdanosti 2) studija izvodljivosti eksploatacije ležišta mineralne sirovine; 3) dugoročni program eksploatacije; 4) rudarski projekti; i 5) godišnji operativni plan. Rudarskim projektom smatra se: 1) glavni rudarski projekat; 2) dopunski rudarski projekat; 3) tehnički rudarski projekat; 4) tehnički rudarski projekat za eksploataciju mineralnih resursa za dobijanje prirodnih građevinskih materijala; 5) rudarski projekat na istraživanju čvrstih mineralnih sirovina; 6) uprošćeni rudarski projekat. Za rudarske projekte vrši se tehnička kontrola.

Izgradnja rudarskih objekata i izvođenje rudarskih radova vrše se po glavnom i dopunskom rudarskom projektu i izvode se na osnovu rešenja o odobrenju za izvođenje rudarskih objekata i/ili izvođenje rudarskih radova.

Uz zahtev za izdavanje odobrenja za izgradnju rudarskih objekata i/ili izvođenje rudarskih radova dostavlja se: 1) dokaz o plaćenoj republičkoj administrativnoj taksi, odnosno pokrajinskoj administrativnoj taksi kada se eksploatacija vrši na teritoriji pokrajine; 2) rudarski projekat overen od strane nosioca odobrenja za eksploataciono polje i tehničke kontrole; 3) saglasnost nosioca eksploatacije i/ili odobrenja za eksploataciono polje na projekat; 4) izjašnjenje organa jedinice lokalne samouprave nadležnog za poslove urbanizma u pogledu usaglašenosti eksploatacije sa urbanističko-planskom dokumentacijom i potrebe izrade planskog dokumenta nižeg reda; 5) dokaz o pravu svojine ili korišćenja, zakupa ili saglasnosti, odnosno pravu službenosti za površinu zemljišta na kojoj je planirana izgradnje rudarskih objekata i izvođenje rudarskih radova za najmanje deset godina; 6) potvrda o resursima i rezervama mineralnih sirovina; 7) akt organa nadležnog za poslove zaštite životne sredine kojim se daje saglasnost na studiju o proceni uticaja eksploatacije na životnu sredinu; 8) saglasnost nadležne ustanove za zaštitu spomenika kulture; 9) akt nadležnog ministarstva za poslove vodoprivrede; 10) saglasnost na tehničku dokumentaciju u pogledu mera zaštite od požara izdatu od organa nadležnog za poslove zaštite od požara u skladu sa posebnim propisima; 11) menica ili dokaz o garanciji banke ili korporativna garancija za izvršenje poslova sanacije i rekultivacije degradiranog zemljišta usled eksploatacije u korist Republike Srbije, izdate radi obezbeđenja urednog izmirenja obaveze izvršenja poslova sanacije i rekultivacije degradiranog zemljišta usled eksploatacije utvrđene ovim zakonom.

Odobrenje za izgradnju rudarskih objekata i/ili izvođenje rudarskih radova je preduslov za izvođenje radova na rudarskom projektu. Odobrenje izdaje ministarstvo nadležno za poslove rudarstva, a za radove na teritoriji autonomne pokrajine – nadležni organ autonomne pokrajine.

Odobrenje za izgradnju rudarskih objekata i/ili izvođenje rudarskih radova sadrži: 1) podatke o investitoru: tačan naziv, matični broj i sedište; 2) vrstu i tip rudarskog projekta, naziv i sastavne delove projekta; 3) naziv ležišta i vrstu mineralne sirovine, broj eksploatacionog polja, godišnji kapacitet proizvodnje i naziv j naziv jedinice lokalne samouprave na čijoj teritoriji će se izvoditi rudarski radovi; 4) obaveze u vezi pribavljanja upotrebne dozvole za izgrađene rudarske objekte; 5) obaveze u vezi sanacije i rekultivacije prostora, angažovanja lica sa odgovarajućom stručnom spremom na poslovima tehničkog rukovođenja, stručnog nadzora i bezbednosti i zdravlja na radu, blagovremenog izveštavanja nadležnog organa i inspekcijskih službi o vršenju rudarskih radova; 6) u slučaju kada je odobren projekat za izgradnju rudarskih objekata rok do kada preduzeće mora pribaviti rešenje kojim se odobrava izvođenje rudarskih radova na eksploataciji mineralne sirovine, koji ne može biti duži od pet godina; 7) vrsta i rok važenja dostavljenog instrumenta obezbeđenja; 8) rok važenja rešenja kojim se odobrava izvođenje rudarskih radova, definisan u skladu sa dokazom o pravu svojine ili korišćenja, odnosno službenosti za površinu na kojoj je planirano izvođenje rudarskih radova, osim u slučaju eksploatacije nafte i gasa; 9) uslova i obaveze u vezi vršenja eksploatacije u pogledu minimalnih i maksimalnih rastojanja radi zaštite ljudi i objekata, određene tehničkim propisima, uslovima utvrđenim rešenjima nadležnih zavoda za zaštitu spomenika kultura kao i uslovima utvrđenim rešenjima drugih nadležnih organa.

Izvođenju rudarskih radova po tehničkim rudarskim projektima i uprošćenim rudarskim projektima može se pristupiti na osnovu prijave koja se podnosi organu koji je izdao odobrenje za istraživanje ili odobrenje za eksploataciju i odobrenje za izvođenje rudarskih radova, pre početka izvođenja radova. Uz ovu prijavu dostavlja se i primerak tehničkog i uprošćenog rudarskog projekta.

Nosilac eksploatacije je dužan da o početku izvođenja radova izvesti rudarskog inspektora i organ jedinice lokalne samouprave i nadležnu ustanovu zaštite spomenika kulture na čijoj teritoriji će izvoditi rudarske radove najkasnije 15 dana pre početka izvođenja radova.

2.2.3. Rudarski objekti

Rudarskim objektima, postrojenjima i uređajima, smatraju se objekti, postrojenja, mašine i uređaji koji su u funkciji istraživanja, eksploatacije, transporta mineralnih sirovina i drugih geoloških resursa i to: objekti i postrojenja u sastavu rudnika koji su neposredno vezani za tehnološki proces istraživanja, eksploatacije i pripreme mineralnih sirovina i odlaganje jalovine, šljake, pepela i mineralnih sirovina na deponijama za homogenizaciju; mašine i uređaji namenjeni svim fazama tehnoloških procesa podzemne i površinske eksploatacije mineralnih sirovina i pripremi mineralnih sirovina; mašine i uređaji namenjeni svim fazama tehnološkog procesa otkopavanja čvrstih mineralnih sirovina kroz bušotine; mašine i uređaji namenjeni svim fazama tehnološkog procesa otkopavanja mineralnih sirovina pod vodom; mašine i uređaji namenjeni svim fazama tehnološkog procesa gasifikacije uglja neposredno u ložištu; objekti, postrojenja i uređaji za zaštitu rudnika od podzemnih i površinskih voda;

objekti, postrojenja i uređaji na naftnim i gasnim poljima koji su neposredno vezani za tehnološki proces istraživanja, eksploataciju, separaciju, pripremu i transport nafte i sabiranje gasa objekti za podzemno skladištenje prirodnog gasa i sirove nafte, kao i drugih materija na eksploatacionom polju; objekti, postrojenja i uređaji koji čine celinu sa električnom mrežom rudnika; glavni i pomoćni magacini eksploziva i eksplozivnih sredstava na eksploatacionom polju; objekti, postrojenja i uređaji za eksploataciju mineralnih sirovina cevnim sistemom i bušotinama i objekti i postrojenja koji služe za separaciju peska, šljunka i kamena.[50]

Rudarski objekti su vezani neposredno za tehnološki proces istraživanja, eksploatacije i transporta podzemnih voda na eksploatacionom polju.

2.2.4. Upotrebna dozvola za rudarske objekte

Upotrebna dozvola za rudarske objekte je upravni akt (rešenje) koji izdaje ministarstvo nadležno za poslove rudarstva, odnosno nadležni organ autonomne pokrajine, ukoliko se objekat nalazi na njenoj teritoriji, kojim odobrava upotreba rudarskog objekta ili njegovog dela.

Ako je za izdavanje odobrenja za upotrebu rudarskog objekta posebnim zakonom propisana obaveza prethodnog pribavljanja saglasnosti ili dozvole drugih organa ili organizacija, uz zahtev za izdavanje upotrebne dozvole za rudarske objekte podnosi se i ta saglasnost, odnosno dozvola.

Upotrebna dozvola se izdaje ako se utvrdi: 1) da je rudarski objekat ili njegov deo izgrađen u skladu sa rudarskim projektom na osnovu koga je izdato odobrenje za izvođenje rudarskih radova, u skladu sa propisima čija je primena obavezna pri izgradnji rudarskih objekata; 2) da su ispunjeni propisani uslovi u pogledu mera bezbednosti i zdravlja na radu, zaštite voda, zaštite od požara, zaštite životne sredine i drugi propisani uslovi za izgradnju i korišćenje te vrste objekata; 3) da su pribavljene saglasnosti ili dozvole drugih organa u skladu sa posebnim propisima, na osnovu uslova izdatih u proceduri pribavljanja odobrenja za vršenje eksploatacije; 4) da je rešenjem nadležnog organa za zaštitu od požara utvrđena podobnost objekta za upotrebu u pogledu sprovedenosti mera zaštite od požara predviđenih u tehničkoj dokumentaciji u skladu sa posebnim propisom.

Ispunjenost navedenih uslova proverava se tehničkim pregledom objekta.

2.2.5. Licence prava rudarstva

Licenca za fizička lica koje se izdaju u vezi vršenja poslova geoloških istraživanja, u skladu sa Zakonom o rudarstvu i geološkim istraživanjima, a koja se isključivo odnosi na hidrogeotermalnu energiju je licenca za projektovanje, tehničku kontrolu, izvođenje i stružni nadzor geoloških istraživanja za hidrogeološka istraživanja i istraživanje geotermalnih resursa.

50 Član 40. Tačka 3) Zakona o rudarstvu i geološkim istraživanjima.

Ostale licence koje su potrebne u poslovima vezanim za geološka istraživanja i eksploataciju mineralnih sirovina i izvođenje rudarskih radova i izgradnju rudarskih objekata su opštijeg karaktera i ni jedna nije isključivo vezana samo za specifična znanja o hidrogeotermalnim resursima.

Licence prava rudarstva mogu da dobiju fizička lica koja imaju: 1) odgovarajuću stručnu spremu; 2) ovlašćenje za obavljanje poslova u skladu sa odredbama ovog zakona; 3) pet godina radnog iskustva na odgovarajućim poslovima, osim u slučaju licence za kompetentno lice za geologiju i kompetentno lice za rudarstvo za koje je potrebno deset godina radnog iskustva.

Licence za pravna lica isključivo iz oblasti hidrogeotermalnih resursa za obavljanje određenih poslova u oblasti geoloških istraživanja su: 1) licenca za izradu i tehničku kontrolu geološke tehničke dokumentacije za podzemne vode i hidrogeotermalne resurse; 2) licenca za uvođenje geoloških istraživanja i stručni nadzor za izvođenje geoloških istraživanja za podzemne vode i hidrogeotermalne resurse. Ostale licence za pravna lica iz oblasti rudarstva nisu specifično vezane za oblast hidrogeotermalnih resursa.

Licence prava rudarstva izdaje rešenjem ministarstvo nadležno za poslove rudarstva i geoloških istraživanja uz stručnu pomoć radne grupe koju obrazuje Ministar nadležan za poslove rudarstva i geoloških istraživanja.

3.

STICANJE PRAVA NA IZGRADNJU POSTROJENJA

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Zakonom o rudarstvu su definisani rudarski objekti i to objekti koji su u funkciji istraživanja, eksploatacije i transporta mineralnih sirovina i drugih geoloških resursa.[51]

Prema Zakonu o planiranju i izgradnji izgrađuju se objekti, tj. građevine spojene sa tlom, koje predstavljaju fizičku, funkcionalnu, tehničko-tehnološku ili biotehničku celinu (zgrade svih vrsta, saobraćajni, vodoprivredni i energetski objekti, objekti infrastrukture elektronskih komunikacija - kablovska kanalizacija, objekti komunalne infrastrukture, industrijski, poljoprivredni i drugi privredni objekti, objekti sporta i rekreacije, groblja, skloništa i sl.).[52]

Uspostavljanje granice između rudarskih objekata i objekata shodno Zakonu o planiranju i izgradnji (građevinski objekti) i Zakonu o energetici (energetski objekat) nije jednostavno, a podela objekata na rudarske objekte i energetske objekte vrši se u zavisnosti od namene objekta. Izgradnja objekata koji su namenjeni za direktnu eksploataciju hidrogeotermalne energije, u smislu njenog korišćenja za direktno grejanje objekata za stanovanje ili za snabdevane toplovoda za distribuciju toplotne energije izvršavala bi se po Zakonu o rudarstvu i geološkim istraživanjima.

Potrebno je razlikovati izgradnju objekata za neposrednu eksploataciju geotermalne energije od obavljanja delatnosti proizvodnje toplotne i/ili električne energije. Kada se radi o izgradnji samog objekta (rudarskog ili energetskog) oni se grade u skladu sa merodavnim zakonom, ali se obavljanje delatnosti proizvodnje toplotne i/ili električne energije uređuje u skladu sa Zakonom o energetici, Zakonom o javnim preduzećima[53] i Zakonom o komunalnim delatnostima.

Ranije je navedeno, da se na osnovu Zakona o javno-privatnom partnerstvu i koncesijama[54] može istovremeno ostvariti i pravo na istraživanje i eksploataciju hidrogeotermalne energije i obavljanja delatnosti od opšteg interesa (komunalnih delatnosti). Ovakvo određenje predmeta koncesije ukazuje da se shodno ovom zakonu može tražiti koncesija koja bi obuhvatila celinu istraživanja i eksploatacije hidrogeotermalne energije i obavljanje delatnosti proizvodnje toplotne energije.

51 Član 3. tačka 40) Zakona o rudarstvu i geološkim istraživanjima.
52 Član 2. tačka 22) Zakona o planiranju i izgradnji.
53 Zakon o javnim preduzećima („Sl. glasnik RS" br. 15/16).
54 Zakon o javno-privatno partnerstvu i koncesijama u članu 11. utvrđuje predmet koncesije.

3.1. Objekti za direktno korišćenje hidrogeotermalne energije[55]

U slučaju kada se hidrogeotermalna energije koristi direktno, za sopstvene potrebe, od strane lica koje je nosilac eksploatacionog prava, za grejanje u stambenoj zgradi, školi, bolnici, banji i slično, bez povezivanja na sistem za daljinsko grejanje ili na drugi način snabdevanja toplotnom energijom trećih lica putem korišćenja hidrogeotermalnog resursa niske ili srednje entalpije nije potrebno pribaviti pravo na eksploataciju hidrogeotermalnog resursa, ali je potrebno pribaviti sva ostala prava koja se odnose na geološka istraživanja i korišćenje voda, kao i utvrditi eksploatacioni prostor i količine rezervi i/ili resursa podzemnih voda niske entalpije na osnovu odobrenja za eksploatacioni prostor.

Građevinski objekat koji koristi grejanje na hidrogeotermalnu energiju se gradi u skladu sa propisima o planiranju i izgradnji. U navedenom slučaju je potrebno da, već u zahtevu za izdavanje lokacijskih uslova, obavezno sadrži i podatke o načinu korišćenja hidrogeotermalnog izvora i vraćanja iskorišćene vode iz hidrogeotermalnog izvora u zemlju, kanalizaciju ili drugi način, kao i neophodna vodna akta, ako ceo projekat nije prikazan u postupku dobijanja vodnih akata za istražne radove.[56]

Potrebno je navesti da ukoliko se eksploatacija hidrogeotermalne energije vrši na području banje, nosilac eksploatacionog prava treba da stekne pravo korišćenja prirodnog lekovitog faktora u banji, tj. termalne vode, kao i da plaća naknadu za njegovo korišćenje shodno Zakonu u banjama.

3.2. Postupak izgradnje postrojenja

Energetski objekti za obavljanje proizvodnje energije iz hidrogeotermalnih izvora (u daljem tekstu: postrojenja) prema delatnosti koju obavljaju mogu biti: 1) za proizvodnju električne energije; 2) postrojenja za proizvodnju toplotne energije i 3) postrojenja za proizvodnju i električne i toplotne energije u kombinovanom ciklusu.

U zavisnosti o kojom postrojenju se radi, na njega se mogu primenjivati različite odredbe istih propisa. Različitost ovih odredbi se najčešće odnosi na nadležnost organa koji donosi rešenje u konkretnom upravnom postupku, ali može se odnositi i na neke druge uslove.

Da bi se u Republici Srbiji izgradio i koristio bilo koji objekat, pa i postrojenje za proizvodnju električne i/ili toplotne energije, neophodno je da se ispune sledeći uslovi: 1) pribavljanje informacije o lokaciji ili lokacijskih uslova; 2) pribavljanje energetske dozvole; 3) pribavljanje građevinske dozvole; 4) izgradnja objekta i tehnički pregled objekta i 5) pribavljanje upotrebne dozvole.

Stupanjem na snagu Zakona o izmenama i dopunama Zakona o planiranju i izgradnji iz 2014. godine, uvedena je objedinjena procedura za izdavanje i izmene lokacijskih uslova; izdavanje građevinske dozvole i izmene rešenja o građevinskoj dozvoli; prijavu radova; izdavanje upotrebne dozvole; kao i u slučajevima izdavanja rešenja za izgradnju objekata i izvođenje radova za koje se ne izdaje građevinska dozvola za izgradnju postrojenja (u daljem

55 Zakon o rudarstvu i geološkim istraživanjima poznaje kvantitativnu razliku u pogledu količine korišćene/eksploatisane hidrogeotermalne energije. Ne smatra se eksploatacijom hidrogeotermalne energije korišćenje hidrogeotermalne energije niske i srednje entalpije – član 3. tačka 37) i član 58-63. Zakona o rudarstvu i geološkim istraživanjima iz 2015. godine. Ovim zakonom (član 33. i član 64.) su predviđena još neka dodatna skraćenja procedure kada se radi o korišćenju petrogeotermalnih resursa za potrebe snabdevanja toplotnom energijom porodičnog domaćinstva fizičkog lica.

56 Član 117. tačka 18) i 24) Zakona o vodama.

tekstu: Akta objedinjene procedure) i čijom primenom u velikoj meri treba da bude ubrzan postupak pribavljanja ovih akata, na način da se imaoci javnih ovlašćenja (državni organi, organi autonomne pokrajine i lokalne samouprave, posebne organizacije i druga lica koja vrše javna ovlašćenja u skladu sa zakonom) po službenoj dužnosti, u veoma kratkim rokovima, izdaju uslove (za priključenje na infrastrukturnu mrežu, upis prava svojine na izgrađenom objektu i sl.), saglasnosti ili druge isprave koji sadrže neophodne elemente za izdavanje Akata objedinjene procedure. Imaoci javnih ovlašćenja ove uslove, saglasnosti ili druge isprave izdaju neposredno organima za izdavanja Akata objedinjene procedure.[57][58]

Građenje objekata u Republici Srbiji, formalno, započinje dobijanjem građevinske dozvole, a vrši se na osnovu građevinske dozvole i tehničke dokumentacije, pod uslovima i na način utvrđen Zakonom o planiranju i izgradnji.

Pravilnikom o energetskoj dozvoli[59] utvrđeno je da je jedan od uslova da bi se izdala energetska dozvola pribavljanje informacije o lokaciji ili lokacijskih uslova. Iz navedenog proizilazi da se postupak pribavljanja energetske dozvole može sprovesti posle pribavljanja Informacije o lokaciji ili lokacijskih uslova.

U postupku pribavljanja građevinske dozvole, za objekte snage veće od 1 MW može se tražiti, a za snage veće od 50 MW je obavezna, izrada Studije o proceni uticaja objekta na životnu sredinu. Za objekte snage preko 50 MW potrebno je i pribavljanje integrisane dozvole.

Potrebno je ukazati, da na zaštićenim područjima postoji prioritetna zabrana izgradnje objekata za proizvodnju energije, shodno Zakonu o zaštiti prirode i Uredbi o režimima zaštite, u zavisnosti od stepena režima zaštićena područjima režima zaštite I, II i III stepena ne mogu se graditi hidrogeotermalna postrojenja.

3.2.1. Izbor lokacije, uvid u važeće planske dokumente i informacija o lokaciji

Prvi korak potencijalnog investitora, odnosno lica za čije potrebe se gradi objekat i na čije ime će da glasi građevinska dozvola za izgradnju postrojenja je, svakako, izbor lokacije. Lokacija i njen izbor su već predodređeni samim mestom gde se vrši eksploatacija hidrogeotermalne energije.

Drugi korak investitora[60] je provera da li je u važećim planskim dokumentima[61] na izabranoj lokaciji predviđena izgradnja energetskog objekta. Treba imati u vidu da se postrojenja mogu graditi i na poljoprivrednom zemljištu, a uz prethodno pribavljenu saglasnost ministarstva nadležnog za poljoprivredu. U članu 10. Zakon o šumama uređena su pravila o promeni namene šumskog zemljišta, koja se primenjuje i u slučaju da je lokacija za izgradnju objekta odabrana na šumskom zemljištu.

U jedinici lokalne samouprave, na čijoj teritoriji se nalazi izabrana lokacija, može se dobiti na uvid važeći planski dokument u kome se može proveriti da li je na toj lokaciji predviđena

57 Objedinjenom procedurom nije obuhvaćeno izdavanje informacije o lokaciji i izdavanje uslova za projektovanje i priključenje na prenosni sistem električne energije, za pojedine objekte, u skladu sa zakonom kojim se uređuje energetika.

58 Od 01.01.2016. godine, sve prijave u okviru objedinjene procedure moguće podnositi isključivo u elektronskoj formi i to putem sledeće internet stranice: http://gradjevinskedozvole.rs/. Za elektronsko potpisivanje dokumenata neophodno je posedovanje kvalifikovanog elektronskog sertifikata.

59 Pravilnik o energetskoj dozvoli („Sl. glasnik RS" br. 15/15).

60 Pod pojmom „investitor" podrazumeva se lice za čije potrebe se gradi objekat i na čije ime glasi građevinska dozvola – član 2. tačka 21) Zakona o planiranju i izgradnji. Ovaj zakon u članu 2. tačka 43) utvrđuje i pojam „finansijer" pod kojim se podrazumeva lice koje po osnovu zaključenog i overenog ugovora sa investitorom finansira, odnosno sufinansira izgradnju, dogradnju, rekonstrukciju, adaptaciju, sanaciju ili izvođenje drugih građevinskih odnosno investicionih radova predviđenih ovim zakonom i na osnovu tog ugovora stiče određena prava i obaveze koje su ovim zakonom propisane za investitora u skladu sa tim ugovorom, osim sticanja prava svojine na objektu koji je predmet izgradnje.

61 Zakonom o planiranju i izgradnji je uređena situacija u slučaju da ne postoji važeći planski dokument. Potrebno je takođe ukazati da se prilikom izrade planskih dokumenata vrši Strateška procena uticaja na životnu sredinu.

izgradnja energetskih objekata. Za željenu lokaciju se zatim podnosi Zahtev za dobijanje Informacije o lokaciji, a radi dobijanja podataka o mogućnostima i ograničenjima gradnje na razmatranoj katastarskoj parceli u skladu sa važećim planskim dokumentom.

Zahtev za izdavanje Informacije o lokaciji, podnosi se nadležnom organu za izdavanje lokacijskih uslova. U prilogu zahteva dostavlja kopija plana parcele/parcela, a koja se prethodno traži u nadležnoj službu za katastar nepokretnosti na teritoriji opštine. Preporuka je da se uporedo sa zahtevom za izdavanje kopije plana, službi za katastar nepokretnosti podnese i zahtev za izdavanje prepisa lista nepokretnosti za predmetne katastarske parcele, kako bi se utvrdio vlasnik zemljišta.

Informacija o lokaciji pored naziva podnosioca zahteva, broja katastarske parcele i mesta na kom se nalazi sadrži[62] i podatke o: 1) planskom dokumentu na osnovu koga je izdaje; 2) zoni u kojoj se nalazi; 3) nameni zemljišta; 4) regulacionim i građevinskim linijama; 5) pravilima građenja; 6) uslovima priključenja na infrastrukturu; 7) potrebi izrade detaljnog urbanističkog plana ili urbanističkog projekta[63]; 8) katastarskoj parceli, odnosno o tome da li katastarska parcela ispunjava uslove za građevinsku parcelu sa uputstvom o potrebnom postupku za formiranje građevinske parcele; 9) inženjersko geološkim uslovima; 10) posebnim uslovima za izdavanje lokacijskih uslova (spisak uslova). Informacija o lokaciji omogućava licu, na čije ime je izdata da sagleda koje uslove će treba ti da ispuni da bi mogao graditi objekat na određenoj lokaciji. Ovi uslovi obuhvataju posebne uslove (uslovi zaštite spomenika kulture, uslovi očuvanja životne sredine, itd.) i tehničke uslove (mesto i način tehničkih priključaka objekta na infrastrukturne vodove, kao i njihovi kapaciteti).

62 Pravilnik o sadržini informacije o lokaciji i o sadržini lokacijske dozvole.

63 Urbanistički projekat se izrađuje za jednu ili više građevinskih parcela (formiranu građevinsku parcelu) na overenom katastarsko-prostornom planu. Urbanistički projekat se izrađuje kada je to predviđeno planskim dokumentom ili na zahtev investitora, za potrebe urbanističko-arhitektonske razrade lokacija. Urbanistički projekat se izrađuje za jednu ili više katastarskih parcela na overenom katastarsko-topografskom planu. Ovim projektom za urbanističko-arhitektonsku razradu lokacije može se utvrditi promena i precizno definisanje planiranih namena u okviru planom definisanih kompatibilnosti, prema proceduri za potvrđivanje urbanističkog projekta utvrđenoj Zakonom o planiranju i izgradnji. Promena i precizno definisanje planiranih namena, dozvoljena je kada je planom predviđena bilo koja od kompatibilnih namena. Urbanistički projekat sadrži: 1) situaciono rešenje, kompozicioni plan i parterno, odnosno pejzažno rešenje; 2) idejna urbanistička i arhitektonska rešenja objekata; 3) prikaz postojeće saobraćajne i komunalne infrastrukture sa predlozima priključaka na spoljnu mrežu; 4) opis, tehnički opis i objašnjenje rešenja iz urbanističkog projekta. Urbanistički projekat može da izrađuje privredno društvo, odnosno drugo pravno lice ili preduzetnik koji je upisan u registar za izradu urbanističkih planova i tehničke dokumentacije, a izradom projekta rukovodi odgovorni licencirani urbanista arhitektonske struke. Organ jedinice lokalne samouprave nadležan za poslove urbanizma potvrđuje da urbanistički projekat nije u suprotnosti sa važećim planskim dokumentom, Zakonom o planiranju i izgradnji i podzakonskim aktima ovog zakona. Pre potvrđivanja urbanističkog projekta, ovaj organ organizuje javnu prezentaciju u trajanju od sedam dana, tokom koje evidentira sve primedbe, a zatim u roku od tri dana urbanistički projekat sa svim primedbama i sugestijama dostavlja Komisiji za planove, koja je dužna da u roku od osam dana razmotri sve primedbe i sugestije izvrši stručnu kontrolu i utvrdi da li je urbanistički projekat u suprotnosti sa planom šireg područja, o čemu sačinjava pisani izveštaj sa predlogom o prihvatanju ili odbijanju urbanističkog projekta. Nadležni organ jedinice lokalne samouprave je dužan da u roku od pet dana od dana dobijanja predloga komisije potvrdi ili odbije potvrđivanje urbanističkog projekta i o tome bez odlaganja pisanim putem obavesti podnosioca zahteva. Ukoliko je potvrdio urbanistički projekat ovaj organ je dužan da u roku od pet dana od dana potvrđivanja, projekat objavi na svojoj internet stranici. Investitor ima pravo da na obaveštenje o potvrdi ili odbijanju potvrđivanja urbanističkog projekta podnese prigovor u roku od tri dana od dana prijema rešenja.

Informaciju o lokaciji izdaje organ nadležan za izdavanje lokacijskih uslova, u roku od osam dana od dana podnošenja zahteva, uz naknadu stvarnih troškova izdavanja te informacije.[64]

3.2.2. Energetska dozvola[65]

Energetska dozvola[66] je jedan od uslova za izdavanje građevinske dozvole i podnosi se uz zahtev za izdavanje građevinske dozvole.

Za dobijanje energetske dozvole neophodno je da budu ispunjeni kriterijumi za izgradnju proizvodnih energetskih objekata predviđeni Zakonom o energetici[67] i Pravilnikom o energetskoj dozvoli. Energetsku dozvolu za izgradnju objekata za proizvodnju električne energije snage 1 MW i više i objekata za kombinovanu proizvodnju električne i toplotne energije u termoelektranama-toplanama električne snage 1 MW i više i ukupne toplotne snage 1 MW i više izdaje ministarstvo nadležno za poslove energetike. Energetsku dozvolu za izgradnju objekata za proizvodnju toplotne energije snage 1 MW i više izdaje jedinica lokalne samouprave na čijem području se gradi postrojenje.

Za postrojenja za proizvodnju električne energije snage ispod 1 MW i za postrojenja za proizvodnju toplotne energije snage ispod 1 MW nije predviđeno izdavanje energetske dozvole, što znači da se za ove objekte izdaje građevinska dozvola, bez sprovođenja postupka izdavanja energetske dozvole.

Zahtev za izdavanje energetske dozvole za postrojenje za proizvodnju električne energije i za kombinovanu proizvodnju električne i toplotne energije podnosi se ministarstvu nadležnom za poslove energetike, dok se zahtev za izdavanje energetske dozvole za postrojenje za proizvodnju toplotne energije podnosi nadležnom organu jedinice lokalne samouprave. Dokaz o pravu svojine, odnosno pravu zakupa zemljišta na kome se planira izgradnja energetskog objekta nije uslov za izdavanje energetske dozvole. [68]

64 U praksi se događa da organ koji izdaje informaciju o lokaciji izda različitim zainteresovanim licima informaciju o lokaciji za isto postrojenje, bez obaveštenja da je već izdao informaciju o lokaciji za isti ili sličan objekat na istoj lokaciji. Prilikom pribavljanja informacije o lokaciji preporučuje se proveriti da li je već izdata informacija o lokaciji za isti ili sličan objekat na istoj lokaciji.

65 Pored energetske dozvole, Zakonom o energetici je predviđena procedura sprovođenja javnog tendera. Ova procedura se sprovodi u slučaju da se putem izdavanja energetskih dozvola ne mogu obezbediti novi proizvodni kapaciteti ili kada preduzete mere energetske efikasnosti, nisu dovoljne za obezbeđivanje sigurnog i redovnog snabdevanja električnom energijom. O sprovođenju javnog tendera odlučuje Vlada, na predlog ministarstva nadležnog za poslove energetike.

66 U Zakonu o energetici iz 2004. godine bilo je izričito propisano da se energetska dozvola izdaje u skladu sa Strategijom razvoja energetike Republike Srbije i sa Programom ostvarivanja ove strategije.

67 Za izdavanje energetske dozvole moraju se ispuniti uslovi koji se odnose na: 1) pouzdan i siguran rad energetskog sistema; 2) uslove za određivanje lokacije i korišćenja zemljišta; 3) mogućnost priključenja objekta na postojeći energetski sistem; 4) energetsku efikasnost; 5) uslove korišćenja primarnih izvora energije; 6) zaštitu na radu i bezbednost ljudi i imovine; 7) zaštitu životne sredine; 8) ekonomsko-finansijsku sposobnost podnosioca zahteva da realizuje izgradnju energetskog objekta; 9) doprinos kapaciteta za proizvodnju električne energije u ostvarivanju ukupnog udela energije iz obnovljivih izvora energije u bruto finalnoj potrošnji energije u skladu sa Nacionalnim akcionim planom; 10) doprinos kapaciteta za proizvodnju električne energije smanjenju emisija - član 33. Zakona o energetici.

68 Član 33. stav 2. Zakona o energetici.

Zahtev za izdavanje energetske dozvole[69] sadrži podatke o: 1) podnosiocu zahteva; 2) energetskom objektu; 3) vrednosti investicije; 4) načinu obezbeđenja finansijskih sredstava; 5) predviđenom eksploatacionom veku objekta, kao i načinu sanacije lokacije po završetku eksploatacionog veka objekta; 6) usklađenost sa odgovarajućim planskim dokumentima u skladu sa zakonom kojim se uređuju uslovi i način uređenja prostora, uređivanje i korišćenje građevinskog zemljišta i izgradnja objekata; 7) roku završetka gradnje energetskog objekta. Ukoliko se izgradnja objekta planira na eksploatacionom polju, potrebno je dostaviti i saglasnost ministra nadležnog za poslove geologije i rudarstva.

Pravilnikom o energetskoj dozvoli uređen je Obrazac zahteva za izdavanje energetske dozvole, posebno za izgradnju energetskog objekta za proizvodnju električne energije, a posebno za izgradnju energetskog objekta za proizvodnju toplotne energije.

U zavisnosti od vrste i namene energetskog objekta za koji se pribavlja energetska dozvola, propisani su zahtevi za izdavanje energetske dozvole i to:

1) Obrazac O-1 - Zahtev za izdavanje - produženje roka važenja energetske dozvole za izgradnju energetskog objekta za proizvodnju električne energije snage 1 MW i više, objekta za proizvodnju električne energije snage do 1 MW koji kao primarni energetski resurs koriste vodu i objekta za kombinovanu proizvodnju električne i toplotne energije u termoelektranama - toplanama električne snage 1 MW i više i ukupne toplotne snage 1 MW i više;
2) Obrazac O-8 - Zahtev za izdavanje - produženje roka važenja energetske dozvole za izgradnju energetskog objekta za proizvodnju toplotne energije snage 1 MW i više.

U obrascima Zahteva za izdavanje energetske dozvole za izgradnju postrojenja O-1 i O-8, potrebno je navesti sledeće podatke: 1) opšte podatke o podnosiocu zahteva (naziv, adresa, država, matični broj podnosioca, poreski identifikacioni broj, pravna forma podnosioca zahteva, podaci o zastupniku, podaci o kontakt osobi); 2) osnovne podatke o objektu (naziv objekta, lokacija objekta, opština, prostorne koordinate proizvodnog objekta, tehnički podaci o energetskom objektu, osnovno i rezervno gorivo); 3) vrednost investicije; 4) ekonomsko-finansijska sposobnost investitora za realizaciju izgradnje energetskog objekta (položeni depozit ili prethodno uložena sredstva za izgradnju ovog objekta); 5) predviđeni radni vek objekta 6) prilozi uz zahtev: 6.1) dokazi za pravno i fizičko lice, 6.2) informacija o lokaciji ili lokacijski uslovi, 6.3) overena izjava odgovornog projektanta o primeni tehničkih propisa, 6.4) potvrda o uplati depozita ili overen dokument kojim se dokazuje ulaganje sredstava u izgradnju energetskog objekta, 6.5) mišljenje operatora sistema o uslovima i mogućnostima priključenja energetskog objekta na energetski sistem, 6.6) prethodna studija opravdanosti sa generalnim projektom/studija opravdanosti sa idejnim projektom, 6.7) izveštaj revizione komisije - ukoliko je potreban.

69 Član 34. Zakona o energetici.

Obrasci O-1 i O-8 su skoro identični, samo što su osnovni podaci o objektu u pogledu tehničkih podataka i planiranih vrsta goriva prilagođeni vrsti objekta i u obrascu O-8 se pojavljuje utvrđenje učešća energetskog objekta kod sistemskih usluga potrebnih mreži daljinskog grejanja, ako podnosilac zahteva za izdavanje energetske dozvole predlaže eventualne mogućnosti učešća pri sistemskim uslugama.[70].

Uz zahtev za izdavanje energetske dozvole, investitor podnosi: 1) za pravno lice, odnosno preduzetnika: izvod o registrovanim podacima (poslovno ime, pravna forma, sedište, delatnost, poreski identifikacioni broj, matični broj); 2) za fizičko lice: fotokopija lične karte, uverenje o državljanstvu i fotokopija pasoša, ako je podnosilac strani državljanin; 3) informacija o lokaciji ili lokacijski uslovi;[71] 4) overena izjava odgovornog projektanta o primeni tehničkih propisa u pogledu građenja objekta, energetske efikasnosti, mogućnosti priključenja objekta na postojeći energetski sistem, protivpožarne zaštite, zaštite na radu i bezbednosti ljudi i imovine, zaštite životne sredine i dr. koji su predviđeni Pravilnikom o energetskoj dozvoli, ako tehnička dokumentacija (prethodna studija opravdanosti sa generalnim projektom ili studija opravdanosti sa idejnim projektom i izveštaj revizione komisije) ne podleže reviziji u smislu zakona kojim se uređuje planiranje i izgradnja objekta; 5) potvrda o uplati depozita u visini od 0,5% od dinarske vrednosti investicije bez obračunatog poreza na dodatu vrednost ili overen dokument kojim se dokazuje ulaganje sredstava u izgradnju energetskog objekta u visini navedenog novčanog depozita; 6) mišljenje operatora sistema o uslovima i mogućnostima priključenja energetskog objekta na energetski sistem.

Energetska dozvola se izdaje rešenjem u roku od trideset dana od dana podnošenja zahteva. Na rešenje o izdavanju energetske dozvole nezadovoljna stranka može u roku od petnaest dana od dana prijema rešenja, podneti žalbu Vladi, odnosno ministarstvu nadležnom za poslove energetike ukoliko je izdavalac rešenja jedinica lokalne samouprave.

Energetska dozvola se izdaje na period od tri godine od dana njene pravosnažnosti i može se produžiti na zahtev imaoca, najduže za još jednu godinu, podnošenjem zahteva za produženje najkasnije 30 dana pre isteka roka važenja energetske dozvole. Rok važenja energetske dozvole će se produžiti ukoliko su ispunjeni propisani uslovi.[72]

Investitor može pokrenuti novi postupak za izdavanje energetske dozvole samo ukoliko je prethodno iskoristio mogućnost produženja roka važenja izdate energetske dozvole.

O izdatim energetskim dozvolama i energetskim dozvolama koje su prestale da važe vodi se registar. Registri se objavljuju na internet stranici ministarstva nadležnog za poslove energetike i ažuriraju se na svaka tri meseca.

70 Učešće energetskog objekta kod sistemskih usluga potrebnih mreži daljinskog grejanja nije predviđeno kao poseban prilog, ali bi trebalo ukazati na prilog, ukoliko investitor odluči da učestvuje u ovima sistemskim uslugama.

71 Uz informaciju o lokaciji ili lokacijske uslove podnosi se prethodna studija opravdanosti sa generalnim projektom ili studija opravdanosti sa idejnim projektom u skladu sa Zakonom o planiranju i izgradnji i izveštaj revizione komisije, ako generalni projekat, odnosno idejni projekat podleže reviziji u smislu Zakona o planiranju i izgradnji.

72 Uslovi za produženje energetske dozvole su: 1) da je podnosilac zahteva dostavio dokaz o pribavljenoj dokumentaciji potrebnoj za izgradnju energetskog objekta, odnosno da je pokrenuo odgovarajući postupak pred nadležnim organima za pribavljanje dokumentacije; i 2) da je podnosilac zahteva dostavio dokaz da je preduzeo sve mere pred nadležnim organima u skladu sa zakonom u cilju pribavljanja dokumentacije.

Energetska dozvola nije prenosiva.

Energetska dozvola nije potrebna za izgradnju energetskih objekata koji se grade u skladu sa zakonom kojim se uređuje javno-privatno partnerstvo i koncesije.

3.2.2.1. Mišljenje operatora sistema o uslovima i mogućnostima priključenja energetskog objekta na energetski sistem

Zakonom o energetici, Uredbom o uslovima isporuke i snabdevanja električnom energijom, Pravilima o radu distributivnog sistema, Pravilima o radu prenosnog sistema utvrđena je procedura za priključenje objekata proizvođača na elektroenergetsku mrežu. Ni ovom uredbom, ni ovim pravilima, ali ni drugim propisom nije regulisan postupak davanja mišljenja energetskog subjekta za prenos, odnosno distribuciju električne energije u postupku izdavanja energetske dozvole. S obzirom na navedenu činjenicu, ovaj postupak nema posebnu formu, ali su operatori sistema razvili odgovarajuće procedure[73][74] u okviru kojih je definisan postupak podnošenja zahteva za izdavanje mišljenja, potrebna dokumentacija, cenovnik, sadržina akta o mišljenju i rok važnosti. Na akt o mišljenju se ne može uložiti žalba. Zahtev za priključenje na elektroenergetsku mrežu obrađen je u tački 4. ovog Vodiča.

Operator prenosnog sistema u Republici Srbiji je JP „Elektromreža Srbije“ (JP EMS)[75], a operator distributivnog sistema u Republici Srbiji je „EPS Distribucija“ d.o.o. Beograd.[76]

3.2.3. Uslovi za priključenje[77][78]

Uslovima za priključenje se definiše mogućnost priključenja objekta proizvođača na elektroenergetsku mrežu, odnosno definišu se elektroenergetski i tehnički uslovi potrebni za izradu idejnog, odnosno projekta za građevinsku dozvolu i projekta za izvođenje, kao i tehnički, projektni i pogonski standardi koje treba da ispune operator prenosnog/distributivnog sistema i objekti korisnika koji se priključuju na prenosni/distributivni sistem.

Za razliku od drugih objekata, za objekat za proizvodnju električne energije uslovi za priključenje se ne pribavljaju u objedinjenoj proceduri.[79] Pored navedene Procedure za priključenje objekta na prenosni sistem, ova oblast je uređena i Pravilima o radu operatora prenosnog, odnosno distributivnog sistema, Uredbom o uslovima isporuke i snabdevanja električnom energijom i internim aktima operatora prenosnog, odnosno distributivnog sistema.

Kada se radi o priključenju na prenosni sistem, postupak počinje podnošenjem zahteva za izradu Studije priključenja objekta na prenosni sistem, koji se podnosi operatoru prenosnog

73 JP EMS, koji je operator prenosnog sistema električne energije, usvojio je Proceduru za priključenje objekata na prenosni sistem, shodno članu 117. stav 3 i članu 39. stav 1. Zakona o energetici, na koju je Agencija za energetiku dala saglasnost, 23. decembra 2015. godine. – www.ems.rs ; www.aers.rs. Prema ovoj Proceduri operator prenosnog sistema daje Mišljenje o uslovima i mogućnostima priključenja na prenosni sistem, u okviru izrade Studije priključenja objekta na prenosni sistem.

74 Uputstvo za priključenje objekata na prenosni sistem, januar 2016. godine – www.ems.rs.

75 www.ems.rs.

76 http://www.epsdistribucija.rs.

77 Ovde je potrebno navesti da se shodno članu 118. Zakona o energetici priključenje postrojenja na prenosni sistem vrši na način da je operator prenosnog sistema investitor ovog priključka. Takođe, shodno članu 140. stav 6. Zakona o energetici priključenje na distributivni elektroenergetski sistem objekta koji je u funkciji proizvodnje električne energije ne vrši se u objedinjenoj proceduri. Ako postoji potreba da se objekat za proizvodnju električne energije priključi kao kupac na (distributivni) elektroenergetski sistem, tada se pribavljanje uslova za priključenje vrši kroz objedinjenu proceduru.

78 Priključenje na mrežu za distribuciju toplotne energije se ne traži za objekat koji kombinovano proizvodi električnu i toplotnu energiju, ukoliko toplotnu energiju koristi za sopstvene potrebe.

79 Član 8b. stav 10. Zakona o planiranju i izgradnji i članovi 117.-120. i 140. stav 6. Zakona o energetici.

sistema. Obrazac zahteva izrađuje operator prenosnog sistema i čini ga dostupnim na svom sajtu. Međusobni odnosi podnosioca zahteva i operatora prenosnog sistema regulišu se Ugovorom o izradi Studije priključenja.

Deo Studije koji se izrađuje za sve proizvođače sadrži, između ostalog, i: 1) tehničke uslove za izradu planske i urbanističke dokumentacije; 2) mišljenje operatora prenosnog sistema o uslovima i mogućnostima priključenja na prenosni sistem i 3) projektne zadatke za priključak na prenosni sistem. Vremenski rok za izradu ovog dela Studije je 90 dana od datuma avansne uplate za NJENU izradu.

Ukoliko je podnosilac zahteva proizvođač sa posebnim karakteristikama obavezno je da se izvrši i provera kvaliteta električne energije, analiza dinamičkim prelaznih procesa, provera usaglašenosti objekata za Pravilima o radu prenosnog sistema.

Rok za izradu Studije priključenja objekta proizvođača na prenosni sistem je 180 dana od datuma registrovane prve uplate prema dinamici plaćanja iz Ugovora o izradi Studije priključenja. Troškove izrade Studije plaća podnosilac zahteva, prema troškovniku operatora prenosnog sistema.

Proces pribavljanja i izrade dokumentacije za gradnju priključka na prenosni sistem pokreće proizvođač podnošenjem zahteva za zaključivanje Ugovora o izradi planske i tehničke dokumentacije i pribavljanju potrebnih dozvola za izgradnju priključka. Zahtev je dostupan na sajtu operatora prenosnog sistema - JP EMS. Ovaj proces počinje tek pošto je završen deo Studije koji se izrađuje za sve proizvođače. Prilikom zaključivanja navedenog Ugovora, proizvođač električne energije se opredeljuje za jednu od mogućnosti predviđenih Zakonom o energetici, a to je: 1) da JP EMS kao investitor izvrši izgradnju priključka o trošku proizvođača ili 2) da JP EMS kao investitor ovlašćuje proizvođača da u njegovo ime, a o svom trošku izgradi priključak, pri čemu proizvođač upravlja projektom izgradnje priključka uz kontrolu JP EMS-a.

Kada se radi o priključenju na distributivni sistem, postupak počinje podnošenjem zahteva za izdavanje uslova za priključenje, koji se podnosi operatoru distributivnog sistema. Obrazac zahteva izrađuje operator distributivnog sistema i čini ga dostupnim u svojim sedištima. U obrascu zahteva za izdavanje uslova za priključenje propisana je i potrebna dokumentacija koja se prilaže uz zahtev. Tehničkim izveštajem se, na osnovu izvršene analize, utvrđuje da li postoje elektroenergetski i tehnički uslovi za eventualno buduće priključenje objekta prema podnetom zahtevu. Na osnovu tehničkog izveštaja energetski subjekt za distribuciju električne energije izdaje akt o uslovima za priključenje. Kroz uslove za priključenje je definisan njihov rok važnosti. Na akt o uslovima za priključenje ne može se uložiti žalba (akt o uslovima za priključenje ne sadrži obrazloženje i uputstvo o pravnom sredstvu). Akt o uslovima za priključenje se izdaje u roku propisanom zakonom[80]. Energetski subjekt izdaje uslove za priključenje uz nadoknadu stvarnih troškova.

80 Rok za izdavanje uslova za priključenje je 30 dana, više o ovome u fusnoti br. 17. ovog Vodiča.

3.2.4. Lokacijski uslovi[81]

Zakonom o planiranju i izgradnji propisano je da su lokacijski uslovi javna isprava koja sadrži podatke o mogućnostima i ograničenjima gradnje na katastarskoj parceli koja ispunjava uslove za građevinsku parcelu, a sadrži sve uslove za izradu tehničke dokumentacije neophodne za izdavanje građevinske dozvole.

Lokacijske uslove za izgradnju postrojenja izdaje ministarstvo nadležno za poslove građevinarstva, odnosno nadležni organ autonomne pokrajine ako se postrojenja nalazi na teritoriji autonomne pokrajine, i to za: 1) izgradnju objekata za proizvodnju energije iz obnovljivih izvora snage 10 MW i više i 2) za izgradnju objekata za proizvodnju energije iz obnovljivih izvora bez obzira na njihovu snagu i to: a) objekata u granicama kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenoj okolini kulturnih dobara od izuzetnog značaja sa određenim granicama katastarskih parcela i objekata u zaštićenoj okolini kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenim područjima u skladu sa aktom o zaštiti kulturnih dobara, kao i objekata u granicama nacionalnog parka i objekata u granicama zaštite zaštićenog prirodnog dobra od izuzetnog značaja; b) objekata konstruktivnog raspona preko 50 m i c) objekata preko 50m visine.

Organi jedinice lokalne samouprave nadležni su za izdavanje lokacijskih uslova za postrojenja snage do 10 MW, ukoliko se ne radi o objektima navedenim u članu 133. Zakona o planiranju i izgradnji, tj. navedenim u tački 2) gornjeg stava.

Lokacijski uslovi se pribavljaju u objedinjenoj proceduri.

3.2.4.1. Postupak izdavanja lokacijskih uslova

Dokumentacija neophodna za dobijanje lokacijskih uslova za izgradnju postrojenja je utvrđena Zakonom o planiranju i izgradnji, Uredbom o lokacijskim uslovima[82] i Pravilnikom o postupku sprovođenja objedinjene procedure. [83] Kao obavezan prilog Zahtevu za dobijanje lokacijskih uslova podnosi se: 1) idejno rešenje budućeg objekta, odnosno dela objekta (skica, crtež, grafički prikaz i sl.), izrađeno i opremljeno prilozima u skladu sa Uputstvom o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju[84] i pravilnikom kojim se uređuje sadržina tehničke dokumentacije[85],[86] i ; 2) dokaz o plaćenoj administrativnoj

81 U vezi sa pribavljanjem dokumentacije neophodne za izdavanje lokacijskih uslova za postrojenje postoje slučajevi preklapanja potrebne dokumentacije (o pravu na korišćenje zemljišta, tehnička dokumentacija i dr.) za izdavanje pojedinih akata.

82 Uredba o lokacijskim uslovima („Sl. glasnik RS" br. 35/15).

83 Razmena podnesaka, akata i dokumentacije u objedinjenoj proceduri između podnosioca zahteva i nadležnog organa obavlja se elektronskim putem. Sva akta koja donose nadležni organi i imaoci javnih ovlašćenja u objedinjenoj proceduri i/ili radi upotrebe u toj proceduri, kao i dokumenti koje podnosilac zahteva, nadležni organ i imaoci javnih ovlašćenja dostavljaju u objedinjenoj proceduri, uključujući i tehničku dokumentaciju, dostavljaju se u formi elektronskog dokumenta u dwg, dwf ili pdf formatu.

84 Uputstvo o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju, http://www.mgsi.gov.rs/cir/dokumenti/uputstvo-o-nachinu-postupanja-nadlezhnih-organa-i-imalaca-javnih-ovlashtshenja-koji-0

85 Pravilnik o sadržini, načinu i postupku izrade i način vršenja kontrole tehničke dokumentacije prema klasi i nameni objekata („Sl. glasnik RS" br. 23/15).

86 Ukoliko hidrogeotarmalna utiče na vodni režim, ova dokumentacija se sačinjava u skladu sa Uputstvom o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju, http://www.mgsi.gov.rs/cir/dokumenti/uputstvo-o-nachinu-postupanja-nadlezhnih-organa-i-imalaca-javnih-ovlashtshenja-koji-0

taksi za podnošenje zahteva.[87] Ovde je potrebno ukazati da je Uputstvom o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju pojašnjeno pravilo postupanja u pogledu pribavljanja vodnih uslova, vodne saglasnosti i vodne dozvole u svim fazama objedinjene procedure, pa tako i dela u pogledu izdavanja lokacijskih uslova. Precizirano je da je neophodno ishodovati vodne uslove za izgradnju postrojenja koje utiče na vodni režim, kao i da je radi pribavljanja mišljenja Republičkog hidrometeorološkog zavoda koje je preduslov za izdavanje vodnih uslova, prethodno potrebno izraditi Hidrološku studiju. U tom cilju je utvrđen spisak podataka i priloga koji moraju biti sadržani u idejnom rešenju[88] koje se prilaže prilikom podnošenja zahteva za dobijanje lokacijskih uslova.

Zahtev za dobijanje lokacijskih uslova obavezno sadrži: 1) podatke o lokaciji (adresa i naziv katastarske opštine i brojevi parcela, kao i njihova površina); 2) podatke o objektu za čije građenje se traže uslovi (izgradnja i namena objekta prema Pravilniku o klasifikaciji objekata[89] – („elektrane"), kategorija („G"), klasifikacioni broj („230201") i bruto razvijena građevinska površina); 3) podatke o postojećim objektima na parceli; 4) izjave u vezi sa troškovima pribavljanja lokacijskih uslova i dostavom; 5) spisak priloga i prilozi; 6) podatke o podnosiocu zahteva.

Ako planski dokument, odnosno separat, ne sadrži mogućnosti, ograničenja i uslove za izgradnju objekata, odnosno sve uslove za priključenje na komunalnu, saobraćajnu i ostalu infrastrukturu, nadležni organ te uslove pribavlja po službenoj dužnosti, o trošku podnosioca zahteva uz naknadu stvarnih troškova izdavanja. Imaoci javnih ovlašćenja dužni su da te uslove po zahtevu nadležnog organa dostave u roku od 15 dana od dana prijema zahteva.

Nadležni organ je dužan da u roku od 5 radnih dana od dana pribavljanja svih potrebnih uslova i drugih podataka od imaoca javnih ovlašćenja izda lokacijske uslove.

Lokacijski uslovi sadrže sve urbanističke, tehničke i druge uslove i podatke potrebne za izradu idejnog, odnosno projekta za građevinsku dozvolu i projekta za izvođenje radova, kao i podatke o: 1) broju i površini katastarske parcele, osim za linijske infrastrukturne objekte i antenske stubove; 2) nazivu planskog dokumenta, odnosno planskom dokumentu i urbanističkom projektu na osnovu kojeg se izdaju lokacijski uslovi i pravila građenja za zonu ili celinu u kojoj se nalazi predmetna parcela; 3) uslove za priključenje na komunalnu, saobraćajnu i drugu infrastrukturu; 4) podatke o postojećim objektima na toj parceli koje je potrebno ukloniti pre građenja; 5) druge uslove u skladu sa posebnim zakonom.

87 Ovde je potrebno ukazati da je Uputstvom o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju pojašnjeno pravilo postupanja u pogledu pribavljanja vodnih uslova, vodne saglasnosti i vodne dozvole u svim fazama objedinjene procedure, pa tako i dela u pogledu izdavanja lokacijskih uslova, ukoliko samo postrojenje utiče na vodni režim. Precizirano je da je neophodno ishodovati vodne uslove za izgradnju postrojenja kao i da je radi pribavljanja mišljenja Republičkog hidrometeorološkog zavoda, koje je preduslov za izdavanje vodnih uslova, prethodno potrebno izraditi Hidrološku studiju. U tom cilju je utvrđen spisak podataka i priloga koji moraju biti sadržani u idejnom rešenju koje se prilaže prilikom podnošenja zahteva za dobijanje lokacijskih uslova.

88 Sadržaj idejnog rešenja je naveden u odeljku br. 3.2.7. Tehnička dokumentacija ovog Vodiča.

89 Pravilnik o klasifikaciji objekata („Sl. glasnik RS" br. 22/15).

Na izdate lokacijske uslove može se podneti prigovor nadležnom opštinskom, odnosno gradskom veću, u roku od tri dana od dana dostavljanja lokacijskih uslova, a ako je lokacijske uslove izdalo ministarstvo nadležno za poslove građevinarstva ili nadležni organ autonomne pokrajine, prigovor se izjavljuje Vladi, preko nadležnog ministarstva.

Lokacijski uslovi važe 12 meseci od dana izdavanja ili do isteka važenja građevinske dozvole izdate u skladu sa tim uslovima, za katastarsku parcelu za koju je podnet zahtev.

3.2.4.2. Formiranje građevinske parcele[90]

Građevinska parcela jeste deo građevinskog zemljišta, sa pristupom javnoj saobraćajnoj površini, koja je izgrađena ili planom predviđena za izgradnju.

Za građenje, odnosno postavljanje infrastrukturnih, elektroenergetskih i elektronskih objekata ili uređaja, može se formirati građevinska parcela manje ili veće površine od površine predviđene planskim dokumentom za tu zonu, pod uslovom da postoji pristup objektu, odnosno uređajima, radi održavanja i otklanjanja kvarova ili havarije.

Ukoliko je potrebno, pre podnošenja zahteva za izdavanje lokacijskih uslova radi se Projekat parcelacije/preparcelacije, tj. formiranja građevinske parcele.[91] Projekat preparcelacije podrazumeva projekat obrazovanja jedne ili više građevinskih parcela na većem broju katastarskih parcela, dok projekat parcelacije podrazumeva projekat obrazovanja većeg broja građevinskih parcela na jednoj katastarskoj parceli.

Projekat parcelacije, odnosno preparcelacije, izrađuje ovlašćeno privredno društvo, odnosno drugo pravno lice ili preduzetnik, koje je upisano u odgovarajući registar. Izradom projekta parcelacije rukovodi odgovorni urbanista arhitektonske struke. Navedeni projekat obavezno sadrži i Projekat geodetskog obeležavanja.

Projekat parcelacije, odnosno preparcelacije se predaje organu nadležnom za poslove urbanizma jedinice lokalne samouprave na potvrdu. Ako je projekat u skladu sa važećim planskim dokumentom, nadležni organ potvrđuje projekat u roku od 10 dana, a ako nije - o tome obaveštava podnosioca projekta. Prigovor na navedeno obaveštenje može se podneti opštinskom, odnosno gradskom veću u roku od 3 dana od dana dostavljanja.

Dalje se, organu nadležnom za poslove državnog premera i katastra (RGZ – Republički geodetski zavod), dostavlja Zahtev za provođenje parcelacije, odnosno preparcelacije.

Uz Zahtev za provođenje parcelacije, odnosno preparcelacije se podnosi: 1) dokaz o rešenim imovinsko-pravnim odnosima za sve katastarske parcele i 2) projekat preparcelizacije, odnosno parcelacije, potvrđen od strane organa nadležnog za poslove urbanizma jedinice lokalne samouprave, a čiji sastavni deo je i Projekat geodetskog obeležavanja. Po ovom zahtevu, organ nadležan za poslove državnog premera i katastra donosi rešenje o formiranju katastarske/ih parcele/a. Na ovo rešenje može se izjaviti žalba u roku od 15 dana od dana dostavljanja rešenja.

90 Odredbe Zakona o planiranju i izgradnji, u pogledu formiranja građevinske parcele za izgradnju elektrane (postrojenja), su složene. U članu 69. stav 1. ovog zakona, propisano je da se za građenje elektrane (postrojenja) može formirati građevinska parcela koja odstupa od površine ili položaja predviđenih planskim dokumentom za tu zonu, pod uslovom da postoji pristup objektu, odnosno uređajima, radi održavanja i otklanjanja kvarova ili havarije. Kao dokaz o rešenom pristupu javnoj saobraćajnoj površini priznaje se i ugovor o uspostavljanju prava službenosti prolaza sa vlasnikom poslužnog dobra, odnosno saglasnost vlasnika poslužnog dobra. Ovi objekti mogu se graditi i na poljoprivrednom, odnosno šumskom zemljištu, uz prethodno pribavljanu saglasnost ministarstva nadležnog za poslove poljoprivrede, odnosno šumarstva. Za potrebe izgradnje navedenih objekata na poljoprivrednom zemljištu mogu se primenjivati odredbe Zakona o planiranju i izgradnji koje se odnose na preparcelaciju, parcelaciju i ispravku granica susednih parcela, kao i odredbe o odstupanju od površine ili položaja predviđenih planskim dokumentom.

91 Pravilnik o opštim pravilima za parcelaciju, regulaciju i izgradnju („Sl. glasnik RS" br. 22/15).

Za dobijanje lokacijskih uslova za postrojenja može se primeniti odredba Zakona o planiranju i izgradnji kojim se regulišu posebni slučajevi formiranja građevinske parcele. Za građenje elektroenergetskih objekata, može se formirati građevinska parcela manje površine od površine predviđene planskim dokumentom, pod uslovom da postoji pristup objektu, odnosno uređajima, radi održavanja i otklanjanja kvarova ili havarije. Kao rešen pristup javnoj saobraćajnoj površini priznaje se i ugovor o pravu službenosti prolaza sa vlasnikom poslužnog dobra.

3.2.4.3. Vodna akta[92]

Pitanja potrebe izdavanja vodnih akata, pre svega vodnih uslova, odnosno vodne saglasnosti za izgradnju postrojenja, u uslovima objedinjene procedure izdavanja lokacijskih uslova i građevinske dozvole, biće razmotreni od strane nadležnih organa, jer je investitor već pribavio vodna akta za ceo posao eksploatacije hidrogeotermalnog resursa. Zbog toga je potrebno da investitor dostavi ova akta zajedno sa zahtevom za izdavanje lokacijskih uslova, odnosno građevinske dozvole.

U uslovima objedinjene procedure izdavanja lokacijskih uslova i građevinske dozvole, rokovi izdavanja vodnih akata su kraći, procedura za podnosioca zahteva pojednostavljena, a u slučaju da je podnosilac zahteva nezadovoljan, nešto drugačija, nego procedura koja se primenjuje u postupcima van objedinjene procedure.[93]

Zakonom o vodama je propisano da je za postupak pripreme tehničke dokumentacije za izgradnju novih i rekonstrukciju postojećih objekata i za izvođenje drugih radova koji mogu uticati na promene u vodnom režimu investitor dužan da pribavi vodne uslove (određuju se tehnički i drugi zahtevi koji moraju biti ispunjeni). U tekstu Uputstva o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju, Prilog broj 1: spisak objekata za koje je potrebno ishodovati vodne uslove, izričito je navedeno da je za izgradnju objekta, odnosno izvođenje radova koji mogu privremeno, povremeno ili trajno da prouzrokuju promene u vodnom režimu ili na koje može uticati vodni režim, a isti su predviđeni planskim dokumentom ili separatom, potrebno ishodovati vodne uslove. Postrojenje na hidrogeotermalnu energiju nije izričito navedeno, ali s obzirom na činjenicu da ovo postrojenje kao izvor energije koristi hidrogeotermalne izvore i na činjenicu da je potrebno pribaviti vodne uslova za izgradnju objekta koji utiče na vodni režim, postoji velika verovatnoća da će za postrojenja na hidrogeotermalnu energiju trebati vodni uslovi – pod uslovom da vodni uslovi pribavljeni u fazi pribavljanja odobrenja za eksploataciju prirodnog bogatstva nisu obuhvatili i izgradnju i karakteristike ovog objekta.

Pre izdavanja vodnih uslova (a koji su element lokacijskih uslova, i neophodni su za izradu projektne dokumentacije – projekta za građevinsku dozvolu), potrebno je pribaviti Mišljenje republičke organizacije nadležne za hidrometeorološke poslove (Republički hidrometeorološki zavod - RHMZ) i Mišljenje javnog vodoprivrednog preduzeća (JVP Srbijavode – za teritoriju

92 Izdavanje vodnih uslova, vodne saglasnosti i vodne dozvole regulisano je Zakonom o vodama i Pravilnikom o sadržini i obrascu zahteva za izdavanje vodnih akata i sadržini mišljenja u postupku izdavanja vodnih akata („Sl. glasnik RS" br. 74/10, 116/12 i 58/14). U uslovima primene objedinjene procedure način i rokovi izdavanja vodnih akata su razrađeni Uputstvom o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju.

93 Uputstvo o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju

Republike Srbije osim Autonomne pokrajine Vojvodine, JVP Vode Vojvodine – za teritoriju Autonomne pokrajine Vojvodine, odnosno JVP „Beogradvode" u Beogradu, za objekte i radove na teritoriji Grada Beograda).

Kako se vodni uslovi pribavljaju u objedinjenoj proceduri, prilikom ishodovanja lokacijskih uslova, zajedno sa dokumentacijom koja se predaje nadležnom organu za izdavanje lokacijskih uslova, potrebno je priložiti hidrološku studiju koju izrađuje investitor[94] i ranije izdata vodna akta u slučaju izgradnje novog objekta u sastavu postojećeg ili njegove rekonstrukcije.

Dobijeno Rešenje o izdavanju vodnih uslova je jedan od elemenata lokacijskih uslova.[95] Na osnovu ovog rešenja radi se projekat za građevinsku dozvolu.

Po dobijanju lokacijskih uslova ulazi se u izradu projektne dokumentacije – idejnog, odnosno projekta za građevinsku dozvolu za postrojenje.

Prilikom pribavljanja građevinske dozvole u objedinjenoj proceduri, vodnu saglasnost nije potrebno pribavljati, jer vodna saglasnost[96] na tehničku dokumentaciju nije uslov za izdavanje građevinske niti izdavanje upotrebne dozvole. Usklađenost tehničke dokumentacije s vodnim uslovima za izdavanje građevinske dozvole proverava i potvrđuje vršilac tehničke kontrole u skladu sa Zakonom o planiranju i izgradnji i podzakonskim aktima donetim na osnovu tog zakona.[97,98]

Kada je objekat izgrađen, a pre dobijanja upotrebne dozvole, investitor treba da pribavi **vodnu dozvolu**[99], ukoliko je u vodnim uslovima naznačena obaveza njenog pribavljanja. Ishodovanje vodne dozvole se obavlja van objedinjene procedure. Zahtev za izdavanje vodne dozvole podnosi investitor ministarstvu nadležnom za vodoprivredu, odnosno nadležnom organu. Vodna dozvola je potrebna za korišćenje voda i prirodnih i veštačkih vodotoka, jezera i podzemnih voda, za prečišćavanje i ispuštanje voda i drugih materija u prirodne i veštačke vodotoke, jezera, podzemne vode i javnu kanalizaciju, u slučaju povećanja ili smanjenja kapaciteta već postojećeg objekta – za povećanje ili smanjenje količine zahvaćenih i ispuštenih voda, izmenjene prirode i kvaliteta ispuštenih voda, kao i za druge radove kojima se utiče na vodni režim. Ova dozvola se izdaje za period od najduže 15 godina, tako da najkasnije dva meseca pre isteka treba produžiti važnost, ukoliko postoji izdato Rešenje o vodnoj dozvoli. Pravo stečeno na osnovu vodne dozvole ne može se preneti na treće lice bez saglasnosti izdavaoca, a ovo pravo prestaje: istekom roka, odricanjem prava i ne konzumiranjem prava

94 Uputstvo o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju, Prilog broj 2: Spisak objekata za koje je prethodno potrebno izraditi hidrološku studiju radi pribavljanja mišljenja Republičkog hidrometeorološkog zavoda.

95 Izuzetno, shodno članu 118. stav Zakona o vodama, nadležni organ za izdavanje vodnih uslova može zahtevati da podnosilac zahteva pribavi mišljenje ministarstva nadležnog za životnu sredinu i/ili specijalizovane stručne naučne institucije (zavodi, instituti i drugo). Za objekte i radove na teritoriji banjskog mesta podnosilac zahteva je dužan da pribavi mišljenje ministarstva nadležnog za poslove turizma. Ne postoji posebno propisana procedura za dobijanje ovih mišljenja.

96 Vodna saglasnost je vodni akt kojim se utvrđuje da je tehnička dokumentacija za objekte i radove urađena u skladu sa vodnim uslovima. Ipak, investitor može zatražiti vodnu saglasnost od nadležnog organa van objedinjenje procedure, kao kontrolni akt koji mu pruža dodatnu sigurnost u primeni vodnih uslova.

97 Uputstvo o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju.

98 Iako je Zakonom o vodama predviđeno da je za dobijanje građevinske dozvole potrebno, pored ostalog, ishodovati Vodnu saglasnost na projektnu dokumentaciju, kojom se utvrđuje da je tehnička dokumentacija – projekat za građevinsku dozvolu, urađena u skladu sa vodnim uslovima. Uputstvom o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju, je precizirano postupanje u slučaju objedinjene procedure, tako da funkciju vodne saglasnosti vrši potvrda vršioca tehničke kontrole (u skladu sa Zakonom o planiranju i izgradnji i podzakonskim aktima ovog zakona) da je tehnička dokumentacija usklađena sa vodnim uslovima. Na taj način se znatno pojednostavljuje i ubrzava postupak pribavljanja građevinske dozvole.

99 Vodnom dozvolom, koja se ishoduje kada je objekat izgrađen, utvrđuju se način i uslovi za upotrebu i korišćenje voda i ispuštanje voda. Iako je Uputstvom o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju predviđeno da vodna dozvola nije uslov za izdavanje upotrebne dozvole, preporuka investitorima je da pribave vodnu dozvolu pre građevinske dozvole iz razloga pravne sigurnosti korišćenja postrojenja koje ima uticaja na vodni režim.

bez opravdanih razloga duže od 2 godine. Zahtev za izdavanje vodne dozvole se podnosi na propisanom obrascu O6.

Zahtev za izdavanje vodne dozvole sadrži: 1) opšte podatke o podnosiocu zahteva; 2) osnovne podatke (administrativni, hidrografski i geodetski podaci) o objektu, odnosno radovima, kao i mesto, datum, potpis i pečat podnosioca zahteva; 3) mesto, datum i pečat podnosioca zahteva. Pored navedenih elemenata, ovaj zahtev za postrojenje za koje je izdata vodna saglasnost ili vodna dozvola, sadrži: 1) rešenje o izdavanju vodne saglasnosti ili vodne dozvole; 2) izveštaj javnog vodoprivrednog preduzeća o ispunjenosti uslova iz vodnih uslova i vodne saglasnosti za izdavanje vodne dozvole; 3) izveštaj komisije o izvršenom tehničkom pregledu objekta; 4) projekat za građevinsku dozvolu ili projekat izvedenog objekta; 5) izvod iz projekta za građevinsku dozvolu ili projekta izvedenog objekta. Ukoliko je za postrojenje izdata upotrebna dozvola, a nije izdata vodna saglasnost, zahtev za izdavanje vodne dozvole sadrži i: 1) upotrebnu dozvolu; 2) izveštaj javnog vodoprivrednog preduzeća o spremnosti objekta za izdavanje vodne dozvole; 3) projekat za građevinsku dozvolu ili projekat izvedenog objekta; 4) izvod iz projekta za građevinsku dozvolu ili projekta izvedenog objekta.

Za postrojenja i radove za koje je izdata vodna saglasnost ili vodna dozvola i objekta za koje je izdata upotrebna dozvola, a nije izdata vodna saglasnost, pored već navedenih elemenata, zahtev za izdavanje vodne dozvole sadrži: 1) rešenje ministarstva nadležnog za poslove zdravlja o određivanju zona sanitarne zaštite izvorišta; 2) rešenje ministarstva nadležnog za poslove geoloških istraživanja o utvrđenim i razvrstanim rezervama podzemnih voda[100]; 3) saglasnost ministarstva nadležnog za poslove turizma za korišćenje voda sa prirodnim lekovitim svojstvom na teritoriji banjskog mesta; 4) ugovor ili drugi dokument da javno komunalno preduzeće vrši uslugu čišćenja objekta za ispuštanje otpadnih voda i uslugu čišćenja čvrstog otpada; 5) izveštaj ovlašćenog pravnog lica o ispitivanju kvaliteta voda (zahvaćenih i ispuštenih) iz prethodnog perioda; 6) potvrda ovlašćenog pravnog lica o ispravnosti objekata za sakupljanje, odvođenje i prečišćavanje otpadnih voda, uključujući i septičke jame; 7) izveštaj ovlašćenog pravnog lica o ispitivanju nivoa i kvaliteta voda u piezometrima, u zoni skladišnih objekata, kao i 8) baždarne tablice izdate od strane ovlašćenog pravnog lica samo za objekte za skladištenje.

Uz navedene priloge, uz zahtev za izdavanje vodne dozvole, dostavlja se i zapisnik vodnog inspektora.

100 Zahtev za izdavanje vodne dozvole sadrži i rešenje ministarstva nadležnog za poslove geoloških istraživanja o utvrđenim i razvrstanim rezervama podzemnih voda, ukoliko se za potrebe procesa vrši zahvatanje voda bunarima.

3.2.5. Procena uticaja na životnu sredinu[101]

Procena uticaja na životnu sredinu je veoma značajan elemenat u postupku izgradnje postrojenja. U postupku pribavljanja energetske dozvole neophodno je izraditi analizu mogućih uticaja na životnu sredinu sa predlogom mera zaštite životne sredine.

Ukoliko nadležni organ utvrdi za potrebno, kao element za izdavanje građevinske dozvole neophodno je izraditi Studiju o proceni uticaja postrojenja na životnu sredinu.[102]

Uredbom o Listi projekata za koje je obavezna izrada Studije o proceni uticaja na životnu sredinu (Lista I) i Listi projekata za koje se može zahtevati izrada ove Studije (Lista II), utvrđeno je da se za izgradnju postrojenja snage preko 50 MW obavezno radi Studija o proceni uticaja (Lista I ove uredbe), a da se za postrojenja snage 1-50 MW može tražiti Studija o proceni uticaja ovog objekta na životnu sredinu (Lista II ove uredbe).[103] Za postrojenja snage ispod 1 MW nije potrebna izrada ove Studije[104], osim ako se ne radi o postrojenjima koje će se graditi u zaštićenom prirodnom dobru i zaštićenoj okolini nepokretnog kulturnog dobra i u drugim područjima posebne namene.

Zakonom o proceni uticaja na životnu sredinu je utvrđeno, kada se radi o postrojenju od 1-50 MW, s obzirom da spada u grupu objekata za koje se može tražiti Studija procene uticaja na životnu sredinu, da nosilac projekta za ovaj objekat podnosi Zahtev za odlučivanje o potrebi procene uticaja nadležnom organu.

Nadležnost organa u postupku utvrđivanja potrebe izrade Studije o proceni uticaja je ista kao i kod utvrđivanja nadležnosti za izdavanje građevinske dozvole[105].

Zahtev o potrebi procene uticaja podnosi se na propisanom obrascu, u skladu sa Zakonom o proceni uticaja na životnu sredinu i Pravilnikom o sadržini zahteva o potrebi procene uticaja i sadržini zahteva za određivanje obima i sadržaja studije o proceni uticaja na životnu sredinu.

101 Potrebno je napomenuti da je pored procene uticaja konkretnog objekta na životnu sredinu izvršena strateška procena uticaja na životnu sredinu, koja se vrši za planove, programe, osnove i strategije (u daljem tekstu: planovi i programi) u oblasti prostornog i urbanističkog planiranja ili korišćenja zemljišta, poljoprivrede, šumarstva, ribarstva, lovstva, energetike, industrije, saobraćaja, upravljanja otpadom, upravljanja vodama, telekomunikacija, turizma, očuvanja prirodnih staništa i divlje flore i faune, kojima se uspostavlja okvir za odobravanje budućih razvojnih projekata određenih propisima kojima se uređuje procena uticaja na životnu sredinu. - član 5. stav 1. Zakona o strateškoj proceni uticaja na životnu sredinu.

102 Neophodan element za izdavanje građevinske dozvole za postrojenja snage od 50 MW ili više je procena uticaja na životnu sredinu izrađena u jasno definisanom formatu – formatu Studije o proceni uticaja postrojenja na životnu sredinu. Za postrojenja snage 1-50 MW Studija procene uticaja na životnu sredinu je obavezna ukoliko nadležni organ (isti kao i za izdavanje građevinske dozvole) utvrdi za potrebno.

103 Postrojenja za proizvodnju električne energije, vodene pare, tople vode, tehnološke pare ili zagrejanih gasova (termoelektrane, toplane, gasne turbine, postrojenja sa motorom sa unutrašnjim sagorevanjem, ostali uređaji za sagorevanje), uključujući i parne kotlove, u postrojenjima za sagorevanje uz korišćenje svih vrsta goriva – snage od 1 do 50 MW.

104 U praksi se pojavljuju slučajevi da kada investitor traži kredit od banke, banka zahteva izradu procene uticaja na životnu sredinu, iako ona nije tražena propisima.

105 Ministarstvo nadležno za životnu sredinu, odnosno nadležni organ autonomne pokrajine su nadležni organi u postupku procene uticaja postrojenja i to: 1.1) izgradnju objekata za proizvodnju energije iz obnovljivih izvora snage 10 MW i više i 1.2) za izgradnju objekata za proizvodnju energije iz obnovljivih izvora bez obzira na njihovu snagu i to: a) objekata u granicama kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenoj okolini kulturnih dobara od izuzetnog značaja sa određenim granicama katastarskih parcela i objekata u zaštićenoj okolini kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenim područjima u skladu sa aktom o zaštiti kulturnih dobara, kao i objekata u granicama nacionalnog parka i objekata u granicama zaštite zaštićenog prirodnog dobra od izuzetnog značaja; b) objekata konstruktivnog raspona preko 50 m i c) objekata preko 50 m visine. Organi jedinice lokalne samouprave nadležni su u postupku procene uticaja elektrane (postrojenja) snage do 10 MW, ukoliko se ne radi o sledećim objektima navedenim u članu 133. Zakona o planiranju i izgradnji, tj. navedenim u tački 1.2) ove podele.

Zahtev o potrebi procene uticaja treba da sadrži[106]: 1) podatke o nosiocu projekta; 2) opis lokacije; 3) opis karakteristika projekta; 4) prikaz glavnih alternativa koje su razmatrane; 5) opis činilaca životne sredine koji mogu biti izloženi uticaju; 6) opis mogućih značajnih štetnih uticaja projekta na životnu sredinu; 7) opis mera predviđenih radi sprečavanja, smanjenja i otklanjanja značajnih štetnih uticaja; 8) druge podatke i informacije na zahtev nadležnog organa. Uz ovaj zahtev potrebno je podneti sledeću dokumentaciju: 1) informacija o lokaciji ili potvrđeni urbanistički projekat (ne stariji od godinu dana); 2) idejno rešenje ili idejni projekat, odnosno izvod iz idejnog projekta; 3) grafički prikaz mikro i makro lokacije; 4) uslovi i saglasnosti drugih nadležnih organa i organizacija pribavljeni u skladu sa posebnim zakonom; 5) dokaz o uplati republičke administrativne takse; 6) druge dokaze na zahtev nadležnog organa.

Nadležni organ o podnesenom zahtevu, a u roku od 10 dana, obaveštava zainteresovane organe i javnost. Zainteresovani moraju podneti svoje mišljenje u roku od 10 dana od dana prijema obaveštenja. Nadležni organ, u daljem roku od 10 dana odlučuje o zahtevu. Ako je odlučeno da je procena uticaja potrebna za razmatrano postrojenje u istoj Odluci se može odrediti i obim i sadržaj studije o proceni uticaja. Ako se utvrdi da procena uticaja nije potrebna, nadležni organ u Odluci može utvrditi minimalne uslove zaštite životne sredine. Odluka se dostavlja nosiocu projekta, zainteresovanim organima i javnosti u roku od tri dana od dana donošenja odluke.

Nosilac projekta i zainteresovana javnost mogu izjaviti žalbu, a nadležni drugostepeni organ odluku donosi u roku od 30 dana od dana prijema žalbe.

Ako je dobijena Odluka po zahtevu o proceni uticaja kojom je odlučeno da je procena uticaja potrebna i ukoliko u istoj Odluci nadležni organ nije odredio obim i sadržaj studije o proceni uticaja, nosilac projekta mora nadležnom organu podneti Zahtev za određivanje obima i sadržaja studije o proceni uticaja i to na propisanom obrascu.

Navedeni zahtev sadrži: 1) podatke o nosiocu projekta, 2) opis projekta, 3) prikaz glavnih alternativa koje su razmatrane, 4) opis činilaca životne sredine koji mogu biti izloženi uticaju, 5) opis mogućih značajnih štetnih uticaja, 6) opis mera predviđenih radi sprečavanja, smanjenja, i otklanjanja značajnih štetnih uticaja, 7) netehnički rezime podataka od 2) do 6), 8) podatke o mogućim teškoćama na koje je naišao nosilac projekta u prikupljanju podataka i dokumentacije, 9) druge podatke i informacije na zahtev nadležnog organa. Uz navedeni zahtev se mora priložiti sledeća dokumentacija: 1) izvod iz urbanističkog plana ili potvrđeni urbanistički projekat, odnosno akt o urbanističkim uslovima koji nije stariji od godinu dana, 2) idejni projekat, odnosno izvod iz idejnog projekta, 3) grafički prikaz makro i mikro lokacije, 4) uslovi i saglasnosti drugih nadležnih organa i organizacija pribavljenih u skladu sa posebnim zakonom, 5) dokaz o uplati republičke administrativne takse i 6) drugi dokazi na zahtev nadležnog organa.

106 Obrazac Zahteva o potrebi procene uticaja projekta na životnu sredinu utvrđen je Pravilnikom o sadržini zahteva o potrebi procene uticaja i sadržini zahteva za određivanje obima i sadržaja Studije o proceni uticaja na životnu sredinu.

Nadležni organ o podnetom zahtevu, a u roku od 10 dana obaveštava zainteresovanu javnost. Zainteresovani moraju podneti svoje mišljenje u roku od 15 dana od dana prijema obaveštenja. Nadležni organ u roku od 10 dana donosi odluku o obimu i sadržaju studije o proceni uticaja. Odluka se dostavlja nosiocu projekta i zainteresovanoj javnosti u roku od 3 dana.

Nosilac projekta i zainteresovana javnost mogu izjaviti žalbu, a nadležni drugostepeni organ odluku donosi u roku od 30 dana od dana prijema žalbe.

Detaljnija procedura za izradu Studije o proceni uticaja postrojenja na životnu sredinu regulisana je Zakonom o proceni uticaja na životnu sredinu i podzakonskim aktima ovog zakona. Zakonom o proceni uticaja na životnu sredinu je utvrđeno da je konkretna studija o proceni uticaja postrojenja na životnu sredinu sastavni deo dokumentacije koja se prilaže uz zahtev za izdavanje građevinske dozvole ili uz prijavu početaka izvođenja projekta (izgradnja, izvođenje radova, promena tehnologije, promena delatnosti i druge aktivnosti).

Studija o proceni uticaja obavezno sadrži: 1) podatke o nosiocu projekta, 2) opis lokacije na kojoj se planira realizacija projekta, 3) opis projekta, 4) prikaz razmatranih glavnih alternativa projekta, 5) prikaz stanja životne sredine na lokaciji i bližoj okolini (mikro i makro lokacija), 6) opis mogućih značajnih uticaja projekta na životnu sredinu, 7) procenu uticaja na životnu sredinu u slučaju udesa, 8) opis mera predviđenih radi sprečavanja, smanjenja, i mogućeg otklanjanja svakog značajnijeg štetnog uticaja na životnu sredinu, 9) program praćenja uticaja na životnu sredinu, 10) netehnički kraći prikaz podataka navedenih od 2) do 9), 11) podaci o tehničkim nedostacima ili nepostojanju odgovarajućih stručnih znanja i veština ili nemogućnosti da se pribave odgovarajući podaci. Uz studiju se prilažu i pribavljeni uslovi i saglasnosti drugih nadležnih organa i organizacija. Studija sadrži i osnovne podatke o licima koja su učestvovala u izradi, o odgovornom licu, datumu izrade, potpis i pečat odgovornog lica, kao i pečat ovlašćene organizacije koja je izradila studiju, a registrovana je za izradu ovakve vrste dokumentacije u Agenciji za privredne registre. [107]

Najkasnije u roku od godinu dana od dana prijema konačne odluke o obimu i sadržaju studije o proceni uticaja, nosilac projekta je dužan da ponese Zahtev za davanje saglasnosti na studiju o proceni uticaja. Uz zahtev se podnosi studija o proceni uticaja (3 primerka u papirnom i 1 u elektronskom obliku) i odluka nadležnog organa iz prethodne faze postupka.

Javni uvid, prezentaciju i javnu raspravu o studiji obezbeđuje nadležni organ, i o njihovom vremenu i mestu obaveštava zainteresovane u roku od 7 dana. Javna rasprava se može sprovesti najmanje 20 dana od dana obaveštavanja.

Nadležni organ u roku od 10 dana od dana prijema zahteva za dobijanje saglasnosti obrazuje Tehničku komisiju za ocenu studije o proceni uticaja. Tri dana posle obrazovanja Tehničke komisije, ovoj komisiji se dostavlja studija na ocenu. Po završenom javnom uvidu, nadležni organ u roku od tri dana dostavlja komisiji Izveštaj sa pregledom mišljenja zainteresovanih strana.

107 Detaljnije propisana sadržina studije nalazi se u Pravilniku o sadržini studije o proceni uticaja na životnu sredinu.

Na predlog Tehničke komisije, nadležni organ može zahtevati od nosioca projekta da u određenom roku izvrši izmene i dopune. Tehnička komisija dužna je da izveštaj sa ocenom studije o proceni uticaja i predlogom odluke dostavi nadležnom organu u roku od 30 dana od dana prijema dokumentacije od nadležnog organa.

O odluci o davanju saglasnosti na ovu studiju ili o odbijanju zahteva za davanje saglasnosti na studiju o proceni uticaja, nadležni organ je dužan da u roku od deset dana od dana prijema Izveštaja od Tehničke komisije obavesti zainteresovane strane, posebno o: 1) sadržini odluke; 2) glavnim razlozima na kojima se odluka zasniva; 3) najvažnijim merama koje je nosilac projekta dužan da preduzima radi sprečavanja, smanjenja ili otklanjanja štetnih uticaja. Protiv navedene odluke (nezadovoljni) nosilac projekta i zainteresovana javnost mogu pokrenuti upravni spor.

Zakonom o proceni uticaja na životnu sredinu uređen je i postupak ažuriranja Studije o proceni uticaja na životnu sredinu zbog proteka vremena. Potrebno je ukazati da je važnost Odluke o saglasnosti na Studiju o proceni uticaja dve godine, u kom je roku nosilac projekta dužan da otpočne sa izgradnjom postrojenja. Po isteku ovog roka, nadležni organ, može doneti odluku o izradi nove Studije o proceni uticaja ili ažuriranju postojeće. Ova odluka se donosi na osnovu zahteva nosioca projekta. Ista odluka se donosi i u slučaju da nosilac projekta mora da odstupi od dokumentacije na osnovu koje je izrađena studija o proceni uticaja postrojenja na životnu sredinu. U poslednjem slučaju zahtev za izdavanja odobrenja na ažuriranu Studiju o proceni uticaja podnosi se pre podnošenja zahteva za izdavanje građevinske dozvole.

Zakonom o zaštiti životne sredine, utvrđeno je da ministarstvo nadležno za životnu sredinu daje prethodnu saglasnost na odobrenje za korišćenje prirodnih resursa ili dobara. Ovom saglasnošću se utvrđuje ispunjenost uslova i mera održivog korišćenja prirodnih resursa, odnosno dobara (vazduh, voda, zemljište, šume, geološki resursi, biljni i životinjski svet) i zaštite životne sredine u toku i posle prestanka obavljanja aktivnosti.[108]

3.2.6. Integrisana dozvola

Zakonom o integrisanom sprečavanju i kontroli zagađivanja životne sredine utvrđeni su uslovi i postupak izdavanja integrisane dozvole za postrojenja i aktivnosti koja mogu imati negativne uticaje na zdravlje ljudi, životnu sredinu ili materijalna dobra, vrste aktivnosti i postrojenja, a sve radi sprečavanja i kontrole zagađivanja životne sredine. Integrisanu dozvolu izdaje organ koji je nadležan za izdavanje dozvole za izgradnju postrojenja. Potrebno je ukazati da integrisana dozvola nije potrebna za svako postrojenje koje koristi hidrogeotermalnu energiju, već samo za one termoelektrane sa toplotnim ulazom iznad 50 MW.[109] Zahtev se podnosi nadležnom organu na Obrascu 1 propisanom u Pravilniku o sadržini, izgledu i načinu popunjavanja zahteva za izdavanje integrisane dozvole.[110]

108 Član 15. Zakona o zaštiti životne sredine.
109 Uredba o vrstama aktivnosti i postrojenja za koje se izdaje integrisana dozvola („Sl. Glasnik RS" br. 30/06).
110 Član 3. stav 2. Pravilnika o sadržini, izgledu i načinu popunjavanja zahteva za izdavanje integrisane dozvole.

Operater objekta-postrojenja (fizičko ili pravno lice koje upravlja postrojenjem – na čije ime se izdaje ova dozvola) podnosi nadležnom organu zahtev za izdavanje dozvole koji sadrži naročito podatke o: 1) postrojenju i njegovoj aktivnosti; 2) sirovinama i pomoćnom materijalu, drugim materijama i energiji koji se koriste u postrojenju ili se u njemu stvaraju; 3) izvorima emisija koje potiču iz postrojenja; 4) uslovima karakterističnim za lokaciju na kojoj se postrojenje nalazi; 5) prirodi i količini predviđenih emisija koje iz postrojenja dospevaju u vodu, vazduh i zemljište; 6) identifikovanim značajnim uticajima emisija na životnu sredinu i mogućnosti uticaja na veću udaljenost; 7) predloženoj tehnologiji i drugim tehnikama kojima se sprečavaju ili, ako to nije moguće, smanjuju emisije; 8) najboljim dostupnim tehnikama koje operater aktivnosti novog ili postojećeg postrojenja primenjuje ili planira da primeni radi sprečavanja ili smanjenja zagađivanja; 9) merama za smanjenje nastajanja i uklanjanje otpada koji nastaje prilikom funkcionisanja postrojenja; 10) merama za efikasno korišćenje energije; 11) planiranim merama monitoringa emisija u životnu sredinu; 12) prikaz glavnih alternativa koje je operater razmatrao; 13) netehnički prikaz podataka na kojima se zahtev zasniva; 14) drugim merama čije preduzimanje se planira u skladu sa propisima.

Zahtev za izdavanje integrisane dozvole sadrži: I. Opšte podatke: 1) o zahtevu, 2) o operateru (fizičkom ili pravnom licu koje upravlja postrojenjem – na čije ime se izdaje ova dozvola), 3) o postrojenju i njegovoj okolini, 4) vrsti industrijske aktivnosti, 5) osoblju i investicionim troškovima; II. Rezime podataka o aktivnosti i izdatim dozvolama: 1) kratak opis aktivnosti za koju se integrisana dozvola zahteva, 2) podaci o planskoj i projektnoj dokumentaciji za postrojenje (dozvole, odobrenja, saglasnosti), 3) kratak izveštaj o značajnim uticajima na životnu sredinu; III. Detaljne podatke o postrojenju, procesima i procedurama: 1) lokacija, 2) upravljanje zaštitom životne sredine, 3) korišćenje najbolje dostupnih tehnika, 4) korišćenje resursa, 5) emisije u vazduh, 6) emisije štetnih i opasnih materija u vode, 7) zaštita zemljišta i podzemnih voda, 8) upravljanje otpadom, 9) buka i vibracije, 10) procena rizika od značajnih udesa, 11) mere za nestabilne (prelazne) načine rada postrojenja, 12) definitivni prestanak rada postrojenja ili njegovih delova, 13) netehnički prikaz podataka na kojima se zahtev zasniva.

Uz ovaj zahtev se prilažu i sledeći prilozi: 1) dokumentaciju propisanu zakonom[111]; 2) tabelarne preglede (dijagrame); 3) mape i skice; 4) kopije izdatih dozvola, odobrenja i saglasnosti i drugih dokumenata; 5) akcione planove III.4 - III.10.

111 U članu 9. Zakona o integrisanom sprečavanju i kontroli zagađivanja životne sredine utvrđen je spisak dokumenata koji se prilaži uz zahtev za izdavanje integrisane dozvole. Uz zahtev za izdavanje dozvole podnosilac zahteva prilaže sledeću dokumentaciju: 1) projekat za planirano, odnosno izgrađeno postrojenje; 2) izveštaj o poslednjem tehničkom pregledu; 3) plan vršenja monitoringa; 4) rezultate merenja zagađivanja činilaca životne sredine ili drugih parametara u toku trajanja probnog rada; 5) plan upravljanja otpadom; 6) plan mera za efikasno korišćenje energije; 7) plan mera za sprečavanje udesa i ograničavanje njihovih posledica; 8) plan mera za zaštitu životne sredine posle prestanka rada i zatvaranja postrojenja; 9) akt o pravu korišćenja prirodnih resursa; 10) izjavu kojom potvrđuje da su informacije sadržane u zahtevu istinite, tačne, potpune i dostupne javnosti; 11) dokaz o uplaćenoj administrativnoj taksi; kao i 12) saglasnost na studiju o proceni uticaja na životnu sredinu i saglasnost na procenu opasnosti od udesa.

Nakon što je podnosilac podneo uredan zahtev (koji je eventualno dopunio na zahtev nadležnog organa), nadležni organ obaveštava organe i organizacije u oblasti: poljoprivrede, vodoprivrede, šumarstva, planiranja, izgradnje, saobraćaja, energetike, rudarstva, zaštite kulturnih dobara, zaštite prirode i dr. kao i organe lokalne samouprave na čijoj teritoriji se planira aktivnost, odnosno nalazi postrojenje i zainteresovanu javnost o prijemu zahteva, u roku od pet dana od dana prijema urednog zahteva za izdavanje dozvole. Nadležni organ dostavlja kopiju zahteva za izdavanje dozvole na zahtev zainteresovane javnosti, odnosno navedenih organa i organizacija kojima stavlja na uvid i priloženu odgovarajuću dokumentaciju.

U roku od 15 dana, od dana prijema obaveštenja o dostavljenom zahtevu, drugi organi i organizacije i predstavnici zainteresovane javnosti dostavljaju svoja mišljenja nadležnom organu.

Nadležni organ je dužan da u roku od 45 dana od dana prijema urednog zahteva za izdavanje dozvole izradi nacrt dozvole, uzimajući u obzir gore navedena prikupljena mišljenja. Ovaj organ je dužan da i o izrađenom nacrtu dozvole i o mogućnosti uvida u prateću dokumentaciju ponovo obavesti druge organe i organizacije i zainteresovanu javnost u roku od pet dana od dana prijema takvog zahteva (za uvidom u nacrt dozvole).

Na zahtev drugih organa i organizacija i zainteresovane javnosti, nadležni organ će dostaviti kopiju nacrta dozvole. Troškove izrade i dostavljanja kopije nacrta dozvole snosi podnosilac zahteva (u propisano iznosu).

Drugi organi i organizacije i predstavnici zainteresovane javnosti mogu nadležnom organu dostaviti svoja mišljenja o nacrtu dozvole, u roku od 15 dana od dana prijema ovog drugog obaveštenja. U daljem roku od 10 dana nadležni organ nacrt dozvole zajedno sa zahtevom operatera i pratećom dokumentacijom, mišljenjima drugih organa i organizacija i zainteresovane javnosti datih na nacrt dozvole, dostavlja tehničkoj komisiji (koju je formirao isti nadležni organ).

Tehnička komisija razmatra zahtev operatera i priloženu dokumentaciju, nacrt dozvole, mišljenja drugih organa i organizacija i zainteresovane javnosti, kao i mišljenja pribavljena u postupku razmene informacija i konsultacija o prekograničnom uticaju. Radu tehničke komisije može prisustvovati operater ili lice koje on ovlasti. Tehnička komisija analizira naročito: 1) studiju o proceni uticaja na životnu sredinu, odnosno studiju o proceni zatečenog stanja na životnu sredinu; 2) očekivane lokalne i šire uticaje rada postrojenja na životnu sredinu; 3) primenu najboljih dostupnih tehnika; 4) očekivane ekonomske i socijalne posledice i promene stanja životne sredine na konkretnoj lokaciji, kao i očekivane posledice na život i zdravlje stanovništva; 5) propisanu podnetu dokumentaciju; 6) ispunjenost uslova iz nacrta dozvole koje naročito analizira.

Tehnička komisija izrađuje izveštaj koji bez odlaganja dostavlja nadležnom organu. Nadležni organ odlučuje o izdavanju dozvole na osnovu zahteva operatera, priložene dokumentacije, izveštaja i ocene tehničke komisije, kao i pribavljenih mišljenja drugih organa i organizacija i zainteresovane javnosti, u roku od 120 dana od dana prijema urednog zahteva za izdavanje dozvole. U izuzetnim slučajevima, na zahtev operatera ili na inicijativu nadležnog organa, ovaj rok se može produžiti najviše do 240 dana. O produženju roka, razlozima, kao i novom roku za donošenje odluke, nadležni organ obaveštava podnosioca zahteva. Nadležni organ rešenjem odlučuje o izdavanju dozvole, odnosno o odbijanju zahteva za izdavanje dozvole.

Nadležni organ će odbiti zahtev za izdavanje dozvole ako: 1) postrojenje za obavljanje aktivnosti za koju se zahteva dozvola ne ispunjava propisane uslove; 2) na osnovu podataka

i dokumentacije sadržanih u zahtevu nisu ispunjeni uslovi za primenu propisanih standarda životne sredine; 3) zahtev sadrži netačne podatke koji su od uticaja na izdavanje dozvole. Rešenje o izdavanju dozvole, odnosno o odbijanju zahteva za izdavanje dozvole nadležni organ dostavlja operateru i o tome obaveštava druge organe i organizacije i javnost u roku od osam dana od dana donošenja rešenja.

Protiv rešenja nadležnog organa nije dopuštena žalba i može se pokrenuti upravni spor.

Dozvolom se utvrđuju uslovi za rad postrojenja i obavljanje aktivnosti i obaveze operatera u zavisnosti od prirode aktivnosti i njihovog uticaja na životnu sredinu. Dozvola sadrži uslove koji se odnose na: 1) primenu najboljih dostupnih tehnika ili drugih tehničkih uslova i mera; 2) mere iz studije o proceni uticaja na životnu sredinu ili studije o proceni uticaja zatečenog stanja na životnu sredinu; 3) granične vrednosti emisija zagađujućih materija utvrđene za dato postrojenje; 4) mere zaštite vazduha, vode i zemljišta; 5) mere koje se odnose na upravljanje otpadom koji nastaje pri radu postrojenja; 6) mere za smanjenje buke i vibracija; 7) mere koje se odnose na efikasno korišćenje energije; 8) zahteve za monitoring emisija sa: specificiranom metodologijom, definisanom učestalošću merenja, definisanim pravilima za tumačenje rezultata merenja, kao i sa utvrđenom obavezom dostavljanja podataka nadležnom organu; 9) mere za sprečavanje udesa i otklanjanje njihovih posledica; 10) smanjenje zagađenja, uključujući i prekogranično zagađenje životne sredine; 11) mere predviđene za početak rada, za trenutno zaustavljanje u slučaju poremećaja u funkcionisanju postrojenja, kao i za prestanak rada postrojenja; 12) preduzimanje mera zaštite životne sredine posle prestanka aktivnosti radi izbegavanja rizika od zagađenja i vraćanja lokacije u zadovoljavajuće stanje; 13) način i učestalost izveštavanja i obim podataka sadržanih u izveštaju koji se dostavlja nadležnom organu u skladu sa propisima; 14) rezultate revizije uslova i obaveza utvrđenih dozvolom; 15) druge specifične zahteve.

Ako se prema određenom standardu kvaliteta životne sredine zahtevaju strožiji uslovi od onih koji se mogu postići primenom najboljih dostupnih tehnika, dozvola sadrži dodatne mere kojima se obezbeđuje primena ovih standarda. U tom slučaju nadležni organ dozvolom utvrđuje mere i rokove za primenu standarda kvaliteta životne sredine, propisanih u skladu sa zakonom, a naročito: 1) datum od kada se standardi primenjuju i područja na koja se odnose; 2) najviši i najniži prihvatljiv nivo zagađujućih materija i buke u životnoj sredini; 3) određene parametre, proceduru monitoringa i metode kojima se utvrđuju prekoračenja standarda, kao i mere koje se preduzimaju u tom slučaju.

Dozvola može sadržati privremeno oslobađanje od pridržavanja određenih uslova, ukoliko se usvojenim sanacionim programom obezbeđuje primena mera koje vode ka smanjenju zagađenja i ispunjenju uslova.

Uslovi za primenu najboljih dostupnih tehnika propisani su Uredbom o kriterijumima za određivanje najboljih dostupnih tehnika, za primenu standard kvaliteta, kao i za određivanje graničnih vrednosti emisija u integrisanoj dozvoli.

Operater postrojenja je obavezan da: 1) postupa u skladu sa uslovima utvrđenim u dozvoli; 2) dostavi nadležnom organu rezultate monitoringa; 3) obaveštava nadležni organ o svakoj promeni u radu, odnosno funkcionisanju postrojenja ili o udesu, sa mogućim vidljivim uticajima na životnu sredinu ili zdravlje ljudi; 4) dostavlja nadležnom organu godišnji izveštaj o vršenju aktivnosti za koje je dozvola izdata; 5) obaveštava nadležni organ o planiranoj promeni operatera; 6) izvrši sve mere koje nadležni organ utvrdi posle prestanka važnosti dozvole.

Operater postrojenja je dužan da vrši monitoring sprovođenjem plana monitoringa i u

skladu sa uslovima utvrđenim u dozvoli koji se odnose na zahteve za monitoring emisija.

Na zahtev nadležnog organa koji izdaje dozvolu ili inspektora, operater je obavezan da: 1) dostavi podatke nadležnom organu neophodne za izdavanje, izmenu ili prestanak važnosti dozvole; 2) omogući inspekciji uvid u dokumentaciju koju čuva u vezi sa izdavanjem dozvole, obezbedi pristup uzorcima i mestima za monitoring određenim u dozvoli i omogući im nesmetano pribavljanje informacija o postupanju u skladu sa uslovima u dozvoli.

Ako zagađenje potiče iz postrojenja koje ima dozvolu ili podleže izdavanju dozvole, operater će o svom trošku sanirati posledice zagađenja u najkraćem mogućem roku, uzimajući u obzir tehničke i ekonomske mogućnosti. Ako operater ne izvrši sanaciju nadležni organ će sanirati zagađenje o trošku operatera. Operater je dužan da za vreme važenja dozvole i najmanje pet godina posle prestanka važenja dozvole čuva svu dokumentaciju u vezi sa izdavanjem dozvole, monitoringom i inspekcijskim nadzorom nad obavljanjem aktivnosti.

Izdata dozvola podleže ponovnom razmatranju (u daljem tekstu: revizija) najmanje dva puta u toku važenja. Postupak revizije nadležni organ pokreće po službenoj dužnosti ili na zahtev operatera. Nadležni organ po službenoj dužnosti pokreće postupak revizije u zakonom propisanim slučajevima.

3.2.7. Tehnička dokumentacija[112]

Građenje postrojenja vrši se na osnovu građevinske dozvole i tehničke dokumentacije, pod uslovima i na način utvrđen Zakonom o planiranju i izgradnji.

Tehnička dokumentacija je skup projekata koji se izrađuju radi: utvrđivanja koncepcije objekta, razrade uslova, načina izgradnje objekta i za potrebe održavanja objekta. Tehnička dokumentacija se izrađuje na osnovu lokacijskih uslova, koji sadrže sve urbanističke, tehničke i druge uslove i podatke potrebne za izradu idejnog, odnosno projekta za građevinsku dozvolu i projekta za izvođenje. Uz zahtev za izdavanje građevinske dozvole za izgradnju postrojenja snage do 1 MW, ne prilaže se energetska dozvola.

Tehničku dokumentaciju za izgradnju objekta, po Zakonu o planiranju i izgradnji čine: 1) generalni projekat; 2) idejno rešenje; 3) idejni projekat; 4) projekat za građevinsku dozvolu 5) projekat za izvođenje i 6) projekat izvedenog objekta. Projekat izvedenog objekta spada u tehničku dokumentaciju koja se izrađuje nakon izgradnje postrojenja, a za potrebe pribavljanja upotrebne dozvole, korišćenja i održavanja objekta.

Pre početka izrade tehničke dokumentacije za građenje postrojenja za koje građevinsku dozvolu izdaje ministarstvo nadležno za poslove građevinarstva, odnosno autonomna pokrajina,[113] obavljaju se prethodni radovi na osnovu čijih rezultata se izrađuje prethodna studija opravdanosti i studija opravdanosti.[114] Za građenje ovakvih postrojenja za koje se na osnovu planskog dokumenta mogu izdati lokacijski uslovi, ne izrađuje se prethodna studija

112 Pravilnik o sadržini, načinu i postupku izrade i način vršenja kontrole tehničke dokumentacije prema klasi i nameni objekata („Sl. glasnik RS" br. 23/15).

113 Ministarstvo nadležno za poslove građevinarstva, odnosno autonomna pokrajina su nadležni za izdavanje građevinske dozvole za postrojenja sledećih karakteristika: 1) izgradnju objekata za proizvodnju energije iz obnovljivih izvora snage 10 MW i više i 2) za izgradnju objekata za proizvodnju energije iz obnovljivih izvora bez obzira na njihovu snagu i to: a) objekata u granicama kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenoj okolini kulturnih dobara od izuzetnog značaja sa određenim granicama katastarskih parcela i objekata u zaštićenoj okolini kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenim područjima u skladu sa aktom o zaštiti kulturnih dobara, kao i objekata u granicama nacionalnog parka i objekata u granicama zaštite zaštićenog prirodnog dobra od izuzetnog značaja; b) objekata konstruktivnog raspona preko 50 m i c) objekata preko 50m visine.

114 Potrebno je navesti da je nadležnost za izdavanje upravnih akata za izgradnju konkretnog postrojenja i korišćenje izgrađenog postrojenja, shodno Zakonu o planiranju izgradnji, ista za sve sledeće akte: 1) informacije o lokaciji, 2) lokacijskih uslova, 3) građevinske dozvole i 4) upotrebne dozvole – shodno Zakonu o planiranju i izgradnji.

opravdanosti[115] sa generalnim projektom[116]. *Prethodna studija opravdanosti* sadrži Generalni projekat. *Studija opravdanosti* sadrži idejni projekat. Izradu prethodne studije opravdanosti, odnosno studije opravdanosti može obavljati privredno društvo, odnosno drugo pravno lice koje je upisano u odgovarajući registar za obavljanje delatnosti projektovanja i inženjeringa i koje ispunjava uslove u pogledu stručnog kadra.

Prethodni radovi, obuhvataju: 1) istraživanja i izradu analiza i projekata i drugih stručnih materijala; 2) pribavljanje podataka kojima se analiziraju i razrađuju inženjerskogeološki, geotehnički, geodetski, hidrološki, meteorološki, urbanistički, tehnički, tehnološki, ekonomski, energetski, seizmički, vodoprivredni i saobraćajni uslovi, uslovi zaštite od požara i zaštite životne sredine, kao i drugi uslovi od uticaja na gradnju i korišćenje određenog objekta.

Generalni projekat sadrži podatke o: 1) makrolokaciji objekta; 2) opštoj dispoziciji objekta; 3) tehničko-tehnološkoj koncepciji objekta; 4) načinu obezbeđenja infrastrukture; 5) mogućim varijantama prostornih i tehničkih rešenja sa stanovišta uklapanja u prostor; 6) prirodnim uslovima; 7) proceni uticaja na životnu sredinu; 8) inženjersko geološkim-geotehničkim karakteristikama terena sa aspekta utvrđivanja generalne koncepcije i opravdanosti izgradnje objekta; 9) istražnim radovima za izradu idejnog projekta; 10) zaštiti prirodnih i nepokretnih kulturnih dobara; 11) funkcionalnosti i racionalnosti rešenja.

Idejno rešenje se izrađuje za potrebe pribavljanja lokacijskih uslova, a može biti deo urbanističkog projekta za potrebe urbanističko-arhitektonske razrade lokacije.

Idejno rešenje za izgradnju postrojenja treba da sadrži sledeće podatke: 1) naziv, vrstu i namenu objekta; 2) da li se objekat priključuje na javni vodovod i javnu kanalizaciju; 3) opis načina zahvata vode sa planiranim količinama vode, ukoliko se voda zahvata iz površinskih ili podzemnih voda; 4) opis planiranog načina ispuštanja otpadnih voda, ukoliko industrijski ili drugi objekat otpadne vode ispušta u površinske vode ili podzemne vode; 5) opis tehnološkog procesa sa procenom kvaliteta i kvantiteta efluenta; 6) opis planiranih radova koji se odnose na uređenje vodotoka i zaštitu od štetnog dejstva voda, uređenje i korišćenje voda i zaštitu voda od zagađivanja; 7) o kvalitetu zahvaćene vode (rezultati ispitivanja vode), u slučaju kada se voda zahvata iz površinskih ili podzemnih voda kao i podatak o načinu vodosnabdevanja (vodotok, kanal, bunar ili javna vodovodna mreža) i lokaciji vodozahvata. Ukoliko nema tehničkih mogućnosti za snabdevanje vodom iz javne vodovodne mreže ili je za potrebe eksploatacije objekta neophodno izgraditi bunar, navesti njegovu namenu (npr. za protivpožarne potrebe, za navodnjavanje,

115 Prethodnom studijom opravdanosti utvrđuje se naročito prostorna, ekološka, društvena, finansijska, tržišna i ekonomska opravdanost investicije za varijantna rešenja definisana generalnim projektom, na osnovu kojih se donosi planski dokument, kao i odluka o opravdanosti ulaganja u prethodne radove za idejni projekat i izradu studije opravdanosti.

116 Studijom opravdanosti određuje se naročito prostorna, ekološka, društvena, finansijska, tržišna i ekonomska opravdanost investicije za izabrano rešenje, razrađeno idejnim projektom, na osnovu koje se donosi odluka o opravdanosti ulaganja, za projekte koji se finansiraju sredstvima iz budžeta.

za ribnjake i dr.), potrebnu količinu vode iz bunara i sl.; 8) podatke o načinu prikupljanja odvođenja, prečišćavanja (primarno, sekundarno) i ispuštanja svih otpadnih voda sa lokacije predmetnog objekta (tehnoloških sanitarno-fekalnih, atmosferskih) i o recipijentu istih (vodotok, laguna, septička jama, javna kanalizaciona mreža i sl.), vrsti i načinu odlaganja otpada koji može uticati na vodni režim (kvantitet i kvalitet). Idejno rešenje sadrži i podatke o: 1) kapacitetu objekta; 2) opis proizvodnog procesa; 3) vrstu i količinu sirovine koja se koristi; 4) vrstu tehnološkog postupka i finalni proizvod; 5) podatke o drugim objektima (radovima) koji mogu uticati na vodne objekte i vodni režim (kvantitet i kvalitet podzemnih i površinskih voda). Takođe je potrebno dostaviti sledeće podatke grafičke priloge: 1) preglednu kartu; 2) situacioni prikaz svih postojećih i planiranih objekata (sa legendom), sa pratećom infrastrukturom (naročito vodovoda i kanalizacije) ili objekata i infrastrukture koja je predmet zahteva a nalazi se u zoni vodnih objekata i vodotoka (vodozahvati, ulivne i izlivne građevine, produktovodi, TT i optički kablovi, elektrovodovi i sl.) u odgovarajućoj razmeri na katastarskoj podlozi i dr.[117]

Idejni projekat se izrađuje za potrebe izgradnje postrojenja, ukoliko za njega građevinsku dozvolu izdaje ministarstvo nadležno za poslove građevinarstva, odnosno nadležni organ autonomne pokrajine, podleže stručnoj kontroli od strane revizione komisije.

Idejnim projektom se određuju: namena, položaj, oblik, kapacitet, tehničko-tehnološke i funkcionalne karakteristike objekta, organizacioni elementi objekta i izgled objekta.

Projekat za građevinsku dozvolu[118] se izrađuje za potrebe pribavljanja građevinske dozvole.

Projekat za građevinsku dozvolu obavezno sadrži i izjavu glavnog projektanta, odgovornog projektanta i vršioca tehničke kontrole kojom se potvrđuje da je projekat izrađen u skladu sa lokacijskim uslovima, propisima i pravilima struke. Pored ovih elemenata, sastavni deo projekta za građevinsku dozvolu jeste i elaborat o zaštiti od požara. Ovaj elaborat izrađuje lice sa odgovarajućom licencom izdatom u skladu sa propisima kojima se uređuje zaštita od požara.

Projekat za izvođenje[119] se izrađuje za potrebe izvođenja radova na građenju. Projekat za izvođenje je skup međusobno usaglašenih projekata kojim se utvrđuju građevinsko-tehničke, tehnološke i eksploatacione karakteristike objekta sa opremom i instalacijama, tehničko-tehnološka i organizaciona rešenja za gradnju objekta, investiciona vrednost objekta i uslovi održavanja objekta.

117 Uputstvo o načinu postupanja nadležnih organa i imalaca javnih ovlašćenja koja sprovode objedinjenu proceduru u pogledu vodnih akata u postupcima ostvarivanja prava na gradnju

118 Shodno izmenama i dopunama Zakona o planiranju i izgradnji iz 2014. godine, deo tehničke dokumentacije pod nazivom „glavni projekat" je sadržinski izmenjen i dobio je novi naziv „projekat za građevinsku dozvolu".

119 Shodno izmenama i dopunama Zakona o planiranju i izgradnji iz 2014. godine, deo tehničke dokumentacije pod nazivom „izvođački projekat" je sadržinski izmenjen i dobio je novi naziv „projekat za izvođenje".

Projekat za izvođenje radova sadrži izjavu glavnog projektanta i izjave odgovornih projektanata kojima se potvrđuje da je projekat izrađen u skladu sa lokacijskim uslovima, građevinskom dozvolom, projektom za građevinsku dozvolu, propisima i pravilima struke. Za objekte za koje se u skladu sa zakonom kojim se uređuje zaštita od požara pribavlja saglasnost na tehnički dokument, pre izdavanja upotrebne dozvole pribavlja se saglasnost na projekat za izvođenje u postupku objedinjene procedure.[120] Ovaj projekat se može izrađivati i u fazama, u kom slučaju se radovi izvode samo za onu fazu za koju je projekat potvrđen izjavom i izjavama odgovornih projektanata, da je izrađen u skladu sa lokacijskim uslovima, građevinskom dozvolom, projektom za građevinsku dozvolu, propisima i pravilima struke.

Projekat izvedenog objekta se izrađuje za potrebe pribavljanja upotrebne dozvole, korišćenja i održavanja postrojenja.

Projekat izvedenog objekta je projekat za izvođenje sa izmenama nastalim u toku građenja objekta. Ukoliko u toku građenja objekta nije bilo odstupanja od projekta za izvođenje, investitor, lice koje je vršilo stručni nadzor i izvođač radova potvrđuju i overavaju na projektu za izvođenje da je izvedeno stanje jednako projektovanom stanju. Projekat izvedenog objekta ne podleže tehničkoj kontroli, osim kada se izrađuje za potrebe legalizacije objekata.

3.2.7.1. Izrada tehničke dokumentacije

Tehničku dokumentaciju za izgradnju objekata može da izrađuje privredno društvo, odnosno drugo pravno lice, odnosno preduzetnik koji su upisani u odgovarajući registar privrednih subjekata. Tehničku dokumentaciju za izgradnju objekata za koje građevinsku dozvolu izdaje ministarstvo nadležno za poslove građevinarstva, odnosno autonomna pokrajina može da izrađuje privredno društvo, odnosno drugo pravno lice koje je upisano u odgovarajući registar za izradu tehničke dokumentacije za tu vrstu objekata, koje ima zaposlena lica sa licencom za odgovornog projektanta i koja imaju odgovarajuće stručne rezultate u izradi tehničke dokumentacije za tu vrstu i namenu objekata.[121]

U izradi tehničke dokumentacije ne može da učestvuje lice koje je zaposleno u privredno društvu, drugom pravnom licu ili preduzetničkoj radnji koje je ovlašćeno da utvrdi neki od uslova na osnovu kog se izrađuje tehnička dokumentacije. U izradi tehničke dokumentacije ne može da učestvuje ni lice koje vrši nadzor nad primenom odredbi ovog zakona.

Pravno lice koje obavlja komunalne delatnosti, odnosno delatnosti od opšteg interesa može da izrađuje tehničku dokumentaciju za izgradnju objekata koje će koristiti za obavljanje svoje delatnosti, pod uslovima propisanim ovim zakonom.

120 Uputstvo o načinu postupanja organa ministarstva unutrašnjih poslova i organa koji sprovode objedinjenu proceduru u postupcima ostvarivanja prava na gradnji za objekte na koje se primenjuje mere zaštite od požara, od 09.04.2015. godine, http://www.mgsi.gov.rs/cir/dokumenti/uputstvo-o-nacinu-postupanja-organa-ministarstva-unutrashnjih-poslova-i-organa-koji

121 Stručne rezultate ima lice koje je izradilo ili učestvovalo u izradi odnosno u vršenju tehničke kontrole tehničke dokumentacije po kojoj su izgrađeni objekti te vrste i namene. - član 126. stav 3. Zakona o planiranju i izgradnji.

3.2.7.2. Tehnička kontrola

Projekat za građevinsku dozvolu podleže tehničkoj kontroli.[122,123]

Tehničku kontrolu projekta za građevinsku dozvolu može da vrši privredno društvo, odnosno drugo pravno lice i preduzetnik koji ispunjavaju uslove za izradu tehničke dokumentacije propisane zakonom. Investitor određuje koje lice će vršiti tehničku kontrolu.

Tehničku kontrolu ovog projekta ne može da vrši odgovorni projektant koji je izradio taj projekat, odnosno koji je zaposlen u privrednom društvu koje je izradilo taj projekat ili preduzeću koje je investitor. Ova kontrola obuhvata naročito: 1) proveru usklađenosti sa svim uslovima i pravilima sadržanim u lokacijskim uslovima, zakonu i drugim propisima, tehničkim normativima, standardima i normama kvaliteta, kao i međusobne usklađenosti svih delova tehničke dokumentacije; 2) usklađenosti projekta sa rezultatima prethodnih istraživanja (prethodni radovi); ocenu odgovarajućih podloga za temeljenje objekata; 3) proveru ispravnosti i tačnosti tehničko-tehnoloških rešenja objekta i rešenja građenja objekata; 4) stabilnosti i bezbednosti; 5) racionalnosti projektovanih materijala; 6) uticaja na životnu sredinu i susedne objekte. Tehnička kontrola projekta za građevinsku dozvolu za građenje objekata za koje građevinsku dozvolu izdaje ministarstvo nadležno za poslove građevinarstva, odnosno autonomna pokrajina, obuhvata i proveru usklađenosti sa merama sadržanim u izveštaju revizione komisije.[124]

O izvršenoj tehničkoj kontroli sačinjava se izveštaj koji potpisuju projektanti sa odgovarajućim licencama koji su obavili tehničku kontrolu pojedinačnih delova projekata, a konačni izveštaj potpisuje zastupnik pravnog lica, odnosno preduzetnik.

Troškove tehničke kontrole snosi investitor. Projekat za građevinsku dozvolu izrađen po propisima drugih zemalja podleže tehničkoj kontroli kojom se proverava usklađenost te dokumentacije sa zakonom i drugim propisima, standardima, tehničkim normativima i normama kvaliteta. Ovaj projekat mora biti preveden na srpski jezik.

Privredno društvo odnosno drugo pravno lice ili preduzetnk, koje obavlja poslove izrade i kontrole tehničke dokumentacije, odnosno koje je izvođač radova, vršilac stručnog nadzora ili tehničkog pregleda, mora biti osigurano od odgovornosti za štetu koju može pričiniti drugoj strani odnosno trećem licu, u skladu sa pravilnikom, koji je podzakonski akt Zakona o planiranju i izgradnji.[125]

3.2.7.3. Revizija projekata

Generalni projekat i idejni projekat, prethodna studija opravdanosti i studija opravdanosti za postrojenju za koje građevinsku dozvolu izdaje ministar nadležan za poslove građevinarstva, odnosno nadležni organ autonomne pokrajine, podležu reviziji, tj. stručnoj kontroli komisije koju obrazuje ministar nadležan za poslove građevinarstva za objekte za koje je nadležan

122 Pravilnik o sadržini, načinu i postupku izrade i način vršenja kontrole tehničke dokumentacije prema klasi i nameni objekata.

123 Cilj tehničke kontrole projekta za građevinsku dozvolu proveri da li je ovaj projekat usklađen sa: 1) svim uslovima i pravilima sadržanim u lokacijskim uslovima, 2) zakonom, tehničkim i drugim propisima, 3) standardima i normama kvaliteta. Tehnička kontrola služi i da se: 1) proveri da li su svi delovi tehničke dokumentacije međusobno usklađeni, 2) proveri da li je projekat usklađen sa rezultatima prethodnih istraživanja (prethodni radovi), 3) izvrši ocena odgovarajućih podloga za temeljenje objekata, 4) proveri ispravnost i tačnost tehničko-tehnoloških rešenja objekta i rešenja građenja objekata, 5) proveri stabilnost i bezbednost objekta, 6) proveri racionalnost projektovanih materijala, 7) proveri uticaj na životnu sredinu i susedne objekte.

124 Ukoliko je Izveštaj o izvršenoj tehničkoj kontroli projekta za građevinsku dozvolu pozitivan, tj. nema primedbi koje bi dovele do izmene projektne dokumentacije, na samom projektu - na prvoj strani, navedeno lice udara pečat o izvršenoj tehničkoj kontroli koji potpisuje odgovorni projektant tehničke kontrole.

125 Član 129a. Zakona o planiranju i izgradnji. Ovaj pravilnik nije bio donet u vreme pisanja ovog Vodiča.

da izdaje građevinsku dozvolu, odnosno komisiji koju obrazuje nadležni organ autonomne pokrajine za objekte za koje je nadležan da izdaje građevinsku dozvolu.

Reviziona komisija sačinjava izveštaj sa merama koje se obavezno primenjuju pri izradi projekata za izvođenje. Rok za dostavljanje ovog izveštaja ne može biti duži od 30 dana od dana podnošenja zahteva. Ukoliko reviziona komisija ne dostavi ovaj izveštaj u navedenom roku, smatraće se da komisija nema primedbe.

Troškove revizije projekta snosi investitor. Visina troškova revizije projekta je propisana pravilnikom, koji je podzakonski akt Zakona o planiranju i izgradnji.[126]

3.2.8. Građevinska dozvola[127]

Po izvršenoj tehničkoj kontroli projekta za građevinsku dozvolu i pozitivnom izveštaju o izvršenoj tehničkoj kontroli, odnosno potvrđivanju ispravnosti na samom projektu za građevinsku dozvolu, podnosi se Zahtev za izdavanje građevinske dozvole. Uz zahtev za izdavanje građevinske dozvole i projekat za građevinsku dozvolu, investitor treba da dostavi dokaze propisane Pravilnikom o postupku sprovođenja objedinjene procedure i da plati odgovarajuće administrativne takse.

Zahtev za izdavanje građevinske dozvole podnosi se:

1) ministarstvu nadležnom za poslove građevinarstva, odnosno nadležnom organu autonomne pokrajine, ukoliko se objekat nalazi na teritoriji autonomne pokrajine, za izgradnju:
   1.1) postrojenje snage 10 MW i više i
   1.2) postrojenje bez obzira na njihovu snagu i to: a) objekata u granicama kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenoj okolini kulturnih dobara od izuzetnog značaja sa određenim granicama katastarskih parcela i objekata u zaštićenoj okolini kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenim područjima u skladu sa aktom o zaštiti kulturnih dobara, kao i objekata u granicama nacionalnog parka i objekata u granicama zaštite zaštićenog prirodnog dobra od izuzetnog značaja; b) objekata konstruktivnog raspona preko 50 m i c) objekata preko 50m visine.
2) organu jedinice lokalne samouprave nadležnom za izdavanje uslova ili dozvola za objekte za proizvodnju energije iz obnovljivih izvora snage do 10 MW, ukoliko se ne radi o sledećim objektima navedenim u članu 133. Zakona o planiranju i izgradnji, tj. navedenim u tački 1.2) ove podele.

Zahtev za izdavanje građevinske dozvole sadrži: 1) ime i prezime investitora, odnosno poslovno ime ili naziv investitora sa PIB i podatkom o sedištu, odnosno adresi; 2) podatke o objektu čije se građenje, odnosno dogradnja dozvoljava (namena objekta: stambeni, poslovni, industrijski, energetski, saobraćajni, gabaritu, volumenu, ukupnoj površini, dograđenoj površini, predračunskoj vrednosti i dr.); 3) oznaku lokacije na kojoj je predviđena izgradnja, odnosno dogradnja objekta (oznaka katastarske parcele sa adresom na kojoj se

126 Član 132. Zakona o planiranju i izgradnji. Pravilnik kojim se utvrđuje visina troškova revizije projekta nije bio donet u vreme izrade ovog Vodiča.

127 Građevinska dozvola je osnovni uslov za izgradnju objekta i element na osnovu koga se može zahtevati status privremenog povlašćenog proizvođača električne energije. Više o sticanju statusa privremenog povlašćenog proizvođača električne energije u poglavlju 6. ovog Vodiča.

objekat nalazi); 4) spisak priloga. U slučaju da se objekat gradi po delovima koji predstavljaju tehničku i funkcionalnu celinu, zahtev sadrži i podatke o planiranim fazama, odnosno etapama građenja i konačnom roku završetka radova.[128]

Uz zahtev za izdavanje građevinske dozvole prilaže se: 1) izvod iz projekta za građevinsku dozvolu, izrađen u skladu sa pravilnikom kojim se uređuje sadržina tehničke dokumentacije; 2) projekat za građevinsku dozvolu, u elektronskoj formi, kao i onoliko primeraka u papirnoj formi koliko podnosilac zahteva želi da mu nadležni organ overi i vrati prilikom izdavanja građevinske dozvole; 3) dokaz o uplaćenoj administrativnoj taksi za podnošenje zahteva i donošenje rešenja o građevinskoj dozvoli; 4) energetsku dozvolu za izgradnju postrojenja snage 1 MW i više; 5) dokaz o odgovarajućem pravu na zemljištu ili objektu u smislu Zakona o planiranju i izgradnji[129], osim ako je to pravo upisano u javnoj knjizi ili je uspostavljeno zakonom; 6) ugovor između investitora i finansijera, ako postoji; 7) ugovor između investitora i imaoca javnih ovlašćenja, odnosno drugi dokaz o obezbeđivanju nedostajuće infrastrukture, ako je to uslov za izdavanje građevinske dozvole predviđen lokacijskim uslovima; 8) izveštaj revizione komisije, za objekte za koje građevinsku dozvolu izdaje ministarstvo, odnosno nadležni organ autonomne pokrajine; 9) energetsku dozvolu, izdatu u skladu sa posebnim zakonom, za izgradnju energetskih objekata za koje postoji obaveza pribavljanja energetske dozvole; 10) saglasnost preostalih suvlasnika, overena u skladu sa zakonom, ako se gradi ili se izvode radovi na građevinskom zemljištu ili objektu koji je u suvlasništvu više lica; 11) uslovi za projektovanje i priključenje objekata na distributivni, odnosno prenosni sistem električne energije, kao i na distributivni, odnosno sistem za transport prirodnog gasa, koji su pribavljeni u skladu sa zakonom kojim se uređuje oblast energetike, a nisu sadržani u lokacijskim uslovima. Za objekte za koje je propisano plaćanje doprinosa za uređenje građevinskog zemljišta, sastavni deo zahteva iz stava 1. ovog člana je i izjašnjenje podnosioca o načinu plaćanja doprinosa za uređenje građevinskog zemljišta, kao i sredstvima obezbeđenja u slučaju plaćanja na rate, za objekte čija ukupna bruto razvijena građevinska površina prelazi 200 m^2 i koji sadrži više od dve stambene jedinice.

128 Pravilnik o sadržini i načinu izdavanja građevinske dozvole („Sl. glasnik RS" br. 93/11 i 103/13- odluka US). Kako je ovaj pravilnik donet na osnovu Zakona o planiranju i izgradnji, pre poslednjih izmena, autor je terminološki uskladio odredbe ovog pravilnika sa odredbama Zakona o planiranju i izgradnji koji je kasnije donet.

129 Kao odgovarajuće pravo na zemljištu smatra se pravo svojine, pravo zakupa na građevinskom zemljištu u javnoj svojini, kao i druga prava propisana ovim zakonom. Kao odgovarajuće pravo na građevinskom zemljištu za lica iz člana 102. stav 9. Zakona o planiranju i izgradnji, smatra se i pravo korišćenja na građevinskom zemljištu koje je upisano u odgovarajuću evidenciju nepokretnosti i pravima na njima, do donošenja posebnog propisa kojim će biti uređeno pravo i način sticanja prava svojine na građevinskom zemljištu za ova lica. Lica iz člana 102. stav 9. Zakona o planiranju i izgradnji su: 1) lica, nosioce prava korišćenja na građevinskom zemljištu, koja su bila ili jesu privredna društva i druga pravna lica na koja su se primenjivale odredbe zakona kojima se uređuje privatizacija, stečajni i izvršni postupak, kao i njihove pravne sledbenike; 2) lica nosioce prava korišćenja na neizgrađenom građevinskom zemljištu u državnoj svojini koje je stečeno radi izgradnje u skladu sa ranije važećim zakonima kojima je bilo uređeno građevinsko zemljište do 13. maja 2013. godine, ili na osnovu odluke nadležnog organa; 3) lica, nosioce prava korišćenja na građevinskom zemljištu, čiji je položaj određen zakonom kojim se uređuje sport, kao i udruženja; 4) društvena preduzeća, nosioce prava korišćenja na građevinskom zemljištu; 5) lica, nosioce prava korišćenja na građevinskom zemljištu, na koja se primenjuju odredbe propisa Republike Srbije i bilateralnih međunarodnih ugovora kojima se uređuje sprovođenje Aneksa Sporazuma o pitanjima sukcesije („Službeni list SRJ - Međunarodni ugovori", broj 6/02). Pravo i uslovi za pretvaranje prava korišćenja građevinskog zemljišta u pravo svojine ovih lica uređuju se posebnim zakonom.

Za objekte za koje građevinsku dozvolu izdaje ministarstvo nadležno za poslove građevinarstva, odnosno nadležni organ autonomne pokrajine, uz zahtev se podnosi i izveštaj revizione komisije. Građevinska dozvola se izdaje u roku od 5 radnih dana od dana podnošenja zahteva, u obliku rešenja.

Građevinska dozvola sadrži naročito podatke o: 1) investitoru; 2) objektu čije se građenje dozvoljava (sa osnovnim podacima o gabaritu, kapacitetima, površini, predračunskoj vrednosti i predračunskom vrednošću); 3) katastarskoj parceli na kojoj se objekat gradi (broj parcele i naziv katastarske opštine na kojoj se nalazi, kao i površinu katastarske parcele, odnosno katastarskih parcela, osim ako se građevinska dozvola izdaje za linijske objekte i antenske stubove); 4) postojećem objektu koji se uklanja ili rekonstruiše radi građenja; 5) roku važenja građevinske dozvole; 6) dokumentaciji na osnovu koje se izdaje; 7) finansijeru, ako je uz zahtev za izdavanje građevinske dozvole priložen i ugovor između investitora i finansijera;[130] 8) podatke o načinu regulisanja doprinosa za uređenje gradskog građevinskog zemljišta, uključujući i visinu doprinosa, pravo na umanjenje na osnovu ugovora sa imaocima javnih ovlašćenja; 9) pravima i obavezama investitora i imaoca javnih ovlašćenja, ako je uz zahtev za izdavanje građevinske dozvole priložen i ugovor između investitora i imaoca javnih ovlašćenja, odnosno drugi dokaz o obezbeđivanju nedostajuće infrastrukture, ako je to uslov za izdavanje građevinske dozvole predviđen lokacijskim uslovima; 10) druge podatke propisane zakonom. Sastavni deo građevinske dozvole su lokacijski uslovi, izvod iz projekta za građevinsku dozvolu i projekat za građevinsku dozvolu.

Na rešenje kojim se izdaje građevinska dozvola može se izjaviti žalba u roku od osam dana od dana dostavljanja.

Po žalbi na rešenje o građevinskoj dozvoli jedinice lokalne samouprave, rešava ministarstvo nadležno za poslove građevinarstva, odnosno nadležni organ autonomne pokrajine ukoliko se objekat gradi na teritoriji autonomne pokrajine.

Po žalbi protiv prvostepenog rešenja o građevinskoj dozvoli donetoj za građenje objekta do 800 m^2 bruto razvijene građevinske površine na teritoriji grada Beograda, rešava nadležni organ Grada Beograda.

Na rešenje kojim se izdaje građevinska dozvola, koje donosi nadležno ministarstvo, odnosno nadležni organ autonomne pokrajine, ne može se izjaviti žalba, ali se tužbom može pokrenuti upravni spor.

Građevinska dozvola prestaje da važi ako se ne otpočne sa građenjem objekta, odnosno izvođenjem radova, u roku od dve godine od dana pravnosnažnosti rešenja kojim je izdata

130 Građevinska dozvola se izdaje na ime investitora i finansijera ako je uz zahtev za izdavanje priložen ugovor između investitora i finansijera, overen u skladu sa zakonom koji uređuje overu potpisa, u kome se investitor saglasio da nosilac prava i obaveze iz građevinske dozvole bude i finansijer. Finansijer solidarno sa investitorom odgovara za sve obaveze prema trećim licima, koje su posledica radnji koje preduzme u skladu sa ovlašćenjima koja su mu preneta ugovorom koji je zaključio sa investitorom.

građevinska dozvola. Ukoliko je građevinsku dozvolu izdalo ministarstvo nadležno za poslove građevinarstva, odnosno nadležni organ jedinice lokalne samouprave, ova dozvola prestaje da važi, ako se u roku od pet godina od dana pravnosnažnosti rešenja kojim je izdata ne izda upotrebna dozvola.

Na zahtev investitora, nadležni organ može doneti rešenje kojim se odobrava da pravnosnažna građevinska dozvola ostaje na pravnoj snazi još dve godine od propisanog roka od 2, odnosno 5 godina, ako investitor pruži dokaz da je stepen završenosti objekata preko 80%, odnosno ako se u postupku utvrdi da je objekat ukrovljen, sa postavljenom spoljnom stolarijom i izvedenim razvodima unutrašnjih instalacija koje omogućavaju njegovo priključenje na spoljnu mrežu infrastrukture.

3.2.9. Građenje objekta[131]

Građenju objekta se može pristupiti na osnovu pravnosnažnog rešenja o građevinskoj dozvoli i prijavi radova.[132]

Investitor podnosi prijavu radova organu koji je izdao građevinsku dozvolu najkasnije osam dana pre početka izvođenja radova. Uz prijavu radova podnosi se dokaz o regulisanju obaveza u pogledu doprinosa za uređivanje građevinskog zemljišta, kao i dokaz o plaćenoj administrativnoj taksi. Nadležni organ o podnetoj prijavi obaveštava građevinsku inspekciju. Rok za završetak radova počinje da teče od dana podnošenja prijave radova. Ako je građevinsku dozvolu izdalo ministarstvo nadležno za poslove građevinarstva, odnosno autonomna pokrajina, rešenje se dostavlja jedinici lokalne samouprave na čijoj teritoriji se gradi objekat, radi informisanja.

Prijava sadrži datum početka i rok završetka građenja, odnosno izvođenja radova.

Pre početka građenja investitor obezbeđuje: 1) obeležavanje građevinske parcele; 2) regulacionih, nivelacionih i građevinskih linija, u skladu sa propisima kojima je uređeno izvođenje geodetskih radova; 3) obeležavanje gradilišta odgovarajućom tablom, koja[133] sadrži: podatke o objektu koji se gradi, investitoru, odgovornom projektantu, broj građevinske dozvole, izvođaču radova, početku građenja i roku završetka izgradnje.

Građenje objekata, odnosno izvođenje radova može da vrši privredno, odnosno drugo pravno lice ili preduzetnik (u daljem tekstu: izvođač radova).

Građenje postrojenja, odnosno izvođenje radova na postrojenjima iz člana 133. Zakona o planiranju i izgradnji[134], može da vrši privredno društvo, odnosno drugo pravno lice koje je upisano u odgovarajući registar za građenje te vrste objekata, odnosno za izvođenje te vrste radova, koje ima zaposlena lica sa licencom za odgovornog izvođača radova i odgovarajuće stručne rezultate (rezultati ostvareni na rukovođenju građenjem ili saradnji na građenju najmanje dva objekta).

Obaveze izvođača radova su da: 1) pre početka radova potpiše projekat za izvođenje, 2) rešenjem odredi odgovornog izvođača radova na gradilištu, 3) odgovornom izvođaču radova

131 Pravilnik o opštim pravilima za parcelaciju, regulaciju i izgradnju.

132 Članom 148. Zakona o planiranju i izgradnji regulisana je prijava radova.

133 Pravilnik o načinu zatvaranja i obeležavanju zatvorenog gradilišta („Sl. glasnik RS" br. 22/15).

134 Za koje je građevinsku dozvolu izdalo ministarstvo nadležno za poslove građevinarstva, odnosno nadležni organ autonomne pokrajine i to: 1) postrojenja 10 MW i više i 2) objekata za proizvodnju energije iz obnovljivih izvora bez obzira na njihovu snagu i to: a) objekata u granicama kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenoj okolini kulturnih dobara od izuzetnog značaja sa određenim granicama katastarskih parcela i objekata u zaštićenoj okolini kulturnih dobara upisanih u Listu svetske kulturne i prirodne baštine, objekata u zaštićenim područjima u skladu sa aktom o zaštiti kulturnih dobara, kao i objekata u granicama nacionalnog parka i objekata u granicama zaštite zaštićenog prirodnog dobra od izuzetnog značaja; b) postrojenja za tretman neopasnog otpada spaljivanjem ili hemijskim postupcima, kapaciteta više od 70 t dnevno; c) objekata konstruktivnog raspona preko 50 m i d) objekata preko 50 m visine.

obezbedi Ugovor o građenju i dokumentaciju na osnovu koje se gradi objekat, 4) obezbedi preventivne mere za bezbedan i zdrav rad u skladu sa zakonom.

Odgovorni izvođač radova dužan je da: 1) izvodi radove prema dokumentaciji na osnovu koje je izdata građevinska dozvola, odnosno projektu za izvođenje; 2) organizuje gradilište na način kojim će obezbediti pristup lokaciji; 3) obezbeđuje sigurnost objekta i lica na gradilištu i okoline; 4) obezbeđuje dokaz o kvalitetu izvršenih radova; 5) vodi građevinski dnevnik, građevinsku knjigu i obezbeđuje knjigu inspekcije; 6) obezbeđuje merenja i geodetsko osmatranje ponašanja tla i objekta u toku građenja; 7) obezbeđuje objekte i okolinu u slučaju prekida radova; 8) na gradilištu obezbedi ugovor o građenju, Rešenje o određivanju odgovornog izvođača radova na gradilištu i projekat za izvođenje, odnosno dokumentacija na osnovu koje se objekat gradi.

Investitor obezbeđuje stručni nadzor u toku građenja objekta, odnosno izvođenja radova za koje je izdata građevinska dozvola. Stručni nadzor može da vrši lice koje ispunjava uslove propisane Zakonom o planiranju i izgradnji za odgovornog projektanta ili odgovornog izvođača radova. U vršenju stručnog nadzora na objektu ne mogu da učestvuju lica koja su zaposlena u privrednom društvu, odnosno drugom pravnom licu ili preduzetničkoj radnji koje je izvođač radova na tom objektu, lica koja vrše inspekcijski nadzor, kao i lica koja rade na poslovima izdavanja građevinske dozvole u organu nadležnom za izdavanje građevinske dozvole.

Ukoliko se radi o priključenju na prenosni sistem, nakon što je pribavljena građevinska dozvola za izgradnju priključka postrojenja na prenosni sistem, proizvođač podnosi zahtev za zaključenje Ugovora o praćenju gradnje priključka, čime pokreće inicijativu za početak gradnje priključka. Zahtev za zaključenje Ugovora o praćenju gradnje priključka dostupan je na sajtu operatora prenosnog sistema – JP EMS. Zavisno od načina izgradnje priključka koji je proizvođač izabrao u fazi izrade planske i tehničke dokumentacije i pribavljanja potrebnih dozvola za izgradnju priključka, shodno Zakonu o energetici, zaključuje se odgovarajući Ugovor o praćenju gradnje priključka i to: 1) operator prenosnog sistema kao investitor vrši gradnju priključka o trošku proizvođača ili 2) operator prenosnog sistema kao investitor ovlašćuje proizvođača da u ime operatora prenosnog sistema, a o svom trošku gradi priključak, pri čemu proizvođač upravlja gradnjom priključka pod kontrolom operatora prenosnog sistema.

3.2.10. Tehnički pregled postrojenja i upotrebna dozvola

3.2.10.1. Tehnički pregled[135]

Podobnost postrojenja za upotrebu utvrđuje se tehničkim pregledom, po završetku izgradnje.

Tehnički pregled objekta vrši se u roku od 30 dana od dana podnošenja Zahteva za izvršenje tehničkog pregleda objekta – ministarstvu nadležnom za poslove građevinarstva, odnosno lokalnoj samoupravi, odnosno jedinici lokalne samouprave (u zavisnosti nadležnog organa koji je izdao građevinsku dozvolu).

Ovaj pregled objekata vrši komisija ili privredno društvo, odnosno drugo pravno lice

135 Pravilnik o sadržini i načinu vršenja tehničkog pregleda objekta, sastavu komisije, sadržini predloga komisije o utvrđivanju podobnosti objekta za upotrebu, osmatranju tla i objekta u toku građenja i upotrebe i minimalnim garantnim rokovima za pojedine vrste objekata („Sl. glasnik RS" br. 27/15).

kome investitor poveri vršenje tih poslova i koje je upisano u odgovarajući registar za obavljanje tih poslova. Sastav ove komisije uređen je Pravilnikom o sadržini i načinu vršenja tehničkog pregleda objekta, sastavu komisije, sadržini predloga komisije o utvrđivanju podobnosti objekta za upotrebu, osmatranju tla i objekta u toku građenja i upotrebe i minimalnim garantnim rokovima za pojedine vrste objekata. Kada je predmet tehničkog pregleda objekat za koji su utvrđene posebne mere zaštite od požara, član komisije za tehnički pregled je i inženjer protivpožarne zaštite sa odgovarajućom licencom. U vršenju tehničkog pregleda, za objekte za koje je rađena studija uticaja na životnu sredinu, mora da učestvuje lice koje je stručno iz oblasti koja je predmet studije, a koje ima stečeno visoko obrazovanje odgovarajuće struke, odnosno smera, na studijama drugog stepena diplomske akademske studije - master, specijalističke akademske studije, odnosno na osnovnim studijama u trajanju od najmanje pet godina.[136]

Komisija izdaje Izveštaj/Nalaz komisije za tehnički pregled.

Troškove tehničkog pregleda snosi investitor.

O tehničkom pregledu vodi se zapisnik, koji potpisuju članovi komisije.

Ako se, radi utvrđivanja podobnosti objekta za upotrebu, moraju vršiti prethodna ispitivanja i provera instalacija, uređaja, postrojenja, stabilnosti ili bezbednosti objekta, uređaja i postrojenja za zaštitu životne sredine, uređaja za zaštitu od požara ili druga ispitivanja, ili ako je to predviđeno tehničkom dokumentacijom, komisija za tehnički pregled, odnosno subjekt kome je povereno vršenje tehničkog pregleda može da odobri puštanje objekta u probni rad, pod uslovom da utvrdi da su za to ispunjeni uslovi, i o tome bez odlaganja obavesti nadležni organ. Da bi postrojenje bilo stavljeno u probni rad, potrebno je da bude priključeno na elektroenergetsku mrežu, odnosno toplovod.[137]

Aktom o odobravanju puštanja objekta u probni rad utvrđuje se vreme trajanja probnog rada, koje ne može biti duže od jedne godine, kao i obaveza investitora da prati rezultate probnog rada i da po isteku probnog rada nadležnom organu dostavi podatke o njegovim rezultatima.

Komisija za tehnički pregled, odnosno subjekt kome je povereno vršenje tehničkog pregleda, u toku probnog rada objekta proverava ispunjenost uslova za izdavanje upotrebne dozvole i izveštaj o tome dostavlja investitoru.

3.2.10.2. Upotrebna dozvola[138]

Objekat za koji je predviđeno izdavanje građevinske dozvole, može se koristiti po prethodno pribavljenoj upotrebnoj dozvoli.

Organ nadležan za izdavanje građevinske dozvole izdaje rešenjem upotrebnu dozvolu, u roku od pet radnih dana od dana podnošenja zahteva za izdavanje upotrebne dozvole.

136 Na osnovu člana 31. stav 2. Zakona o proceni uticaja, nadležni organ koji je vodio postupak procene uticaja imenuje lice koje učestvuje u radu komisije za tehnički pregled. Ovo imenovano lice može biti zaposleno ili postavljeno u nadležnom organu, odnosno u drugom organu i organizaciji ili biti nezavisni stručnjak koji poseduje dokaze o kvalifikaciji za učešće u radu tehničke komisije iz člana 22. ovog zakona. Upotrebna dozvola ne može se izdati ako ovo imenovano lice ne potvrdi da su ispunjeni uslovi iz odluke o davanju saglasnosti na Studiju o proceni uticaja, a u slučaju da je doneta Odluka da se Studija mora raditi.

137 O priključenju postrojenja na elektroenergetsku mrežu odnosno toplovod, više u poglavlju 4. ovog Vodiča.

138 Upotrebna dozvola je jedan od uslova koji su potrebni za sticanje statusa povlašćenog proizvođača električne energije i statusa proizvođača električne energije iz obnovljivih izvora. Više o ovome u poglavlju 6. ovog Vodiča.

Postupak za *izdavanje upotrebne dozvole* pokreće se podnošenjem zahteva nadležnom organu, uz koji zahtev se prilaže: 1) projekat za izvođenje sa potvrdom i overom investitora, lica koje vrši stručni nadzor i izvođača radova da je izvedeno stanje jednako projektovanom u slučaju da u toku građenja nije bilo odstupanja od projekta za izvođenje, odnosno projekat izvedenog objekta izrađen u skladu sa pravilnikom kojim se uređuje sadržina tehničke dokumentacije; 2) izveštaj komisije za tehnički pregled, kojim se utvrđuje da je objekat podoban za upotrebu, sa predlogom za izdavanje upotrebne dozvola; 3) dokaz o plaćanju propisanih taksi, odnosno naknada; 4) sertifikat o energetskim svojstvima objekta, ako je za objekat propisana obaveza pribavljanja sertifikata o energetskim svojstvima; 5) dokaz o uplati administrativne takse za izdavanje upotrebne dozvole; 6) elaborat geodetskih radova za izvedeni objekat i posebne delove objekta; 7) elaborat geodetskih radova za podzemne instalacije.

Upotrebna dozvola izdaje se za ceo objekat ili za deo objekta koji predstavlja tehničko-tehnološku celinu i može se kao takav samostalno koristiti.

Upotrebna dozvola sadrži i garantni rok za objekat i pojedine vrste radova utvrđene posebnim propisom.[139]

Ako postrojenje podleže obavezi pribavljanja integrisane dozvole može se koristiti samo uz pribavljenu upotrebnu dozvolu i integrisanu dozvolu propisane posebnim zakonom.[140] Ovo se odnosi samo na postrojenja snage preko 50 MW.

Upotrebna dozvola se dostavlja investitoru ili finansijeru (ukoliko na njega glasi upotebna dozvola), nadležnoj građevinskoj inspekciji i imaocima javnih ovlašćenja.

Postupak za dobijanje upotrebne dozvole je dvostepen. Žalba se može uložiti u roku od 8 dana od dana dostavljanja rešenja, ministarstvu nadležnom za poslove građevinarstva, odnosno autonomnoj pokrajini, ako se objekat gradi na teritoriji autonomne pokrajine.

Na rešenje o upotrebnoj dozvoli, kada je donosilac rešenja ministarstvo nadležno za poslove građevinarstva, odnosno nadležni organ autonomne pokrajine, ne može se izjaviti žalba, ali se može pokrenuti upravni spor u roku od 30 dana od dana dostavljanja.

Potrebno je ukazati da u roku od pet radnih dana po pravnosnažnosti izdate upotrebne dozvole, nadležni organ po službenoj dužnosti dostavlja organu nadležnom za poslove državnog premera i katastra upotrebnu dozvolu, elaborat geodetskih radova za izvedeni objekat i posebne delove objekta, kao i elaborat geodetskih radova za podzemne instalacije.

Ovaj organ vrši upis prava svojine na objektu i o tome obaveštava investitora i nadležni organ uprave u roku od sedam dana od dostavljanja upotrebne dozvole.[141]

Pored pribavljanja upotrebne dozvole za postrojenje potrebno je pribaviti i upotrebnu dozvolu za priključak postrojenja na prenosni, odnosno distributivni sistem.

139 Pravilnik o minimalnim garantnim rokovima za pojedine vrste objekata odnosno radova („Sl. glasnik RS" br. 93/11).
140 Postupak pribavljanja integrisane dozvole opisan je u tački 3.2.6. ovog Vodiča.
141 Član 158. stav 11. i 12. Zakona o planiranju i izgradnji i Pravilnik o postupku sprovođenja objedinjene procedure elektronskim putem („Sl. glasnik RS" br.113/15)

3.3. Poseban slučaj izgradnje postrojenja[142]

Posebnim slučajem izgradnje postrojenja smatra se slučaj utvrđen Zakonom o planiranju i izgradnji za koje se ne izdaje građevinska dozvola. Pod ovim slučajem podrazumeva se građenje pomoćnih objekata[143] i ekonomskih objekata[144] u koje spada postavljanje elektrana (postrojenja) koje koriste obnovljive izvore energije instalirane snage 50 kW, vrši se na osnovu rešenja kojim se odobrava izvođenje tih radova, koje izdaje organ nadležan za izdavanje građevinske dozvole.

Uz zahtev za izdavanje rešenja podnosi se: 1) dokaz o pravu svojine; 2) idejni projekat prema klasi objekta; 3) dokaz o uređenju odnosa sa jedinicom lokalne samouprave u pogledu doprinosa za uređivanje građevinskog zemljišta i 4) dokaz o plaćenoj propisanoj administrativnoj taksi.

Za radove na izgradnji/postavljanju postrojenja na objektima u granicama nacionalnog parka, objekata u granicama zaštite zaštićenog prirodnog dobra od izuzetnog značaja, kao i objekta u zaštićenoj okolini kulturnih dobara od izuzetnog značaja i kulturnih dobara upisanih u Listu svetske kulturne baštine, rešava nadležni organ jedinice lokalne samouprave na čijoj teritoriji se nalazi predmetni objekat.

Nadležni organ donosi rešenje u roku od pet dana od dana podnošenja zahteva. Izuzetak je slučaj ukoliko nadležni organ odbija zahtev ako je za radove navedene u zahtevu, jer je za njihovo izvođenje potrebno izdavanje građevinske dozvole, kada je rok za donošenje rešenja osam dana od dana podnošenja zahteva.

Na ova rešenja može se izjaviti žalba u roku od osam dana od dana dostavljanja rešenja, ministarstvu nadležno za poslove građevinarstva, odnosno nadležnom organu autonomne pokrajine ukoliko se radi o objektu odnosno radovima na njenoj teritoriji.

Pravnosnažno rešenje kojim se odobrava izvođenje radova za objekte, koji se u skladu sa odredbama zakona kojim se uređuje upis u javnu knjigu o evidenciji nepokretnosti i pravima na njima mogu upisati u javnu evidenciju, predstavlja osnov za upis u javnu knjigu o evidenciji nepokretnosti i pravima na njima.

Po završetku izgradnje, odnosno izvođenja radova, postavljanja postrojenja, po zahtevu investitora, nadležni organ može izdati upotrebnu dozvolu. Ako je za predmetni objekat, odnosno izvođenje radova izdata i upotrebna dozvola po zahtevu investitora, osnov za upis u javnu knjigu predstavlja pravnosnažno rešenje kojim se odobrava izvođenje radova i pravnosnažno rešenje o upotrebnoj dozvoli.

142 Član 145. Zakon o planiranju i izgradnji.

143 Pomoćni objekat jeste objekat koji je u funkciji glavnog objekta, a gradi se na istoj parceli na kojoj je sagrađen glavni stambeni, poslovni ili objekat javne namene (garaže, ostave, septičke jame, bunari, cisterne za vodu i sl.) – Član 2. tačka 24) Zakona o planiranju i izgradnji.

144 Ekonomski objekti jesu objekti za gajenje životinja (staje za gajenje konja, štale za gajenje goveda, objekti za gajenje živine, koza, ovaca i svinja, kao i objekti za gajenje golubova, kunića, ukrasne živine i ptica); prateći objekti za gajenje domaćih životinja (ispusti za stoku, betonske piste za odlaganje čvrstog stajnjaka, objekti za skladištenje stoke); objekti za skladištenje stočne hrane (senici, magacini za skladištenje koncentrovane stočne hrane, betonirane silo jame i trenč silosi), objekti za skladištenje poljoprivrednih proizvoda (ambari, koševi) i drugi slični objekti na poljoprivrednom gazdinstvu (objekti za mašine i vozila, pušnice, sušare i sl.) – Član 2. tačka 24a) Zakona o planiranju i izgradnji.

4.

ODOBRENJE ZA PRIKLJUČENJE POSTROJENJA NA ENERGETSKU MREŽU

4. ODOBRENJE ZA PRIKLJUČENJE POSTROJENJA NA ENERGETSKU MREŽU

4.1. Priključenje postrojenja na elektroenergetsku mrežu[145]

Nakon dobijanja upotrebne dozvole neophodno je izvršiti priključenje postrojenja na elektroenergetsku mrežu. Objekat proizvođača električne energije priključuje se na prenosni odnosno distributivni elektroenergetski sistem pod uslovima i na način propisan Zakonom o energetici, Uredbom o uslovima isporuke i snabdevanja električnom energijom[146] i Pravilima o radu prenosnog, odnosno distributivnog elektroenergetskog sistema, a u skladu sa standardima i tehničkim propisima koji se odnose na uslove priključenja i korišćenja elektroenergetskih objekata, uređaja i postrojenja.

Troškove priključenja utvrđuje operator sistema, u skladu sa Metodologijom za utvrđivanje troškova priključenja koju donosi Agencija[147]. Troškovi priključenja obuhvataju i troškove nabavke mernih uređaja i snosi ih podnosilac zahteva za priključenje.

Obračun troškova priključka zavisi od mesta priključenja na sistem, odobrene snage, potrebe za izvođenjem radova i potrebe za pružanjem usluga ili potrebe za ugrađivanjem neophodne opreme i drugih objektivnih kriterijuma.

Postupak počinje podnošenjem zahteva za izdavanje odobrenja za priključenje, koji se podnosi energetskom subjektu za prenos, odnosno distribuciju električne energije na čiji sistem se priključuje postrojenje. Obrazac zahteva izrađuje operator sistema i čini ih dostupnim u svojim sedištima i objavljuje ih na svojoj internet stranici.

Zahtev za izdavanje odobrenja za priključenje objekta za proizvodnju električne energije na prenosni, odnosno distributivni sistem sadrži podatke o: 1) vlasniku objekta, odnosno korisniku javne svojine (za fizičko lice: lični podaci – ime, prezime i prebivalište i jedinstveni matični broj građana, a za pravno lice odnosno preduzetnika: poslovno ime odnosno naziv, sedište, izvod iz registra privrednih subjekata, poreski identifikacioni broj, matični broj, račun i odgovorno lice); 2) objektu za čije se priključenje traži izdavanje odobrenja za priključenje (adresa, vrsta i namena objekta); 3) ukupnoj instalisanoj snazi objekta, broju, snazi i vrsti generatorskih jedinica; 4) očekivanoj godišnjoj i mesečnoj proizvodnji električne energije; 5) sopstvenoj potrošnji; 6) planiranom načinu rada (ostrvski rad, paralelni ili kombinovani rad); 7) vremenu kad se predviđa izgradnja,

145 Ovde je potrebno navesti da se shodno članu 118. Zakona o energetici priključenje postrojenja na prenosni sistem vrši na način da je operator prenosnog sistema investitor ovog priključka. Takođe, shodno članu 140. stav 6. Zakona o energetici priključenje na distributivni elektroenergetski sistem objekta koji je u funkciji proizvodnje električne energije ne obavlja u objedinjenoj proceduri. Ako je postrojenje povezano direktnim dalekovodom sa kupcem električne energije, priključenje postrojenja, kao kupca na distributivni sistem, ukoliko je potrebno vrši se u objedinjenoj proceduri.

146 Uredba o uslovima isporuke i snabdevanja električnom energijom („Sl. glasnik RS“ br. 63/13).

147 Odluka o utvrđivanju metodologije za određivanje troškova priključenja na sistem za prenos i distribuciju električne energije („Sl. glasnik RS” br. 109/15).

odnosno priključenje objekta; 8) druge podatke u skladu sa pravilima o radu. Uz zahtev za izdavanje odobrenja za priključenje objekta prilaže se: 1) dokaz o pravu svojine na objektu ili pravu korišćenja objekta; 2) građevinska dozvola za objekat koji se prvi put priključuje.

Ako zahtev za izdavanje odobrenja za priključenje ne sadrži sve podatke i dokumentaciju, operator sistema na čiji sistem se zahteva priključenje, dužan je da u roku od 15 dana od dana prijema zahteva za objekte za proizvodnju električne energije, o tome pismeno obavesti podnosioca zahteva i da mu odredi rok za dostavljanje podataka koji nisu sadržani u zahtevu.

4.1.1 Priključenje na prenosni sistem

Prava i obaveze operatora prenosnog sistema i proizvođača, u postupku priključenja, uređuju se ugovorima i to: 1) ugovorom o izradi studije priključenja objekta na prenosni sistem; 2) ugovorom o izradi planske i tehničke dokumentacije i pribavljanju potrebnih dozvola za izgradnju priključka; 3) ugovorom o praćenju gradnje priključka.

Priključenje postrojenja na prenosni sistem vrši se na osnovu odobrenja za priključenje. Zahtev za izdavanje odobrenja za priključenje podnosi se JP EMS-u, po dobijanju građevinske dozvole za gradnju postrojenja koja se priključuje na prenosni sistem. Odobrenje za priključenje objekta izdaje se rešenjem u upravnom postupku u pismenoj formi u roku od 60 dana.[148] Protiv rešenja može se podneti žalba Agenciji, u roku od 15 dana od dana dostavljanja rešenja. Odluka Agencije po žalbi je konačna i protiv nje se može pokrenuti upravni spor.

Odobrenje za priključenje se izdaje sa rokom važenja koji odgovara roku izgradnje objekta, odnosno roku završetka radova na objektu, u skladu sa propisima kojima se uređuje planiranje i izgradnja objekta, a najduže dve godine od dana donošenja rešenja. Na zahtev podnosioca zahteva, rok važenja rešenja kojim je odobreno priključenje se može produžiti. Zahtev za produženje roka podnosi se najkasnije 30 dana pre isteka roka važenja rešenja kojim je odobreno priključenje.

Odobrenje za priključenje objekta na prenosni sistem sadrži naročito: 1) mesto priključenja na sistem; 2) način i tehničke uslove priključenja; 3) troškove priključenja; 4) potrebna ispitivanja usaglašenosti sa Pravilima o radu prenosnog sistema; 5) instalisani kapacitet; 6) odobrenu snagu; 7) mesto primopredaje energije i način merenja energije i snage; 8) rok za fizičko priključenje objekta.

Tehnički i drugi uslovi priključenja na prenosni sistem operator prenosnog sistema određuje u skladu sa Zakonom o energetici, Uredbom o uslovima isporuke i snabdevanja električnom energijom, tehničkim i drugim propisima i pravilima o radu prenosnog sistema.

148 Član 120. stav 4. Zakona o energetici.

Nakon izgradnje postrojenja i priključka postrojenja na prenosni sistem, neophodno je izvršiti proveru ispunjenosti tehničkih uslova iz odobrenja za priključenje. Inicijativu pokreće proizvođač podnošenjem zahteva operatoru prenosnog sistema, koji u roku od 45 dana, od dana prijema zahteva, sa podnosiocem zahteva usaglašava Protokol za puštanje objekta u pogon. Nakon usaglašavanja, Protokol se obostrano potpisuje.

Operator prenosnog sistema je dužan da priključi objekat proizvođača na prenosni sistem u roku od 15 dana od dana ispunjenja sledećih uslova: 1) uslova iz odobrenja za priključenje, koje je sam izdao;[149] 2) da je za objekat pribavljen akt kojim se odobrava puštanje u probni rad ili upotrebna dozvola za objekat i priključak; 3) da kupac, odnosno proizvođač dostavi operatoru sistema ugovor o snabdevanju električnom energijom, bez komercijalnih podataka; 4) da je za mesto primopredaje uređena balansna odgovornost i pristup sistemu.

Prilikom puštanju objekta u pogon mogu postojati sledeći režimi: 1) ispitni pogon – na objektu se vrše funkcionalna ispitivanja sa puštanjem pod napon pojedinih delova objekta, 2) probni pogon – objekat pušten pod napon do dobijanja upotrebne dozvole, 3) trajni pogon – objekat pod naponom u trajnom eksploatacionom režimu.

Po usaglašavanju dinamike realizacije Protokola za puštanje objekta u probni pogon obostrano je potpisuju operator prenosnog sistema i proizvođač-podnosilac zahteva. Ukoliko postoje neusaglašenosti sa Pravilima o radu prenosnog sistema, operator prenosnog sistema u saradnji sa proizvođačem određuje rokove za ispravljanje neusaglašenosti. Proizvođač shodno Protokolu za puštanje objekta u probni pogon, u saradnji sa operatorom prenosnog sistema i komisijom za tehnički pregled, organizuje puštanje u probni pogon (puštanje objekta pod napon do upotrebne dozvole). Puštanje objekta u probni pogon može se obaviti tek pošto se dobiju pozitivni izveštaji sa funkcionalnih ispitivanja i provera usaglašenosti objekta sa Pravilima o radu prenosnog sistema izvršenih tokom ispitnog pogona. Troškovi operatora prenosnog sistema u realizaciji Protokola za puštanje objekta u pogon se utvrđuju pri usaglašavanju Protokola za puštanje objekta u pogon (vrsta objekta, tip opreme u objektu, lokacija objekta itd.). Ovi troškovi se naplaćuju proizvođaču.

Nakon puštanja objekta u trajni pogon (pribavljena upotrebna dozvola za priključak i objekat) i po završetku svih aktivnosti i ispunjenja međusobnih obaveza u svim fazama realizacije projekta priključenja, operator prenosnog sistema i proizvođač električne energije zatvaraju projekat priključenja objekta na prenosni sistem.

Zabranjeno je: priključivanje objekata na sistem bez odobrenja za priključenje, samovlasno priključivanje objekata, uređaja ili instalacija na prenosni sistem, kao i puštanje u pogon istih.

U postupku priključenja postrojenja na prenosni sistem operator prenosnog sistema i proizvođač zaključuju i sledeće Ugovore: Ugovor o eksploataciji objekta[150], Ugovor o balansnoj odgovornosti, Ugovor o pristupu, Ugovor o snabdevanju, u skladu sa Pravilima o radu prenosnog sistema i Zakonom o energetici.

U slučaju priključenja objekta proizvođača na deo distributivnog sistema kojim upravlja

149 U postupku priključenja, pre puštanja uređaja i instalacija u objektu pod napon, odnosno u pogon, pored provere ispunjenosti uslova utvrđenih Zakonom o energetici i Uredbom o uslovima isporuke i snabdevanja električnom energijom, operator sistema proverava da li su uređaji i instalacije u objektu usaglašeni sa tehničkim i drugim uslovima iz odobrenja za priključenje. Ispunjenost uslova proverava operator sistema u prisustvu ovlašćenih lica investitora objekta o čemu se sačinjava zapisnik. Ispunjenost uslova proverava se i u slučaju kada se priključuje objekat koji je prethodno isključen sa sistema.

150 Ugovor o eksploataciji objekta (priključka), sadrži sledeće elemente: 1) spisak objekata koji se priključuju na prenosni sistem, na koje se ugovor odnosi; 2) granice vlasništva na primarnoj, sekundarnoj i ostaloj opremi; 3) nadležne centre upravljanja operatora prenosnog sistema i postrojenja; 4) spisak ovlašćenog osoblja za tehničku saradnju; 5) razmenu tehničke dokumentacije; 6) tehničke parametre koji se odnose na merenje električne energije; 7) poverljive podatke na osnovu kriterijuma iz Pravila o radu operatora prenosnog sistema.

operator prenosnog sistema odobrenje za priključenje izdaje operator prenosnog sistema. Pre izdavanja odobrenja za priključenje operator prenosnog sistema, pribavlja od operatora distributivnog sistema: 1) tehničke uslove za priključenje koji su od značaja za distributivni sistem; 2) prethodnu saglasnost za izdavanje odobrenja za priključenje.

4.1.2 Priključenje na distributivni sistem

Objekat proizvođača električne energije priključuje se na distributivni sistem na osnovu odobrenja operatora distributivnog sistema u skladu sa Zakonom o energetici, Uredbom o uslovima isporuke i snabdevanja električnom energijom, tehničkim i drugim propisima i pravilima o radu distributivnog sistema.

Operator distributivnog sistema je investitor izgradnje priključka i, po pravilu, gradi priključak na distributivni sistem. Na zahtev proizvođača električne energije, operator distributivnog sistema je dužan da izda ovlašćenje proizvođaču da u ime operatora sistema sam izgradi priključak o svom trošku. U tom slučaju, proizvođaču će se umanjiti troškovi priključenja na sistem u skladu sa metodologijom za određivanje troškova priključenja na sistem za prenos i distribuciju. Za priključak se pribavlja se dokumentacija na ime operatora distributivnog sistema u skladu sa zakonom kojim se uređuje izgradnja objekata. Prava i obaveze operatora distributivnog sistema i proizvođača, uređuju se ugovorom koji pored elemenata utvrđenih zakonom koji uređuje obligacione odnose naročito sadrži: 1) praćenje izgradnje priključka; 2) dinamiku izvođenja radova i rokove; 3) stručni nadzor koji je odredio investitor i 4) druga pitanja. Po izgradnji priključka, priključak postaje deo distributivnog sistema.

Odobrenje za priključenje objekta izdaje se rešenjem u upravnom postupku na zahtev vlasnika ili korisnika javne svojine čiji se objekat priključuje.[151] Protiv rešenja može se podneti žalba Agenciji, u roku od 15 dana od dana dostavljanja rešenja. Odluka Agencije po žalbi je konačna i protiv nje se može pokrenuti upravni spor.

Odobrenje za priključenje se izdaje sa rokom važenja koji odgovara roku izgradnje objekta, odnosno roku završetka radova na objektu, u skladu sa propisima kojima se uređuje planiranje i izgradnja objekta, a najduže dve godine od dana donošenja rešenja. Na zahtev podnosioca zahteva, rok važenja rešenja kojim je odobreno priključenje se može produžiti. Zahtev za produženje roka podnosi se najkasnije 30 dana pre isteka roka važenja rešenja kojim je odobreno priključenje.

Operator distributivnog sistema je dužan da odluči po zahtevu za priključenje objekta proizvođača u roku od 45 dana od dana prijema pismenog zahteva.

Odobrenje za priključenje objekta na distributivni sistem sadrži naročito: 1) mesto priključenja na sistem; 2) način i tehničke uslove priključenja; 3) odobrenu snagu; 4) mesto i način merenja energije; 5) rok za priključenje i 6) troškove priključenja.

151 Nadležni energetski subjekt će izdati pozitivno rešenje, ukoliko su ispunjeni svi uslovi, a na osnovu tehničkog izveštaja, obračuna troškova priključka i drugih raspoloživih dokumenata.

Tehničke i druge uslove priključenja na distributivni sistem operator sistema određuje u skladu sa Zakonom o energetici, Uredbom o uslovima isporuke i snabdevanja električnom energijom, tehničkim i drugim propisima i pravilima o radu distributivnog sistema.

Operator distributivnog sistema je dužan da priključi objekat proizvođača električne energije na distributivni sistem u roku od osam dana od dana ispunjenja sledećih uslova: 1) uslova iz odobrenja za priključenje;[152] 2) da je za objekat pribavljen akt kojim se odobrava puštanje u probni rad ili upotrebna dozvola; 3) da proizvođač dostavi operatoru distributivnog sistema ugovor o snabdevanju električnom energijom; 4) da je za mesto primopredaje uređena balansna odgovornost i pristup sistemu.

Priključenjem objekta priključak postaje deo sistema na koji je priključen.

U slučaju potrebe za priključenje objekta za koje je odobren probni rad u skladu sa posebnim zakonom može se izdati odobrenje za privremeno priključenje objekta. Izdavanje odobrenja za privremeno priključenje i isporuku energije vrši se pod uslovima, na način i postupak propisanim za izdavanja odobrenja za priključenje objekata.

Zabranjeno je: priključivanje objekata na sistem bez odobrenja za priključenje, samovlasno priključivanje objekata, uređaja ili instalacija na distributivni sistem, kao i puštanje u pogon istih.

4.2. Priključenje postrojenja na mrežu za distribuciju toplotne energije[153]

Priključenje postrojenja na mrežu za distribuciju toplotne energije vrši se u skladu sa odredbama Zakona o energetici i posebnim propisima ukoliko su doneti.[154]

Kada se radi o postrojenju koje istovremeno proizvodi toplotnu i električnu energiju, ono ne mora biti priključeno na mrežu za distribuciju toplotne energije, ukoliko toplotnu energiju koriste za sopstvene potrebe.[155]

Priključenje objekta na distributivni sistem za toplotnu energiju vrši sa na osnovu odobrenja energetskog subjekta za distribuciju toplotnom energijom, na čiji sistem se priključuje objekat, pod uslovom da uređaji i instalacije objekta koji se priključuje ispunjavaju uslove propisane zakonom, tehničkim i drugim propisima kojima se uređuju uslovi i način obavljanja delatnosti distribucije toplotne energije.

152 U postupku priključenja, pre puštanja uređaja i instalacija u objektu pod napon, odnosno u pogon, pored provere ispunjenosti uslova utvrđenih Zakonom, operator sistema proverava da li su uređaji i instalacije u objektu usaglašeni sa tehničkim i drugim uslovima iz odobrenja za priključenje. Ispunjenost uslova proverava operator sistema u prisustvu ovlašćenih lica investitora objekta o čemu se sačinjava zapisnik. Ispunjenost uslova proverava se i u slučaju kada se priključuje objekat koji je prethodno isključen sa sistema.

153 Jedan od veoma važnih elemenata da bi priključenje proizvodnog objekta na toplovod bilo svrsishodno, je usklađivanje Zakona o komunalnim delatnostima sa Zakonom o energetici, tj. odvajanje energetske delatnosti proizvodnje toplotne energije od njene distribucije. Takođe je važno i odvajanje distribucije toplotne energije od snabdevanja toplotnom energijom. U svakom slučaju distribucija toplotne energije mora biti izdvojena od delatnosti koje u sebi imaju elemente prodaje, kako bi se mogli proceniti troškovi distribucije toplotne energije (kao mrežne delatnost) i time ostvariti konkurentnost proizvedene toplotne energije, sa jasno definisanom cenom, koja konkuriše drugim proizvođačima toplotne energije, odnosno drugim načinima obezbeđenja toplotne energije.

154 Pod posebnim propisima se smatraju propisi jedinice lokalne samouprave koji se odnose na način obavljanja komunalne delatnosti proizvodnje i distribucije toplotne energije i obezbeđenja funkcionisanja obavljanja ove delatnosti, njenog kontinuiteta i prava i obaveza vršioca komunalne delatnosti distribucije i snabdevanja toplotnom energijom. U ove propise spadaju i pravila rada distributera toplotne energije, ukoliko ih je doneo.

155 Član 56. tačka 3) i član 56. tačka 5), 6) i 9) Zakona o energetici. – značajno i za sticanje statusa povlašćenog proizvođača električne energije.

5.

STICANJE PRAVA NA OBAVLJANJE DELATNOSTI OD OPŠTEG INTERESA

5. STICANJE PRAVA NA OBAVLJANJE DELATNOSTI OD OPŠTEG INTERESA

5.1. Sticanje prava na obavljanje delatnosti od opšteg interesa

Postoji različita procedura za sticanje prava na obavljanje delatnosti proizvodnje električne i/ili toplotne energije u postrojenju, u zavisnosti od toga da li delatnost koju obavlja spada u delatnosti od opšteg interesa. Proizvodnja električne energije i kombinovana proizvodnja električne i toplotne energije spadaju u tržišne delatnosti, dok proizvodnja toplotne energije spada u delatnost od opšteg interesa – u komunalne delatnosti[156].

Postoji više načina sticanja prava na obavljanje delatnosti proizvodnje toplotne energije:

1) neposredno: 1.1) poveravanje prava na obavljanje komunalne delatnosti,
   1.2) koncesija na obavljanje delatnosti od opšteg interesa;
2) posredno: ulaganje u javno (komunalno) preduzeće, odnosno privredno društvo koje obavlja komunalnu delatnost.

Za obavljanje delatnosti proizvodnje toplotne energije, pored sticanja prava na obavljanje ove delatnosti kao delatnosti od opšteg interesa, neophodno je pribaviti i licencu za obavljanje ove delatnosti. Licencu za obavljanje delatnosti proizvodnje toplotne energije izdaje nadležni organ jedinice lokalne samouprave, grada, odnosno grada Beograda.[157]

5.1.1. Poveravanje prava na obavljanje komunalne delatnosti

Poveravanje prava na obavljanje komunalne delatnosti regulisano je Zakonom o komunalnim delatnostima.

U Zakonu o komunalnim delatnostima je delatnost proizvodnje toplotne energije deo jedinstvene delatnosti: proizvodnja i distribucija toplotne energije.[158]

Pravo na obavljanje komunalne delatnosti stiče se na osnovu poveravanja obavljanja konkretne delatnosti. Pod poveravanjem obavljanja komunalne delatnosti podrazumeva se vremenski oročeno ugovorno uređivanje odnosa u vezi sa obavljanjem komunalne delatnosti ili pojedinih poslova iz okvira komunalne delatnosti između jedne ili više jedinica lokalne samouprave i vršioca komunalne delatnosti, koje za cilj ima pružanje komunalnih usluga na teritoriji jedne ili više jedinica lokalne samouprave ili na delu teritorije jedinice lokalne samouprave.

156 Zakon o energetici, Zakonom o javnim preduzećima je utvrđeno da su komunalne delatnosti delatnosti od opšteg interesa, Zakon o komunalnim delatnostima („Sl. glasnik RS" br. 88/11).

157 Član 361. Zakona o energetici.

158 U Zakonu o energetici postoje tri energetske delatnosti: proizvodnja toplotne energije, distribucija toplotne energije i snabdevanje toplotnom energijom. Takođe, utvrđeno je da je proizvođač toplotne energije, kome je aktom o osnivanju ili aktom o poveravanju obavljanja delatnosti proizvodnje toplotne energije utvrđena obaveza proizvodnje toplotne energije za krajnje kupce, dužan da proizvedenu toplotnu energiju isporučuje energetskom subjektu koji obavlja delatnost snabdevanja krajnjih kupaca toplotnom energijom, prema potrebama ovih krajnjih kupaca. Ovaj proizvođač toplotne energije i energetski subjekt koji obavlja delatnost snabdevanja krajnjih kupaca toplotnom energijom, u slučaju da nisu isti privredni subjekt (pravno lice), zaključuju godišnji ugovor o prodaji toplotne energije za potrebe krajnjih kupaca. Ovaj ugovor se zaključuje u pisanoj formi. Obzirom da postoji neusklađenost između Zakona o komunalnim delatnostima i Zakona o energetici, dok se ova dva zakona ne usaglase, snabdevanje toplotnom energijom najverovatnije će se smatrati elementom delatnosti „proizvodnja i distribucija toplotne energije".

Poveravanje obavljanja komunalne delatnosti vrši se na osnovu: 1) odluke skupštine jedinice lokalne samouprave o načinu obavljanja komunalne delatnosti i 2) ugovora o poveravanju.

Ukoliko se osniva javno preduzeće za obavljanje komunalne delatnosti, nije potrebno da zaključuje ugovor o poveravanju, već se vršilac komunalne delatnosti može odrediti u odluci o načinu obavljanja komunalne delatnosti.

U zavisnosti od finansiranja obavljanja komunalne delatnosti, razlikuje se postupak poveravanja njenog obavljanja. Postoje dva slučaja: 1) kada vršilac dobija pravo da finansiranje obavljanja komunalne delatnosti obezbeđuje u celosti ili delimično naplatom naknade od korisnika usluga, na koji postupak se primenjuju odredbe zakona kojim se uređuju koncesije i 2) kada se obavljanje komunalne delatnosti finansira iz budžeta jedinice lokalne samouprave, na koji postupak se primenjuju odredbe zakona kojim se uređuju javne nabavke.

Skupština jedinice lokalne samouprave odlukama propisuje: 1) način obavljanja komunalne delatnosti, kao i 2) opšta i posebna prava i obaveze vršilaca komunalne delatnosti i korisnika usluga na svojoj teritoriji, uključujući i: 2.1) način plaćanja cene komunalne usluge, 2.2) način vršenja kontrole korišćenja i naplate komunalne usluge i 2.3) ovlašćenja vršioca komunalne delatnosti u vršenju kontrole i 2.4) mere koje su kontrolori ovlašćeni da preduzimaju.

5.1.2. Koncesija na obavljanje komunalne delatnosti[159]

Zakonom o javno-privatnom partnerstvu i koncesijama je utvrđeno da se i koncesijom može steći pravo na obavljanje delatnosti od opšteg interesa[160].

Postupak dobijanja koncesije je detaljno uređen Zakonom o javno-privatnom partnerstvu i koncesijama. U nekim elementima procedure upućuje se na Zakon o javnim nabavkama. Pravni osnov koncesije je ugovor o koncesiji.[161]

Koncesija se može dati najkraće na pet, a najduže na pedeset godina[162], osim ako nekim drugim zakonom nije drugačije utvrđeno.

Propisano je da se uređivanje uslova i postupka zaključivanja ugovora o koncesijama zasniva na načelima: 1) zaštite javnog interesa, 2) efikasnosti, 3) transparentnosti, 4) jednakog i pravičnog tretmana, 5) slobodne tržišne utakmice, 6) proporcionalnosti, 7) zaštite životne sredine, 8) autonomije volje i 9) ravnopravnosti ugovornih strana. Prilikom sprovođenja postupka davanja koncesija, davalac koncesije dužan je da, u odnosu na sve učesnike u postupku, primenjuje i: 1) načelo slobode kretanja robe, 2) načelo slobode pružanja usluga, 3) načelo zabrane diskriminacije i 4) načelo uzajamnog priznavanja.

159 Zakonom o javno-privatnom partnerstvu i koncesijama utvrđeno je da je koncesija, ugovorno javno-privatno partnerstvo sa elementima koncesije u kome je javnim ugovorom uređeno komercijalno korišćenje prirodnog bogatstva, odnosno dobra u opštoj upotrebi koja su u javnoj svojini ili obavljanja delatnosti od opšteg interesa, koje nadležno javno telo ustupa domaćem ili stranom licu, na određeno vreme, pod posebno propisanim uslovima, uz plaćanje koncesione naknade od strane privatnog, odnosno javnog partnera, pri čemu privatni partner snosi rizik vezan za komercijalno korišćenje predmeta koncesije.

160 Zakonom o javno-privatnom partnerstvu i koncesijama utvrđeno je da je koncesija, ugovorno javno-privatno partnerstvo sa elementima koncesije u kome je javnim ugovorom uređeno komercijalno obavljanje delatnosti od opšteg interesa, koje nadležno javno telo ustupa domaćem ili stranom licu, na određeno vreme, pod posebno propisanim uslovima, uz plaćanje koncesione naknade od strane privatnog, odnosno javnog partnera, pri čemu privatni partner snosi rizik vezan za komercijalno korišćenje predmeta koncesije.

161 Postupak zaključenja ovog ugovora je detaljnije razrađen nego postupak zaključenja ugovora o poveravanju. S druge strane, postupak dobijanja koncesije s obzirom na propisane rokove i stadijume, može da bude dugotrajniji nego poveravanje obavljanja delatnosti od opšteg interesa putem ugovora o poveravanju.

162 Opšti rok za koncesije je utvrđen Zakonom o javno-privatnom partnerstvu i koncesijama.

5.1.2.1. Postupak davanja koncesije

Postupak davanja koncesije vrši javno telo[163].

Svaki javni ugovor (pa i javni ugovor sa elementima koncesije - ugovor o koncesijama) dodeljuje se u postupku koji se pokreće objavljivanjem javnog poziva na srpskom jeziku i na stranom jeziku koji se uobičajeno koristi u međunarodnoj trgovini. Zakonom o javno-privatno partnerstvu i koncesijama[164] uređen je postupak davanja koncesija, rok za prijem ponuda (koji iznosi najmanje 60 dana)[165], poverljivost i tajnost podataka iz dostavljene ponude i sl.

5.1.2.2. Postupak utvrđivanja koncesionog akta

Prethodni postupak postupku davanja koncesije je utvrđivanje koncesionog akta. Ovaj postupak započinje postupkom utvrđivanja predloga koncesionog akta. Javno telo, pre sačinjavanja predloga za donošenje koncesionog akta imenuje stručni tim za izradu konkursne dokumentacije koji vrši: 1) procenu vrednosti koncesije; 2) izrađuje studiju opravdanosti davanja koncesija i 3) preduzimanje svih ostalih radnji koje prethode postupku davanja koncesije. Predlog za donošenje koncesionog akta za dodelu koncesije za proizvodnju toplotne energije dostavlja se skupštini jedinice lokalne samouprave.

Nakon usvajanja predloga za donošenje koncesionog akta, predloženi koncesioni akt postaje koncesioni akt, koji sadrži sve elemente predloga koncesionog akta, i to: 1) predmet koncesije; 2) razloge za davanje koncesije; 3) eventualno oduzimanje poverenih poslova i oduzimanje prava korišćenja imovine za obavljanje poverenih poslova; 4) podatke o uticaju koncesione delatnosti na životnu sredinu, na infrastrukturu i druge privredne oblasti, na efikasno funkcionisanje tehničko-tehnoloških sistema; 5) minimalne tehničke, finansijske i iskustvene kvalifikacije koje učesnik u postupku mora da ispunjava da bi mu se omogućilo učestvovanje u postupku izbora koncesionara i pregovaranja; 6) rok trajanja koncesije, uključujući obrazloženje predloženog roka; 7) podatke o potrebnim novčanim i drugim sredstvima i dinamici njihovog ulaganja, način plaćanja, davanja garancija ili drugih sredstava obezbeđenja za izvršavanje koncesionih obaveza, prava i obaveze koncesionara prema korisnicima usluga koje su predmet koncesije i pitanja vezana za podnošenje prigovora od strane tih korisnika, pitanja uslova i načina vršenja nadzora, i cene i opšte uslove za korišćenje dobara i obavljanje delatnosti; 8) podatke

163 Javno telo je, shodno Zakonu o javno-privatnom partnerstvu i koncesijama: 1) državni organ, organizacija, ustanova ili drugi direktni ili indirektni korisnik budžetskih sredstava u smislu zakona kojim se uređuje budžetski sistem i budžet, kao i organizacija za obavezno socijalno osiguranje; 2) javno preduzeće; 3) pravno lice koje obavlja i delatnost od opšteg interesa, ukoliko je ispunjen neki od sledećih uslova: 3.1) da više od polovine članova organa upravljanja tog pravnog lica čine predstavnici javnog tela; 3.2) da više od polovine glasova u organu tog pravnog lica imaju predstavnici javnog tela; 3.3) da javno telo vrši nadzor nad radom tog pravnog lica; 3.4) da javno telo poseduje više od 50% akcija, odnosno udela u tom pravnom licu; 3.5) da se više od 50 % finansira iz sredstava javnog tela; 4) pravno lice osnovano od javnog tela, a koje obavlja i delatnost od opšteg interesa i koje ispunjava najmanje jedan od uslova iz prethodne tačke.

164 Zakon o javno-privatnom partnerstvu i koncesijama se primenjuje na sve javne ugovore koji nisu izuzeti i čija je procenjena vrednost bez poreza na dodatu vrednost (PDV) jednaka ili veća od donjih graničnih vrednosti ispod kojih javna tela nisu u obavezi da primenjuju zakon kojim se uređuju javne nabavke, određenih zakonom kojim se uređuje godišnji budžet Republike Srbije.

165 Član 37. Zakona o javno-privatnom partnerstvu i koncesijama.

o naknadama koje plaćaju koncedent i koncesionar[166]; 9) ocenu o potrebnom broju radnih mesta i kvalifikovane radne snage u vezi sa izvršavanjem koncesije, ukoliko se predlaže da to bude elemenat koncesionog akta.

Posebno značajnu ulogu ima stručni tim javnog tela, koji, pored aktivnosti na pripremi koncesionog akta, u postupku davanja koncesije ima i sledeće zadatke: 1) pružanje stručne pomoći javnom telu pri pripremi potrebnih analiza, odnosno studija opravdanosti davanja koncesije, pri pripremi i izradi uslova i konkursne dokumentacije, pravila i uslova za ocenu ponuđača i primljenih ponuda, kao i kriterijuma za izbor ponude; 2) pregledanje i ocena pristiglih ponuda; 3) utvrđivanje predloga odluke o izboru najpovoljnije ponude za davanje koncesije ili predloga odluke o poništaju postupka davanja koncesije, i obrazloženje tih predloga; 4) obavljanje ostalih poslova potrebnih za realizaciju postupka davanja koncesije. Stručni tim za koncesije, o svom radu vodi zapisnik i sačinjava druga dokumenta koja potpisuju svi članovi stručnog tima.

Javno telo u izradi studije opravdanosti davanja koncesije posebno uzima u obzir javni interes, uticaj na životnu sredinu, uslove rada, zaštitu prirode i kulturnih dobara, finansijske efekte koncesije na budžet Republike Srbije, odnosno budžet autonomne pokrajine i budžet jedinice lokalne samouprave.

5.1.2.3. Postupak zaključivanja ugovora o koncesiji

Postupak davanja koncesije počinje danom objavljivanja javnog poziva u „Službenom glasniku Republike Srbije", a okončava se donošenjem konačne odluke o izboru najpovoljnije ponude ili donošenjem konačne odluke o poništaju postupka davanja koncesije.

Konkursna dokumentacija sadrži: 1) oblik ponude, 2) sadržaj ponude, 3) rok važnosti ponude, 4) opis predmeta koncesije (tehničke specifikacije), 5) nacrt javnog ugovora o koncesiji, 6) uslove i dokaze koje su ponuđači obavezni da dostave uz ponudu u svrhu dokazivanja njihove osposobljenosti, 7) zahtev za dostavu pune liste povezanih društava, 8) rok za donošenje odluke o izboru najpovoljnije ponude, kao i 9) sve ostale zahteve koje ponuđač mora da ispuni.

Potrebno je ukazati da ako davalac koncesije ili drugo javno telo na osnovu posebnog propisa ima pravo određivanja cene koju koncesionaru za njegove usluge plaćaju krajnji korisnici ili davanja saglasnosti koncesionaru na tarifu njegovih javnih usluga, takvo pravo, kao sastavni deo odredaba javnog ugovora o koncesiji koja je predmet postupka dodele, treba da bude sastavni deo konkursne dokumentacije. Ovo je posebno značajno ukoliko se radi o proizvodnji toplotne energije za tarifne kupce.

166 Nije jasno kakvu naknadu vezanu za davanje koncesije može da plaća koncedent.

Javni poziv mora da sadrži sledeće podatke: 1) kontakt podatke davaoca koncesije; 2) predmet koncesije, uključujući prirodu i obim koncesione delatnosti, mesto obavljanja koncesione delatnosti i rok trajanja koncesije; 3) rok za predaju ponuda, adresu na koju se dostavljaju ponude, jezik i pismo na kojem ponude moraju biti sačinjene; 4) lične, stručne, tehničke i finansijske uslove koje moraju da zadovolje ponuđači, kao i isprave kojima se dokazuje njihovo ispunjenje; 5) kriterijume za izbor najpovoljnije ponude; 6) datum dostavljanja obaveštenja o ishodu postupka; 7) naziv i adresu tela nadležnog za rešavanje po zahtevima za zaštitu prava, kao i podatke o rokovima za njihovo podnošenje.

Pre početka postupka davanja koncesije, davalac koncesije je dužan da u konkursnoj dokumentaciji i javnom pozivu navede obavezu ponuđača da dostavi bankarsku garanciju (u daljem tekstu: garancija) za ozbiljnost ponude. Davalac koncesije dužan je da utvrdi visinu garancije za ozbiljnost ponude u apsolutnom iznosu. Garancija za ozbiljnost ponude ne može biti viša od 5% procenjene vrednosti koncesije.[167]

Kriterijumi na kojima davalac koncesije zasniva izbor najpovoljnije ponude su: 1) u slučaju ekonomski najpovoljnije ponude sa stanovišta davaoca koncesije, kriterijumi vezani za predmet koncesije, kao što su: kvalitet, visina naknade, cena, tehničko rešenje, estetske, funkcionalne i ekološke osobine, cena pružene usluge prema krajnjim korisnicima, operativni troškovi, ekonomičnost, servisiranje nakon predaje i tehnička pomoć, datum isporuke i rokovi isporuke ili rokovi završetka radova ili 2) najviša ponuđena koncesiona naknada. [168]

Davalac koncesije donosi odluku o izboru najpovoljnije ponude za koju će ponuditi potpisivanje javnog ugovora o koncesiji. Davalac koncesije ne može potpisati javni ugovor o koncesiji pre isteka perioda mirovanja, koje iznosi 15 dana od dana dostavljanja odluke o izboru najpovoljnije ponude svakom ponuđaču.

Rok za donošenje odluke o izboru najpovoljnije ponude mora biti primeren, a počinje da teče danom isteka roka za dostavljanje ponuda. Ako u konkursnoj dokumentaciji nije navedeno drugačije, rok za donošenje odluke o izboru najpovoljnije ponude iznosi 60 dana.

Odluka o izboru najpovoljnije ponude sadrži: 1) naziv davaoca koncesije sa brojem i datumom donošenja odluke; 2) naziv ponuđača; 3) predmet koncesije; 4) prirodu, obim i mesto obavljanja koncesione delatnosti; 5) rok trajanja koncesije; 6) posebne uslove koje treba da ispunjava koncesionar tokom trajanja koncesije; 7) iznos koncesione naknade ili osnov za utvrđivanje

167 Ostale osobine garancije za ozbiljnost ponude utvrđene su članom 38. Zakona o javno-privatnom partnerstvu i koncesijama.

168 Kada se radi o iskorišćenju prirodnog bogatstva ili dobra u opštoj upotrebi potpuno je jasno obaveza plaćanja naknade od strane privatnog partnera. S druge strane koncesiona naknada za pravo na obavljanje delatnosti od opšteg interesa, u konkretnom slučaju proizvodnje toplotne energije, koje je istovremeno i obaveza privatnog partnera, direktno utiče na povećanje cene proizvedene toplotne energije. Svakako bi trebalo u budućnosti razmotriti da li je koncesiona naknada za obavljanje delatnosti proizvodnje toplotne energije obavezan element koncesionog ugovora. Verovatno ovo pitanje nije isključivo vezano za proizvodnju toplotne energije, kao delatnost od opšteg interesa, već se vezuje i za druge slučajeve obavljanja delatnosti od opšteg interesa. Razmatranje ovog odnosa ide u prilog mišljenju da proizvodnja toplotne energije ne bi trebalo da bude delatnost od opšteg interesa, već komercijalna delatnost, te u tom slučaju javno-privatno partnerstvo za obavljanje proizvodnje toplotne energije ne bi imalo elemente koncesije.

iznosa koncesione naknade koju će plaćati koncesionar ili koncedent[169]; 8) rok u kojem je najpovoljniji ponuđač obavezan da potpiše javni ugovor o koncesiji sa davaocem koncesije; 9) rok u kome davalac koncesije može pozvati druge ponuđače da potpišu ugovor o koncesiji u slučaju nepotpisivanja ugovora od strane najpovoljnijeg ponuđača, kao i obavezu produženja roka obaveznosti ponude i roka bankarske garancije za ozbiljnost ponude; 10) obrazloženje razloga za izbor ponuđača; 11) pouku o pravnom leku; 12) potpis odgovornog lica i pečat davaoca koncesije.

5.1.2.4. Ugovor o koncesiji

Ugovorom o koncesiji se uređuju prava i obaveze države kao koncedenta i korisnika koncesije (koncesionara). Ugovorom se obavezno uređuje vreme, mesto i način korišćenja koncesije i obaveza plaćanja koncesione naknade.

Ugovor o koncesiji zaključuje nadležni organ jedinice lokalne samouprave u ime i za račun jedinice lokalne samouprave, uz prethodnu pismenu saglasnost Vlade[170], u skladu sa Zakonom o koncesijama i koncesionim aktom.

Prilikom određivanja odredaba i uslova javnog ugovora, javni partner uređuje sledeća pitanja: 1) karakter i obim radova koje treba da izvrši i/ili usluga koje treba da obezbedi privatni partner i uslove za njihovo obezbeđenje, pod uslovom da su navedeni u javnom pozivu; 2) raspodela rizika između javnog i privatnog partnera; 3) odredbe o minimalnom zahtevanom kvalitetu i standardu usluga i radova u interesu javnosti ili korisnika usluga ili javnih objekata, kao i posledice neispunjenja ovih zahteva u pogledu kvaliteta, pod uslovom da ne predstavljaju povećanje ili smanjenje naknade privatnom partneru iz tačke 9) ovog stava; 4) obim isključivih prava privatnog partnera, ako postoje; 5) eventualnu pomoć koju javni partner može pružiti privatnom partneru za dobijanje dozvola i odobrenja potrebnih za realizaciju koncesije; 6) zahteve u vezi sa društvom za posebne namene[171] u pogledu: pravne forme, osnivanja, minimalnog kapitala i minimalnih drugih sredstava ili ljudskih resursa, strukture akcionara, organizacione strukture i poslovnih prostorija kao i poslovnih aktivnosti ovog društva; 7) vlasništvo nad sredstvima koja se odnose na projekat i po potrebi, obaveze ugovornih strana u pogledu sticanja projektnih sredstava i eventualno potrebnih službenosti; 8) visina i način izračunavanja koncesione naknade, ako je ima; 9) naknada privatnom partneru, bez obzira da li se sastoji od tarifa ili naknada za obezbeđene objekte ili usluge, način i formula za utvrđivanje,

169 Nije jasno kakvu naknadu vezanu za davanje koncesije može da plaća koncedent.

170 Ovo je potvrđeno i u članu 46. stav 3. Zakona o javno-privatnom partnerstvu i koncesijama. Ako javni ugovor, nezavisno koje javno telo ga zaključuje, sadrži odredbe koje na bilo koji način dovode do odgovornosti Republike Srbije ili imaju direktnog uticaja na budžet Republike Srbije, neophodno je pribaviti saglasnost Vlade. Ipak, u članu 47. stav 5. ovog zakona je propisano da davanje saglasnosti Vlade na konačni nacrt javnog ugovora u kome Republika Srbija nije ugovorna strana, ne podrazumeva odgovornost Republike Srbije za sporove koji nastanu iz tog ugovora između javnog i privatnog partnera.

171 Društvo za posebne namene, shodno Zakonu o javno-privatnom partnerstvu i koncesijama je privredno društvo koje može osnovati privatni, odnosno javni partner za potrebe zaključenja javnog ugovora, odnosno za potrebe realizacije projekta javno-privatnog partnerstva.

periodično usklađivanje i prilagođavanje tih tarifa ili naknada, eventualne isplate koje javni partner treba da izvrši privatnom partneru; 10) mehanizmi za povećanje ili smanjenje naknade (bez obzira na pravni oblik) privatnom partneru u slučaju lošeg kvaliteta njegovih usluga/objekata; 11) postupak koji javni partner koristi za razmatranje i odobravanje projekata, planova izgradnje i specifikacija, kao i postupci za testiranje i konačnu inspekciju, odobrenje i prijem infrastrukturnog objekta kao i izvršenih usluga, ako je potrebno; 12) postupci za izmene projekata, planova izgradnje i specifikacija ako ih jednostrano utvrđuje javni partner i postupci za saglasnost o eventualnom produženju rokova i/ili povećanju naknade (uključujući troškove finansiranja); 13) obim obaveze privatnog partnera da zavisno od slučaja obezbedi izmenu objekata ili usluga u toku trajanja ugovora da bi se udovoljilo izmenjenoj stvarnoj tražnji za uslugom, njenom kontinuitetu i njenom pružanju pod suštinski istim uslovima svim korisnicima, kao i posledice toga na naknadu (i troškove finansiranja) za privatnog partnera; 14) mogući obim izmena javnog ugovora nakon njegovog zaključenja, lica koja imaju pravo da to zahtevaju i mehanizam za usaglašavanje tih izmena; 15) eventualna prava javnog partnera da privatnom partneru odobri zaključenje najvažnijih podizvođačkih ugovora ili ugovora sa zavisnim društvima privatnog partnera ili sa drugim povezanim licima; 16) jemstva koja treba da obezbedi privatni partner ili javni partner (uključujući jemstva javnog partnera finansijerima); 17) pokriće osiguranjem koje treba da obezbeđuje privatni partner; 18) raspoloživi pravni lekovi u slučaju da bilo koja ugovorna strana ne izvrši svoje ugovorne obaveze; 19) mera u kojoj bilo koja ugovorna strana može biti izuzeta od odgovornosti za neizvršenje ili kašnjenje u ispunjenju ugovornih obaveza usled okolnosti realno van njene kontrole (viša sila, promena zakona i sl.); 20) rok trajanja javnog ugovora i prava i obaveze ugovornih strana nakon njegovog isteka (uključujući i stanje u kojem se imovina mora predati javnom partneru), postupak produženja ugovorenog roka uključujući njegove posledice na finansiranje projekta; 21) kompenzacija i prebijanje potraživanja; 22) posledice štetne promene propisa; 23) razlozi i posledice prevremenog raskida (uključujući minimalan iznos koji se mora isplatiti javnom ili privatnom partneru), ugovorne kazne i odgovarajuće odredbe predviđene u tački 19) ovog stava; 24) eventualna ograničenja odgovornosti ugovornih strana; 25) svi sporedni ili povezani ugovori koje treba zaključiti, uključujući i one namenjene lakšem finansiranju troškova vezanih za projekat, kao i efekte tih ugovora na javni ugovor. To naročito obuhvata posebne odredbe kojima se javnom partneru dozvoljava da zaključi ugovor sa finansijerima privatnog partnera i da obezbedi prava na prenos javnog ugovora na lice koje navedu finansijeri u određenim okolnostima; 26) merodavno pravo i mehanizam za rešavanje sporova; 27) okolnosti pod kojima javni partner ili određeno treće lice može (privremeno ili na drugi način) preuzeti vođenje objekta ili drugu funkciju privatnog partnera kako bi se obezbedilo delotvorno i neprekidno vršenje usluge i/ili objekata koji su predmet ugovora u slučaju ozbiljnih propusta privatnog partnera u izvršavanju njegovih obaveza; 28) oporezivanje i fiskalna pitanja - ako postoje.

Javni ugovor može biti zaključen po dobijanju saglasnosti nadležnog organa jedinice lokalne samouprave. Po dobijanju ove saglasnosti, javni partner mora odabranom najpovoljnijem ponuđaču da ponudi potpisivanje javnog ugovora o koncesiji u roku koji je odredio odlukom o izboru najpovoljnije ponude.

Koncesionar, odnosno koncedent[172] je dužan da plaća novčanu naknadu za koncesiju u iznosu i na način kako je to uređeno javnim ugovorom o koncesiji, osim ako plaćanje naknade za koncesiju nije ekonomski opravdano. Koncesiona naknada određuje se u zavisnosti od vrste prirodnog bogatstva, vrste delatnosti, roka trajanja koncesije, poslovnog rizika i očekivane dobiti, opremljenosti i površini dobra u opštoj upotrebi, odnosno javnog dobra.

Javni ugovor može biti finansiran od strane privatnog partnera kroz kombinaciju direktnih ulaganja u kapital ili putem zaduženja, uključujući bez ograničenja strukturirano ili projektno finansiranje i sl. obezbeđeno od strane međunarodnih finansijskih institucija, banaka, odnosno trećih lica (u daljem tekstu: finansijeri).

Uz prethodnu saglasnost javnog partnera, privatni partner biće ovlašćen da dodeli, optereti hipotekom, založi, u periodu i obimu koji je u skladu sa Zakonom o javno-privatnom partnerstvu i koncesijama, odnosno zakonom kojim se uređuje javna svojina, bilo koje svoje pravo, odnosno obavezu iz javnog ugovora ili drugu imovinu vezanu za projekat, u korist finansijera, a radi obezbeđivanja plaćanja bilo kog nastalog ili budućeg potraživanja u vezi sa izgradnjom i finansiranjem, odnosno refinansiranjem koncesije.

Na zahtev finansijera i privatnog partnera, javni partner može prihvatiti da dâ određena razumno zahtevana obezbeđenja i prihvati preuzimanje određenih odgovornosti koje su neophodne privatnom partneru u vezi sa bilo kojom obavezom iz javnog ugovora, ako takvi zahtevi ne narušavaju raspodelu projektnih rizika definisanih u već zaključenom ugovoru.

Potrebno je naglasiti da je status ugovornih strana u koncesiji zaštićen na način što je propisano da u slučaju promene propisa nakon zaključenja javnog ugovora koje pogoršavaju položaj privatnog ili javnog partnera, ugovor se može izmeniti bez ograničenja, a u obimu koji je neophodan da se privatni, odnosno javni partner dovede u položaj u kome je bio u momentu zaključenja javnog ugovora, s tim da rok trajanja javnog ugovora ni u kom slučaju ne može biti duži od pedeset godina, uz mogućnost produženja ugovorenog perioda uz izbor privatnog partnera na način i u postupku propisanom Zakonom o javno-privatnom partnerstvu.[173]

5.1.3. Ulaganje u javno (komunalno) preduzeće, odnosno privredno društvo koje obavlja komunalnu delatnost

Ulaganje u javno (komunalno) preduzeće, odnosno privredno društvo koje obavlja komunalnu delatnost se odvija u skladu sa Zakonom o komunalnim delatnostima, Zakonom o javnim preduzećima i Zakonom o privrednim društvima[174].

Bitan element ovakvog ulaganja, pod uslovom da je imovina ovih privrednih subjekata jasno definisana. Ulaganje u privredni subjekt ne menja samo strukturu vlasništva nad njegovim kapitalom, već se može odraziti i na njegovu upravljačku strukturu, ali i na samo biće privrednog subjekta.

172 Pretpostavka je da se ovde radi o tehničkoj grešci u samom tekstu zakona, jer koncedent ne bi trebalo da plaća koncesionu naknadu sam sebi.
173 Član 52. Zakona o javno-privatnom partnerstvu i koncesijama.
174 Zakon o privrednim društvima („Sl. glasnik RS“ br. 36/11, 99/11 i 5/15).

Shodno članu 69. Zakona o javnim preduzećima, radi obezbeđivanja zaštite opšteg interesa u javnom preduzeću, osnivač daje saglasnost na ulaganje kapitala, statusne promene i akt o proceni vrednosti državnog kapitala, kao i na program i odluku o svojinskoj transformaciji, kao i na druge odluke u skladu sa zakonom kojim se određuje obavljanje delatnosti od opšteg interesa i osnivačkim aktom.[175]

5.2. Licenca[176][177]

Licenca je administrativni akt o ispunjenosti uslova propisanih Zakonom o energetici i Pravilnikom o licenci za obavljanje energetske delatnosti i sertifikaciji.[178]

Licencu izdaje Agencija za energetiku Republike Srbije (u daljem tekstu: Agencija), osim u slučaju obavljanja delatnosti proizvodnje, distribucije i snabdevanja toplotnom energijom. Licenca izdaje rešenjem u roku od 30 dana od dana podnošenja zahteva za izdavanje licence, ukoliko su ispunjeni propisani uslovi. Protiv rešenja o izdavanju licence može se u roku od 15 dana podneti žalba ministarstvu nadležnom za poslove energetike

Za energetskog subjekta koji obavlja energetsku delatnost postrojenjem, licenca se izdaje za obavljanje sledećih energetskih delatnosti: 1) proizvodnju električne energije, 2) kombinovanu proizvodnju električne i toplotne energije ili 3) proizvodnju toplotne energije. Za prve dve delatnosti licencu izdaje Agencija za energetiku Republike Srbije. Ukoliko se radi o proizvodnji toplotne energije, licencu izdaje nadležni organ jedinice lokalne samouprave.

Licenca je poslednji u nizu pravnih akata neophodnih za obavljanje energetske delatnosti. Licencu mora da poseduje lice koje već ima u posedu postrojenje, a ukoliko se radi o licu koje obavlja delatnost proizvodnje toplotne energije, ono mora da poseduje i pravo na obavljanje ove delatnosti koje je steklo na osnovu odluke o osnivanju, ugovora o poveravanju obavljanja delatnosti od opšteg interesa ili na osnovu ugovora o koncesiji.

Uslovi za dobijanje licence su: 1) da je podnosilac zahteva osnovan ili registrovan, za obavljanje energetske delatnosti za koju se izdaje licenca; 2) da je za energetski objekat izdata upotrebna dozvola, osim za objekte za koje propisom kojim se uređuje izgradnja objekata nije predviđeno izdavanje upotrebne dozvole; 3) da energetski objekti i ostali uređaji, instalacije ili postrojenja neophodni za obavljanje energetske delatnosti ispunjavaju uslove i zahteve utvrđene tehničkim propisima, propisima o energetskoj efikasnosti, propisima o zaštiti od požara i eksplozija, kao i propisima o zaštiti životne sredine; 4) da podnosilac zahteva ispunjava propisane uslove u pogledu stručnog kadra za obavljanje poslova tehničkog rukovođenja,

175 Članom 76. Zakona o javnim preduzećima utvrđeno je da postoje izuzeci od primene odredbi ovog zakona na pravni položaj javnih preduzeća i drugih oblika organizovanja koji obavljaju delatnosti od opšteg interesa, ukoliko je pravni položaj ovih subjekata utvrđen posebnim zakonom ili potvrđenim međunarodni sporazumom.

176 Nakon što stekne pravo na obavljanje delatnosti proizvodnje električne energije, energetski subjekt koji proizvodi električnu energiju treba da se obrati ministarstvu nadležnom za vodoprivredu, odnosno sekretarijatu nadležnom za vodoprivredu (ako se nalazi na teritoriji Autonomne pokrajine Vojvodine) za utvrđivanje naknade za korišćenje površinskih, podzemnih i mineralnih voda, da izvrši obračun naknade za korišćenje vode. Ova naknada je utvrđena samo za javno elektroprivredno preduzeće.

177 Licenca za obavljanje energetskih delatnosti je jedan od uslova koji su potrebni za sticanje statusa povlašćenog proizvođača električne energije i statusa proizvođača električne energije iz obnovljivih izvora. Više o ovome u poglavlju 6. ovog Vodiča

178 Pravilnik o licenci za obavljanje energetske delatnosti i sertifikaciji („Sl. glasnik RS" br. 87/15).

rukovanja i održavanja energetskih objekata, odnosno uslove u pogledu broja i stručne osposobljenosti zaposlenih lica za obavljanje poslova na održavanju energetskih objekata, kao i poslova rukovaoca u tim objektima; 5) da podnosilac zahteva ispunjava finansijske uslove za obavljanje energetske delatnosti; 6) da direktor, odnosno članovi organa upravljanja nisu bili pravnosnažno osuđeni za krivična dela u vezi sa obavljanjem privredne delatnosti; 7) da podnosiocu zahteva nije izrečena mera zabrane obavljanja delatnosti ili ako su prestale pravne posledice izrečene mere; 8) da podnosilac zahteva poseduje dokaz o pravnom osnovu za korišćenje energetskog objekta u kojem se obavlja energetska delatnost; 9) da nad podnosiocem zahteva nije pokrenut postupak stečaja ili likvidacije. Pored navedenih uslova podnosilac zahteva za obavljanje delatnosti od opšteg interesa mora biti osnovan za obavljanje te delatnosti ili tu delatnost obavlja kao poverenu u skladu sa posebnim zakonom, koji uključuje i javno-privatno partnerstvo.

Licenca za proizvodnju električne energije, kombinovanu proizvodnju električne i toplotne energije i proizvodnju toplotne energije izdaje se na period od 30 godina.[179] Prilikom izdavanja licence plaća se određena taksa Agenciji. Za posedovanje licence Agenciji se godišnje plaća određena naknada.[180] Ukoliko se radi o licenci za proizvodnju toplotne energije, ove takse i naknade zavisiće od odluka nadležnih organa jedinice lokalne samouprave.

U slučaju da nosilac licence prestane da ispunjava propisane uslove za dobijanje licence, ili da ne ispunjava bilo koje druge propise vezane za obavljanje energetske delatnosti, licenca mu se može privremeno ili stalno oduzeti.

Izuzetno, licenca nije potrebna za obavljanje: 1) proizvodnje električne energije u objektima ukupne odobrene snage priključka do 1 MW i manje, osim ako isti energetski subjekt proizvodnju električne energije vrši u dva ili više energetskih objekata čija ukupna odobrena snaga prelazi snagu od 1 MW, bez obzira da li su povezani na sistem preko jednog ili više priključaka; 2) proizvodnje električne energije isključivo za sopstvene potrebe; 3) proizvodnje toplotne energije u objektima ukupne snage do 1 MWt i proizvodnje toplotne energije isključivo za sopstvene potrebe; 4) kombinovane proizvodnja električne i toplotne energije u termoelektranama - toplanama u objektima do 1 MW ukupne odobrene električne snage priključka i 1 MWt ukupne toplotne snage, kao i kombinovane proizvodnje električne i toplotne energije isključivo za sopstvene potrebe.

U Pravilniku o licenci za obavljanje energetske delatnosti sertifikaciji, definisani su posebni obrasci zahteva za izdavanje licence za obavljanje energetske delatnosti za proizvodnju električne energije. Kada se radi o proizvodnji električne energije različito je definisan obrazac u zavisnosti od objekata u kojima se proizvodi električna energije.[181]

179 Član 20. stav 2. Zakona o energetici.

180 Naknada za licence utvrđena je Aktima Agencije za energetiku i to: Kriterijumima i merilima za određivanje visine naknade za licence za obavljanje energetskih delatnosti i Odlukom o vrednosti koeficijenta za obračun visine naknade za licence za obavljanje energetskih delatnosti za konkretnu godinu, www.aers.org.

181 Formulari zahteva za izdavanje licence iz Pravilnika o bližim uslovima i sadržini zahteva za izdavanje, izmenu i oduzimanje licence za obavljanje energetskih delatnosti i o načinu vođenja registra izdatih i oduzetih licenci: 1) Opšti obrazac OO1 – kada se zahtev za izdavanje licence podnosi Agencija ili opšti obrazac OO2 – kada se zahtev za izdavanje licence podnosi nadležnom organu jedinice lokalne samouprave; 2) Obrazac PO 1.5 - Zahtev za izdavanje licence za proizvodnju električne energije za druge elektrane, 3) Obrazac PO 2.1 sa Obrascem PO 2.2 - Zahtev za izdavanje licence za kombinovanu proizvodnju električne i toplotne energije sa podacima o emisijama gasova i čestica; 4) Obrazac PO 18 - Zahtev za izdavanje licence za proizvodnju toplotne energije.

Uz zahtev za izdavanje licence za obavljanje energetske delatnosti podnosi se: 1) akt o osnivanju i izvod iz registra u skladu sa propisom kojim se uređuje registracija privrednih subjekata, kao i akt o poveravanju obavljanja delatnosti od opšteg interesa, odnosno ugovor o koncesiji; 2) upotrebnu dozvolu, odnosno akt nadležnog organa da nije predviđeno izdavanje upotrebne dozvole; 3) izveštaj nadležnog inspektora da energetski objekti i ostali uređaji, instalacije ili postrojenja neophodni za obavljanje energetske delatnosti ispunjavaju uslove i zahteve utvrđene tehničkim propisima, propisima o energetskoj efikasnosti, propisima o zaštiti od požara i eksplozija, kao i propisima o zaštiti životne sredine; 4) dokaze o ispunjenosti finansijskih uslova za obavljanje energetske delatnosti i to: 4.1) akt nadležnog organa o izmirenju poreskih obaveza; 4.2) program poslovanja ili poslovni plan za godinu u kojoj se podnosi zahtev za izdavanje licence; 4.3) potvrda poslovne banke o ostvarenom prometu i dnevnom prosečnom stanju sredstava na svim tekućim računima podnosioca zahteva za prethodne dve godine, 4.4) bilans stanja i bilans uspeha za prethodne dve godine 4.5) standardizovane izveštaje o bonitetu: BON 1 - Potpuni izveštaj o pokazateljima za ocenu boniteta, BON 2 - Izveštaj o finansijskom položaju i uspešnosti poslovanja; 5) potvrdu nadležnog organa da direktor, odnosno članovi organa upravljanja nisu bili pravnosnažno osuđeni za krivična dela u vezi sa obavljanjem privredne delatnosti; 6) akt nadležnog organa kojim se potvrđuje da podnosiocu zahteva nije bila izrečena mera zabrane obavljanja delatnosti ili ako su prestale pravne posledice izrečene mere; 7) pravni osnov korišćenja energetskog objekta u kojem se obavlja energetska delatnost; 8) akt nadležnog organa da nad podnosiocem zahteva nije pokrenut stečaj ili likvidacija; 9) izjavu podnosioca zahteva da nije bio vlasnik ili imao vlasnički udeo ili bio zaposlen u energetskom subjektu kome je trajno oduzeta licenca, koja treba da uključi isti status i za bračne drugove, decu ili srodnike u pravoj liniji nezavisno od stepena srodstva ili pobočne srodnike zaključno sa drugim stepenom srodstva; 10) dokaz o uplati administrativne takse. (Ukoliko podnosilac zahteva posluje manje od dve godine tačke 4.3 – 4.5) se menjaju i glase: 4.3) kao i potvrdu poslovnih banaka o ostvarenom prometu i dnevnom prosečnom stanju sredstava na svim tekućim računima podnosioca zahteva od dana otvaranja tekućeg računa do dana podnošenja zahteva poslovnoj banci, 4.4) bilans stanja i bilans uspeha za prethodnu godinu, odnosno početni bilans stanja, ako energetski subjekt otpočinje sa poslovanjem; 4.5) potvrdu poslovne banke ili matičnog preduzeća da podnosiocu zahteva može staviti na raspolaganje neophodna finansijska sredstva ili druga sredstva obezbeđenja prema obimu planirane aktivnosti).

Licenca je neprenosiva.

Zakonom o energetici je propisano da jedinica lokalne samouprave izdaje licence za obavljanje energetskih delatnosti proizvodnje, distribucije i snabdevanja toplotnom energijom. Nadležni organ jedinice lokalne samouprave vodi i evidenciju proizvođača toplotne energije snage od 0,1 MW do 1 MW. [182]

182 Član 361. Zakona o energetici.

O izdatim licencama se vodi Registar izdatih i oduzetih licenci. Ovaj registar se vodi kao javna knjiga u obliku registarske knjige (štampana forma) i kao jedinstvena baza podataka (elektronska forma).

Registar izdatih i oduzetih licenci je dostupan na internet stranici Agencije za energetiku Republike Srbije, odnosno nadležnog organa jedinice lokalne samouprave, a uvid u registar se može obaviti u službenim prostorijama Agencije za energetiku Republike Srbije, odnosno nadležnog organa jedinice lokalne samouprave.

6.

STICANJE STATUSA (POVLAŠĆENOG) PROIZVOĐAČA ENERGIJE IZ OBNOVLJIVIH IZVORA

6. STICANJE STATUSA (POVLAŠĆENOG) PROIZVOĐAČA ENERGIJE IZ OBNOVLJIVIH IZVORA

6.1. Status proizvođača električne energije koju proizvodi u postrojenju

Zakonom o energetici je utvrđena mogućnost sticanja različitih statusa za proizvođače koji proizvode električnu energiju u postrojenjima koja koriste podzemne vode. Status privremenog povlašćenog proizvođača električne energije, status povlašćenog proizvođača električne energije i status proizvođača iz obnovljivih izvora može steći energetski subjekt i fizičko lice.

Energetski subjekt koji poseduje postrojenje po dva osnova može steći status privremenog povlašćenog proizvođača električne energije, status povlašćenog proizvođača električne energije, odnosno status proizvođača iz obnovljivih izvora, ukoliko: u procesu proizvodnje koriste obnovljiv izvor energije, proizvode električnu energiju u novoizgrađenim, odnosno rekonstruisanim postrojenjima u kojima je ugrađena nekorišćena oprema i ukoliko ispunjavaju i druge uslove propisane Zakonom o energetici i Uredbom o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije[183]. Za fizičko lice u pogledu sticanja statusa povlašćenog proizvođača, statusa privremenog povlašćenog proizvođača električne energije i statusa proizvođača električne energije iz obnovljivih izvora postoji još jedno ograničenje, a to je da ovaj status može steći samo za jedno postrojenje koji koristi obnovljive izvore energije, u konkretnom slučaju postrojenje instalisane snage do 30 kW.

Zakonom o energetici je utvrđeno da povlašćeni proizvođači električne energije imaju pravo na podsticajne mere koje obuhvataju: 1) obavezu otkupa električne energije od povlašćenog proizvođača; 2) cene po kojima se ta energija otkupljuje; 3) period važenja obaveze otkupa električne energije; 4) preuzimanje balansne odgovornosti; 5) i druge podsticajne mere propisane aktom donetim na osnovu zakona o energetici, kao i drugim zakonima i propisima kojima se uređuju porezi, carine i druge dažbine, zaštita životne sredine i energetska efikasnost.

Podsticajne mere može koristiti energetski subjekt i fizičko lice, koji je stekao status povlašćenog proizvođača i status privremenog povlašćenog proizvođača u smislu Zakona o energetici i podzakonskih akata ovog zakona[184].

Povlašćeni proizvođač i privremeni povlašćeni proizvođač ostvaruje pravo na podsticajne mere stupanjem na snagu ugovora o otkupu električne energije sa garantovanim snabdevačem, u skladu sa Zakonom o energetici i propisima donetim na osnovu ovog Zakona.

183 Uredba o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije („Sl. glasnik RS" br. 56/16).

184 Uredba o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije, Uredba o podsticajnom merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije („Sl. glasnik RS" br. 56/16) i Uredba o ugovoru o otkupu električne energije („Sl. glasnik RS" br. 56/16).

Zakonom o energetici je takođe utvrđen postupak podnošenja zahteva za sticanje statusa privremenog povlašćenog proizvođača električne energije, statusa povlašćenog proizvođača električne energije i statusa proizvođača iz obnovljivih izvora. Na osnovu Zakona o energetici Vlada je donela Uredbu o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije[185], Uredbu o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije[186] i Uredbu o ugovoru o otkupu električne energije[187]. Takođe, Vlada je donela i Uredbu o naknadi za podsticaj povlašćenih proizvođača električne energije[188], kao i Uredbu kojom je utvrdila visinu naknade za podsticaj u 2016. godini.[189] Ova naknada bi trebalo da se utvrđuje svake godine.

Energetski subjekat i fizičko lice ne mogu istovremeno imati status proizvođača iz obnovljivih izvora i status povlašćenog proizvođača za isto postrojenje.

Zakonom o energetici[190] je propisano da se za postrojenja koje ispunjavaju propisane uslove, pre sticanja statusa povlašćenog proizvođača električne energije, može steći privremeni status povlašćenog proizvođača električne energije.

Uredbom o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije utvrđene su i pojedine obaveze povlašćenog proizvođača, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.[191]

6.1.1. Sticanje privremenog statusa povlašćenog proizvođača električne energije

Energetski subjekt, odnosno fizičko lice, može, pre sticanja statusa povlašćenog proizvođača, steći status privremenog povlašćenog proizvođača električne energije, ako:

1) može da pristupi građenju postrojenja za koju se može steći status povlašćenog proizvođača električne energije[192], u skladu sa Zakonom o planiranju i izgradnji;
2) je pribavio finansijski instrument obezbeđenja[193], za slučaj da ne stekne status povlašćenog proizvođača za postrojenje instalisane snage veće od 100 kW;
3) iz tehničke dokumentacije proizilazi da za planirano postrojenje može da stekne status povlašćenog proizvođača, što je bliže uređeno članom 5. tačka 3) Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije..

185 Uredba o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije).
186 Uredba o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije („Sl. glasnik RS" br. 56/16).
187 Uredba o ugovoru o otkupu električne energije.
188 Uredba o naknadi za podsticaj povlašćenih proizvođača električne energije („Sl. glasnik RS" br. 12/16).
189 Uredba o visini posebne naknade za podsticaj u 2016 godini („Sl. glasnik RS" br. 12/16).
190 Član 71. Zakona o energetici. U momentu pisanja ovog Vodiča nije bio donet podzakonski akt koji bi bliže uredio ove odredbe Zakona o energetici iz 2014. godine.
191 Članovi 27-29. Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.
192 Uslovi iz člana 70. stav 1. i 2. Zakona o energetici.
193 Finansijski instrument obezbeđenja će biti propisan podzakonskim aktom Zakona o energetici. Ukoliko se analogno primene odredbe Uredbe o postupku i uslovima za sticanje statusa povlašćenog proizvođača električne energije, koja je doneta pre stupanja na snagu Zakona o energetici, finansijskim instrumentom obezbeđenja smatra se novčani depozit ili bankarska garancija u visini od 2% od vrednosti investicije u postrojenje.

Zahtev za sticanje statusa privremenog povlašćenog proizvođača podnosi se ministarstvu nadležnom za poslove energetike na Obrascu O-1[194]. Uz ovaj zahtev se podnosi: 1) za pravno lice, odnosno preduzetnika: izvod o registrovanim podacima (poslovno ime, pravna forma, sedište, delatnost, poreski identifikacioni broj, matični broj); 2) za fizičko lice: fotokopija lične karte, odnosno uverenje o državljanstvu ili fotokopija pasoša, ako je podnosilac strani državljanin; 3) pravnosnažna građevinska dozvola ili pravnosnažno odobrenje za izgradnju, osim ako za postrojenje nije potrebno pribaviti akt nadležnog organa za izgradnju u kom slučaju se podnosi informacija o lokaciji koja nije starija od šest meseci od dana podnošenja zahteva; 4) kopija izvoda iz projekta za potrebe pribavljanja građevinske dozvole ili idejni projekat ili druga tehnička dokumentacija na osnovu koje se gradi postrojenje, u skladu sa zakonom kojim se uređuje planiranje i izgradnja objekata; 5) akt (mišljenje, uslovi i sl.) o mogućnosti priključenja na distributivni, odnosno prenosni sistem izdat od strane operatora distributivnog, odnosno prenosnog sistema koji je pribavio u prethodnim postupcima radi dobijanja građevinske dozvole i izrade tehničke dokumentacije za postrojenje; 6) potvrda o uplati novčanog depozita, odnosno originalni primerak bankarske garancije pribavljenih u skladu sa odredbama ove uredbe; 7) dokaz o uplati administrativne takse.[195][196]

Status privremenog povlašćenog proizvođača važi tri godine od dana pravnosnažnosti rešenja o sticanju statusa privremenog povlašćenog proizvođača električne energije.

Status privremenog povlašćenog proizvođača može se produžiti iz sledećih razloga: 1) samo jednom za najviše godinu dana, pod uslovom da se uz zahtev za produženje priloži dokaz da je postrojenje izgrađeno[197] ili 2) za period koji je potreban da se otklone dejstva nepredvidivih okolnosti[198] koje sprečavaju privremenog povlašćenog proizvođača da stekne status povlašćenog proizvođača u skladu sa Zakonom o energetici. Period koji je potreban da se otklone dejstva nepredvidivih okolnosti ne može da bude duži od roka trajanja statusa privremenog povlašćenog proizvođača.

Ovaj zahtev se može podneti najkasnije 30 dana pre isteka roka važenja statusa povlašćenog proizvođača. Rešenje po ovom zahtevu donosi ministarstvo nadležno za poslove energetike u roku od 30 dana od dana podnošenja zahteva. Protiv rešenja ovog ministarstva može se izjaviti žalba Vladi u roku od 15 dana od prijema rešenja.

Status privremenog povlašćenog proizvođača se može oduzeti.[199]

194 Obrazac O-1, verzija od 16.06.2016. godine, www.mre.gov.rs, (Zahtev za izdavanje rešenja o sticanju statusa privremenog povlašćenog proizvođača električne energije).

195 Član 21. Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

196 Na internet stranici ministarstva nadležnog za poslove energetike (http://www.mre.gov.rs/energetska-efikasnost-obnovljivi-izvori-takse.php) se nalazi model uplatnice za uplatu ove takse.

197 Članom 23. Uredbe o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije, propisani su dokazi koji se podnose uz zahtev za produžetak trajanja statusa privremenog povlašćenog proizvođača kada je postrojenje izgrađeno.

198 Ove nepredvidive okolnosti su bliže uređene u članu 15. Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije, a isprave koje se podnose kao dokazi da su nastupile nepredvidive okolnosti su propisane u članu 24. ove uredbe.

199 Status privremenog povlašćenog proizvođača se oduzima ako: 1) je rešenje o sticanju ovog statusa doneto na osnovu neistinitih podataka; 2) ne ispunjava obaveze utvrđene Zakonom o energetici i aktima donetim na osnovu ovog zakona; 3) su akti na osnovu kojih je stekao status povlašćenog proizvođača pravnosnažno ukinuti, poništeni ili stavljeni van snage; 4) ako ne održava finansijsko sredstvo obezbeđenja za vreme trajanja statusa privremenog statusa povlašćenog proizvođača.

Privremeni povlašćeni proizvođač ostvaruje pravo na podsticajne mere u skladu sa Zakonom o energetici, Uredbom o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije, zaključenjem ugovora o otkupu električne energije sa garantovanim snabdevačem pod odložnim uslovom[200].

Garantovani snabdevač je dužan da na zahtev privremenog povlašćenog proizvođača zaključi ugovor o otkupu električne energije sa odložnim uslovom u roku od 30 dana od dana podnošenja zahteva. Privremeni povlašćeni proizvođač koji u skladu sa Zakonom o energetici („Sl. glasnik br. 145/14) stekne status povlašćenog proizvođača ima pravo samo na podsticajne mere koje su važile na dan podnošenja zahteva za sticanje statusa privremenog povlašćenog proizvođača.[201]

Prava i obaveze privremenog povlašćenog proizvođača u pogledu korišćenja podsticajnih mera za vreme probnog rada postrojenja uređeni su podzakonskim aktom Zakona o energetici[202].

6.1.2. Sticanje statusa povlašćenog proizvođača električne energije

Energetski subjekt, odnosno fizičko lice može steći status povlašćenog proizvođača električne energije (u daljem tekstu: povlašćeni proizvođač) za postrojenje, odnosno deo postrojenja ako: 1) u procesu proizvodnje električne energije koristi obnovljive izvore energije i ispunjava uslove u pogledu instalisane snage; 2) je izgrađena i podobna za upotrebu u skladu sa zakonom kojim se uređuje izgradnja objekata; 3) ima obezbeđeno posebno merenje, odvojeno od merenja u drugim tehnološkim procesima, kojim se meri preuzeta i predata električna energija u sistem, sa jasno označenim mernim uređajima izvedenim u skladu sa Zakonom o energetici i pravilima o radu distributivnog, odnosno prenosnog sistema; 4) proizvodi električnu energiju u novoizgrađenim, odnosno rekonstruisanim postrojenjima u kojima je ugrađena nekorišćena oprema; 5) ima licencu za obavljanje delatnosti u skladu sa zakonom o energetici; 6) ispunjava i druge uslove u skladu sa Uredbom o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

Ovom uredbom je utvrđeno da u postrojenju (geotermalnoj elektrani), utvrđeno je da energetska vrednost upotrebljene geotermalne energije za proizvodnju električne energije, mora iznositi najmanje 90% ukupne energetske vrednosti utrošene primarne energije.[203] Takođe je utvrđeno da se kao dopunsko gorivo može koristiti fosilno gorivo, otpadni tehnološki gasovi sa organskom frakcijom, otpadni mulj iz postrojenja za tretman otpadnih voda ili neki drugi obnovljivi izvor energije.[204]

Status povlašćenog proizvođača izdaje se za instalisanu snagu postrojenja ili dela postrojenja koje odgovara ukupno odobrenoj snazi od strane operatora sistema za priključenje postrojenja ili dela postrojenja, na distributivni, odnosno prenosni sistem.[205]

200 Elementi Ugovora o otkupu električne energije su bliže uređeni Uredbom o ugovoru o otkupu električne energije, a model ovog ugovora se nalazi na www.mre.gov.rs.

201 Član 77. stav 3. Zakona o energetici.

202 Uredba o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije („Sl. glasnik RS" br. 56/16).

203 Član 27. Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

204 Član 5. Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

205 Član 3. stav 2. Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

Proizvođač koji obavlja delatnost proizvodnje električne energije u više postrojenje koje koriste obnovljive izvore energije koje ispunjavaju kriterijume za sticanje statusa povlašćenog proizvođača električne energije shodno navedenoj uredbi, podnosi zahtev za sticanje statusa povlašćenog proizvođača za svaku elektranu (postrojenje) posebno.

Proizvođač koji obavlja delatnost proizvodnje električne energije u postrojenju koje sadrži različite proizvodne jedinice, može steći status povlašćenog proizvođača samo za one proizvodne jedinice koje ispunjavaju uslove propisane Zakonom o energetici i Uredbom o uslovima i postupku za sticanje statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

Propisano je da u mestima priključenja na prenosni, odnosno distributivni sistem proizvodne jedinice za koje se podnosi zahtev za sticanje statusa povlašćenog proizvođača moraju biti ugrađeni posebni merni uređaji za merenje električne energije sa karakteristikama shodno Zakonu o energetici i pravilima o radu prenosnog, odnosno distributivnog sistema. Pored mernih uređaja, ove proizvodne jedinica moraju imati označena merna mesta na kojima se meri ukupna proizvedena toplota, povratna toplota i potrošnja primarne energije.

Zahtev za sticanje statusa povlašćenog proizvođača podnosi se ministarstvu nadležnom za poslove energetike na Obrascu O-2.[206]

Uz zahtev za sticanje statusa povlašćenog proizvođača dostavljaju se dokazi o ispunjenosti uslova za sticanje tog statusa, i to: 1) za pravno lice, odnosno preduzetnika: izvod o registrovanim podacima (poslovno ime, pravna forma, sedište, delatnost, poreski identifikacioni broj, matični broj); 2) za fizičko lice: fotokopija lične karte, odnosno uverenje o državljanstvu ili fotokopija pasoša, ako je podnosilac strani državljanin; 3) upotrebna dozvola u skladu sa zakonom kojim se uređuje planiranje i izgradnja objekata ili potvrda nadležnog organa da za izgrađeno postrojenje, odnosno deo postrojenja nije potrebno pribaviti upotrebnu dozvolu; 4) za rekonstruisana postrojenja dokaz o rekonstrukciji postrojenja sa datumom izgradnje i puštanja u rad rekonstruisanog postrojenja, ako se dokazom iz tačke 3) ne može utvrditi da je postrojenje rekonstruisano; 5) odobrenje za priključenje postrojenja sa šemom mernih uređaja; 6) dokazi da ugrađena oprema nije prethodno korišćena, kao što su: podaci o godini proizvodnje, račun o nabavci opreme ili radova, ugovor sa proizvođačem/dobavljačem, deklaracija proizvođača/dobavljača ili slični dokazi kojima se nedvosmisleno dokazuje da ugrađena oprema nije prethodno korišćena; 7) overena izjava odgovornog lica podnosioca zahteva kojom pod materijalnom i krivičnom odgovornošću potvrđuje da ugrađena oprema nije prethodno korišćena; 8) licenca za obavljanje delatnosti proizvodnje električne energije, u skladu sa Zakonom o energetici; 9) dokaz o uplati administrativne takse.[207/208]

206 Obrazac O-2, verzija od 16.06.2016. godine, (Zahtev za izdavanje rešenja o sticanju statusa povlašćenog proizvođača električne energije), www.mre.gov.rs.

207 Član 20. Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

208 Na internet stranici ministarstva nadležnog za poslove energetike (http://www.mre.gov.rs/energetska-efikasnost-obnovljivi-izvori-takse.php) se nalazi model uplatnice za uplatu ove takse.

Status povlašćenog proizvođača utvrđuje ministarstvo nadležno za poslove energetike rešenjem koje se donosi u roku od 30 dana od dana podnošenja zahteva za sticanje statusa povlašćenog proizvođača, ako su ispunjeni uslovi. Protiv ovog rešenja se može podneti žalba Vladi u roku od 15 dana od dana prijema rešenja.

Povlašćeni proizvođač je dužan da pismeno obavesti ministarstvo nadležno za poslove energetike o svim promenama podataka iz propisanog obrazaca, odnosno o svim planiranim promenama tehnološkog procesa, vrste primarnog goriva ili drugih karakteristika postrojenja koje su od značaja za sticanje statusa povlašćenog proizvođača prema Zakonu o energetici i ovoj uredbi, najkasnije 30 dana pre započinjanja planiranih radova.

Posebna obaveza povlašćenog proizvođača električne energije je da vodi evidenciju o utrošenom primarnom gorivu (osnovnom i dopunskom) u kojoj se beleži količina i prosečne donje toplotne moći utrošenog goriva.[209]

Status povlašćenog proizvođača se oduzima ako: 1) je rešenje o sticanju statusa povlašćenog proizvođača doneto na osnovu neistinitih podataka; 2) ne ispunjava obaveze utvrđene Zakonom o energetici i aktima donetim na osnovu ovog zakona; 3) proizvodi električnu energiju suprotno uslovima pod kojima je stekao status povlašćenog proizvođača električne energije iz obnovljivih izvora; 4) su akti na osnovu kojih je stekao status povlašćenog proizvođača pravnosnažno ukinuti, poništeni ili stavljeni van snage.

Ministarstvo nadležno za poslove energetike vodi registar povlašćenih proizvođača, privremenih povlašćenih proizvođača i proizvođača električne energije iz obnovljivih izvora energije. Registar sadrži glavni i pomoćni registar. Na internet stranici ministarstva nadležnog za poslove energetike[210], u okviru glavnog registra, posebno se prikazuju podaci o proizvođačima koji imaju status povlašćenog proizvođača, status privremenog povlašćenog proizvođača i status proizvođača iz obnovljivih izvora, a posebno podaci o proizvođačima kojima je taj status prestao da važi. Pomoćni registar sadrži podatke koji su od značaja za tačno vođenje podataka i transparentnost upisa podataka za elektrane na vetar i solarne elektrane u glavni registar. Ministarstvo je, shodno propisima, dužno da vrši ažuriranje podataka u glavnom registru bez odlaganja od saznanja razloga za ažuriranje i da datum poslednjeg ažuriranja vidno prikaže na svojoj internet stranici. Pomoćni registar ministarstvo ažurira i objavljuje najmanje na svakih mesec dana.

6.1.2.1. Mere podsticaja za proizvođače električne energije u hidrogeotermalnim postrojenjima

Podsticajne mere za povlašćene proizvođače električne energije su propisane Zakonom o energetici, Uredbom o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije[211] i obuhvataju: 1) podsticajni period koji traje 12 godina, počevši od dana prvog očitavanja električne energije u postrojenju, odnosno delu postrojenja, posle dana sticanja statusa povlašćenog proizvođača električne energije, osim ako je trajanje podsticajnog perioda drugačije određeno ovom uredbom ili ugovorom o otkupu električne energije; 2)

209 Uredbom o postupku i uslovima za sticanje statusa povlašćenog proizvođača električne energije je propisan i način kako se dokazuje i tačnost ove evidencije: 1) kopijama računa o nabavci goriva sa dokumentacijom koja prati gorivo, a u slučaju da vlasnik postrojenja ima sopstvenu proizvodnju goriva, izmerenim vrednostima utrošene količine svakog goriva, registrovanim preko instalisanih i zapečaćenih merno-registracionih merača za kontinualno praćenje utroška svake vrste goriva koje se ne kupuje; 2) rezultatima analiza donje toplotne moći reprezentativnog uzorka, za svaku nabavku goriva, izvršena od strane akreditovanih institucija, a u slučaju korišćenja goriva koja vlasnik postrojenja sam proizvodi rezultatima analiza reprezentativnih uzoraka svake vrste goriva rađenih na svaka tri meseca.

210 http://mre.gov.rs/doc/registar%2023.06.2016.html

211 Uredba o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije („Službeni glasnik RS" br. 56/16)..

podsticajnu otkupnu cenu[212] po kojoj povlašćeni i privremeni povlašćeni proizvođači prodaju garantovanom snabdevaču odgovarajući iznos proizvedene električne energije tokom ili pre podsticajnog perioda; 3) preuzimanje balansne odgovornosti za mesta primopredaje električne energije povlašćenog proizvođača električne energije tokom podsticajnog perioda, a od strane garantovanog snabdevača; 4) preuzimanje troškova balansiranja povlašćenog proizvođača električne energije tokom podsticajnog perioda od strane garantovanog snabdevača; 5) besplatan pristup prenosnom, odnosno distributivnom sistemu električne energije.

Podsticajne mere za povlašćene proizvođače mogu biti propisane drugim zakonima i propisima kojima se uređuju porezi, carine i druge dažbine, zaštita životne sredine i energetska efikasnost.

Privremeni povlašćeni proizvođač od dana zaključenja ugovora o otkupu električne energije do dana početka podsticajnog perioda, ima pravo na navedene podsticajne mere.[213]

Zakonom o energetici[214] i Uredbom o ugovoru o otkupu električne energije[215] bliže su propisani sadržina i drugi elementi ugovora o otkupu električne energije. Model ugovora može se naći na internet stranici ministarstva nadležnog za energetiku.[216]

Uz zahtev za zaključenje ovog ugovora, koji se dostavlja u pisanoj formi, povlašćeni proizvođač dostavlja garantovanom snabdevaču rešenje o sticanju statusa povlašćenog proizvođača, a privremeni povlašćeni proizvođač rešenje o sticanju statusa privremenog povlašćenog proizvođača, kao i druge isprave predviđene ugovorom o otkupu električne energije. Za deo postrojenja ne zaključuje se poseban ugovor o otkupu električne energije, nego aneks koji čini sastavni deo ugovora o otkupu električne energije zaključenog za postrojenja kojoj taj deo postrojenja pripada.

Garantovani snabdevač je dužan da sa povlašćenim proizvođačem i privremenim povlašćenim proizvođačem zaključi ugovor o otkupu ukupnog iznosa proizvedene električne energije u roku od 15 dana od dana podnošenja zahteva. Povlašćeni proizvođač i privremeni povlašćeni proizvođač ima pravo da raskine ugovor pre isteka podsticajnog perioda o čemu mora pismeno obavestiti garantovanog snabdevača najmanje 30 dana pre dana raskida ugovora. Ugovor raskinut od strane povlašćenog proizvođača, na ovaj način ne može biti ponovo zaključen za isto postrojenje povlašćenog proizvođača.

Zakonom o energetici i Uredbom o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije su propisane obaveze povlašćenog proizvođača električne energije: 1) da svu proizvedenu električnu energiju prodaje isključivo garantovanom snabdevaču; 2) vodi evidenciju o utrošenim energentima; 3) dostavlja planove rada garantovanom snabdevaču, ako je instalisana snaga elektrane (postrojenja) preko 5 MW i da ispunjava druge obaveze

212 Podsticajna otkupna cena je oblik operativne državne pomoći povlašćenim i privremenim povlašćenim proizvođačima u skladu sa pravilima državne pomoći radi podsticanja proizvodnje električne energije iz obnovljivih izvora energije i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije.

213 Član 3. stav 2. Uredbe o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije.

214 Zakonom o energetici su utvrđeni obavezni elementi ugovora o otkupu električne energije: 1) vrsta i instalisana snaga postrojenja povlašćenog proizvođača; 2) mesto primopredaje energije u sistem; 3) mesto i način merenja; 4) cena električne energije i način i uslovi promene cene; 5) način i dinamika obračunavanja, fakturisanja i plaćanja; 6) kamata u slučaju neblagovremenog plaćanja; 7) instrumenti obezbeđenja plaćanja; 8) obaveze garantovanog snabdevača u pogledu preuzimanja balansne odgovornosti i povlašćenog proizvođača u pogledu planiranja rada postrojenja; 9) podsticajne mere u periodu probnog rada, kada ugovor zaključuje privremeni povlašćeni proizvođač; 10) i drugi elementi u skladu sa podzakonskim aktom Zakona o energetici.

215 Uredba o ugovoru o otkupu električne energije („Službeni glasnik RS“ br. 56/16).

216 http://mre.gov.rs/dokumenta-efikasnost-izvori.php

prema garantovanom snabdevaču utvrđene ugovorom o otkupu električne energije; 4) da obavesti ministarstvo nadležno za poslove energetike ako garantovani snabdevač ne ispunjava obaveze iz ugovora o otkupu električne energije; 5) da obavesti ministarstvo nadležno za poslove energetike o postupanju državnog organa, imaoca javnog ovlašćenja, organa autonomne pokrajine ili organa jedinice lokalne samouprave koje je od uticaja na izvršavanje obaveza ili uživanje prava u vezi sa podsticajnim merama.

Uredbom o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije utvrđene su podsticajne otkupne cene električne energije koje se razlikuju prema vrsti elektrane (postrojenja) i prema instalisanoj snazi, kao i maksimalnom efektivnom vremenu rada.

Kada su u pitanju geotermalne elektrane (postrojenja) postoje jedna povlašćena kategorija i to:

Vrsta elektrane	Instalisana snaga P (MW)	Podsticajna otkupna cena (c€/kWh)	Maksimalno efektivno vreme rada [217] (h)
Geotermalna elektrana	-	8,2	8600 u godini podsticajnog perioda [218]

Istom uredbom utvrđene su maksimalna proizvedena električna energije[219] i otkupne cene[220] električne energije. Potrebno je razlikovati podsticajnu otkupnu cenu od otkupne cene električne energije. Naime ovom uredbom je propisana obaveza povlašćenog proizvođača da svu proizvedenu električnu energiju prodaje isključivo garantovanom snabdevaču, ali ukoliko proizvede više od one količine električne energije za koju je ugovorena podsticajna otkupna cena, na taj deo proizvedene električne energije primenjuju se odredbe po otkupnoj ceni za električnu energiju koju proizvede povlašćeni proizvođač. Prema navedenom pravilu, do isteka svake godine podsticajnog perioda, dodatnu proizvedenu električnu energiju, u odnosu na maksimalnu proizvedenu električnu energiju, garantovani snabdevač kupuje od povlašćenog proizvođača električne energije po otkupnoj ceni koja iznosi 35% podsticajne otkupne cene.

Povlašćeni proizvođači električne energije za rekonstruisana postrojenja ostvaruju pravo na podsticajnu otkupnu cenu u iznosu od 70% propisane vrednosti cene, a privremeni povlašćeni proizvođač do početka podsticajnog perioda ostvaruje pravo na podsticajnu otkupnu cenu u iznosu od 50% propisane vrednosti cene.

Podsticajne otkupne cene izražene su u evrocentima po kilovatsatu (c€/kWh) i zaokružuju se na dve decimale.

217 Maksimalno efektivno vreme rada elektrane/postrojenja, odnosno dela elektrane/postrojenja je propisano efektivno vreme rada elektrane/postrojenja koje se obračunava za godinu podsticajnog perioda koje odgovara količini proizvedene energije za koju povlašćeni proizvođač električne energije ima pravo na podsticajnu otkupnu cenu.

218 Godina podsticajnog perioda je deo podsticajnog perioda od godinu dana, pri čemu prva godina podsticajnog perioda počinje da teče prvog dana podsticajnog perioda.

219 Maksimalna proizvedena električna energija koja se može otkupiti po podsticajnoj otkupnoj ceni izračunava se kao: $E_{el\ max} = P * t_{max}$, gde je: $E_{el\ max}$ – maksimalna proizvedena električna energija za koju povlašćeni proizvođač električne energije ima pravo otkupa od strane garantovanog snabdevača po podsticajnim otkupnim cenama datim u tabeli, izražena u kWh; P – instalisana snaga elektrane (postrojenja), odnosno dela elektrane (postrojenja), izražena u kW; t_{max} – maksimalno efektivno vreme rada dato u tabeli, izraženo u h.

220 Otkupna cena je cena električne energije po kojoj garantovani snabdevač kupuje od povlašćenog proizvođača električne energije dodatno proizvedenu električnu energiju u odnosu na maksimalnu proizvedenu električnu energiju u godini podsticajnog perioda, odnosno kvartalu podsticajnog perioda.

Uredbom o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije utvrđena je formula po kojoj se vrši redovna godišnja korekcija podsticajnih otkupnih cena zbog inflacije u evro zoni. Ova korekcija se vrši u februaru svake godine, počevši od 2017. godine.

Ova uredba važi do 31. decembra 2018. godine. Prelaznim odredbama su utvrđena pravila za povlašćene proizvođače koji su već zaključili ugovor o otkupu električne energije proizvedene iz obnovljivih izvora i zaštita njihovih prava.

Očitavanje električne energije kod povlašćenog proizvođača, koji je zaključio ugovor o otkupu proizvedene električne energije sa garantovanim snabdevačem, svakog prvog u mesecu obavlja, bez naknade, operator prenosnog, odnosno distributivnog sistema i najkasnije do petog u mesecu dostavlja očitane podatke za prethodni mesec povlašćenom proizvođaču i garantovanom snabdevaču. Operator prenosnog, odnosno distributivnog sistema je dužan da pre zaključenja ovog ugovora[221] izvrši očitavanje brojila i da očitane podatke dostavi povlašćenom proizvođaču i garantovanom snabdevaču u roku od tri dana od dana dostavljanja zahteva od strane povlašćenog proizvođača.

Uredbom o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije su propisane brojne odredbe u cilju ostvarivanja pravne sigurnosti svih strana u vezi sa realizacijom podsticajnih mera za proizvodnju električne energije iz obnovljivih izvora.

Pravo na podsticajne mere prestaje, gubitkom statusa, otkazom ili raskidom ugovora o otkupu električne energije pod uslovima na način određen ugovorom o otkupu električne energije i u skladu sa drugim propisanim uslovima. Ovo pravo prestaje nezavisno od volje garantovanog snabdevača i povlašćenog proizvođača električne energije u slučajevima i pod uslovima određenim ugovorom o otkupu električne energije.[222]

6.1.3. *Status proizvođača električne energije iz obnovljivih izvora*

Pored statusa povlašćenog proizvođača električne energije, privremenog statusa povlašćenog proizvođača električne energije postoji i status proizvođača električne energije iz obnovljivih izvora.

Energetski subjekt može steći status proizvođača električne energije iz obnovljivih izvora (u daljem tekstu: proizvođač iz obnovljivih izvora) za to postrojenje ako: 1) u procesu proizvodnje električne energije koristi obnovljive izvore energije; 2) je izgrađena i podobna za upotrebu u skladu sa zakonom kojim se uređuje izgradnja objekata; 3) ima obezbeđeno posebno merenje, odvojeno od merenja u drugim tehnološkim procesima, kojim se meri preuzeta i predata električna, odnosno toplotna energija u sistem; 4) ima licencu za obavljanje delatnosti u skladu sa Zakonom o energetici; 5) ispunjava i druge uslove propisane Zakonom o energetici i Uredbom o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

221 Izuzetak od ovog pravila je ukoliko se radi o slučaju kada proizvođač električne energije iz obnovljivih izvora, koji je stekao privremeni status povlašćenog proizvođača i tada zaključio ugovor o otkupu proizvedene električne energije sa odložnim uslovom - sa garantovanim snabdevačem, u kom slučaju je ugovor o otkupu već bio zaključen, pre nego što je objekat bio izgrađen i merni instrument postavljen. U navedenom slučaju se opisano očitavanje brojila vrši po početku primene ugovora, odnosno prestanku dejstva uslova koji je odložio primenu ugovora, a to je sticanje statusa povlašćenog proizvođača električne energije.

222 Član 13. Uredbe o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije.

Status proizvođača električne energije iz obnovljivih izvora može steći i fizičko lice koje proizvodi električnu energiju iz obnovljivih izvora samo za jedno postrojenje instalisane snage do 30 kW pod uslovima propisanim u Zakonu o energetici. Energetski subjekat i fizičko lice ne mogu istovremeno imati status proizvođača iz obnovljivih izvora i status povlašćenog proizvođača za isto postrojenje.

Zahtev za sticanje statusa proizvođača iz obnovljivih izvora podnosi se ministarstvu nadležnom za poslove energetike na Obrascu O-3[223], zajedno sa dokazima čija je sadržina određena u skladu sa Zakonom o energetici i Uredbom o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

Uz zahtev za sticanje statusa proizvođača energije iz obnovljivih izvora, podnose se: 1) za pravno lice, odnosno preduzetnika: izvod o registrovanim podacima (poslovno ime, pravna forma, sedište, delatnost, poreski identifikacioni broj, matični broj); 2) za fizičko lice: fotokopija lične karte, odnosno uverenje o državljanstvu ili fotokopija pasoša, ako je podnosilac strani državljanin; 3) upotrebna dozvola u skladu sa zakonom kojim se uređuje planiranje i izgradnja objekata ili potvrda nadležnog organa da za izgrađeno postrojenje, odnosno deo postrojenja nije potrebno pribaviti upotrebnu dozvolu; 4) odobrenje za priključenje postrojenja sa šemom mernih uređaja; 5) licenca za obavljanje delatnosti proizvodnje električne energije, u skladu sa Zakonom o energetici; 6) dokaz o uplati administrativne takse.[224]

Status proizvođača iz obnovljivih izvora, utvrđuje ministarstvo nadležno za poslove energetike rešenjem u roku od 30 dana od dana podnošenja zahteva.

Protiv rešenja može se izjaviti žalba Vladi u roku od 15 dana od dana prijema rešenja.

Proizvođač električne energije iz obnovljivih izvora ima pravo na garanciju porekla i na pravo prvenstva predaje proizvedene električne energije u prenosnu ili distributivnu elektroenergetsku mrežu, osim u slučaju kada je ugrožena sigurnost snabdevanja ili sigurnost rada prenosnog, odnosno distributivnog sistema.[225]

Status proizvođača iz obnovljivih izvora se oduzima ako: 1) je rešenje o sticanju statusa proizvođača električne energije doneto na osnovu neistinitih podataka; 2) ne ispunjava obaveze utvrđene Zakonom o energetici i aktima donetim na osnovu ovog zakona; 3) proizvodi električnu energiju suprotno uslovima pod kojima je stekao status proizvođača električne energije iz obnovljivih izvora; 4) su akti na osnovu kojih je stekao status proizvođača iz obnovljivih izvora pravnosnažno ukinuti, poništeni ili stavljeni van snage.

Status proizvođača iz obnovljivih izvora energije prestaje na dan konačnosti rešenja o oduzimanju statusa povlašćenog proizvođača u slučaju oduzimanja tog statusa, ili na

223 Obrazac O-3, verzija od 16.06.2016. godine, (Zahtev za izdavanje rešenja o sticanju statusa proizvođača električne energije iz obnovljivih izvora energije), www.mre.gov.rs.

224 Član 25. Uredbe o uslovima i postupku sticanja statusa povlašćenog proizvođača električne energije, privremenog povlašćenog proizvođača i proizvođača električne energije iz obnovljivih izvora energije.

225 Član 162. stav 1. Zakona o energetici.

dan prestanka važenja rešenja na osnovu koga je taj status stečen, kao i na osnovu izjave proizvođača da mu se ukine rešenje o sticanju statusa proizvođača električne energije iz obnovljivih izvora.

6.2. Sticanje statusa povlašćenog proizvođača toplotne energije i mere podsticaja

Zakonom o energetici definisano je da su povlašćeni proizvođači toplotne energije oni proizvođači koji u procesu proizvodnje toplotne energije koriste obnovljive izvore energije i pri tome ispunjavaju uslove u pogledu energetske efikasnosti.

Zakonom o energetici utvrđena je mogućnost za ostvarivanje podsticaja za proizvođače toplotne energije. Jedinica lokalne samouprave propisuje podsticajne mere i uslove za sticanje statusa povlašćenog proizvođača toplotne energije, kriterijume za sticanje ispunjenosti tih uslova i utvrđuje način i postupak sticanja tog statusa. Ovakva akta u vreme pisanja ovog Vodiča nisu bila doneta.

Jedinica lokalne samouprave vodi registar povlašćenih proizvođača toplotne energije, koji sadrži naročito podatke o postrojenjima na hidrogeotermalne energije za proizvodnju toplotne energije, lokaciji na kojoj se nalaze, instalisanoj snazi toplane, vremenu predviđenom za eksploataciju, uslovima izgradnje i eksploatacije za to postrojenje, vrsti primarnog izvora koji koristi i subjektima koji obavljaju energetsku delatnost proizvodnje toplotne energije u tim objektima.

Jedinica lokalne samouprave na zahtev ministarstvanadležnog za poslove energetike, a najmanje jedanput godišnje obaveštava ovo ministarstvo o podacima sadržanim u registru, na obrascu čiju sadržinu propisuje ministar nadležan za poslove energetike.

Nadležni organ jedinice lokalne samouprave, sa teritorije autonomne pokrajine, dostavlja nadležnom pokrajinskom organu za pitanja energetike podatke iz registra, do kraja juna tekuće godine o stanju na dan 31. decembar prethodne godine.

7.0

POSEBNI POSTUPCI - GARANCIJA POREKLA

7. POSEBNI POSTUPCI - GARANCIJA POREKLA[226]

Garancija porekla je dokument koji ima isključivu funkciju da dokaže krajnjem kupcu da je dati udeo ili količina električne energije proizvedena iz obnovljivih izvora energije, kao i iz kombinovane proizvodnje električne i toplotne energije sa visokim stepenom iskorišćenja primarne energije. Garancija porekla se izdaje isključivo proizvođaču električne energije iz obnovljivih izvora energije, koji je stekao status proizvođača energije iz obnovljivih izvora[227].

Garancija porekla za energiju proizvedenu iz obnovljivih izvora energije sadrži naročito: 1) naziv, lokaciju, vrstu i snagu proizvodnog kapaciteta; 2) datum puštanja u rad energetskog objekta, odnosno dela energetskog objekta; 3) podatke o operatoru prenosnog sistema nadležnog za izdavanje garancije porekla; 4) datum početka i kraja proizvodnje energije za koju se izdaje garancija porekla; 5) podatak iz pismene izjave podnosioca zahteva da li je za izgradnju proizvodnog kapaciteta bila korišćena investiciona podrška iz nacionalnih sredstava i vrsta te podrške; 6) podatak da li je korišćena podsticajna otkupna cena energije; 7) datum i zemlju izdavanja garancije porekla; 8) dodeljeni jedinstveni identifikacioni broj garancije porekla.

Garancija porekla za električnu energiju proizvedenu u postrojenjima sa visokoefikasnom kombinovanom proizvodnjom električne i toplotne energije, pored prethodno navedenih podataka, sadrži i: 1) donju toplotnu moć energenta koji se koristi za proizvodnju električne energije za koju se izdaje garancija porekla; 2) svrhu za koju se koristi toplotna energija proizvedena u postrojenju za kombinovanu proizvodnju električne i toplotne energije za koju se izdaje garancija porekla; 3) stepen korisnog dejstva postrojenja na godišnjem nivou.

Podnosilac zahteva za izdavanje garancije porekla je energetski subjekt koji je stekao status proizvođača energije iz obnovljivih izvora.

Zahtev za izdavanje garancije porekla podnosi se samo za deo isporučene električne energije proizvedene iz obnovljivih izvora energije.

Zahtev za izdavanje garancije porekla podnosi se sa korisničkog računa u registru garancija porekla.

O zahtevu za izdavanje garancije porekla odlučuje operator prenosnog sistema.

Garancija porekla se izdaje samo za onaj deo električne energije koji je proizveden iz obnovljivih izvora energije, odnosno koji je proporcionalan udelu električne energije proizvedene iz obnovljivih izvora energije u ukupno proizvedenoj električnoj energiji.

Za dan početka važenja garancije porekla usvaja se poslednji dan obračunskog perioda proizvodnje na koji se garancija porekla odnosi.

Garancija porekla se izdaje samo jednom za jediničnu količinu električne energije od 1 MWh proizvedene u određenom periodu.

Garancija porekla važi godinu dana od poslednjeg dana perioda proizvodnje za koju se izdaje.

Garancija porekla je prenosiva. Prenos garancija porekla sa jednog na drugi korisnički račun vrši se na principima transparentnosti i nediskriminacije. Ovaj prenos vrši operator prenosnog sistema na zahtev koji dostavlja vlasnik garancije porekla.

226 Pravilnik o garanciji porekla električne energije proizvedene iz obnovljivih izvora energije.
227 Član 82. Zakon o energetici. Vidi više u fusnoti 213. ovog Vodiča.

Garancija porekla prestaje da važi kada: 1) vlasnik odluči da je iskoristi; 2) istekne rok važenja; 3) operator prenosnog sistema povuče garanciju.

Vlasniku garancije porekla koji je odlučio da iskoristi garanciju porekla i podneo zahtev za iskorišćenje, operator prenosnog sistema izdaje izjavu o iskorišćenju u roku od osam dana.

Garancija porekla se može iskoristi samo jednom.

Garancije porekla koje su prestale da važe evidentiraju se u registru.

Operator prenosnog sistema formira i vodi registar garancija porekla u elektronskom obliku i u skladu sa Zakonom, Pravilnikom o garanciji porekla električne energije proizvedene iz obnovljivih izvora energije i međunarodnim standardom evropskog sistema energetske sertifikacije.

Potrebno je ukazati da Garancija porekla izdata u drugim državama važi pod uslovima reciprociteta i u Republici Srbiji i u skladu sa potvrđenim međunarodnim ugovorom.

Relevantni zakoni, strateška dokumenta, planovi i podzakonska akta

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3. Zakon o prostornom planu Republike Srbije, Sl. glasnik RS, br. 88/10
4. Zakon o zaštiti životne sredine, Sl. glasnik RS, br. 135/04, 36/09 i 14/16
5. Zakon o integrisanom sprečavanju i kontroli zagađenja, Sl. glasnik RS, br. 135/04 i 25/15
6. Zakon o planiranju i izgradnji, Sl. glasnik RS, br. 72/09, 81/09, 64/10 - odluka US, 24/11, 121/12, 42/13 - odluka US, 50/13 - odluka US, 98/13 - odluka US, 132/14 i 145/14
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2. Nacionalni akcioni plan za obnovljive izvore energije, Sl. glasnik RS br. 53/13

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2. Uredba o utvrđivanju Liste projekata za koje je obavezna procena uticaja i Liste projekata za koje se može zahtevati procena uticaja na životnu sredinu, Sl. glasnik RS, br. 114/08
3. Uredba o režimima zaštite, Sl. glasnik RS, br. 31/12
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5. Uredba o uslovima isporuke i snabdevanja električnom energijom, Sl. glasnik RS, br. 63/13
6. Uredba o podsticajnim merama za proizvodnju električne energije iz obnovljivih izvora i iz visokoefikasne kombinovane proizvodnje električne i toplotne energije, Sl. glasnik RS, br. 56/16

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12. Pravilnik o načinu zatvaranja i obeležavanju zatvorenog gradilišta, Sl. glasnik RS, br. 22/15
13. Pravilnik o sadržini i načinu vršenja tehničkog pregleda objekta, sastavu komisije, sadržini predloga komisije o utvrđivanju podobnosti objekta za upotrebu, osmatranju tla i objekta u toku građenja i upotrebe i minimalnim garantnim rokovima za pojedine vrste objekata, Sl. glasnik RS, br. 27/15
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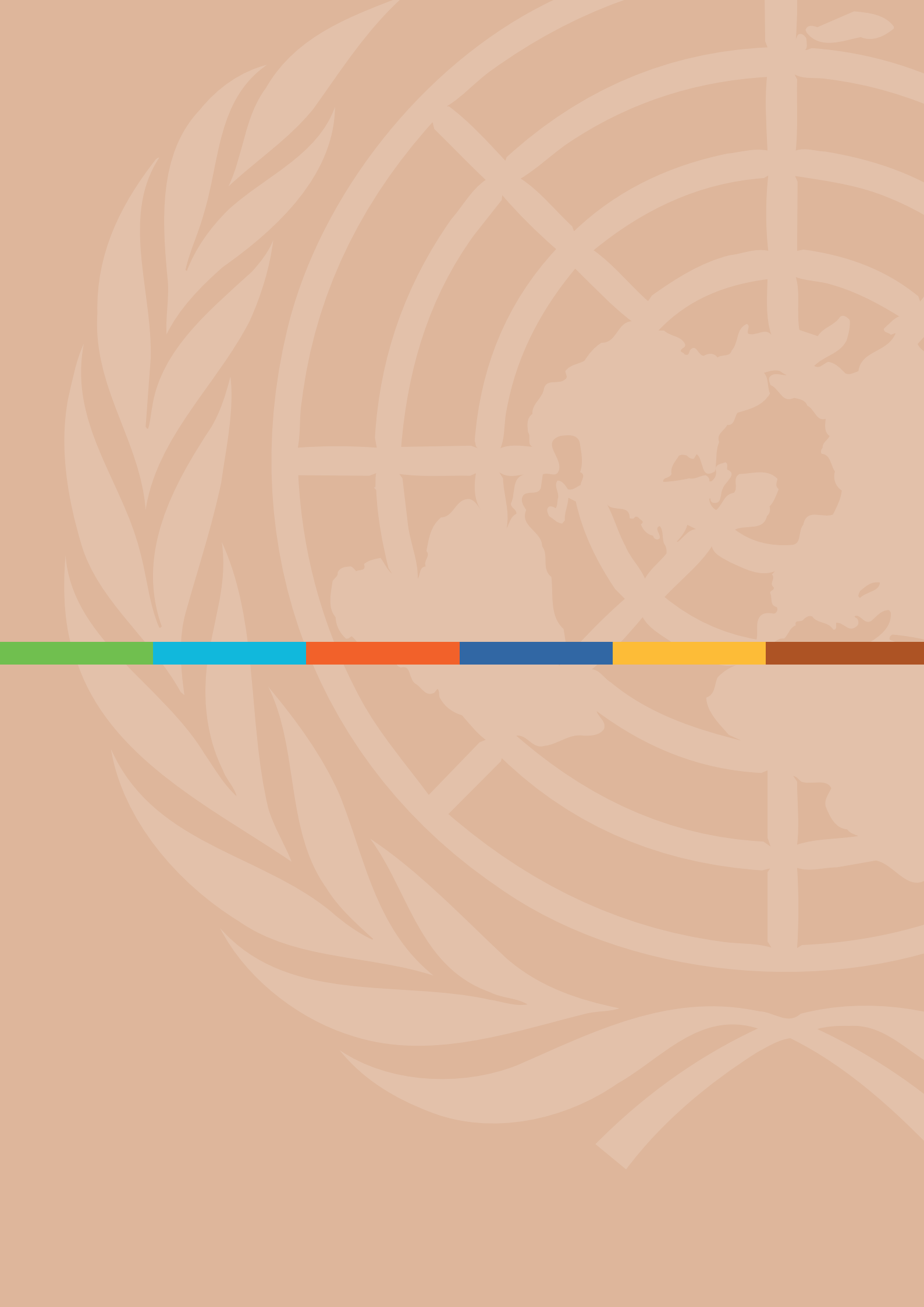

CONSTRUCTION OF PLANTS AND ELECTRICITY/ HEAT GENERATION FROM HYDRO-GEOTHERMAL SOURCES IN THE REPUBLIC OF SERBIA

Guide for investors

Contents

Foreword

The United Nations Development Programme (UNDP), acting as an implementing agency of the Global Environment Facility (GEF) is implementing the GEF funded project "Reducing Barriers to Accelerate the Development of Biomass Markets in Serbia" in close partnership with the Ministry of Mining and Energy and the Ministry of Agriculture and Environmental Protection of the Republic of Serbia.

The objective of the Biomass Project is to increase the share of energy from renewable sources in the energy mix of Serbia, namely the share of biomass in power generation.
One of project activities is focused on enhancing the capacity of all relevant stakeholders to develop, finance, construct and operate bankable biomass renewable energy projects. To that end an update and revision of six existing, yet outdated guides for investors in renewable energy facilities has been performed:

1. CONSTRUCTION OF PLANTS AND ELECTRICITY/HEAT GENERATION FROM BIOMASS IN THE REPUBLIC OF SERBIA
2. CONSTRUCTION OF FACILITIES AND ELECTRIC POWER GENERATION IN SMALL HYDROPOWER PLANTS IN THE REPUBLIC OF SERBIA
3. CONSTRUCTION OF PLANTS AND ELECTRICITY GENERATION IN WIND POWER PLANTS IN THE REPUBLIC OF SERBIA
4. CONSTRUCTION OF PLANTS AND ELECTRICITY/HEAT GENERATION FROM HYDRO-GEOTHERMAL SOURCES IN THE REPUBLIC OF SERBIA
5. CONSTRUCTION OF PLANTS AND ELECTRICITY GENERATION IN WIND POWER PLANTS IN THE REPUBLIC OF SERBIA
6. CONSTRUCTION OF SOLAR HEATING SYSTEMS IN THE REPUBLIC OF SERBIA

All guides are bilingual and, except for one, were delivered in two versions. Six detailed guides describe in details the comprehensive procedure for constructing the energy facilities and performing economic activity of energy generation from renewable sources. Detailed guides are intended primarily to investors and project developers, but also to officials in different competent institutions since the legal procedure is cross-sectoral. In five less detailed guides the comprehensive matter is described in simpler and illustrative manner with an idea to get this topic closer to the wide range of stakeholders.

The objective of the guides is to encourage and assist the investors interested in the Serbian renewable energy sector, but also to identify through thorough analysis weakness and inconsistencies of the procedure and to encourage competent institutions to perform legal and institutional improvements. We sincerely hope that the guides will trigger constructive dialog between the numerous stakeholders and thus contribute to their better awareness and mutual understanding, which ultimately should result in favorable environment for investments in renewable energy.

1.0

INTRODUCTION

1. INTRODUCTION[1]

Geothermal energy implies heat accumulated in dry rocks and fluids of the Earth's crust, as the consequence of continuous heat radiation from the interior of the Earth. Therefore, geothermal or heat energy may be accumulated in fluids (water and gases) in which case it is defined as hydro-geothermal energy, and in hard rocks, in which case it is referred to as petro-geothermal energy.

Hydro-geothermal energy has been successfully used for different purposes for several decades now. In the past twenty years, the use of petro-thermal energy from shallow geoprobes has been increasingly used for heating and cooling of large structures.

Hydro-geothermal energy is a form of renewable energy sources[2].

Hydro-geothermal energy can be utilized directly, and it can also be utilized for generation of thermal energy and electricity generation.

Energy generating facilities for production of electricity and/or thermal energy using hydro-geothermal energy (hereinafter: plants)[3], if they fulfill the prescribed requirements, can acquire the status of privileged producer and thus the right to certain incentive measures provided for in the Energy Law and bylaws adopted under this law.[4] This puts emphasis on the significance of power generation from renewable sources.

Production of heat is an activity of public interest. The right to engage in that activity is acquired under separately prescribed conditions.

1.1. Sources of law

Utilization of geo-thermal sources for electricity and heat production is very complex and is performed according to a number of regulations of the Republic of Serbia. This activity is linked to the laws on mining, energy, corporate law, construction law, law on contractual obligations, etc.

First of all, it is necessary to differentiate the process of exploration and exploitation of a geo-thermal resource (mineral resource), then the process of construction of a facility for utilization of heat, generation of heat, or of electricity, and the process of engaging in the activity of heat or of electricity generation.

1 It should be underlined that this Guide refers to all hydrogeothermal plants and that it describes procedures towards competent authorities and institutions, but that certain elements of these procedures, as well as enforcement of certain procedures depend on the size of the structure, the site where the structure is constructed, the specific power generation technology and other characteristics of the structure itself. This Guide is compiled in accordance with the regulations prevailing in the Republic of Serbia as of 1 July 2016

2 The Energy Law (Official Gazette of RS, No. 145/14) in Article 2, item 47, prescribes that energy from renewable sources is energy produced for non-fossil renewable sources such as: water courses, biomass, wind, sun, landfill gas, gas sewage treatment plants, and sources of geo-thermal energy. Article 3, itm 5) of the Law on Mining and Geologic Explorations (Official Gazette of RS, No. 101/15) prescribes that geo-thermal resources are a set of renewable geological resources including ground waters and heat from rock masses from which heat energy can be extracted.

3 Article 2, para 1, item 1) of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary privileged Electricity Producer and Electricity Producer from Renewable Energy Sources (Official Gazette of RS, No. 56/16) prescribes that geothermal plants are plants utilizing ground waters and heat from rock masses.

4 Article 4, para 2, of the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy (Official Gazette of RS, No. 56/16).

The sources of law of the Republic of Serbia can be classified in several groups of laws and regulations, which will be discussed in further chapters of this Guide.

The issues of exploration and exploitation of hydro-geothermal sources are regulated by the Law on Mining and geologic Explorations[5] and bylaws adopted under this law. The Law prescribes that the utilization of ground waters is considered to include the performance of works related to preparation, activation and utilization of ground waters and hydro-geothermal resources.

The group of regulations governing the field of planning and construction of facilities includes: the Law on Planning and Construction[6], the Law on the Spatial Plan of the Republic of Serbia[7], their pertaining bylaws and other regulations. Planning documents include spatial plans (regional spatial plans, spatial plans of units of local self-government, and spatial plans of areas for special use) and urban development plans (urban master plan, general regulating plan, detailed regulating plan). The Law on Planning and Construction with the relevant bylaws regulating the area of construction of facilities prescribes the procedures for receiving information on locations and location requirements, the construction permit, and the operation permit, while planning documents define the objectives of spatial planning and development, i.e. spatial development, such as whether it is planned in a certain time period to construct a certain facility in a certain location in the Republic of Serbia. In order to obtain the above permits it is necessary to obtain the technical requirements for connection to the power grid or district heating system, and other requirements.

The group of regulations governing the field of energy includes: the Energy Law, and the accompanying bylaws, the Strategy of Development of the Energy Sector of the Republic of Serbia[8] and other regulations governing the issuing of energy permits, connection of facilities to the grid, acquiring of different types of status of electricity producer from renewable energy sources, and the right to incentives for such producers, and other issues which will be detailed in this Guide.

The group of regulations governing the field of environmental protection and utilization of natural resources (with the exception of mineral resources) includes: the Law on Environmental Protection[9], the Law on Environmental Impact Assessment[10], the Law on Strategic Environmental Impact Assessment[11], the Law on Integrated Pollution Prevention and Control[12], the Law on Air Pollution[13], the Law on Nature Protection[14], the Law on Waters[15], the Law on Forests[16], bylaws adopted under these laws and other regulations governing environmental protection and the protection and use of natural resources.

It is necessary here to mention the significance of fire protection regulations, which are significant both in the stage of preparation of the technical documentation and plant construction and at the time when the plant begins to operate.

5 The Law on Mining and Geologic Explorations (Official Gazette of RS, No. 101/15).
6 The Law on Planning and Construction (Official Gazette of RS, No. 72/09, 81/09, 64/10 – decision of the Constitutional Court 24/11, 121/12, 42/13 - decision of the Constitutional Court 50/13 - decision of the Constitutional Court 98/13 - decision of the Constitutional Court 132/14 and 145/14).
7 The Law on the Spatial Plan of the Republic of Serbia (Official Gazette of RS, No. 88/10).
8 The Strategy of Development of the Energy Sector of the Republic of Serbia until 2025 with Projections until 2030 (Official Gazette of RS, No. 101/15).
9 The Law on Environmental Protection (Official Gazette of RS, No. 135/04, 36/09, and 14/16).
10 The Law on Environmental Impact Assessment (Official Gazette of RS, No. 135/04 and 36/09).
11 The Law on Strategic Environmental Impact Assessment (Official Gazette of RS, No. 135/04 and 88/10).
12 The Law on Integrated Pollution Prevention and Control (Official Gazette of RS, No. 135/04 and 25/15).
13 The Law on Air Pollution (Official Gazette of RS, No. 10/13).
14 The Law on Nature Protection (Official Gazette of RS, No. 36/09, 88/10, 91/10 and 14/16).
15 The Law on Waters (Official Gazette of RS, No. 30/10 and 93/12).
16 The Law on Forests (Official Gazette of RS, No. 30/10 and 93/12).

Procedures for the obtaining of different permits issued by state (administrative) authorities and other procedures necessary for obtaining the accompanying documents are administrative procedures, and the deadlines for the issuing of such acts are defined by the relevant regulations governing the issuance of the specific administrative act. In cases when such deadlines are not defined by specific regulations, the deadline for the issuance of the specific administrative act shall be governed by the provisions of the General Administrative Procedure Law.[17]

A special group of regulations refers to acquiring the right to engage in the activity of generation of thermal energy. The generation of thermal energy is an activity of general interest both under the Energy Law and the Law on Public Utilities[18]. For this reason acquiring of the right to perform activities of production of heat in a plant is carried out in two steps, i.e.: 1) acquiring the right to perform public utility services of public interest and 2) acquiring the right to perform energy-related activities - obtaining the energy license.

It must be noted that the Law on Public-Private Partnerships and Concessions[19] is the only regulation of the Republic of Serbia whose application enables simultaneous exercise of the right to exploitation of geothermal sources and the right to perform energy activity of general public interest. Construction of plants utilizing hydro-geothermal energy and the performing of the activity of producing electricity and/or thermal energy in such plants is regulated by a number of regulations of the Republic of Serbia.

17 Article 145 of the General Administrative Procedure Law (Official Gazette of RS, No. 18/16), stipulates that the deadline for the issuing of decisions by competent state authorities shall be maximum 30 days from the day of initiating the procedure in the interest of the party and when the matter is to be decided in the procedure of direct decision-making, or a maximum of 60 days in cases when the procedure was initiated in the interest of the party but when the administrative issue at hand is not decided by direct decision-making. The general deadline for filing of appeals is 15 days of the day of the party receiving the first-instance decision, unless otherwise stipulated by the law. Article 153, para 2, of the General Administrative Procedure Law stipulates that should the first-instance body fail to issue the decision within the deadline prescribed by the law, an appeal can be filed after the expiration of such deadline but not later than one year after the expiration thereof.

18 There are inconsistencies between the Energy Law and the Law on Public Utilities (Official Gazette of RS, No. 88/11) with respect to defining energy activities in the field of thermal energy. The Energy Law defines three energy activities in the field of thermal energy: production of thermal energy, distribution, and supply of thermal energy. The Law on Public Utilities defines one utility activity: production and distribution of thermal energy. It is interesting to note that neither of these laws set apart as separate activity the distribution of thermal energy as a network regulated activity, set apart from production or sale (supply) of thermal energy. The Law on Public Utilities defines this as an activity of general interest, which could apply only to distribution of thermal energy which, by its nature, should be a regulated activity. The activity of production and sale of thermal energy by their nature should be market activities.
It is not clear why production of thermal energy, as a special activity, has remained a regulated activity under the Energy Law, while production of thermal energy in a combined cycle is treated as unregulated activity, just as production of electricity. Production of energy (electricity and/or heat), by its nature, is not a regulated activity.

19 The Law on Public Private Partnerships and Concessions (Official Gazette of RS, No. 88/11 and 15/16).

2.

EXPLORATION AND EXPLOITATION OF HYDROGEOTHERMAL SOURCES

2. EXPLORATION AND EXPLOITATION OF HYDROGEOTHERMAL SOURCES

2.1. Geological exploration

For the purpose of establishing the potential of thermal waters as possible sources of geothermal energy, geological or hydro-geological explorations shall be conducted. Such explorations shall be conducted in compliance with the Law on Geological Explorations, technical and other regulations.

The Law on Mining and Geological Explorations stipulates that resources of hydrogeothermal energy are mineral raw materials, which are at the same time geothermal resources. Geothermal resources are a set of renewable geological resources including ground waters and the heat of rock masses from which heat energy can be extracted. Geothermal resources include: sub-geothermal resources with water temperature and rock masses temperature up to 30°C, low enthalpy resources from which it is possible to extract heat energy of temperatures from 30°C - 100°C, and resources of medium and high enthalpy from which it is possible to extract heat energy of temperatures above 100°C.[20] Exploitation boreholes for geothermal resources shall mean mining facilities in which mining works are performed in the course of exploitation of geothermal resources of high enthalpy.

In order to acquire the right to geological explorations, which is the precondition for acquiring the right to exploit mineral raw materials, a set of requirements must be fulfilled as prescribed by the Law on Mining and Geological Explorations and its by-laws. Geological explorations[21] may be preliminary (basic)[22] and detailed (applied)[23] geological explorations.

Basic geological explorations are activity of public interest and are funded from the national budget of the Republic of Serbia. The autonomous province performs and funds the basic geological explorations in its territory.

It should be noted that geological explorations, exploitation of reserves of mineral raw materials and geothermal resources, and the use and maintenance of mining facilities are

20 Article 3, item 5) of the Law on Mining and Geologic Explorations.

21 Geological explorations are a complex process and imply a set of activities implementing relevant methods and technical means in order to understand the evolution, composition and structure of the earth's crust, to identify, explore and assess in geologic and economic terms the mineral and other geologic resources, to explore and identify reserves of mineral raw materials and assess the potential for their exploitation, to identify and asses the geologic, engineering-geologic, and hydro-geologic characteristics of terrain being explored, especially from the point of view of spatial and urban planning, design and construction of buildings, and to determine and eliminate harmful effects of geologic and technical processes on geologic and environmental aspects and cultural assets under preliminary protection; while geologic exploratory works include all types of field, laboratory and office research and testing performed in order to identify and explore mineral and other geologic resources and reserves of mineral raw materials and ground waters. As well as research of geologic environs – Article 3, items 12) and 15) of the Law on Mining and Geologic Explorations.

22 Article 17 of the Law on Mining and Geologic Explorations – Basic geologic explorations are explorations performed in order to: study the evolution, composition and structure of the earth's crust; detection of mineral resources, groundwater resources and geothermal resources and their initial study; evaluate the overall potentials of the geologic environs as spaces for spatial and urban planning purposes and determining their fitness for construction of structures; identify and eliminate harmful effects of natural and technical processes on the geologic environs and the environment.

23 Applied geologic explorations are a set of processes and activities performed in order to determine and collect relevant data on: geologic composition, quality and quantity characteristics of mineral and other geologic resources; hydro geologic and geothermal engineering-geologic-geotechnical characteristics and geo-dynamic properties of the geologic environs, as areas of special interest for the purpose of spatial and urban planning, design and construction of civil, mining and other structures – Article 3, item 16) of the Law on Mining and Geologic Explorations.

to be performed in a manner ensuring a feasible and cost-efficient utilization of deposits of mineral raw materials and other geological resources, safety of people, facilities and property, and in line with contemporary technical developments and technologies and regulations applicable to this type of facilities and works as well as regulations on occupational health and safety, fire and explosion protection and protection of cultural assets and assets of preliminary protection.[24]

The activities of geological explorations, development of designs for geological explorations, development of studies on resources and reserves of mineral raw materials, development of studies on resources and reserves of ground waters and geothermal resources, reports of results of geologic explorations, studies of engineering geologic-geotechnical requirements for construction and reports on geothermal resources, as well as reports on different specialized explorations and performance of technical supervision can be performed only by a company, another legal entity and entrepreneur provided that they are: 1) inscribed in the relevant registry of companies or another register for this type of activity, and 2) possessing the license for the performance of such activities.[25,26]

During the performance of geological explorations the entity in charge of explorations shall ensure technical supervision over the performance of geological explorations in accordance with the Law on Mining and Geological Explorations.

In cases where detailed geological explorations make use of data from basic geological explorations which were funded from the budget of the Republic of Serbia, or data and documents which have become public/state property under concession agreements, the person using these date shall be obliged to make a payment equivalent to 5% of the actual value of performed explorations for the specific exploration field.

In order to provide potential investors with comprehensive information on geologic explorations, we point here that the portal "GEOLISS", which is the Geological Information System of Serbia[27], contains the basis for preservation of geological data in digital form and which provides an overview and records of all geological resources in one place, and ensures efficient management and use of all geological resources and mineral raw materials, thus facilitating design and exploitation of all mineral raw materials including sources of hydrogeothermal energy. The „GEOLISS" portal also enables search of issued water permits, and insight into a map of exploration areas and exploitation fields of Serbia.

2.1.1. Geological exploration design

Geologic explorations are performed according to the designs for geologic explorations which contain especially: 1) documents confirming fulfillment of requirements for the legal person or entrepreneur performing geological explorations and recruitment of physical persons who actually perform certain actions and activities during the explorations; 2) textual description, and 3) graphical attachments. The requirements, criteria and content of designs for exploration of hydrogeothermal resources are prescribed by a separate rulebook.[28]

24 Article 5 of the Law on Mining and Geologic Explorations.
25 Article 22 of the Law on Mining and Geological Explorations.
26 Geologic explorations can also be performed by foreign legal persons under the conditions and in the manner prescribed by the Law on Mining and Geologic Explorations and the law regulating the rights of foreign persons with respect to utilization of assets of public interest, as well as in accordance with the laws regulating defense and confidentiality of data – Article 22, para 5, by the Law on Mining and Geologic Explorations.
27 The „GEOLISS" portal is part of the portal by the Ministry of Mining and Energy, which was developed with the assistance of UNDP and JICA: http://geoliss.mre.gov.rs/. The portal is also available in the English language.
28 The Rulebook on the contents of geologic exploration designs and studies on results of geologic explorations (Official Gazette of RS, No. 51/96).

The geological exploration design and any amendments to the design are subject to technical control.

In the course of geological explorations the person in charge shall ensure technical supervision over the performance of geological explorations.

The applicant for the permit for geological explorations shall, prior to developing the geological explorations design, request from the competent authority for nature protection or authority for protection of cultural heritage, or another relevant authority, an act specifying requirements for the design and performance of planned geological explorations. Such an act shall be an integral part of the geological explorations design.

2.1.2. Permit for explorations

In order to conduct geological explorations related to hydrogeothermal energy in a certain exploration area, it is necessary to obtain the permit for exploration. Applied geological explorations are conducted on the basis of the decision approving geological explorations issued by the ministry in charge of mining, upon request of the economic entity which fulfills conditions for performing such activities. Permits for applied geological explorations conducted in the territory of the autonomous province are issued in form of a decision by the competent secretariat of the autonomous province. The competent authority of the autonomous province is obligated to report to the ministry on issued permits for geological explorations.

This decision of the ministry in charge of mining shall be final and an administrative dispute may be instituted against it. An appeal may also be lodged against the decision issued by the competent authority of the autonomous province to the minister in charge of mining.

The minister in charge of mining shall define in detail the area of the exploration field where the applied geological explorations can be permitted, depending on the type of mineral and other geological resources subject to explorations.

The application for the approval of exploration shall contain data on: 1) exploration entity; 2) type of geological explorations; 3) size of the exploration area; 4) type of exploratory works; 5) duration of geological explorations, and 6) evidence of paid national or provincial administrative tax.

If the authority in charge shall determine, with respect to the application for permit for applied geologic explorations, that the exploration area is free and that there are geologic and other conditions for smooth performance of explorations, it shall so notify the applicant which shall, within the further deadline of 90 days submit the following: 1) an excerpt from the company registry for the applicant; 2) a topographic map of scale 1:25.000, with marked boundaries and coordinates of intersection points of the explored area; 3) a design for geologic explorations, two copies; 4) a report and confirmation on performed technical control of the designs; 5) evidence of ownership rights on the land or evidence of ease of way in the land where exploration is intended; 6) evidence of paid national administrative tax for the issuing of the permit.

The permit for exploration shall be issued under special conditions in cases of structures or areas under special protection or special regime. In areas which are protected natural area or an ensemble having cultural and historical or construction importance, touristic and recreational ensembles, water intakes of special importance for regional water supply or in other protected areas, conducting of geological explorations and exploitation of reserves of mineral raw materials and geothermal resources may be permitted only under the conditions issued pursuant to a separate law by competent authorities and organizations in charge of issuing requirements for regulation of area, protection of nature and environmental protection, protection of cultural heritage and other authorities and organizations in charge of the respective field related to the protected area.

The Law ion Waters prescribes that water management acts are required for mining explorations and exploitation works[29]. Thus, the application for the issuing of the permit for geologic explorations should include copies of the water management requirements and water permit.[30]

The Law on Mining and Geologic Explorations prescribes when the competent authority shall refuse to issue the permit for explorations. Since the said law does not prescribe the deadline for the issuing of permits, the deadline shall be governed by the on General Administrative Procedure Law[31].

The person in charge of performing explorations and exploitation cannot be a company or another legal person with outstanding unsettled debts for the following: on the basis of public revenues, public contributions related to earlier explorations or exploitation, illegal explorations or illegal exploitation, or unsettled debts related to rehabilitation and protection of the environment and cultural assets or assets under special protection.

The permit for applied geologic explorations shall state the following data: 1) the name of the entity undertaking explorations and the address of its registered seat; 2) the scope and type of explorations; 3) the surface area and coordinated of intersection points for the geological area; 4) the name of the geologic explorations project; 5) and duration of exploration period in line with the application of the entity in charge of explorations.[32]

The permit for applied geologic exploration sets the exploratory period of up to two. This period can be extended twice, consecutively, provided that the duration of each extension may be up to two years.

Application for expanding the exploratory period shall be submitted at least 30 days prior to the expiry of the exploratory period set in the permit for explorations, provided that at least 75% of the scope of exploration works planned and the timetable in the design was completed.

29 Article 117, item 18) and 24) of the Law on Waters.
30 More details about the procedure for the issuing of these acts provided in section 2.2.1.1 of this Guide.
31 More details on deadlines from the General Administrative Procedure Law to be found in footnote number 15 of this Guide.
32 Article 37 of the Law on Mining and geologic Explorations

The following shall be submitted with the application for extension of the validity of permit for geological explorations: 1) 2 copies of geological explorations design; 2) topographic map with plotted borders of the exploration area and coordinates of breaking points for continued explorations in the scale 1:25000 ; 3) the report and confirmation of performed technical control; 4) the final report on the previous explorations period; 5) evidence of paid relevant republic administrative tax.

The maximum surface exploration area for performance of applied geologic explorations of ground waters and geothermal resources is up to 10 km^2.[33]

Article 47 of the Law on Mining and Geological Explorations prescribes the cases when the competent authority can cancel the permit for explorations before the expiry of the designated period, including also if under the form of explorations the entity performs exploitation of ground waters and geothermal resources. The authority which had issued the permit shall keep records on issued permits for explorations and a cadastre of approved exploration areas. The Cadastre shall include data on entity in charge of explorations, the exploration area, the scope of geologic explorations and the duration of explorations. Interested persons and other legal entities shall have the right to access the cadastre of approved exploration areas.

Conducting of applied geological explorations of ground waters and geothermal resources is subject to payment of a fee.[34] This fee is paid once a year for a period of one year, not later than within 30 days from the date of receipt of the permit for applied geological explorations and/or the permit on keeping the right to the exploration area, while in case of geologic explorations approved in preceding years, the deadline shall be by 31 January of the current year.

It should be noted that the company or another legal person performing geological explorations or exploitation of mineral raw materials or other geothermal resources without the relevant permit shall be obliged to compensate for damages the owner of the occupied land and to pay in favor of the budget of the Republic of Serbia or the autonomous province the compensation for damages for the unapproved geological explorations and for the value of the total amount of abstracted mineral raw materials or other geological resources, as well as to rehabilitate and recultivate the land in which the geological exploration and/or exploitation of geologic or geothermal resources were performed.

2.1.3. Conducting of geological explorations

The entity in charge of explorations shall notify the commencement of geological explorations works prior to commencement of execution of designed exploratory works to the competent authority of the local self-government unit in whose territory the exploration

33 Article 41, item 2) of the Law on Mining and geologic Explorations

34 The amount of fees for applied geological explorations of mineral raw materials and other geologic resources is RSD 10,000 / km2 of the exploration area, except in cases of exploration area smaller than 0.5 km2, in which case it is RSD 5,000. The manner and deadline of payment of this fee is regulated by the Decree on manner and deadlines for payment of fee for applied geological explorations of mineral raw materials and other geologic resources and fee for keeping the exploration area (Official Gazette of RS, No. 10/16).

area is located and to the authority which issued the decision permitting explorations and to the geological and/or mining inspection. If the works are carried out in the area which is within jurisdiction of the Institute for Protection of Nature and the Institute for Protection of Cultural Monuments, works should be notified to these competent bodies, as well.

When carrying out the works on geological explorations, the contractor shall: 1) secure the necessary financial means for the execution of approved geological explorations and undertake all other necessary measures and activities and start execution of approved explorations in line with the determined time schedule; 2) obtain evidence of the right to use the land where it plans to execute designed exploratory works (exploration drilling / exploration cuts / exploration levels /exploration mining rooms etc.); 3) perform the type and scope of exploratory works pursuant to the geological investigations design, with maximum possible deviation from the approved scope and type of works of up to 25%; 4) notify the commencement of exploration works; 5) secure professional supervision of execution of geological explorations; 6) pay the fee for approved applied geological explorations; 7) submit Annual and Final report on results of explorations; 8) implement all the prescribed measures of safety at work, required measures of securing the assets, people's health and measures for environmental protection; 9) reinstate in the original condition the land where the exploration works are carried out; 10) register other mineral raw materials and geological resources, if identified within the scope of approved exploration area and inform the authority which issued the permit for execution of geological explorations; 11) keep in a prescribed manner the reports and studies on the results of geological explorations and other geological documentation during the explorations, as well as cores of exploratory drilling and samples and analyses from all exploratory works and make them, if required, accessible for perusal of the Ministry, or to the competent authority of the autonomous province or the local self-government unit, for the verification of results of explorations; 12) adhere during the tests of cores of exploratory drillings and other samples, to the valid geological practice for these investigations in the manner ensuring confidentiality of the obtained exploration results, 13) enable the geologic inspector to enter business and production premises and insight into designs and plans, reports and other documents regarding the status of geologic works.

The entity in charge of explorations shall in the course of explorations obtain from the competent authority in charge of urban development planning of the unit of local self-government information on possible limitations for execution of such exploration works with respect to spatial or urban development planning and other limitations.

Exploration works are carried out at the exploration area, which is marked on the topographic map by coordinates. The size of this area is defined by the permit for exploration.

During the execution of works the person in charge of explorations shall ensure professional supervision of the execution of geological explorations, which will check the quality of works and their compliance with the design, the designed time schedule and compliance with the law, technical regulations, regulations on health and safety at work, fire protection and environmental protection. Professional supervision may be carried out directly by the entity in charge of explorations or it can be outsourced to another legal entity fulfilling the prescribed requirements. This supervision shall be provided also for the elaboration of geological documentation on all works on preparation, elaboration and exploitation of mineral raw materials, as well as in the construction of all underground structures and structures in the areas intended for utilization of mineral raw materials. Upon completion of performed geological exploration works for ground waters and geothermal resources as set out in the design, the final report on results of exploration works is to be compiled. The entity in charge of explorations shall submit one copy of this report and a copy of the study on engineering-geologic and geotechnical conditions for construction in written form or in electronic PDF format, not later than 30 days of the expiration of the exploration period, and in case of extended deadline – not later than by the end of the previously extended approved exploration period. This report shall also include a copy of the report on technical supervision over the execution of geological explorations.

The entity in charge of explorations shall have the right to use and dispose of results of applied geological exploration and documents containing results of geological explorations. Three years after completion of applied geological explorations, the Republic of Serbia may use the results of such explorations, in a manner which does not jeopardize the owner of such data, while also respecting the regulations on data protection and this only in cases of: defense of the country and raising the level of general public security, rehabilitation of consequences of geologic hazards (earthquakes, floods, landslides, avalanches, etc.), elaboration of strategic study explorations for the purposes of determining and evaluating the total mineral potential of the geologic environs or other geologic resources, and for the purposes of spatial and urban planning and other strategic documents of general public interest.

Mining facilities resulting from the process of geologic explorations which are not registered as property of the entity in charge of explorations, shall not be considered to be results of explorations and after the completion of explorations shall become property of the Republic of Serbia and can be used by the entity holding the permit for explorations or holding the permit for exploitation in whose exploitation field such facilities are located.

The entity in charge of explorations who is making use of data and results of explorations which are results of geologic explorations performed by another legal entity or are results of basic and applied geologic explorations funded by the budget of the Republic of Serbia, shall be obliged to provide evidence of the right to use such data in the elaboration of designs for geologic explorations, reports and studies of results of such explorations and/or studies on resources and reserves.[35]

2.1.4. Classification of ground waters and geothermal resources

Classification of resources and reserves of ground waters and geothermal resources is performed in compliance with the relevant regulations and rulebooks on reporting and classification of ground waters and geothermal resources which are harmonized with recognized international reporting and classification methods. Explored resources and

35 Article 49 of the Law on Mining and Geologic Explorations.

reserves of ground waters and hydrogeothermal resources are presented in the study of resources and reserves of ground waters.

The study on results of geological explorations - on resources and reserves of ground waters – is to be prepared upon completion of geological explorations included in the design and it is to present findings of explored resources and reserves of mineral raw materials and ground waters, as well as geothermal resources, for which there is evidence of technical feasibility and cost-efficient exploitation according to the Rulebook on contents of designs for geologic explorations and reports on geologic explorations. The entity in charge of explorations shall submit a copy of the report to the authority which issued the permit for explorations. The entity in charge of explorations shall ensure the preservation of macroscopic and microscopic samples of rocks and other legally prescribed elements of significance for the geologic explorations and materials.

Resources and reserves of ground waters and geothermal resources shall be determined by means of a certificate on resources and reserves. This certificate is issued by the competent authority which issued the permit for geological explorations.

The application for issuing the above certificate shall be accompanies by: 1) the permit for explorations, or permit for exploitation; 2) indicative map in the relevant scale with coordinates of breaking points of established resources and reserves; 3) study on resources and reserves of mineral raw materials, ground waters and geothermal resources; 4) report of the competent person with geologic qualifications on expert assessment – review of the report on resources and reserves of ground waters; 5) evidence of paid republic or autonomous province administrative tax for verification of ground waters and geothermal resources; 6) evidence of the right to use data and results of explorations resulting from other geological explorations by other entities or which are result of basic or applied geological explorations funded from the budget of the Republic of Serbia, if such data was used in compiling the report.

Study on resources and reserves of mineral raw materials, ground waters and geothermal resources is a document containing results of geological explorations of a particular deposit of mineral raw materials or ground waters and geothermal resources, quantities and quality of explored raw materials or resources, their classification, technical capacities and conditions of exploitation, as well as on expected economic benefits.

Every five years of the previous identified state of determined resources and reserves of ground waters, the permit holder for the exploitation field for the use of ground waters shall submit the study to the ministry in charge of mining based on newly performed – contemporary – observations of the hydrodynamic regime of ground waters and new control quality tests of such waters in order to determine the actual quantity and quality characteristics of extractable ground waters in the field which is subject to exploitation.

The study on reserves of ground waters shall, among other things, include the following: 1) data on geological and hydro geological characteristics of the deposit; 2) data on quantity and quality of explored resources of ground waters; 3) classification of resources; 4) technical evaluation of possibilities and conditions of exploitation; 5) expected economic benefits.

The entity in charge of hydro geothermal explorations shall keep the book of the state of ground water and geothermal resources in the approved exploration area or exploitation field, which is covered by the permit and, each year, it shall submit the data to the ministry in charge of mining and, if the work is carried out in the territory of the autonomous province, to the competent authority of the autonomous province.

2.2. Exploitation of hydrogeothermal resources

Exploitation of geothermal resources implies execution of mining works on preparation, drilling, exploitation and utilization of geothermal resources. After conducting geological explorations and establishing the potential of a certain area, or of a specific site for exploitation of a hydrogeothermal resource, exploitation shall take place in compliance with the regulations governing exploitation of mineral raw materials.

The permit for exploitation shall be issued only in cases when it refers to exploitation of geothermal resources of high enthalpy and in such cases it is necessary according to the Law on Mining and Geological Explorations to obtain the following: permit for the exploitation field, permit for execution of mining works, and operation permits.

Exploitation of mineral raw materials – ground waters and geothermal resources used for generation of hydrogeothermal energy in the Republic of Serbia is performed on the basis of the decisions issuing the following permits: 1) permit for the exploitation field or permit for exploitation, 2) permit for construction of mining structures and/or execution of mining works, and 3) permit for utilization of mining structures. The said permits are issued by the ministry in charge of mining, or by the relevant secretariat for the autonomous province.[36]

The application for the issuing of the permit for the exploitation field and/or permit for exploitation may be submitted at the same time as the application for the issuing of the permit for construction of mining structures and/or execution of mining works.

The decision issued by the ministry in charge of mining shall be final and it can be subject to an administrative dispute, while the decision issued by the relevant authority of the autonomous province is subject to appeals which are filed to the said ministry.

Exploitation of geothermal energy implies the performance of works for preparation and opening up of the deposit, performance of other mining works under the ground surface and on the ground surface. Exploitation of mineral raw materials implies also the performance of works for the preparation of mineral raw materials.

Exploitation of hydrogeothermal energy can be performed by any company which fulfills the requirements that it is not the entity in charge of explorations or the beneficiary of

36 Secretariat for Energy and Mineral Raw Materials of the AP Vojvodina issues exploitation permits for the territory of the AP Vojvodina.

the certificate on resources and reserves of mineral raw materials and geothermal resources. The certificate is issued in accordance with the Law on Mining and Geological Explorations.

Prior to the adoption of the Law on Mining and Geological Explorations in 2016, there was an obligation of the company performing exploitation of hydrogeothermal energy to pay a fee for the use of mineral raw materials – ground waters used for generation of hydro geothermal energy amounting to 2% of revenues. As of the coming into effect of the above law, this fee is not paid for the utilization of ground waters used for generation of hydrogeothermal energy, which is an incentive for the use of renewable energy sources.

It is necessary to be aware of the provisions of the Law on Spas[37]. This law prescribes that the right to use natural medicinal factors in spas (thermal and mineral waters, gas and medicinal mud) shall be issued to legal or physical persons by the municipality in whose territory the spa is located, with the approval of the Government of the Republic of Serbia.[38] It is also regulated that the beneficiary of natural medicinal factors in spas shall pay a fee for its utilization. This fee is paid depending on the quantity of utilized natural medicinal factor. Fines are also prescribed for the person who is using the natural medicinal factor contrary to the provisions of the Law on Spas. This law refers only to the exploitation of thermal water in the territory of the spa, whose boundaries are marked by relevant marking. This permit does not consume the permits provided for by the Law on Mining and Geological Explorations, but it is an additional act for the exploitation of hydrogeothermal energy in the territory of the spa.

2.2.1. Permit for exploitation of mineral raw materials

The Law on Mining and geological Explorations prescribes that ground water and geothermal resources, as well as other geological resources, are a part of natural assets which are property of the Republic of Serbia and that they can be used under the conditions and in the manner stipulated in the Law on Mining and Geological Explorations. In order to achieve geological explorations and exploitation of mineral resources, or mineral raw materials which are of strategic significance for the Republic of Serbia, it is possible to undertake expropriation of immovable property in line with the relevant regulations.

Exploitation of reserves of mineral raw materials, performance of mining works within construction of civil structures, preparation of investment-technical documentation for execution of mining works, technical control of mining projects and technical supervision can be performed by companies, or other legal persons and entrepreneurs which are inscribed in the company registry or another registry for the performance of this specific activity and which holds a license for the performance of specific tasks in the field of mining. The entity in charge of exploitation is obliged to provide technical supervision during the exploitation of mineral raw materials and supervision of execution of mining works.[39]

37 The Law on Spas (Official Gazette of RS, No. 80/92).

38 Article 10, para 2, of the Law on Spas prescribes that the right to use natural medicinal factors in spas can be given to foreign persons according to the law regulating concessions.

39 Article 67 of the Law on Mining and Geological Explorations.

The application for the issuing of the permit for the exploitation field / exploitation shall attach the following: 1) evidence of paid national administrative tax; 2) layout map of scale 1:2,500 or other appropriate scale with plotted boundaries of the exploitation field, public roads and other structures located in that field and with plotted clearly visible boundaries and markings of cadastre lots in written and digital form; 3) certificate of resources and reserves of mineral raw materials issued on the basis of performed explorations according to valid regulations on classification of resources and reserves; 4)certificate of registration and a copy of the relevant act stating the general broader activities for which the applicant is registered, the registration number of the company and the relevant license; 5) the feasibility study of exploitation of the deposit of mineral raw materials; 6) act issued by the unit of local self-government in charge of urban planning with respect to the compliance of exploitation with the relevant spatial or urban development plans. The applicant for the permit for exploitation / exploitation field, prior to preparing the feasibility study for exploitation shall be obliged to obtain the following: 1) the act of requirements for the development of the environmental impact assessment issued by the relevant authority or organization in charge of nature protection; 2) the act on requirements issued by the relevant authority in charge of protection of cultural heritage; 3) the act on requirements issued by the ministry in charge of water management.

The permit for the exploitation field / exploitation shall include: 1) the business name of the entity holding the permit, the registry number and registered seat; 2) type of mineral raw material which is determined in the certificate on reserves and resources; 2) the position, surface area and coordinates of breaking points of the boundary of the exploitation field, and the number of the exploitation field in the cadastre of exploitation fields; 4) the deadline for completion of preparatory works and for obtaining of the construction permit for mining structures and/or performance of mining works, which shall not be longer than two years; 5) the requirements an obligations for exploitation with respect to minimum and maximum distances and requirements stated in the permits of other competent authorities; 6) the prescribed protective area around the exploitation field necessary for possible expansion of the field at the request of the person holding the permit for exploitation, specifically: (1) for exploitation field covering a surface area up to 25 ha the protective area of width of up to 100 meters from the relevant exploitation field boundary, (2) for exploitation field covering a surface area from 25 to 100 ha the protective area of width of up to 250 meters from the relevant exploitation field boundary, (3) for exploitation field covering a surface area exceeding 100 ha the protective area of width of up to 500 meters from the relevant exploitation field boundary.

The permit for exploitation may expire or it may be cancelled according to the Law on Mining and Geological Explorations.[40]

It is interesting to note that in the exploitation field the holder of the permit for exploitation can exploit also other mineral raw materials and geothermal resources which are not covered by the permit, provided that it has the relevant approval.

The exploitation field covers the area within which the reserves of mineral raw materials and geothermal resources are located, and the area which is envisaged for the disposal of tailings tanks and other mining waste, the area for the construction of facilities for preparation of mineral raw materials, for construction of maintenance facilities, water intakes and other structures, and it is limited by relevant polygon lines on the surface of the ground and spreads up to the designed depth of exploitation.

Exploitation of reserves of mineral raw materials and geothermal resources is to be performed according to the investment-technical documentation for the performance of mining works.

2.2.1.1. Water management acts[41,42]

Water requirements, water consent and water permit are jointly referred to as water management acts.

The Law on Waters makes distinction between the general and special uses of waters. The utilization of waters for the purpose of exploitation of hydrogeothermal energy would be included under special utilization of waters when it is related to structures using sewerage for disposal of utilized hydrogeothermal source or when it in other ways disposes of water from the utilized hydrogeothermal source.[43] The right to special use of water is acquired by means of a water permit, and when special use of water is undertaken under a concession than it is acquired on the basis of the concession, and in accordance with the agreement regulating the concession.

The Law on Waters also introduced special rules related to performance of works and design and construction of structures (mining, civil-engineering structures). Performance of works and design and construction of structures is performed by: 1) enabling the return of the water into the water course after energy is utilized; 2) not reducing the existing volume and not preventing the use of water for public water supply and use by other beneficiaries; 3) not reducing the level of protection against harmful effects of waters; 4) not deteriorating the conditions of sanitary protection; 5) ensuring their multi-purpose use.

This Law defines the following water documents relevant to construction of plants: 1) water requirements, 2) water approval, and 3) water permit. The water management acts in each specific case shall be issued by the Ministry of Agriculture, Forestry and Water Management, by the competent authority of the Autonomous Province, or of the City of

40 Article 72 and 73 of the Law on Mining and Geological Explorations.

41 Issuing of the water requirements, the water approval, and water permit is regulated by the Law on Waters. It should be note that in case of construction of a structure which is to be used to perform the activity of heat generation, the water acts for exploitation of hydrogeothermal energy should cover the whole of the operation. In such a case the said acts shall also be filed when applying for the construction permit for the said structure. The water permit shall determine the conditions for discharging waste waters.

42 Issuing of the water requirements, the water approval, and water permit is regulated by the Law on Waters and the Rulebook on Contents and Form of the Application for Issuing Water acts and Contents of Opinion in the Procedure of Issuing Water acts (Official Gazette of RS, No. 74/10).

43 Note: in case that the persons utilizing geothermal waters decide to opt for discharging such waters, after utilization, into water course, for example the river Tisa, Danube, or canals, in order to discharge utilized waters they must hold provisional permits issued by the relevant water management organizations. The requirement for obtaining the permit to discharge utilized water into water courses is that the discharged water does not cause deterioration of the quality of the water in the watercourse. If such conditions cannot be ensured, the water permit shall determine the requirements for the discharge of waters.

Belgrade, depending on the place in which the structure will be located[44]. The deadline for issuing the above documents shall be two months from the date of filing the application.

An appeal may be lodged against the decision brought in the procedure of issuing the water approval or the water permit by the competent authority of the Autonomous Province, or of the City of Belgrade, to the Minister within 15 days. When a decision, in the procedure of issuing the water documents, is brought by the Ministry, it shall be final and an administrative dispute may be instituted against it.

Prior to issuing the water requirements (which are an element of the location requirements, and are necessary for preparation of the design documentation), it is necessary to obtain the opinion of the national organization in charge of hydro meteorological affairs (the Republic Hydro Meteorological Service - RHMS) and the opinion of the public water management enterprise (Public Water Management Enterprise Srbijavode – for the territory of the Republic of Serbia except for the Autonomous Province of Vojvodina, i.e. of the Public Water Management Enterprise Vode Vojvodine – for the territory of the Autonomous Province of Vojvodina, or of PWC ''Beogradvode'' in Belgrade, for structures and works in the territory of the City of Belgrade).

The opinion of the Republic Hydro Meteorological Service shall be obtained on the basis of submitted request.

The request shall attach the following[45]: 1) topographic map of the area (1:25000) with marked layout of structures, 2) technical description, and 3) in case of unstudied catchment areas, a hydrological study (usually developed on the basis of meteorological data and hydrological data for catchment areas in the vicinity).

The opinion of the public water management enterprise shall be issued at the request for opinion.

The request shall attach[46]: 1) copy of plan with marked structures, 2) excerpt from the plan document – information on location, 3) technical description of the solution (the general design, if available, can also be attached).

44 Depending on the type of the facility or works for which the application for the water management acts is submitted, the competent authority may also be the competent ministry in charge of water management, or the provincial authority in charge of waters or authority of a local self-government unit (depending on the facility or the type of works for which the water acts are applied for). Types of facilities/ works and the competence of the authorities for issuing the water management acts are prescribed by Articles 117 and 118 of the Law on Waters.

45 There are no prescribed provisions on which attachments are needed for the request for obtaining the opinion of the RHMS – the list in this guide is based on the opinion of the author, in line with discussions with the said organizations.

46 There are no prescribed provisions on which attachments are needed for the request for obtaining the opinion of the public water management enterprises – the list in this guide is based on the opinion of the author, in line with discussions with the said organizations.

After obtaining the opinion of the Republic Hydro Meteorological Service and the opinion of the public water management enterprise and other prescribed attachments, the Request for issuing of the water requirements shall be filed using the prescribed form O1.

The water requirements shall be issued by the same authority issuing all other water management acts.[47]

The request for the issuing of water requirements shall contain: 1) general data on the applicant; 2) basic data on the facility or works, planning documents (the spatial plan of the unit of local self-government and the urban planning (general and regulation) and the forest management plans; 3) the place, sate, signature and seal of the applicant.

In order to receive the water requirements it is necessary to have the opinion of the public water management enterprise. Apart from the above, the request for the issuing of water requirements shall also attach as mandatory: 1) copy of the plot plan; 2) excerpt from the immovable property list; 3) information on location (or location requirements) according to the law regulating planning and construction; 4) opinion of the public water management enterprise; 5) opinion of the national organization in charge of hydrometeorological tasks; 6) opinion of the ministry in charge of tourism for structures and works in the territory of spa locations; 7) technical description of the project, or works; 8) graphical attachments: general layout map, situational drawings, foundations, profiles, etc.; 9) previously issued water management acts in case of constructing a new structure within the existing one or its reconstruction; 10) evidence of resolved property-legal issues; 11) preliminary feasibility study with general design or feasibility study with preliminary design with the report of the review commission on technical control.

Apart from the above, in case of plant facility requiring intake and supply of water from ground waters and for plants, the application for water requirements shall contain: 1) requirements of the public utility company for the connection to public water supply system and public sewage system; 2) information from the public utility company on the position of the facility with respect to the zones of sanitary protection of the source; 3) a study or another document of the authorized legal person on the quantity of water taken in, prepared on the basis of previous explorations carried out by the authorized legal person during minimum of one hydrological year; 4) a study or another document of the authorized legal person on the quality of water intake, prepared on the basis of previous explorations carried out by the authorized legal person during minimum of one hydrological year.

47 Exceptionally, pursuant to Article 118 of the Law on Waters, the authority in charge of issuing the water requirements may request from the applicant to obtain the opinion of the Ministry of Environment and Spatial Planning and/or of a specialized scientific institution (institutes, etc.). For the structures and works in a territory of a spa resort, the applicant shall obtain the opinion of the ministry in charge of the affairs of tourism. There is no specifically prescribed procedure for obtaining the above opinions.

The water approval shall specify that the technical documentation has been prepared in compliance with the water requirements. Application for the water approval is filed on the prescribed Form O3.

The request for the issuing of the water consent shall include: 1) general data on the applicant; 2) basic data on the facility or works, and the planning documents (the same as stated for water requirements), and the 3) place, date, signature and seal of the applicant.

The request for the issuing of the water consent for plant or works for which water requirements have been issued shall include: 1) the decision issuing the water requirements; 2) location requirements issued in compliance with the law regulating planning and construction; 3) the relevant design document (in compliance with the law regulating mining) with a relevant license for the designer in charge; 4) the excerpt from the relevant design document (in compliance with the law regulating mining) which refers to the hydrotechnical and technological part and the part relevant to facilities which have an impact on the water regime; 5) report of technical control by the relevant designer (in compliance with the law regulating mining) with the relevant license for the person performing the technical control of the specific design.

Besides the above mentioned, for the plant facility for which there is a water intake and supply from ground waters and from plants, the application for water requirements shall also contain: 1) decision of the ministry in charge of health on determining the zones of sanitary protection of the water source; 2) decision of the ministry in charge of geological explorations on established and classified reserves of ground waters; 3) conditions of the public utility company regarding the connection to public water supply system or the public sewage system; 4) information of the public utility company on the position of the facility with respect to the zones of sanitary protection of the source; 5) a study or another document of the authorized legal person on the quantity of water taken in, prepared on the basis of previous explorations carried out by the authorized legal person during minimum of one hydrological year 6) a study or another document of the authorized legal person on the quality of water intake, made on the basis of preliminary explorations carried out by the authorized legal person during minimum of one hydrological year.

In case that the execution of works or construction of a facility is not started within two years from the issuing of the water approval, the water approval shall cease to be valid.

Prior to the issuing of the water requirements and the water approval for the use of the water land, use of water facilities, and providing other services (in accordance with the decision for the current year), the Investor shall, where necessary, conclude the relevant agreement

with the public water management enterprise or with the ministry in charge of waters - the Republic Water Directorate.

Once the facility has been constructed, and prior to obtaining the operation permit[48] one has to submit the application for the water permit to the ministry in charge of agriculture, forestry and water management, to the competent authority of the Autonomous Province, or of the City of Belgrade. The water permit is required for the exploitation and use of waters and natural and artificial watercourses, lakes and ground waters, for discharge of waters and other substances into natural and artificial watercourses, lakes, ground waters, and public sewers, as well as in case of increasing the capacity of the already existing structure – for the increase or decrease of the quantity of intaken and discharged waters, changed nature and quality of discharged waters and other works which have an impact on the water regime. This permit shall be issued for a period of maximum 15 years so that, minimum two months prior to its expiry, its validity should be extended. If there is a decision on the water permit, the right acquired on the basis of the water permit may not be assigned to a third party without the consent of the issuing party and this right shall terminate: upon expiry of the validity thereof, by waiver of the right, and by failure to exercise the right without justified reasons for over 2 years. Application for water permit is filed on the prescribed Form O6.

Application for the water permit shall contain: 1) general data on the applicant; 2) basic data (administrative, hydrographic and topographical survey data) on the structure, or works, as well as the place, date, signature, and seal of the applicant. In addition to the above elements, this application for a facility for which water requirements or water permit have been issued, shall contain: 1) decision on issuing water approval or water permit; 2) report of a public water management enterprise on fulfillment of requirements from water requirements and water approval for issuing of the water permit; 3) report of the commission on completed technical inspection of the structure; 4) the relevant design of the structure in compliance with the law regulating mining; 5) excerpt from the relevant design of the structure in compliance with the law regulating mining. If the operating permit has been issued for the facility and water approval has not been issued, the application for issuing of the water permit shall also contain: 1) Operation Permit; 2) report of the public water management enterprise on readiness of the structure for issuing of the water permit; 3) the relevant design in compliance with the law regulating mining; 4) excerpt from the relevant design in compliance with the law regulating mining.

For plants and works for which water approval or water permit has been issued and for facilities for which the operating permit has been issued, but water approval has not been issued, in addition to the already specified items, the application for issuing of the water permit shall contain: 1) decision of the ministry in charge of health on determining the zones of sanitary protection of the source; 2) decision of the ministry in charge of geological explorations

48 The operation permit is issued for mining facilities and (power) structures. See more about the Operation Permit for mining facilities in the chapter 2.2.4. of this Guide. See more about the Operation Permit for (power) structures in the chapter 3.2.2.10.2 of this Guide.

on established and classified reserves of ground waters[49]; 3) approval of the ministry in charge of tourism on the use of waters with natural medicinal properties in the territory of a spa; 4) a contract or other document that the public utility company is executing the service of cleaning the facility for discharge of waste waters and the service of collecting the solid waste; 5) report on the testing of quality of water (taken-in and discharged) from the previous period; 6) certificate of the authorized legal person on the readiness of the facility for collecting, discharging and filtering waste waters, including septic tanks; 7) report of the authorized legal person on testing the water level and quality in piezometers, in the storage facilities zone, as well as 8) calibration tables issued by the authorized legal person only for the storage facilities.

Besides the specified attachments, the minutes of the water inspector shall also be submitted with the application for issuing the water permit.

2.2.2. Approval for construction of mining facilities and/or execution of mining works

Exploitation of reserves of mineral raw materials and geothermal resources is carried out according to the investment-technical documentation for the construction of mining facilities and/or execution of mining works.

The investment-technical documentation for the execution of mining works is elaborated on the basis of exploration results, i.e. the study on resources and reserves, classified in compliance with the regulations on the classification of resources and reserves and other documentation detailing and analyzing technical, technological and economical conditions of the execution of works, conditions of safety at work and health, fire protection, environmental protection, protection of cultural assets and assets under preliminary protection, protection of waters and other conditions of influence on the evaluation of technical and technological feasibility of exploitation and execution of mining works.

Mining works beyond the exploitation field are executed according to the mining design for the execution of mining works beyond the exploitation field.

The investment-technical documentation includes the following: 1) preliminary feasibility study 2) feasibility study for the exploitation of deposits of mineral raw materials; 3) long-term exploitation program; 4) mining designs and 5) annual operational plans. The mining design means: 1) the main mining design; 2) the additional mining design; 3) the technical min8ig design; 4) the technical mining design for exploitation of mineral resources for manufacturing of natural construction materials; 5) mining design for exploration of solid mineral raw materials; 6) simplified mining design. Mining designs shall be subject to technical review.

49 Application for water permit also contains the decision of the ministry in charge of geological explorations on established and classified reserves of ground waters, if the water intake through wells is to be carried out for the requirements of the process.

Construction of mining facilities and execution of mining works is performed according to the main and additional mining designs and on the basis of the permit for construction of mining facilities and/or execution of mining works.

The application for the issuing of the permit to construct mining facilities and/or execute mining works shall include: 1) evidence of payment of republic administrative tax, or provincial administrative tax when exploitation is performed in the territory of the province; 2) the mining design certified by the holder of the permit for exploitation of the exploitation field and technical control; 3) consent of the holder of permit for exploitation and/or permit for the exploitation field for the design; 4) statement of the authority of the unit of local self-government in charge of urban planning with respect to harmonization of exploitation with the urban planning documentation and the need to develop lower level planning documents; 5) evidence of property right or right to use or rent or right of easement for the land in which mining structures are to be constructed and mining works are to be performed for at least ten years; 6) certificate of resources and reserves of mineral raw materials; 7) act issued by the authority in charge of environmental protection approving the environmental impact assessment; 8) consent of the institution in charge of protection of monuments of culture; 9) act issued by the ministry in charge of water management; 10) consent of the technical documentation with respect to fire protection issued by the authority in charge of fire fighting according to special regulations; 11) bill of exchange or bank guarantee or corporate guarantee for the performance of rehabilitation and recultivation of degraded land due to exploitation issued in favor of the Republic of Serbia, issued as security for execution of rehabilitation and recultivation of degraded land due to exploitation as prescribed by the law.

The approval for construction of mining facilities and/or execution of mining works is a prerequisite for the execution of works on the mining facility. The approval is issued by the ministry in charge of mining, and for the works in the territory of the Autonomous Province – the competent authority of the Autonomous Province.

The approval for construction of mining facilities and/or execution of mining works shall contain: 1) data about the investor: name, registrations ID number, and registered seat; 2) kind and type of the mining design, title and component parts of the project; 3) title of deposits and the kind of mineral raw material, the number of the exploitation field, the annual capacity of production and name of local self-government in which the works are to be performed; 4) obligations regarding the obtaining the operation permit for the constructed

mining facilities; 5) obligations regarding remediation and recultivation of the area, recruitment of staff with relevant qualifications to perform tasks of technical management, technical supervision and occupational health and safety, timely reporting to competent authorities and inspections on execution of mining works; 6) in case when there is an approved design for construction of mining facilities the deadline by which the company is to acquire the decision approving execution of mining works for exploitation of mining raw materials, which shall not be longer than five years; 7) the type and validity period of the security document; 8) validity period of the approval for execution of mining works, defined in accordance with the evidence on right of ownership or right to use or right of easement for the area where mining works are planned, except in cases of exploitation of oil and gas; 9) requirements and obligations relevant to exploitation and minimum and maximum distances in order to protect people and structures, as determined in technical regulations, requirements issued by competent institutions for protection of monuments of culture and requirements issued by other competent authorities.

Carrying out of mining works according to technical mining design or simplified mining design may be commenced based on the application submitted to the authority which issued the approval for exploration or approval for exploitation and approval for execution of mining works, submitted before the commencement of execution of works. The application is accompanied with a copy of the technical or simplified mining design.

Prior to the commencement of the works, the entity in charge of exploitation shall notify the mining inspector and the authority of the unit of local self-government, as well as the authority in charge of protection of monuments of culture where the mining works will be executed, 15 days prior to the commencement of works at the latest.

2.2.3. Mining facilities

Mining facilities, plants and equipment imply facilities, plants, machines and equipment which are directly related to exploration, exploitation, transportation of mineral raw materials and other geological resources, including: facilities and plants within the complement of mines which are directly related to the technological process of exploration, exploitation, and preparation of mineral raw materials and disposal of mining waste, slag, ash, and mineral raw materials on dumpsites for homogenization; machines and equipment intended for all stages of technological processes of underground and open cast exploitation of mineral raw materials and the preparation of mineral raw materials; machines and equipment intended for all the stages of technological processes of excavation of solid mineral raw materials by means of drilling; machines and equipment intended for all the stages of technological processes of excavation of mineral raw materials under water; machines and equipment intended for all the stages of technological processes of gasification of coal directly in the furnace; facilities, plants, and equipment for the protection of mine from ground and surface water; facilities, plants, and equipment on oil and gas fields, which are directly related to the technological process of exploration, exploitation, separation, preparation and transportation of oil, gas and ground waters; facilities for underground storage of oil and collection of gas and underground storage

of natural gas and crude oil, as well as of other matter in an exploitation field; facilities, plants, and equipment which form a whole with electrical installations of mines; main and auxiliary warehouse of explosives and blasting agents on an exploitation field; facilities, plants, and equipment for exploitation of geothermal resources or other mineral raw materials by means of piping systems and boreholes and facilities for separation of gravel, sand, and stone.[50]

Mining facilities are directly related to the technological processes of exploration, exploitation and transportation of ground waters on an exploitation field.

2.2.4. Operation permit for mining facilities

The operation permit for mining facilities is an administrative act (decision), which shall be issued by the ministry in charge of mining, or the relevant authority of the autonomous province when the facility is located in its territory, which approves the use of a mining facility or a part thereof.

If a special Law prescribes the obligation of previous approval or permit of other authorities or organizations for the issuing of permit for the use of a mining facility, the application for operation permit for mining facilities should include such approval, or permit.

The operation permit shall be issued if the following is established: 1) that the mining facility or a part thereof was constructed in compliance with the mining design on the basis of which approval for the execution of mining works was issued, in line with the regulations which are mandatory for the construction of mining facilities; 2) that the prescribed conditions regarding the safety measures and protection of health are fulfilled, as well those concerning the protection of waters, fire protection, environmental protection and other conditions concerning the construction and use of that kind of facilities; 3) that approvals and permits have been issued by other authorities in line with special regulations, based on requirements issued in the procedure of issuing the permit for exploitation; 4) that the decision of the competent authority for fire protection has declared the facility fit for use in respect to fire protection measures defined in the technical documentation in line with the special regulations.

The fulfillment of above conditions is verified by means of technical inspection of the facility.

2.2.5. The mining right licenses

Licenses for natural persons issued for performing activities of geological explorations, in accordance with the Law on Mining and Geological Explorations, which refer exclusively to hydrogeothermal energy are licenses for design, technical control, execution of works, and technical supervision of geological explorations of geothermal resources.

50 Article 40, item 3) Law on Mining and Geological Explorations.

Other licenses which are necessary for activities related to geological explorations and exploitation of mineral raw materials and performance of mining works and construction of mining facilities are of more general nature and none of them are linked specifically to having specific knowledge of hydrogeothermal resources.

Mining right licenses can be issued to physical persons who have: 1) the relevant qualification; 2) approval to perform works in compliance with this Law; 3) five years of working experience in relevant fields, except for license for competent person for geology and competent person for mining, where ten years of working experience is required.

Licenses for legal persons exclusively for the field of hydrogeothermal resources for performance of certain activities in the field of geologic explorations are as follows: 1) license for preparation and technical control of geological technical documentation for ground waters and hydrogeothermal resources; 2) license for commencement of geologic explorations and technical supervision for execution of geologic explorations for ground waters and hydrogeothermal resources. Other licenses for legal persons in the field of mining are not specifically related to the field of hydrogeothermal resources.

Mining right licenses are issued by a decision of the ministry in charge of mining and geological explorations with the technical assistance of the working group established by the ministry in charge of mining and geological explorations.

3.

ACQUIRING THE RIGHT TO CONSTRUCT THE FACILITY

3. ACQUIRING THE RIGHT TO CONSTRUCT THE FACILITY

The Law on Mining defines mining facilities as facilities serving the function of exploration, exploitation, and transport of mineral raw materials and other geologic resources.[51]

According to the Law on Planning and Construction, construction refers to facilities or structures connected to the ground, which are a physical, functional, technical-technological, or a biotechnical whole (structures of all types, transport, water management, and energy facilities, facilities of electronic communications infrastructure – cable, sewerage, facilities of utility infrastructure, structures intended for farming and economy, sports and recreation purposes, cemeteries, shelters, etc.).[52]

Establishing the borders between mining facilities and structures as defined by the Law on Planning and Constructions (civil structures) and the Energy Law (energy facilities) is not simple, and the classification of structures into mining facilities and energy facilities is performed based on the purpose that they serve. Construction of facilities intended for direct exploitation of hydrogeothermal energy, in terms of its utilization for direct heating of residential buildings or feeding district heating systems is to be governed by the Law on Mining and Geological Explorations.

It is necessary to differentiate between the construction of facilities for direct exploitation of geothermal energy and engaging in the activity of heat and/or electricity generation. In case of construction of a facility (mining or energy-related one), they are to be constructed in compliance with the applicable law, but engaging in the activity of heat and/or electricity generation is regulated in compliance with the Energy Law, the Law on Public Companies[53], and the Law on Public Utility Services.

It has been stated above that on the basis of the Law on Public Private Partnerships and Concessions[54] is the only statute of the Republic of Serbia, which provides for a possibility to simultaneously exercise both the right to explore and to exploit hydro- geothermal energy and engaging in activities of public interest (public utility services). Such a definition of the subject matter of a concession indicates that, subject to this law, one may apply for a concession, which would include the entire exploration and exploitation of geothermal energy and engaging in the activity of generation of heat.

51 Article 3, item 40) of the Law on Mining and Geological Explorations.
52 Article 2, item 22) of the Law on Planning and Construction.
53 The Law on Public Enterprises (Official Gazette of RS, No. 15/16).
54 The Law on Public-Private Partnerships and Concessions in Article 11 determines the scope of the concession

3.1. Facilities for direct utilization of hydrogeothermal energy[55]

In case of direct utilization of hydrogeothermal energy, for own needs, by a person holding the exploitation right, for heating purposes for residential buildings, schools, hospitals, spas and other similar purposes, without connection to a district heating system or otherwise supplying heat to third parties by utilizing hydrogeothermal resources of low or medium enthalpy, it shall not be required to obtain the right to exploitation of hydrogeothermal resources, but it is required to obtain all other rights relevant to geological explorations and utilization of water, and it is required to determine the exploitation area and the volume of reserves and/or resources of ground waters of low enthalpy on the basis of the permit for the exploitation area.

Civil structures utilizing heating based on hydrogeothermal energy shall be constructed in accordance with the applicable regulations on planning and construction. In such a case it is necessary, already in the application for location requirements, to state all data on the manner of utilization of hydrogeothermal sources and the return of utilized water from hydrogeothermal source back into the ground, sewerage or otherwise, and to submit the necessary water management acts if the whole design was not presented in the procedure for obtaining the water management acts for exploration works.[56]

It should be noted that if exploitation of hydrogeothermal energy is performed within a spa area, the holder of the exploitation right should acquire the right to utilize natural medicinal agents in spas (thermal water) and to pay the fee for utilization under the Law on Spas.

3.2. Construction of the structure

Energy facilities intended for energy generation from hydrogeothermal sources (hereinafter: plants), according to the activity which they perform, can be classified as: 1) plants for electricity generation; 2) plants for thermal energy (heat) generation, and 3) plants for electricity and heat co-generation.

Depending on the type of plant, different provisions of same regulations can apply. The difference between these provisions refers to the competent authorities issuing decisions in the relevant administrative procedures, but also to other conditions.

In order to construct and use any structure in the Republic of Serbia, including an energy and/or heat generation plant, it is necessary to fulfill the following requirements: 1) obtain the information on location or location requirements; 2) obtain the energy permit; 3) obtain the construction permit; 4) construct the structure, and undertake the technical inspection of the structure and 5) obtain the operation permit.

With the coming into effect of the Law on Changes and Amendments to the Law on Planning and Construction of 2014, integrated procedure has been introduced for the issuing and changes of location requirements; issuing of construction permits and changes of decisions on construction permits; notification of works; issuing of operating permit; as well as in cases of issuing decisions for construction of structures and performance of works for

55 The Law on Mining and Geological Explorations makes a quantitative difference with respect to the quantity of used/exploited hydro-geothermal energy. Use of hydrogeothermal energy of low and medium enthalpy shall not be considered to represent exploitation of hydrogeothermal energy – Article 3, item 37) and Articles 58-63 of the Law on Mining and Geological Explorations of 2015. This Law (Articles 33 and 64) also prescribes certain additional simplification of procedures in cases of use of petrogeothermal resources for the purpose of supplying heat to family households to physical persons.

56 Article 117, items 18) and 24) of the Law on Waters.

which no construction permit is issued for the construction of the plant (hereinafter: the acts of integrated procedure) whose application should significantly accelerate the procedure of obtaining these acts, by means of having holders of public competences (public administration bodies, bodies of the autonomous province, and bodies of local self-government, special organizations and other persons performing public competences according to the law), ex officio, within very short deadlines, issuing the relevant requirements (for connection to the infrastructure network, inscription of property rights on constructed structures, etc.), permits and other acts containing the necessary elements for the issuing of the acts of the integrated procedure. Holders of public competences shall issue these requirements, permits and other acts directly to bodies in charge of issuing the acts of integrated procedure.[57,58]

The construction of structures in the Republic of Serbia formally begins after the acquisition of the construction permit and it is performed on the basis of the issued construction permit and technical documentation, under conditions and in the manner regulated by the Law on Planning and Construction.

The Rulebook on Energy Permits[59] sets out that one of the requirements for the issuing of the construction permit is the obtaining the information on location or location requirements. Thus, the procedure of acquiring the construction permit can be carried out after obtaining the information on location or location requirements.

In the course of obtaining the construction permit for plants of capacity greater than 1 MW the environmental impact assessment (EIA) may be requested, while for plants of capacity greater than 50 MW such an EIA is mandatory. Plants of capacity greater than 50 MW also require the integrated permit to be obtained.

It should be noted that in protected areas there is a priority ban of construction of energy generating plants, according to the Law on Nature Protection and the Decree on Protection Regimes protected areas under regimes of I, II, and III degree it is not allowed to construct hydrogeothermal plants.

3.2.1. Selection of location, perusal of valid planning documents and information on location

The first step to be made by the potential investor, or the person for whose needs the facility is to be constructed and in whose name the construction permit for the construction of the plant is made out, is certainly the selection of location. The Location and its selection are predetermined by the location in which hydrogeothermal energy is exploited.

The second step by the investor[60] is to verify if the valid planning documents[61] of the selected location envisage construction of an energy generating plant. It should be noted that plants can also be constructed on agricultural land, with the prior consent of the ministry in charge of agriculture.

57 The integrated procedure does not include the issuing of information on the location and issuing of requirements for design and connection to the power transmission network, for certain structures, in accordance with the law governing the energy sector.

58 As of 1 January 2016, all applications for the integrated procedure can be filed exclusively in electronic form using the following website: http://gradjevinskedozvole.rs/. The electronic signing of documents requires the possession of qualified electronic certificate.

59 The Rulebook on Energy Permits (Official Gazette of RS, No. 15/15).

60 The term "investor" implies the person for whose needs the structure is being built and in whose name the construction permit is issued – Article 2, item 21) of the Law on Planning and Construction. This law, in Article 2, item 43) defines the term "financier" implying the person which, on the basis of signed and authenticated contract with the investor, is funding or co-funding the construction, extension, reconstruction, adaptation, rehabilitation or performance of other construction works or investment works regulated by this law, and based on such contract acquires certain rights and obligations prescribed by this law for investors pursuant to such contract, except the acquisition of property rights on structures subject to construction.

61 The Law on Planning and Construction governs the situation in the case of non-existence of a valid planning document. It should also be stressed that the strategic environmental impact assessment is carried out during the preparation of planning documents.

Article 10 of the Law on Forests prescribes certain rules on changing the intended use of forestland and the rules apply also in the case when the selected location for the construction of the facility is on the forestland.

In the local self-government unit whose territory includes the selected location, one can get for perusal the valid planning document in which it is possible to check whether construction of energy facilities has been envisaged at that location. After that, the application for the information on location shall be submitted for the desired location, for the purpose of obtaining the data on the possibilities and limitations with respect to the construction on the reviewed cadastral lot in line with the valid planning document.

The application for the information on location shall be submitted to the authority in charge of issuing the location requirements. A copy of the lot plan shall be submitted with the application for the information on location, which has been previously applied for in the competent cadastral service in the territory of the municipality. In parallel with the application for a copy of the plan, it is recommended to also apply for a transcript of the list of title deeds for the subject cadastral lot from the cadastral service, in order to identify the owner of the land.

The information on location, in addition to the name of the applicant, the number of the cadastral lot, and the address (the place where it is located, street name and number) shall also contain[62] data on: 1) planning document based on which it is issued; 2) zone in which it is located; 3) use of the land; 4) regulation and building lines; 5) Codes of Construction; 6) requirements for connection to the infrastructure; 7) need to prepare a detailed urban development plan or urban development design[63]; 8) cadastral lot, or whether the cadastral lot fulfills the requirements for the building plot with the instructions on the required procedure for forming the building plot; 9) engineering and geological conditions; 10) special requirements for issuing the location requirements (list of requirements). The information on location shall enable the person, in

62 The Rulebook on Contents of Information on Location and on Contents of Location Permit (Official Gazette of RS, No. 3/10).

63 An urban development design shall be prepared for one or more construction lots (formed construction lot) on a certified cadastral-spatial plan. The urban development design is prepared when so envisaged by the planning document or requested by the investor, for the purposes of urban/architectural elaboration of the location. The urban development plan is prepared for one or more cadastre parcels on a certified cadastral-topographic plan. This design for urban/architectural elaboration of the location may determine a change in the intended use within the compatibilities stated in the plan, according to the procedure set out in the Law on Planning and Construction. The change and the detailed definition of planned changes is allowed when the plan envisages any of the compatible changes. The urban development design shall contain: 1) situation plan, composition plan and ground-floor, or landscape plan; 2) concept urban development and architectural plans of the structures; 3) layout of the existing traffic and utility infrastructure with proposed connections to the external network/grid; 4) the description, technical description, and explanation of the solution from the urban development design. The urban development design may be prepared by a legal entity or by an entrepreneur registered in the registry for preparation of technical documentation, and the preparation of the design shall be managed by the responsible licensed urban development planning engineer of architectural profession. The competent authority of the local self-government in charge of urban development planning unit shall confirm that the urban development design has been prepared in compliance with the urban development plan, the spatial plan of the local self-government unit, the Law on Planning and Construction and the relevant by-laws. Prior to such confirmation, the same authority shall organize a public presentation lasting for seven days, during which all comments shall be recorded, after which within three days the urban development plan with all the comments and suggestions shall be forwarded to the Commission for Plans, which is obliged within eight days to consider all comments and suggestions and undertake an expert review and determine if the urban development plan is contrary to the plan for the wider area, and compile a written report with the proposal to endorse or reject the urban development design. Within five days of receiving the proposal of the Commission, the relevant authority of the LSG shall endorse of reject the confirmation of the urban development design and so notify the applicant. If the urban development design is confirmed, this authority shall, within five days of such confirmation, publish the design on its webpages. The investor shall have the right with respect to the notification of confirmation of rejection to file a complaint within three days of receipt of the decision.

whose name it is issued, to gather all the special requirements (requirements for protection of cultural monuments, requirements for preservation of the environment, etc.) and technical requirements (the place and method of service connections of the structure to the infrastructure lines, as well as their capacities) prior to issuing of the location requirements.

The information on location shall be issued by the authority in charge of issuing the location requirements, within eight days as of the date of submitting the application, against remuneration of the actual costs of issuing such information[64]

3.2.2. The energy permit[65]

The energy permit[66] is one of the requirements for the issuing of the construction permit.

In order to obtain the energy permit, it is necessary to fulfill the criteria for construction of power generating facilities stipulated in the Energy Law[67] and the Rulebook on Energy Permits. Energy permits for construction of facilities having electrical capacity of 1 MW and more, and for combined electricity and heat production in thermal power plants / heating facilities of electrical capacity 1MW and more and heat capacity 1 MW and more shall be issued by the ministry in charge of energy, while the energy permits for construction of facilities for generation of heat of capacity 1 MW and more shall be issued by the relevant unit of local self-government unit in whose territory the facility is to be constructed.

For facilities for electricity generation of capacity below 1 MW and for heat generating power plants of capacity below 1 MW, issuing of the energy permit has not been envisaged, which means that, for such facilities, the construction permit shall be issued, without the procedure for issuing the energy permit.

The application for the issuing of the energy permit for facilities for production of electricity and for electricity and heat co-generation shall be submitted to the ministry in charge of energy, while the applications for the issuing of energy permits for facilities for production of thermal energy shall be submitted to the competent authority of the local self-government. The proof of the property right or of the lease of the land where the construction of the energy facility is foreseen is not a prerequisite for issuing the energy permit[68].

64 It happens in practice that the body providing information on location issues to different interested parties information on location for the same facility, without notification that it has already issued the information on location for the same or similar structure in the same location. When obtaining the information on location it is recommended to check if information on location has already been issued for the same or similar facility in the same location.

65 Besides the energy permit, the Energy Law envisages the procedure of public tender. This procedure is carried out in cases when it is not possible through the issuance of the energy permits to ensure new production capacities or when the undertaken energy efficiency measures are not sufficient to ensure safe and regular supply of electricity. The decision to undertake a tender is made by the Government, at the proposal of the ministry in charge of energy.

66 In the previous Energy Law (from 2004) it was explicitly prescribed that the energy permit will be issued in compliance with the Strategy of Development of the Energy Sector of the Republic of Serbia and the Programme of Implementation of the said Strategy

67 In order to have the energy permit issued, the following requirements must be met which refer to: 1) reliable and safe operation of the power system; 2) requirements for identification of location and land use; 3) possibility of connecting the facility to the existing power system; 4) energy efficiency; 5) requirements concerning the use of primary sources of energy; 6) safety at work and safety of people and property; 7) environmental protection; 8) economic-financial capacity of the applicant to implement the construction of the energy facility; 9) contribution of the energy facility to achieving the total share of energy from RES in total final energy consumption in line with the National Action Plan; 10) contribution of the facility to reducing emissions - Article 33 of the Energy Law.

68 Article 33, para 2, of the Energy Law.

The application for the issuance of the energy permit[69] shall contain data on: 1) the applicant; 2) energy facility; 3) value of the investment; 4) manner of securing financing; 5) foreseen exploitation life of the facility, as well as on the manner of site rehabilitation after the expiry of the exploitation life of the facility; 6) compliance with the corresponding planning documents in line with the law governing the conditions and manner of space arrangement, arrangement and use of the construction land and the construction of the facility; 7) the deadline for completion of the construction of energy facility. If the facility is to be constructed on an exploitation field, the application shall contain the consent of the minister in charge of geology and mining.

The Rulebook on Energy Permits specifies the application form for the energy permit, separately for construction of the energy facility for electricity generation, and separately for construction of an energy facility for heat generation.

Depending on the type and intended use of the plant for which the energy permit is being obtained, requirements are prescribed as follows:

1) Form O-1 – Application for the issuance – extension of validity – of energy permits for the construction of energy facility for production of electricity of capacity 1 MW and more, facility for production of electricity of capacity up to 1 MW using water as primary resource, and facility for electricity and heat co-generation in thermal power plants and heating plants of electric capacity 1 MW and more and heat capacity 1 MW and more;
2) Form O-8 - Application for the issuance – extension of validity – of energy permits for the construction of energy facility for production of thermal energy of capacity 1 MW and more.

The forms of applications for the issuance of energy permits for the construction of facilities O-1 and O-8 shall state the following data: 1) general data on the applicant (name, address, state, official registration number of the applicant, tax identification number, legal and organizational form, data on the person representing the applicant, name of the contact person); 2) basic data on the facility (name of the facility, the location of the facility, municipality, spatial coordinates of the production facility, technical data on the energy facility, primary and secondary fuels); 3) value of the investment; 4) financial position of the investor to implement the construction of the energy facility (deposit made or funds invested in this facility); 5) envisaged economic and service life of the facility; 6) attachments to the application: 6.1) evidence for legal and physical entities, 6.2) information on location or location requirements, 6.3) certified statement of designer in charge on compliance with technical regulations, 6.4) evidence of deposit being paid or a certified document evidencing investments into the construction of the facility, 6.5) opinion of the

69 Article 34 of the Energy Law.

system operator on conditions and possibilities for connection of the energy facility to the energy grid, 6.6) preliminary feasibility study with the general design/feasibility study with the preliminary design, 6.7) report of the revision board – if necessary.

The Application Forms 0-1 and 0-8 are almost identical, the only difference being the basic data on the facility in terms technical data and planned types of fuels are adjusted to the types of facility, and that the form 0-8 asks for the share of the energy facility in system services necessary for the district heating system, if the applicant is proposing possible share in system services.[70]

The investor shall submit the following with the application for the energy permit: 1) for legal persons or entrepreneurs: excerpt from the Register of Companies (business name, legal form, registered seat, activity, tax identification number, registry number); 2) for natural persons: photocopy of personal identity card, certificate of nationality and photocopy of passport, if the applicant is a foreign citizen; 3) information on location or the location requirements[71]; 4) certified statement of designer in charge confirming compliance with technical regulations with respect to construction of the facility, energy efficiency, possibility of connection to the existing power grid, fire-fighting protection, safety at work and safety of people and property, environmental protection, etc., in compliance with the Rulebook on Energy Permits, if the technical documentation (preliminary feasibility study with the general design or feasibility study and preliminary design and the report of the review commission) do not require a revision according to the law regulating planning and construction; 5) certificate of deposit payment amounting to 0.5% of the RSD value of the investment not including VAT or a certified document evidencing that funds have been provided for the construction of the energy facility in the amount of the said monetary deposit; 6) opinion of the system operator on requirements for and possibilities of connection of the new facility to the energy systems

The energy permit shall be issued in form of a decision within thirty days from the date of the application. The unsatisfied party may lodge an appeal to the Government against the decision on the energy permit within fifteen days from the date of receipt of the decision. If the issuer is a unit of local self-government, the appeal shall be lodged to the ministry in charge of energy.

70 The share of the facility in system services necessary for the district heating system is not stipulated as a separate attachment, but if the investor decides to participate in such system services it should be noted.

71 Along with the information on location or location requirements a preliminary feasibility study is to be submitted with the general design or a feasibility study and a preliminary design, in accordance with the Law on Planning and Construction, and the report of the review commission in cases when the general design or the preliminary design are subject to review under the Law on Planning and Construction.

The energy permit shall be issued for a period of three years commencing with the date of its validity and its validity may be extended at the request of the holder for maximum one additional year, by filing the application for extension at the latest 30 days before the expiration of its validity. The validity period shall be extended provided that all legally prescribed requirements are fulfilled. .[72]

The investor may initiate a new procedure for the issuing of the energy permit only if he has previously exhausted the possibility for extension of the validity of the valid permit.

All issued energy permits and expired energy permits shall be inscribed in a registry book. The registries shall be published at the website of the ministry in charge of energy and shall be updates every three months.

Energy permits are not transferrable.

Energy permits are not required for the construction of energy facilities constructed within public/private partnerships and concessions.

3.2.2.1. Opinion of system operator regarding the possibility for connection of the energy facility to the energy system

The Energy Law, the Decree on Conditions of Supply of Electricity, the Rules on the Operation of the Distribution System and the Rules on Operation of the Transmission System set out a procedure for the connection of generating facilities to the power grid. Neither this Decree, not these rules, nor other regulations regulate the procedure of giving the opinion of the energy entity for transmission or distribution of electricity in the process of issuing the energy permit. In view of this fact, this procedure does not have a specific form, but system operators have developed relevant procedures[73,74] within which they developed the procedure of filing the application for the issuing of the opinion, the necessary documentation, the tariffs, the content of acts on opinion and the validity period thereof. No appeal can be lodged on the act of opinion. The application for connection to the power grid is set out in section 4 of this Guide.

The operator of the transmission system in the Republic of Serbia is the Public Enterprise JP "Elektromreža Srbije" (JP EMS)[75], and the operator of the distribution system in the Republic of Serbia is the Public Enterprise "EPS Distribucija" d.o.o. Beograd.[76]

72 The requirements for the extension of the energy permit are as follows: 1) that the applicant shall provide evidence of obtaining the necessary documents for the construction of the energy facility, or evidence that it has initiated a procedure before relevant authorities to obtain such documentation; and 2) that the applicant has provided evidence of having undertaken all measures before competent authorities according to the law in order to obtain documentation.

73 Public Enterprise for Energy Transmission Network of Serbia (JP EMS), which is the operator of the energy transmission network, has adopted a procedure for connection of structures to the transmission network, according to Article 117, para 3 and Article 39, para 1 of the Energy Law, and this procedure has been endorsed by the Energy Agency on 23 December 2015 – www.ems.rs ; www.aers.rs. According to this Procedure, the operator of the transmission network provides its opinion on conditions and possibility of connection to the transmission network within the preparation of the Study for Connection of Structures to the Transmission System.

74 Guidelines for connection of structures to the transmission network, January 2016 – www.ems.rs.

75 www.ems.rs.

76 http://www.epsdistribucija.rs.

3.2.3. Conditions for connection[77][78]

Conditions for connection define the possibility of connecting a facility of the producer to the power grid, and they define electric-energy and technical requirements necessary for the development of the preliminary design and the design for energy permit and the final design, as well the design and operating standards which should be fulfilled by the operator of the transmission/distribution system and facilities of the user which are being connected to the transmission/distribution system.

In contrast to other facilities, conditions for connection for energy generating facilities are not obtained under the integrated procedure.[79] Besides the said procedure for connection of facilities to the power grid, this field is regulated by the Rules of Operation of operators of the transmission and distribution system, the Decree on Conditions of Supply of Electricity and internal acts of the operators of the transmission and distribution systems.

With respect to connection to the transmission network, the procedure starts with filing the request for the development of the Study for Connection of Facilities to the Transmission System, submitted to the transmission system operator. The form of this request is developed by the transmission system operator, who publishes it on its website. Relations between the applicant and the transmission system operator are regulated by the Contract for the Development of the Connection Study.

A part of the study which is developed for all power generators contains, among other things, the following: 1) technical requirements for the development of planning and urban development planning documentation; 2) opinion of the transmission system operator on conditions and possibility of connection to the transmission system, and 3) terms of reference for the connection to the transmission system. The deadline for the development of this part of the study is 90 days after the advance payment being made for its development.

If the applicant is an energy producer with special characteristics, it is mandatory to undertake the quality control of the electricity, and analysis of dynamic transmission processes, control of compliance of facilities with the Rules on Operation of the Transmission System.

The deadline for the completion of the Study for Connection of Facilities to the Transmission System is 180 days of the date of the registered first payment according to the time frame of payments from the Contract for the Development of the Connection Study.

The process of obtaining and developing documentation for the construction of the connection to the transmission system is initiated by the energy producer by filing a request for signing the contract for development of planning and technical documentation and

77 It should be noted here that according to Article 118 of the Energy Law the connection of the energy facility to the transmission system is performed in a manner implying that the transmission system operator is the investor for this connection. Also, according to Article 140, para 6, of the Energy Law connection to the distribution system of plants producing electricity is not performed in the integrated procedure. If there is a need for an electricity generating plant to be connected as a buyer to the power distribution system, in such a case the obtaining of conditions is done as part of the integrated procedure.

78 Connection to the heat distribution network is not requested for facilities engaged in electricity and heat co-generation, if they use the heat for their own needs.

79 Article 8b, para 10, of the Law on Planning and Construction and Articles 117-120 and 140, para 6, of the Energy Law.

obtaining the necessary permits for the construction of the connection. The application is available at the website of the Transmission System Operator – the Public Enterprise - JP EMS. This process begins only after completion of the part of the study which is made for all electricity producers. When signing the said contract, the electricity producer opts for one of the possibilities set forth in the Energy Law, specifically: 1) that the JP EMS, as investor, shall construct the connection at the cost of the electricity producer, or 2) that JP EMS, as investor, authorizes the producer to build the connection in its name and at the cost of EMS, in which case the producer manages the project of constructing the connection under control by JP EMS.

With respect to connection to the distribution system, the procedure begins with the filing of the application for the issuing of connection requirements, filed to the distribution system operator. The form of the application is developed by the distribution system operator and is available at its registered offices. The form of the application for the issuing of connection conditions also states the necessary documentation to be attached to the application. The technical report, based on the performed analysis, determines if there are electrical-energy and technical conditions for potential future connection of the structure under the filed application. On the basis of the technical report the energy entity for the distribution of electricity issues an act on conditions for connection. The conditions for connection also define their period of validity. No appeals can be filed regarding the act on conditions for connection (the act does not include justification and instructions on legal remedies). The act on conditions for connection is issued within the deadline prescribed by the law[80]. Energy entities issue these conditions for connection against remuneration for actual costs.

3.2.4. Location requirements[81]

The Law on Planning and Construction prescribes that location requirements is a public document containing data on possibilities and limitations for construction on a cadastral lot which fulfills requirements for the construction permit and which contains all requirements for the preparation of technical documentation necessary for the issuing of the construction permit.

The location requirements for the construction of facilities is issued by the ministry in charge of construction or the relevant authority of the autonomous province if the facility is located in the territory of the autonomous province, as follows: 1) for construction of facilities producing energy from renewable energy sources of capacity 10 MW and more, and 2) for construction of facilities producing energy from renewable energy sources irrespective of capacity, specifically: a) facilities within the boundaries of cultural assets registered in the List of World Cultural and Natural Heritage, structures in protected environs of cultural assets of exceptional significance with determined boundaries of cadastre lots and structures in protected environs of cultural assets inscribed in the List of World Cultural and Natural Heritage, structures in protected environs in accordance with acts on protection of cultural assets, and structures within the boundaries of national parks and structures within the boundaries of protection of protected natural assets of special significance; b) structures of structural span exceeding 50 m, and c) structures of height exceeding 50 m.

80 The deadline for the issuing of conditions for connection is 30 days, more details available in footnote 17 of this Guide.

81 With respect to obtaining documentation necessary for the issuing of location requirements for facilities there are cases of overlapping of documentation (on the right to use the land, technical documentation, etc.) for the issuing of individual acts.

Authorities of units of local self-government are competent to issue location requirements for facilities of capacity up to 10 MW, if these are not facilities stated in Article 133 of the Law on Planning and Construction or stated in item 2) of the above paragraph.

Location requirements are obtained within the integrated procedure.

3.2.4.1. Procedure for issuing of location requirements

The documentation necessary to obtain the location requirements for construction of a plant is specified in the Law on Planning and Construction and the Decree on Information on Location[82] and the Rulebook on Integrated Procedure.[83] The following shall be submitted as obligatory exhibits to the application for the location requirements: 1) concept design of the future structure or part of structure (sketch, drawing, graphical presentation, etc.), developed and with appendices according to the Instructions on the manner of actions by competent authorities and holders of public competences implementing the integrated procedure with respect to water acts in the process of exercising rights for construction[84] and the rulebook regulating the content of technical documentation[85],[86] and 2) evidence of paid administrative tax for the filing of application.[87] It should be noted here that the Instructions on the manner of actions by competent authorities and holders of public competences implementing the integrated procedure with respect to water acts in the process of exercising rights for construction contains a clarification of the rule regarding action taken with respect to obtaining water management requirements, water management consents and permits in all stages of the integrated procedure, including in the stage of obtaining the location requirements. This clarification sets out that it is necessary to obtain water management requirements for the facility which by its operation impacts the water regime and that, for that purpose, in order to obtain the opinion of the National Hydrometeorological Authority (which is a pre-requisite for the issuance of water requirements) it is in advance necessary to develop the hydrologic study. For this purpose a list of data and appendices has been developed which need to be provided in the concept design[88], which is to be enclosed with the application for location requirements.

82 The Decree on Location Requirements (Official Gazette of RS, No. 35/15).

83 The exchange of the application, acts and documentation within the integrated procedure between the applicant and the competent authority is performed in electronic form. All acts made by competent authorities and holders of public competences within the integrated procedure and/or intended for use within such procedure, as well as documents filed by the applicant, the competent authority of the holder of public powers, including the technical documentation, shall be provided in the form of electronic documents in dwg, dwf, or pdf format.

84 The Instructions on the manner of actions by competent authorities and holders of public competences implementing the integrated procedure with respect to water acts in the process of exercising rights for construction http://www.mgsi.gov.rs/cir/dokumenti/uputstvo-o-nachinu-postupanja-nadlezhnih-organa-i-imalaca-javnih-ovlashtshenja-koji-0

85 Rulebook on Content, Method and Manner of Development and Performing Control of Technical Documentation According to Class and Intended Use of the Structure („The Official Gazette of RS" No. 23/15)

86 If the hydrogeothermal plant impacts the water regime, this documentation shall be prepared in accordance with the Instructions on the manner of actions by competent authorities and holders of public competences implementing the integrated procedure with respect to water acts in the process of exercising rights for construction http://www.mgsi.gov.rs/cir/dokumenti/uputstvo-o-nachinu-postupanja-nadlezhnih-organa-i-imalaca-javnih-ovlashtshenja-koji-0

87 It should be noted here that the Instructions on the manner of actions by competent authorities and holders of public competences implementing the integrated procedure with respect to water acts in the process of exercising rights for construction provided clarification of the rule with respect to obtaining of water acts, water consent and water permit in all stages of the integrated procedure, including the part relevant to location requirements, if the plant impacts the water regime. It is prescribed that it is mandatory to obtain water requirements and to obtain the opinion of the National Hydrometeorological Institute and develop the hydrological study. For this purpose a list of data and attachments has been prepared which must be included in the concept design to be attached to the application for location requirements.

88 Content of concept design is stated in section 2.1.7. Technical Documentation, of this Guide.

The application for obtaining the location requirements shall contain as mandatory: 1) data on the location (address and name of cadastre municipality and numbers of lots and their size); 2) data on the structure for which the permit is requested (construction and intended use of the structure according to the Rulebook on Classification of Structures[89] – ("power plants"), category ("G"), classification number ("230201") and the gross developed construction surface); 3) data on structures existing in the plot; 4) statements regarding the costs of obtaining location requirements and delivery; 5) list of appendices and the appendices themselves; 6) data on the applicant.

If the planning document, or the report, does not contain the possibilities, limitations or conditions for construction of structures, meaning all conditions for connection to utility, transport and other infrastructure, the competent authority shall obtain such conditions *ex officio*, at the cost of the applicant, with remuneration for actual costs of issuance. Holders of public powers are obliged to provide such conditions at the request of the competent authority within 15 days of receipt of the request.

The competent authority shall be obliged within 5 working days of the date of obtaining all necessary conditions and other data from holders of public powers to issue the location requirements.

Location requirements contain all urban-planning, technical and other conditions and data necessary for the preparation of the preliminary design or the design for the construction permit and the final design for the performance of works, as well as the following data: 1) the number and size of the cadastre lot, except for line infrastructure facilities and antenna pillars; 2) name of the plan document, or the plan document and urban development design based on which the location requirements is issued and rules of construction for the zone or for the whole in which the relevant lot is located; 3) conditions for connection to the communal, transport and other infrastructure; 4) data on existing facilities in the relevant lot which need to be removed before construction; 5) other conditions in accordance with special laws.

With respect to issued conditions, complaints may be filed to the competent municipal authority or the city council within three days of the serving of location requirements, and in case where the permit was issued by the relevant ministry or authority of the autonomous province the complaint shall be lodged to the Government, through the relevant ministry.

Location requirements are valid for a period of 12 months of the date of issuance or until the validity of the construction permit issued in accordance with such permit, for the cadastre plot for which the application was filed.

89 Rulebook on Classification of Structures (Official Gazette of RS, No. 22/15).

3.2.4.2. Forming the building plot[90]

A building plot is a part of the construction land, with access to a public traffic area, which has been constructed or is envisaged for construction by a plan.

For construction, or installation of infrastructure, electric power and electronic structures and equipment, a building plot of smaller or larger area than the one foreseen in the planning document for that zone can be formed, provided the existence of the access to the structure, or equipment, enabling maintenance and elimination of defects or access in case of average/ damage.

If necessary, prior to submitting the application for location requirements, it is possible to make the allotment/re-allotment plan, i.e. the plan forming the building plot.[91] The re-allotment plan implies the plan forming one or more building plots on a number of cadastral lots while the allotment plan implies the plan forming a number of building plots on a single cadastral lot.

The allotment or re-allotment plan shall be drawn up by an authorized company, or by another legal entity or an entrepreneur, registered in the relevant registry. Drawing up of the allotment plan shall be managed by the town planner-in charge, an architect. The specified plan shall also contain the design of geodetic survey benchmarking.

The allotment or re-allotment plan shall be submitted to the authority in charge of urban planning of the unit of local self-government for verification. If the plan complies with the valid planning document, the competent authority shall verify the plan within 10 days, and, if not, it shall notify the party that has submitted the plan thereof. A complaint against the above notification may be submitted to the municipal or to the city/town council within 3 days as of the date of its submission.

Thereafter, the application for undertaking the allotment, or re-allotment, shall be submitted to the authority in charge of affairs of state survey and cadastre (RGA – the Republic Geodetic Authority).

The following shall be submitted with the application for undertaking the re-allotment/allotment: 1) evidence of resolved property-rights relations for all the cadastral lots, and 2) re-allotment or allotment plan verified by the authority in charge of town planning affairs of the unit of local self-government, an integral part of which shall also be the design of geodetic survey benchmarking. The authority in charge of state survey and cadastre shall hand down the decision on forming of cadastral lot(s) further to the above application. An appeal may be lodged against this decision within 15 days as of the date of submitting of the decision.

90 Provisions of the Law on Planning and Construction with respect to forming the construction plot for facilities are complex. Article 69, para 1, of the said Law prescribes that for the purposes of constructing a facility a construction plot may be formed which deviates from the surface or position envisaged by the plan document for the specific zone, provided that there is access to the structure or to the equipment, for the purposes of maintenance and removal of defects or average/damage. Acceptable evidence of the existence of access to the public traffic surface can be the contract on establishing the right of official easement signed with the owner of such passage or consent of the owner of passage. Such facilities can be constructed also on agricultural or forest land, provided that a prior consent has been obtained from the ministry in charge of agriculture or forestry. In order to construct such facilities in agricultural land it is possible to apply provisions of the Law on Planning and Construction relevant to parcelization, re-parcelization and changing of boundaries of adjacent plots, as well as provisions on variations from surface area and positions as stated in plan documents.

91 Rulebook on General Rules of Parcelization, Regulation and Construction (Official Gazette of RS, No. 22/15).

For obtaining the location requirements for facilities, it is possible to apply the provisions of the Law on Planning and Construction which regulates special cases of forming of a building plot. For construction of electric power facilities, a building plot may be formed of a smaller area than the area specified in the planning document, provided there is an access to the facility, or to equipment, for the purpose of maintenance and elimination of defects or accidents. An access easement agreement with the owner of the servient estate shall also be recognized as a resolved access to a public traffic area.

3.2.4.3. Water management acts[92]

The issue of the need to obtain water acts, primarily water requirements, or water consent, for the construction of the plant under the integrated procedure of issuing location requirements and construction permit, is to be discussed by the relevant authorities, since the investor has already obtained the water act for the whole undertaking of exploiting the hydrogeothermal resources. The investor should therefore submit these acts together with the application for issuing of location requirements and the construction permit.

Within the integrated procedure for issuing of location requirements and construction permits, the deadlines for the issuing of water acts are shorter, the procedure for the applicant is simplified, and in cases when the applicant is dissatisfied it is somewhat different compared to the one outside of the integrated procedure.[93]

The Law on Waters prescribes that, for the procedure for preparation of the technical documentation for construction of new and reconstruction of existing facilities and for carrying out of other works which may have impact on the changes in the water regime, the investor shall obtain the water requirements (specifying technical and other requirements that must be met). The Instructions on the procedures by relevant authorities and holders of public powers within the integrated procedure with respect to water acts in the process of exercising the right to construct, Appendix 1 provides: the list of facilities for which water acts are to be obtained, explicitly state that for the purpose of constructing a plant and performing works which may temporarily, intermittently or permanently cause changes in the water regime or which may be under the impact of the water regime, when such plants are included in the planning documents and studies, it shall be necessary to obtain water requirements. Plants using hydrogeothermal energy are not explicitly stated but, since such plants use hydrogeothermal sources and since water requirements are necessary for construction of plants having impact on water regime, it is very likely that hydrogeothermal plants will require the issuing of water management acts – provided that water requirements obtained at the time of obtaining permits for exploitation of natural resources did not cover also the construction and characteristics of this plant.

Prior to issuing the water requirements (which are an element of the location requirements, and are necessary for preparation of the design documentation – the design for construction permit), it is necessary to obtain the opinion of the national organization in charge of hydro meteorological affairs (the Republic Hydro Meteorological Service - RHMS)

92 Issuing of the water requirements, the water approval, and water permit is regulated by the Law on Waters and the Rulebook on Contents and Form of the Application for Issuing Water acts and Contents of Opinion in the Procedure of Issuing Water acts (Official Gazette of RS, No. 74/10, 116/12 and 58/14). Under the integrated procedure, the manner and deadlines for the issuing of water acts are defined by the Instructions on the procedures by relevant authorities and holders of public powers within the integrated procedure with respect to water acts in the process of exercising the right to construct.

93 The Instructions on the procedures by relevant authorities and holders of public powers within the integrated procedure with respect to water acts in the process of exercising the right to construct.

and the opinion of the public water management enterprise (Public Water Management Enterprise Srbijavode – for the territory of the Republic of Serbia except for the Autonomous Province of Vojvodina, i.e. of the Public Water Management Enterprise Vode Vojvodine – for the territory of the Autonomous Province of Vojvodina, or of PWC "Beogradvode" in Belgrade, for structures and works in the territory of the City of Belgrade).

Since water requirements are obtained within the integrated procedure, at the time of obtaining location requirements, along with the documentation submitted to the competent authority issuing location requirements, it is necessary to attach the hydrologic study developed by the investor[94] and the previously issued water acts in case of constructing a new facility within the already existing one or in case of reconstruction.

The obtained decision on issuing the water requirements is one of the components of location requirements.[95] On the basis of this decision the design for the construction permit is to be developed.

After obtaining the location requirements, the project documentation shall be prepared – preliminary design and design for construction permit for the facility.

When obtaining the construction permit within the integrated procedure, it is not necessary to obtain the water consent, as the water consent [96] for technical documentation is not a requirement for the obtaining of the construction permit or of the operation permit. Compliance of the technical documentation with the water requirements for the issuing of construction permit is verified and confirmed by the entity performing technical control in accordance with the Law on Planning and Construction and bylaws under that Law. [97,98]

Once the facility is constructed, and prior to obtaining the operation permit, the investor should obtain the **water permit**[99], if the water requirements stated this obligation. The water permit shall be obtained outside of the integrated procedure.

The application for the water permit is submitted to the ministry in charge of water management or the competent authority. The water permit is required for the exploitation and use of natural and artificial watercourses, lakes, and ground waters, for treatment and discharge of waters and other substances into natural and artificial watercourses, lakes, ground waters, and public sewers, in case of increase or decrease of the capacity of the already existing structure – for the increase of the quantity of in-taken and discharged waters, changed nature

94 The Instructions on the procedures by relevant authorities and holders of public powers within the integrated procedure with respect to water acts in the process of exercising the right to construct, Appendix 2: list of structures for which it is necessary to obtain in advance the hydrological study in order to receive the Opinion of the National Hydro-Meteorological Authority.

95 Exceptionally, according to Article 118 of the Law on Waters, the competent authority for the issuing of water requirements may request from the applicant to obtain the opinion of the ministry in charge of the environment and/or a specialized technical or scientific institution (institute, etc.). For structures and works in a territory of a spa resort, the applicant shall obtain the opinion of the ministry in charge of the affairs of tourism. There is no specifically prescribed procedure for obtaining the above opinions.

96 Water consent is a water act determining that the technical documentation for structures and works is prepared in compliance with the water requirements. Yet, the investor may apply for the water consent to be issued by the relevant authority outside of the integrated procedure, as a control document providing additional security with respect to application of water requirements.

97 The Instructions on the procedures by relevant authorities and holders of public powers within the integrated procedure with respect to water acts in the process of exercising the right to construct.

98 Although the Law on Waters requires for the issuing of the construction permit to have obtained the water consent for the technical documentation, confirming that the technical documentation– the design for the construction permit, is prepared in compliance with the water requirements. The Instructions on the procedures by relevant authorities and holders of public powers within the integrated procedure with respect to water acts in the process of exercising the right to construct defines the process in case of an integrated procedure, so that the role of the water consent is performed by the confirmation of the entity undertaking technical control (according to the Law on Planning and Construction and by-laws adopted under it) that the technical documentation is in conformity with water requirements. This simplifies and accelerates the obtaining of the construction permit.

99 The water permit, which is obtained after the facility is constructed, sets out the manner and conditions for operation and use and discharge of water. Although Instructions on the procedures by relevant authorities and holders of public powers within the integrated procedure with respect to water acts in the process of exercising the right to construct define that the water consent is not a prerequisite for the obtaining of the operation permit, investors are advised to obtain it before the construction permit for reasons of legal certainty with respect to utilization of facilities which have an impact on the water regime.

and quality of discharged waters, as well as for other civil works that impact water regime. This permit shall be issued for a period of maximum 15 years and not later than two months prior to its expiry its validity should be extended if there is an issued decision on water permit. The right acquired on the basis of the water permit may not be assigned to any third party without the consent of the issuing party, and this right shall terminate: upon expiry of the validity thereof, by waiver of the right, and by failure to exercise the right without justified reasons for over 2 years. The application for issuing the water permit shall be submitted on the prescribed form O6.

The application for issuing the water permit shall contain: 1) general data on the applicant; 2) basic data (administrative, hydrographic and topographical survey data) on the structure, or works; and 3) the place, date, signature, and seal of the applicant. Additionally, this application for an electric power plant for which water requirements or water permit have been issued, shall contain: 1) decision on issuing water approval or water permit; 2) report of a public water management enterprise on fulfillment of requirements from water requirements and water approval for issuing the water permit; 3) report of the commission on completed technical inspection of the structure; 4) design for construction permit or as-built design; 5) excerpt from the design for construction permit or as-built design. If operation permit has been issued for the plant, and water approval has not been issued, the application for issuing of the water permit shall also contain: 1) operation permit; 2) report of the public water management enterprise on readiness of the structure for issuing of the water permit; 3) design for construction permit or as-built design; 4) excerpt from the design for construction permit or as-built design.

For plants and works for which water approval or water permit has been issued and structures for which operation permit has been issued, and water approval has not been issued, in addition to the already specified elements, the application for issuing of the water permit shall contain: 1) decision of the ministry in charge of health on determination of zones of sanitary protection of springs; 2) decision of the ministry in charge of geological investigations on established and classified reserves of ground waters[100]; 3) approval of the ministry in charge of tourism for use of water with natural curative properties in a territory of a spa resort; 4) contract or other document that the public utility company provides the service of cleaning of the structure for discharge of water and the service of elimination of solid waste; 5) report of a licensed legal entity on testing of quality of waters (taken in and discharged) from the previous period; 6) certificate of a licensed legal entity of proper condition of facilities for collection, evacuation, and treatment of waste waters, including septic tanks; 7) report of a licensed legal entity on testing of the level and quality of waters in piezometers, in the zone of storage structures, as well as 8) calibration tables issued by a licensed legal entity only for structures for storage.

100 Application for Water Requirements also contains the decision of the Ministry in charge of geological explorations on established and categorized reserves of ground water, if intake of the water through wells is to be carried out for the requirements of the process

Along with the specified attachments to the application for issuing of the water permit, the minutes of the water inspector shall also be submitted.

3.2.5. Environmental impact assessment[101]

Environmental impact assessment is a very important element in the process of constructing the facility. In the process of obtaining the energy permit it is necessary to undertake the assessment of potential environmental impacts and propose measures to protect the environment.

Should the competent authority deem it necessary it may request, as a pre-requisite for the issuance of the construction permit, to prepare the environmental impact assessment.[102]

The Decree on the List of Projects for which the Environmental Impact Assessment Is Mandatory (List I) and on the List of Projects for which the Environmental Impact Assessment May Be Requested (List II), prescribe that the construction of plants of capacity exceeding 50 MW the environmental impact assessment is mandatory (List I of the Decree), while for plants of capacity 1-50 MW the environmental impact assessment may be required (List II of the Decree).[103] For plants of capacity lower than 1 MW this assessment is not required[104], except when it refers to plants to be constructed within protected natural good and protected environs of an immobile cultural good and in other areas of special use.

The Law on Environmental Impact Assessment prescribes that for plants of capacity 1-50 MW, falling within the group for which EIA may be requested, the entity in charge of the project shall file an application to the competent authority to decide on the need to undertake the EIA.

The competences of the authority in the process of determining the need for EIA is determined on the same principle of competences as in the case of determining the competences for the issuing of the construction permit.[105]

The application concerning the need to undertake EIA shall be submitted in the prescribed form, in compliance with the Law on Environmental Impact Assessment and the

101 It should be noted that, in addition to the environmental impact assessment for a specific structure, strategic environmental impact assessments have been made, which is made for plans, programs, layouts and strategies (hereinafter referred to as: plans and programs) in the areas of spatial and urban development planning or use of land, agriculture, forestry, fishery, hunting, energy, industry, transportation, waste management, water management, telecommunications, tourism, preservation of natural habitats, and wild flora and fauna, which establish the framework for approval of future development projects defined by regulations which govern environmental impact assessment. - Article 5, paragraph 1, of the Law on Strategic Environmental Impact Assessment.

102 The necessary element for issuing the Construction Permit for plants of a capacity of 50 MW or over is the environmental impact assessment made in a clearly defined format – the format of the Environmental Impact Assessment Study for the plant. For plants of a capacity of 1-50 MW, the Environmental Impact Assessment Study is mandatory if the competent authority (the same as the one for issuing the Construction Permit) finds it necessary

103 Plants for production of electricity, water steam, hot water, utility steam or heated gases (power plants, gas turbines, plants with internal combustion engines, other combustion facilities), including steam boilers, in combustion plants using all types of fuel – of capacity from 1 to 50 MW.

104 It happens in practice that when the investor applies for a bank loan the bank requires the environmental impact assessment even when it is not mandatory by the relevant regulations.

105 The ministry in charge of environmental protection or the competent authority of the autonomous province shall be competent authorities in the procedure of environmental impact assessment for the following facilities: 1.1) construction of facilities for production of energy from renewable sources of capacity 10 MW and more, and 1.2) construction of facilities for production of energy from renewable sources irrespective of their capacity including: a) facilities within the boundaries of cultural assets registered in the List of World Cultural and Natural Heritage, facilities in protected environs of outstanding cultural assets with clearly defined borders of cadastral lots and facilities in the protected environs of outstanding cultural assets in the List of World Cultural and Natural Heritage, of facilities in protected areas in compliance with the act on protection of the cultural asset, as well as facilities within the boundaries of a national park and facilities within the boundaries of protection of protected outstanding natural asset; b) plants for treatment of non-hazardous waste by incineration or chemical treatment, with capacity exceeding 70 t per day; c) facilities of structural span exceeding 50 m, and d) facilities of height exceeding 50 m. Authorities of local self-government shall be competent in procedures of EIA for facilities of capacity up to 10 MW, provided that these are not structures listed in Article 133 of the Law on Planning and Construction or listed in item 1.2) of this division.

Rulebook on Contents of the Application for the Need to Assess the Impact and Contents of the Application for Determining the Scope and Contents of the Study of Environmental Impact Assessment Study.

The application concerning the need to assess the impact shall contain[106]: 1) data on the project leader; 2) description of the location; 3) description of the characteristics of the project; 4) presentation of the main alternatives that have been analyzed; 5) description of the environmental factors that may be exposed to the impact; 6) description of possible major harmful impacts of the project on the environment; 7) description of the measures envisaged for the purpose of prevention, mitigation, and elimination of major harmful impacts; 8) other data and information at the request of the competent authority. The following documentation shall be submitted with this application: 1) information on location or the verified urban development design (issued within a period of maximum one year); 2) concept design or the preliminary design, or the excerpt from the preliminary design; 3) graphical presentation of the micro- and macro-location; 4) requirements and approvals of other competent authorities and organizations obtained in compliance with a special law; 5) evidence of payment of the republic administrative fees and duties; 6) other evidence at the request of the competent authority.

Within 10 days, the competent authority shall notify the interested authorities and the public about the submitted application. The interested parties shall submit their respective opinions within 10 days from the date of receipt of the notification. The competent authority shall decide on the application within an additional period of 10 days. If it is decided that the impact assessment is required for the reviewed plant, the same decision may determine both the scope and contents of the impact assessment study. If it is established that impact assessment is not required, the competent authority may specify minimum requirements for environmental protection in the decision. The decision shall be submitted to the project owner, interested authorities, and to the public within 3 days as of the date of handing down the decision.

The project owner and the interested public may lodge an appeal, and the competent second-instance authority shall hand down its decision within 30 days from the date of receipt of the appeal.

If, further to the application related to the impact assessment, the decision has been handed down in which it was decided that the impact assessment is required and if, in the same decision, the competent authority has not specified the scope and contents of the impact assessment study, the project owner shall submit the application for determining the scope and contents of the impact assessment study to the competent authority, in the prescribed form.

106 The Application Form concerning the need to assess the impact of a project on the environment is specified in the Rulebook on Contents of the Application Concerning the Need for Impact Assessment and Contents of the Application for Determining Scope and Contents of the Environmental Impact Assessment Study.

The specified application shall contain: 1) data on the project owner, 1a) description of the location, 2) description of the project, 3) presentation of the main alternatives that have been analyzed, 4) description of the environmental factors that may be exposed to the impact, 5) description of possible major harmful impacts, 6) description of measures envisaged for the purpose of prevention, mitigation, and elimination of major harmful impacts, 7) non-technical summary of data from 2) to 6), 8) data on possible difficulties encountered by the project owner in collecting the data and documentation, 9) other data and information at the request of the competent authority. The following documentation shall be submitted with the specified application: 1) excerpt from the urban development plan or verified urban development design, or the decision on urban development requirements issued within a period of maximum one year, 2) preliminary design, or the excerpt from the preliminary design, 3) graphical presentation of the macro- and micro-location, 4) requirements and approvals of other competent authorities and organizations obtained in compliance with a special law, 5) evidence of payment of the republic administrative fees and duties, and 6) other evidence at the request of the competent authority.

Within 10 days, the competent authority shall notify the interested public about the submitted application. The interested parties shall submit their respective opinions within 15 days as of the date of receipt of the notification. Within 10 days, the competent authority shall hand down the decision on the scope and contents of the impact assessment study. The decision shall be submitted to the project owner and to the interested public within 3 days.

The project owner and the interested public may lodge an appeal, and the competent second-instance authority shall hand down its decision within 30 days from the date of receipt of the appeal.

More detailed procedure for elaboration of the EIA Study for the plant is regulated by the Law on Environmental Impact Assessment and by the bylaws under this Law. This Law stipulates that the concrete impact assessment study for the plant is an integral part of the documentation, which shall be submitted with the application for the construction permit or with the report on commencement of the project implementation (construction, execution of works, change of technology, change of activity, and other activities).

The EIA Study shall contain: 1) data on the project owner, 2) description of the location at which the project implementation is planned, 3) description of the project, 4) presentation of the main alternatives of the project that have been analyzed, 5) presentation of the state of the environment at the location and close environs (micro- and macro-location), 6) description of possible major impacts of the project on the environment, 7) assessment of the impact on the environment in case of an accident, 8) description of the measures envisaged for the purpose of prevention, mitigation, and possible elimination of any

major harmful impact on the environment, 9) program of monitoring of the impact on the environment, 10) non-technical short presentation of the data specified under 2) to 9), 11) data on technical deficiencies or non- existence of adequate expert knowledge and skills or inability to obtain relevant data. The obtained requirements and approvals of the other competent authorities and organizations shall also be submitted with the Study. The Study shall also contain the basic data on the persons, who have participated in making the study, on the responsible person, date of making the study, signature and seal of the responsible person, as well as the seal of the licensed organization, which has made the study and which is registered for preparation of this type of documentation in the Business Registers Agency.[107]

Not later than one year from the date of receipt of the final decision on the scope and contents of the impact assessment study, the project owner shall submit the application for the approval of the impact assessment study. The impact assessment study (3 copies in paper and 1 in electronic form) and the decision of the competent authority from the previous stage of the procedure shall be submitted with the application.

The public authority shall ensure public insight in, the presentation of, and public debate on the study and it shall notify the interested parties about its time and venue within 7 days. Public debate may be held within minimum 20 days from the date of notification.

Within 10 days from the date of receipt of the application for the approval, the competent authority shall form the technical commission for evaluation of the impact assessment study and, within 3 days after it is formed, the study shall be submitted to the commission for evaluation. Upon completion of the public insight in it, the competent authority shall submit the report with the overview of the opinions of the interested parties to the commission within 3 days.

At the proposal of the technical commission, the competent authority may request from the project owner to make amendments and supplements within a certain time period. The technical commission shall submit the report with the evaluation of the EIA study and a proposed decision to the competent authority within 30 days from the date of receipt the documentation from the competent authority.

Within 10 days from the date of receipt of the report from the technical commission, the competent authority shall notify the interested parties about the decision approving this study or about the rejection of the application for the approval on the impact assessment study, specifically about: 1) contents of the decision; 2) main reasons on which the decision is based; 3) most important measures, which the project owner shall undertake for the purpose of prevention, mitigation, or elimination of harmful impacts. The (unsatisfied) project owner and the interested public may institute an administrative dispute against the specified decision.

The Law on Environmental Impact Assessment also regulates the procedure for updating the EIA study due to the lapse of time. It is necessary to point to the fact that the validity of the decision on approval of the EIA study shall be two years, within which time period the project owner shall commence the construction of the plant. Upon expiry of this deadline, the competent authority may hand down the decision on the making a new EIA study or on

107 Detailed prescribed contents of the study are contained in the Rulebook on Contents of the Environmental Impact Assessment Study.

updating the existing one. This decision shall be handed down on the basis of the application of the project owner. The same decision shall also be handed down in case the project owner must deviate from the documentation based on which the environmental impact assessment study for the plant has been made. In the latter case, the application for the approval of the updated EIA study shall be submitted prior to submitting the application for the construction permit.

The Law on Environmental Protection stipulates that the ministry in charge of environment shall issue the preliminary consent on the approval for the use of natural resources or assets. This consent shall verify fulfillment of requirements and measures of sustainable use of natural resources, or assets (air, water, land, forests, geological resources, plant and animal life) and environmental protection in the course and after termination of engaging in the activity.[108]

3.2.6. Integrated permit

The Law on Integrated Pollution Prevention and Control stipulates requirements and procedures for issuing the integrated permit for plants and activities that may have negative impact on health of people, environment or material goods, types of activities and plants, all aimed at pollution prevention and control. The competences of the authority in the process of issuing the integrated permit are determined on the same principle as in the case of determining the competences for the issuing of the construction permit. It should be noted that integrated permit is not required for every plant using hydrogeothermal energy, but only for those thermal plants with heat capacity above 50 MW[109]. The application shall be submitted to the competent authority on the Form 1 prescribed in the Rulebook on Contents, Appearance and Manner of Filling the Application for Issuing of the Integrated Permit.[110]

The operator of a structure - plant (a natural person or a legal entity managing the plant – on whose name this permit is to be issued) shall submit to the competent authority the application for issuing of the permit, which shall particularly contain the data on: 1) plant and its activity; 2) raw materials and auxiliary materials, other substances and energy used in the plant or created therein; 3) sources of emissions that originated from the plant; 4) conditions that are characteristic for the location on which the plant is situated; 5) nature and quantity of envisaged emissions that, from the plant get into water, air, and land; 6) identified major impacts of emissions on the environment and possibility of impact on a greater distance; 7) proposed technology and other techniques by which emissions are prevented or, if that is not possible, emissions are reduced; 8) the best available techniques that the operator of activities of a new or existing plant is applying or plans to apply for the purpose of prevention or reduction of pollution; 9) measures for reduction of generation and elimination of waste that is generated while the plant is functioning; 10) measures for efficient utilization of energy; 11) planned

108 Article 15 of the Law on Environmental Protection.
109 The Decree on Types of Activities and Plants for which the Integrated Permit is Issued (Official Gazette of RS, No. 30/06).
110 Article 3, para 2, of the Rulebook on Contents, Format and Manner of Filling in of the Application for Integrated Permit (Official Gazette of RS, No. 30/06).

measures of monitoring of emissions into the environment; 12) presentation of main alternatives reviewed by the operator; 13) non-technical presentation of data on which the application is based; 14) other measures, undertaking of which is planned in compliance with regulations.

The application for issuing the integrated permit shall contain: I. General data: 1) on the application, 2) on the operator (a natural person or a legal entity managing the electric power plant – on whose name this permit is to be issued), 3) on the plant and its environs, 4) type of industrial activity, 5) staff and capital costs; II. Summary of data on the activity and issued permits/licenses: 1) short description of the activity which the Integrated Permit is applied for, 2) data on planning and design documentation for the plant (permits, approvals, consents), 3) brief report on major impacts on the environment; III. Detailed data on the plant, processes and procedures: 1) location, 2) environmental protection management, 3) use of the best available techniques, 4) utilization of resources, 5) emissions into the air, 6) discharge of noxious and hazardous substances into waters, 7) protection of land and ground waters, 8) waste management, 9) noise and vibrations, 10) assessment of risk from major accidents 11) measures for unstable (transitional) modes of operation of the plant, 12) definitive termination of operation of the plant or parts thereof, 13) non-technical presentation of data on which the application is based.

The following attachments shall also be submitted with this application: 1) documentation prescribed by the law[111]; 2) tabular summaries (diagrams); 3) maps and sketches; 4) copies of issued permits, approvals, and consents and other documents; 5) action plans III.4 - III.10.

After the applicant has submitted a proper application (which it has possibly supplemented at the request of the competent authority), the competent authority shall notify authorities and organizations in the areas of: agriculture, water resources management, forestry, planning, construction, transportation/traffic, energy, mining, protection of cultural goods, nature protection, etc. as well as the authorities of local self-government on the territory of which the activity is planned, or the plant is located and the interested public on receipt of the application, within five days from the date of receipt of proper application for issuing of the permit. The competent authority shall submit a copy of the application for issuing of the permit at the request of interested public, or of the specified authorities and organizations to which it shall also submit for insight the relevant attached documentation.

111 Article 9 of the Law on Integrated Pollution Prevention and Control sets out the list of documents, which shall be attached to the application for issuing of the Integrated Permit. The applicant shall submit the following documentation with the application for issuing of the permit: 1) design of the planned, or constructed plant; 2) report on the last technical inspection; 3) plan of conducting monitoring; 4) results of measurements of pollution of elements of the environment or other parameters during the trial run; 5) waste management plan; 6) Plan of measures for efficient utilization of energy; 7) plan of measures for prevention of accidents and mitigation of their consequences; 8) plan of measures for environment protection after termination of operation and closing of the plant; 9) decision on the right to use natural resources; 10) statement confirming that the information contained in the application are true, accurate, complete, and available to the public; 11) evidence of the paid administrative duty; as well as 12) approval of the environmental impact assessment study and approval of the assessment of the threat from accidents.

Within 15 days from the date of receipt of the notification about the submitted application, other authorities and organizations and representatives of interested public shall submit their respective opinions to the competent authority.

The competent authority shall, within 45 days as of the date of receipt of proper application for issuing of the permit, make a draft of the permit, taking into account the above mentioned collected opinions. This authority shall again notify other authorities and organizations and interested public both about the draft permit made and about the possibility of insight in the accompanying documentation within five days from the date of receipt of such a request (for insight into the draft permit).

At the request of other authorities and organizations and interested public, the competent authority shall submit a copy of the draft permit. The costs of making and submittal of a copy of the draft permit shall be borne by the applicant (in the prescribed amount).

Other authorities and organizations and representatives of interested public may submit their respective opinions on the draft permit to the competent authority, within 15 days from the date of receipt of this second notification. Within a further term of 10 days, the competent authority shall submit the draft permit together with the application of the operator and accompanying documentation, opinions of other authorities and organizations and interested public given on the draft permit, to the technical commission (formed by the same competent authority).

The technical commission shall review the application of the operator and the attached documentation, the draft permit, opinions of other authorities and organizations and interested public, as well as opinions obtained in the procedure of exchange of information and consultations on cross-border impacts. The operator or a person authorized by it may be present during the work of the technical commission. The technical commission shall analyze in particular: 1) the EIA study, or study of assessment of current state of the environment; 2) expected local and wider impacts of operation of the plant on the environment; 3) application of the best available techniques; 4) expected economic and social impacts and changes of the state of the environment on the concrete location, as well as expected impacts to life and health of the population; 5) submitted prescribed documentation; 6) fulfillment of requirements from the draft permit, which shall be particularly analyzed.

The technical commission shall compile a report, which it shall submit, without delay, to the competent authority. The competent authority shall decide on the issuing of the permit on the basis of the application of the operator, the attached documentation, the report and evaluation of the technical commission, as well as the obtained opinions of other authorities and organizations and interested public, within 120 days from the date of receipt of proper application for issuing of the permit. In exceptional cases, at the request of the operator or at the initiative of the competent authority, this deadline may be extended maximum to 240 days. The competent authority shall notify the applicant about the extension of the deadline, reasons, as well as about the new deadline for bringing the decision. The competent authority shall decide by the decision on the issuing of the permit, or on rejecting the application for issuing of the permit.

The competent authority shall reject the application for issuing of the permit if: 1) the plant for engaging in the activity for which the permit is applied for does not satisfy the prescribed requirements; 2) based on the data and documentation contained in the application, conditions have not been met for implementation of prescribed environmental standards; 3) application contains incorrect data, which are of influence on issuing the permit. The decision on issuing the permit or on rejecting the application for issuing the permit shall be submitted by the competent authority to the operator and shall notify other authorities and

organizations and the public thereof within eight days from the date of issuing the decision.

No appeal may be lodged against the decision of the competent authority but an administrative dispute may be instituted.

The permit shall establish requirements for the operation of the plant and engaging in the activity and obligations of the operator depending on the nature of the activities and their impact on the environment. The permit shall contain the requirements that are related to: 1) application of the best available techniques or other technical conditions and measures; 2) measures from the environmental impact assessment study or the study of assessment of current state of the environment; 3) limit values of emissions of polluting substances established for the given plant; 4) measures of protection of air, water, and land; 5) measures related to the management of waste generated during the operation of the plant; 6) measures for reduction of noise and vibrations; 7) measures related to efficient utilization of energy; 8) requirements for monitoring of emission with: specified methodology, defined frequency of measurement, defined rules for interpretation of measuring results, as well as with the established obligation to submit data to the competent authority; 9) measures for prevention of accidents and elimination of their consequences; 10) reduction of pollution, including cross-border pollution of the environment; 11) measures envisaged for commencement of operation, for instant stopping in case of a disruption in the functioning of the plant, as well as for termination of operation of the plant; 12) undertaking of measures of environment protection after termination of activities aimed at avoidance of the risk from pollution and bringing the location back in a satisfactory state; 13) manner and frequency of reporting and volume of data contained in the report, which is to be submitted to the competent authority in line with the regulations; 14) results of revision of requirements and obligations established by the permit; 15) other specific requirements.

If, according to a certain standard of the quality of the environment, stricter requirements are set than those, which can be achieved by applying the best available techniques, the permit shall contain additional measures which shall ensure implementation of such standards. In such a case, the competent authority, by the permit, shall establish measures and deadlines for implementation of the standards of quality of the environment, prescribed in line with the law, and particularly: 1) date as of which the standards shall be applied and areas to which they are related; 2) highest and the lowest acceptable level of polluting substances and noise in the environment; 3) specific parameters, the procedure of monitoring, and methods by which violations of standards shall be established, as well as measures to be undertaken in such a case.

The permit may contain a temporary exemption from adherence to specific requirements if the adopted rehabilitation program ensures implementation of measures that give rise to mitigation of pollution and fulfillment of requirements.

The requirements for application of the best available techniques are prescribed in the Decree on Criteria for Definition of the Best Available Techniques, for Implementation of the Standards of Quality, as well as for Determination of Limit Values of Emission in the Integrated Permit.

The plant operator shall: 1) act in compliance with the requirements established in the Permit; 2) submit to the competent authority the results of monitoring; 3) notify the competent authority on any change in the operation, or functioning of the plant or about an accident, with possible visible impacts on the environment or health of people; 4) submit

to the competent authority an annual report on engaging in activities for which the permit has been issued; 5) notify the competent authority about planned change of the operator; 6) undertake all the measures established by the competent authority after termination of validity of the permit.

The plant operator shall conduct monitoring by implementing the monitoring plan and in compliance with the requirements established in the Permit, which are related to the requirements for monitoring of emissions.

At the request of the competent authority issuing the permit or of an inspector, the operator shall: 1) submit data to the competent authority necessary for issuing, modification or termination of validity of the permit; 2) enable the inspectorate insight in the documentation kept related to the issuing of the permit, provide access to samples and points of monitoring determined in the permit and enable them unobstructed obtaining of information on acting in compliance with requirements in the permit.

If pollution originates from the plant, which has the permit or is subject to the issuing of the permit, the operator shall eliminate the consequences of pollution at his/her own cost within the shortest possible time, taking into account technical and economic possibilities. Should the operator fail to do the rehabilitation, the competent authority shall eliminate the pollution at the cost of the operator. The operator shall, during the validity of the permit and minimum five years after termination of validity of the permit, keep all the documentation related to the issuing of the permit, monitoring, and inspection supervision over the engaging in the activities.

The issued permit shall be subject to repeated review (hereinafter referred to as: revision) minimum twice during its validity. The procedures of revision shall be initiated by the competent authority *ex officio* or at the request of the operator. The competent authority shall initiate the procedures of revision *ex officio* in cases prescribed by the law.

3.2.7. Technical documentation[112]

Construction of facilities is carried out on the basis of the construction permit and the technical documentation, under conditions and in the manner regulated by the Law on Planning and Construction.

Technical documentation is a set of designs that are prepared for the purpose of: establishing the concept of the structure, elaboration of requirements, the method of construction of the structure, and for the requirements of maintenance of the structure. Technical documentation is prepared on the basis of the location requirements, which contains all the requirements and data required for preparation of the preliminary design, design for construction permit and final design. The energy permit shall not be submitted with the application for construction permit for construction of plants of up to 1 MW, because the energy permit is not issued for them.

The technical documentation for construction of a structure, according to the Law on Planning and Construction, shall consist of: 1) general design; 2) concept design; 3) preliminary design; 4) design for construction permit, and 5) design for performance of works, and the 6) as-built design. The as-built design of a structure is part of the technical documentation which is prepared after construction of the plant, for the purposes of obtaining the operation permit, operation and maintenance of the structure.

112 Rulebook on Content, Method and Procedure for Preparation and Control of Technical Documentation by Class and Intended Use of Structures (Official Gazette of RS, No. 23/15).

Prior to commencement of preparation of the technical documentation for the plant for which the construction permit is issued by the ministry in charge of construction, or the autonomous province,[113] preliminary work is to be performed based on whose results the preliminary feasibility study and the feasibility study are to be performed.[114] For the construction of such plants for which is it possible, based on the plan document, to issue the location requirements, the preliminary feasibility study shall not be undertaken[115] with the general design[116]. *The preliminary feasibility study* shall contain the general design, while the *feasibility study* shall contain the preliminary design. The preparation of the preliminary feasibility study or the feasibility study may be performed by a company or another legal person inscribed in the relevant register for performing the activity of design and engineering and fulfilling requirements in terms of qualifies staff.

Preliminary works include: 1) research and preparation of studies and designs and other technical materials; 2) obtaining of data for analysis and elaboration of engineering-geologic, geotechnical, geodetic, hydrologic, meteorological, urban development planning, technical, technological, economic, energy-related, seismic, water management, and transport conditions, conditions for fire and environmental protection, and all other conditions relevant to the construction and operation of a certain structure.

The general design shall include data on: 1) the macro-location of the structure; 2) the general layout of the structure; 3) technical-technological concept of the structure; 4) method of providing infrastructure; 5) possible variants of spatial and technical solutions in terms of fitting into the space; 6) natural conditions; 7) environmental impact assessment; 8) engineering, geological, and geotechnical characteristics of the terrain from the aspect of establishing the general concept and justifiability of construction of the structure; 9) exploratory works for preparation of the preliminary design; 10) protection of natural and immovable cultural assets; 11) functionality and rationality of the design.

113 Ministry in charge of construction or the AP shall be competent for the issuing of the construction permit for facilities of the following characteristics: 1. construction of facilities for production of energy from renewable sources of capacity 10 MW and more, and 2) construction of facilities for production of energy from renewable sources irrespective of their capacity including: a) facilities within the boundaries of cultural assets registered in the List of World Cultural and Natural Heritage, facilities in protected environs of outstanding cultural assets with clearly defined borders of cadastral lots and facilities in the protected environs of outstanding cultural assets in the List of World Cultural and Natural Heritage, of facilities in protected areas in compliance with the act on protection of the cultural asset, as well as facilities within the boundaries of a national park and facilities within the boundaries of protection of protected outstanding natural asset; b) plants for treatment of non-hazardous waste by incineration or chemical treatment, with capacity exceeding 70 t per day; c) facilities of structural span exceeding 50 m, and d) facilities of height exceeding 50 m.

114 It should be stressed that the competence for issuing administrative acts for construction and operation of a structure, i.e.: 1) information on location, 2) location requirements, 3) construction permit and 4) operation permit – pursuant to the Law on Planning and Construction– is the same for each plant.

115 The preliminary feasibility study (pre-feasibility study) determines in particular the spatial, environmental, social, financial, market and economical justifiability of an investment with respect to the alternative solutions/variants defined in the general design, on the basis of which a planning document can be adopted, as well as the decision on the justifiability of investments into preliminary works for the preliminary design and elaboration of the feasibility study.

116 The feasibility study determines in particular the spatial, environmental, social, financial, market and economical justifiability of an investment for a selected solution, detailed in the preliminary design, on the basis of which on the basis of which the decision can be made on the justifiability of investment, for projects funded from the national budget.

The concept design is prepared for the purpose of obtaining the location requirements, and it can also be a part of the urban development design for the purposes of urban-architectural elaboration of the location.

The concept design for the construction of the plant should contain the following data: 1) name, type, and intended use of the structure; 2) whether the structure is to be connected to public water supply and sewerage systems; 3) description of the method for water intake with planned water volumes, if the water is taken from surface or ground water sources; 4) description of the method of discharging waste waters, if the structure discharges waste water into surface or ground waters; 5) description of the technological process including effluent quality and quantity assessment; 6) description of planned works for protection of water courses and prevention of harmful effects of water, protection and utilization of water and prevention of water pollution; 7) data on quality of intaken water (water testing results), in cases when water in taken from surface or ground waters and information about water supply (water course, canal, well or public water supply system) and the location of water intake. If there are no technical possibilities for water supply from public water supply systems or if it is necessary for the purposes of plant operation to construct a well, in such a case state its intended use (ex. for fire-fighting purposes, for irrigation, fisheries, etc.), the necessary quantity of water from the well, and the like; 8) information on method of water collection and treatment (primary, secondary treatment) and discharge of all waste water from the plant location (technological water, sanitary/fecal water, precipitation) and information regarding the recipient of discharge water (water course, lagoon, septic tank, public sewerage network, etc.), type and method of waste disposal which can impact the water regime (quantity and quality). The concept design shall contain data on: 1) plant capacity; 2) description of production process; 3) type and quantity of raw materials used; 4) type of technological process and final product; 5) data on other structures (works) which may impact the water structures and the water regime (quantity and quality of ground and surface water). It is also necessary to provide the following graphic attachments: 1) a general drawing; 2) layout of all existing and planned structures (with legend), with accompanying infrastructure (especially water supply and sewerage) or structures and infrastructure which is the subject of the application and which is located in the zone of the water structures and water courses (water intakes, inflowing and outflowing structures, TT and fiber optic cables, electric mains, etc.) of appropriate scale on cadastre basis etc.[117]

117 The Instructions on the manner of actions by competent authorities and holders of public competences implementing the integrated procedure with respect to water acts in the process of exercising rights for construction.

Preliminary design shall be prepared for the plant if it is a plant for which the construction permit is to be issued by the ministry in charge of construction, the competent authority of the autonomous province, and if it is subject to technical control by a review commission.

The preliminary design shall determine: the intended use, position, shape, capacity, technical-technological, and functional characteristics of the structure, its organizational elements and the appearance of the structure.

The design for the construction permit[118] is prepared for the purpose of obtaining the construction permit.

The design for the construction permit shall contain the statement by the chief designer, the responsible designer and the person in charge of technical control confirming that the design is prepared in compliance with the location requirements, the applicable regulations, and the professional rules. Additionally, the design for the construction permit shall contain the fire-fighting and protection study. This study shall be prepared by a person holding the relevant license issued in compliance with the regulations on fire fighting and protection.

The design for performance of works[119] shall be prepared for the purposes of performing the construction works. The design for the performance of works is a set of designs harmonized among themselves determining the structural-technical, technological and operational characteristics of the facility with equipment and installations, the technical-technological and organizational solutions for the construction of the facility, the investment value of the facility and conditions of plant maintenance.

The design for performance of works shall include the statement of the chief designer and statements of the responsible designers confirming that the design has been prepare din compliance with the location requirements, the construction permit, the design for the construction permit, the applicable regulations and professional rules. For structures which, according to the law, require fire fighting and protection consent for the technical documentation, prior to the issuance of the operating permit it is necessary to obtain the consent for the design for performance of works within the integrated

118 According to the changes and amendments to the Law on Planning and Construction of 2014, the part of the technical documentation which used to be termed "the design for construction permit" has changed in content and has been given the new name "design for construction permit".

119 According to the changes and amendments to the Law on Planning and Construction of 2014, the part of the technical documentation which used to be termed „the design for construction permit" has changed in content and has been given the new name "design for performance of works" (in Serbian: "izvođački projekat") and the new name is "design for performance" (in Serbian: "projekat za izvođenje".

procedure.[120] This design can also be prepared by stages, in which case the works are to be performed only for the stage for which the design has been confirmed by the statement(s) of responsible designers, confirming that it has been prepared in compliance with the location requirements, construction permit, the design for the construction permit, the applicable regulations and professional rules.

The as-built design is prepared for the purposes of obtaining the operating permit, the operation and maintenance of the plant.

The as-built design of the constructed plant is the design for performance of works with the amendments occurring in the course of construction of the structure. In case there have been no deviations from the design for performance of works in the course of construction of the structure, the investor, the person who has exercised the supervision, and the contractor shall corroborate and certify, on the design for construction permit, that the as-built state is equal to the designed state. The as-built design shall not be subject to technical control, except when it is prepared for the purposes of legalization of the structure.

3.2.7.1. Preparation of technical documentation

Technical documentation for the construction of a structure may be elaborated by a company, or other legal person, or entrepreneur, registered in the corresponding register of companies. Technical documentation for the construction of structures for which the construction permit is issued by the ministry in charge of construction, or the autonomous province, may be prepared by a company or another legal person inscribed in the relevant registry for preparation of technical documentation for the specific type of structure, which has staff holding license of responsible designer and relevant technical references in preparing technical documentation for structures of the specific type and intended use.[121]

A person employed in a company, another legal entity or an entrepreneur authorized to determine any of the requirements for the preparation of the technical documentation may not participate in the preparation of the technical documentation. Equally, a person authorized to perform technical supervision over the compliance with this law may not participate in the preparation of the technical documentation.

The legal entity performing utility activity or an activity of general interest may prepare the technical documentation for the construction of facilities which it will be using to perform its activity, under conditions prescribed by this law.

120 The Instructions on the manner of actions by law enforcements authorities and authorities implementing the integrated procedure in the process of exercising rights for construction for structures to which fire fighting measures are implemented, of 9 April 2015, http://www.mgsi.gov.rs/cir/dokumenti/uputstvo-o-nacinu-postupanja-organa-ministarstva-unutrashnjih-poslova-i-organa-koji

121 Technical references are possessed by persons who have prepared or have participated in the preparation of or execution of technical control of technical documentation based in which structures of this type and intended use have been constructed - Article 126, para 3, Law on Planning and Construction.

3.2.7.2. Technical review

The design for the construction permit shall be subject to technical review.[122,123]

The technical review of the design for the construction permit shall be performed by a company or another legal entity of entrepreneur fulfilling the requirements for the preparation of technical documentation prescribed by the law. The Investor nominates the person who shall perform the technical review.

Technical review of this design may not be performed by a responsible designer who has prepared the design or who is employed in the company which prepared the design or in the company which is the investor. This technical review shall cover especially: 1) checking the compliance with all requirements and rules contained in the Location Requirements, the law and other applicable regulations, technical norms, standards and quality norms, and harmonization of all parts of the technical documentation; 2) compliance of the design with results of preliminary research (preliminary works); review of relevant basis for foundations of the structure; 3) checking the correctness and accuracy of technical-technological solutions for the structure and solutions for the construction thereof; 4) stability and safety; 5) rationality of designed materials; 6) environmental impact and impact on surrounding structures. The technical control of the design for the construction permit for the construction of the structure for which the permit is issued by the ministry in charge of construction or the autonomous province shall also cover the compliance with measures stated in the report of the review commission.[124]

A report shall be compiled on the technical control and is signed by the designers holding relevant licenses who have performed the technical control of individual parts of design, while the final report shall be signed by the person representing the legal person or the entrepreneur.

The costs of technical control shall be covered by the investor. Designs for construction permit prepared according to regulations of other countries shall be subject to technical control which checks the compliance of such documentation with the law and other applicable regulations, technical norms, standards and quality norms. This design document shall be translated into the Serbian language.

The company or another legal person or entrepreneur which is performing the preparation or control of technical documentation and the contractor performing the works, the entity performing supervision and technical review, shall all be covered by liability insurance for damages which may result to the other party or a third person, in accordance with the rulebook which is a bylaw under the Law on Planning and Construction.[125]

122 The Rulebook on Contents, Method and Procedures for Preparation of and Control of Technical Documentation According to Class and Intended Use of Structures.

123 The purpose of the technical control of the design for construction permit is to check if this document is in compliance with: 1) all requirements and rules contained in the location requirements, 2) the law and other applicable regulations, 3) technical norms, standards and quality norms. The purpose of the technical control is also to check: 1) the harmonization of all parts of the technical documentation, 2) if the design is in compliance with results of preliminary research (preliminary works), 3) to review of relevant basis for foundations of the structure, 4) the correctness and accuracy of technical-technological solutions for the structure and solutions for the construction thereof, 5) stability and safety, 6) rationality of designed materials, 7) the environmental impact and impact on surrounding structures.

124 If the technical control report is positive, meaning that there are no comments leading to amendments of the technical documentation, the designated person shall, on the first page of the document, attach the seal of performed technical control which shall be signed by the responsible designer of the technical control.

125 This rulebook was not yet adopted at the time of writing of this Guide.

3.2.7.3. Technical review of the design

The general design and the preliminary design, the preliminary feasibility study and the feasibility study for plants for which the construction permit is issued by the ministry in charge of construction or the autonomous province, shall be subject to technical review, which is an expert control by commission appointed by the minister in charge of construction for structures for which he/she is competent to issue the construction permit, or by the commission appointed by the relevant authority of the autonomous province for structures for which it is competent to issue the construction permit.

The review commission shall compile a report including measures that shall be implemented in the course of preparing the design for the performance of works. The deadline for the submission of this report shall not be longer than 30 days of the issuing of the application. If the review commission fails to provide its report within this period, it shall be deemed that the commission has no comments.

The costs of the review shall be covered by the investor. The amount of costs is prescribed by the rulebook which is a bylaw under the Law on Planning and Construction.[126]

3.2.8. Construction permit[127]

After completion of the technical control of the design for the construction permit and after receipt of a positive report on technical control or verification stated on the design itself, the application for the construction permit shall be submitted. To the application for the construction permit and the design for construction permit, the investor shall attach the evidence prescribed by the Rulebook on the Integrated Procedure and shall pay the relevant administrative tax.

The application for the issuing of the construction permit shall be submitted to:

1) The ministry in charge of construction or the competent authority of the autonomous province if the plant is located in the territory of the autonomous province, for the construction of:
   - 1.1. plant of capacity of 10 MW and more, and
   - 1.2. plant irrespective of its capacity for: a) facilities within the boundaries of cultural assets registered in the List of World Cultural and Natural Heritage, facilities in protected environs of outstanding cultural assets with clearly defined borders of cadastral lots and facilities in the protected environs of outstanding cultural assets in the List of World Cultural and Natural Heritage, of facilities in protected areas in compliance with the act on protection of the cultural asset, as well as facilities within the boundaries of a national park and facilities within the boundaries of protection of protected outstanding natural asset; b) plants for treatment of non-hazardous waste by incineration or chemical treatment, with capacity exceeding 70 t per day; c) facilities of structural span exceeding 50 m, and d) facilities of height exceeding 50 m.

2) The competent authority of the unit of local self-government in charge of issuing the requirements and permits for plants for electricity generation from renewable sources of capacity up to 10 MW, except for plants stated in Article 133 of the Law on Planning and Construction and stated on item 1.2) of this division.

126 This rulebook was not yet adopted at the time of writing of this Guide.

127 The construction permit is the basic requirement for the construction of structures and after it is obtained it is then possible to apply for the status of preliminary privileged electricity producer, as it is one of the requirements for obtaining this status. More details on obtaining the status of preliminary privileged producer of electricity in Chapter 5 of this Guide.

The application for the construction permit shall contain: 1) first and family name of the investor or the business name of the investor including its tax ID number and the registered seat or address; 2) data on the structure to be constructed or extended for which the permit is applied for (intended use: residential, commercial, industrial, energy-related, transport, dimensions, volume, total surface area, the extended surface area, cost estimates, etc.); 3) designation of the location for construction or extension of the plant (designation of the cadastre lot with address of the plant); 4) list of attachments. In case when the structure is constructed by parts which are technical or functional units, the application shall contain data on planned stages of construction and the final deadline for completion of works. [128]

The following shall be attached to the application for the construction permit: 1) the excerpt from the design for the construction permit, prepared in accordance with the rulebook regulating the contents of technical documentation; 2) the design for the construction permit, in electronic form, and as many hardcopies as the applicant desires to have verified and returned when issuing the construction permit; 3) evidence of paid administrative tax for the filing of the application and issuing the decision on construction permit; 4) the energy permit for construction of plant of capacity 1 MW and more; 5) evidence of adequate rights on the land or structure according to the Law on Planning and Construction[129], except when such right is inscribed in public registries or established by the law; 6) contract between investor and financier, if any; 7) contract between the investor and the holder of public powers, or other evidence of ensuring the necessary infrastructure, if that is a requirements for the issuing of the construction permit stated in the location requirements; 8) report by the review commission, for structures for which the construction permit is issued by the ministry or the competent authority of the autonomous province; 9) the energy permit, issued in accordance with the special law for construction of energy facilities requiring the energy permit; 10) consent of other co-owners, certified according to the law, if construction or works are performed on construction land or a structure which is co-owned by several persons; 11) requirements for design and connection of the structure to the electricity distribution and transmission system or transport

128 The Rulebook on the Content and Manner of Issuing the Construction Permit (Official Gazette of RS, No. 93/11 and 103/13 – decision of the Constitutional Court). As this rulebook was adopted on the basis of the Law on Planning and Construction, before the most recent changes, the author adjusted the terminology of the rulebook with the terminology of the Law on Planning and Construction which was adopted subsequently.

129 Adequate right to the land means property right, right of lease on construction permit which is public property, or other rights prescribed by the law. Adequate right on the construction land for persons from Article 102, para 9, of the Law on Planning and Construction, shall be the right of use on the construction land which is entered in the relevant records of immovable property and rights thereon, until the adoption of a separate regulation regulating the right and the manner of obtaining property rights on construction land for such persons. Persons from Article 102, para 9, of the Law on Planning and Construction include: 1) persons, holders of the right of use on the construction plan, which have been or are companies and other legal persons subject to the law regulating privatization, bankruptcy proceedings or enforcement proceedings, and their legal successors; 2) persons who are holders of right of use on undeveloped construction land in state ownership which was acquired for the purpose of construction pursuant to previously applicable laws regulating construction land until 13 May 2013, or on the basis of decision issued by competent authority; 3) persons, or holders of rights to use on construction land, whose position is regulated by the laws applicable to sports, or associations; 4) socially-owned enterprises, holders of right on construction land; 5) persons, or holders of rights to use on construction land, whose position is regulated by the laws applicable to the laws of the republic of Serbia and bilateral international agreements regulating the implementation of the Annex to the Agreement on Succession Issues (Official Gazette of FRY – International Agreements, No. 6/02). The right to and relevant conditions for conversion of the right to use construction land to property rights of such persons are regulated by a separate law.

of natural gas, obtained in accordance with the law regulating the energy sector, which are not contained in the location requirements. For structures for which the regulations prescribe payment of contributions for arrangements of the construction land, the application shall include as its integral part of the application from para 1 of this article shall be the statement by applicant on the method of payment of contributions for the arrangement of construction land, and instruments of security in case of payment by installments, for structures whose gross developed construction surface exceeds 200 m^2 and which contain two or more housing units.

For structures for which the construction permit is issued by the Ministry, or by the autonomous province, the application shall also enclose the report of the review commission. The construction permit shall be issued within 5 working days of the submission, in form of a decision.

The construction permit shall especially contain data on: 1) the investor; 2) the facility whose construction is permitted (with basic data on dimensions, capacities, surface area, cost estimates; 3) the cadastre lot on which the facility is to be built (number of lot and name of cadastre municipality in which it is located, as well as the surface of the lot(s), except when the construction permit is issued for line facilities or antenna pillars); 4) the existing structure which is being removed or reconstructed for the purpose of construction; 5) validity of the construction permit; 6) documentation based on which it is issued; 7) the financier, if the application for the construction permit attached the contract between investor and financier;[130] 8) the manner of settling contributions for arrangement of construction land, including the amount of contributions, the right for reduction based on the contract with holders of public powers; 9) the rights and obligations of the investor and the holder of public powers, if the application for the construction permit attached the contract between the investor and the holder of public powers, or other evidence regarding ensuring of missing infrastructure, when it is a pre-requirement for the issuing of the permit based on location requirements; 10) other data prescribed by the law. Location requirements, the excerpt from the design for construction permit, and the design for the construction permit shall be integral parts of the construction permit.

130 Construction permits are issued in the name of the investor and the financier in cases when the application encloses an agreement between the investor and the financier, certified in accordance with the law regulating certification of signatures, in which the investor has agreed that the financier shall also be the holder of the rights and obligations from the construction permit. The financier shall severally with the investor be liable for all obligations towards third parties resulting from the powers transferred to it by the agreement signed with the investor.

An appeal may be lodged against the decision issuing the construction permit within eight days of the date of issuance.

The appeals against decisions on construction permit issued by the unit of local self-government shall be decided by the ministry in charge of construction, or the relevant authority of the autonomous province if the structure is to be constructed in the territory of the autonomous province.

The City of Belgrade shall decide on appeals against the first-instance decisions on construction permits for construction or reconstruction of facilities of up to 800 m^2 of gross floor area in the territory of the City of Belgrade.

No appeal may be lodged against the decision on construction permit issued by the competent ministry, or by the competent authority of the autonomous province, but an administrative dispute may be initiated.

The construction permit shall cease to be valid if construction of the structure is not commenced within two years as of the date of legal validity of the decision. If the decision was made by the ministry in charge of construction or the competent authority of the unit of local self-government, this decision shall cease to be valid if, within five years of the decision coming into force, no operation permit has been issued.

At the request of the investor, the competent authority may issue a decision that the construction permit which is in effect shall remain valid for additional two years, or five years, provided that the investor provides evidence that the degree of completion of the structure exceeds 80%, or if it is determined in the procedure that the structure is covered by roof, with installed external fixtures and internal installations enabling its connection to the external infrastructure network.

3.2.9. Construction of a structure[131]

The construction of a structure can begin on the basis of an effective decision issuing the construction permit and the filing of the notification of works.[132]

The investor shall notify the authority which has issued the construction permit at the latest eight days prior to the commencement of works. The notification shall also include evidence regarding fulfillment of obligations regarding contributions for arrangement of construction land, and evidence of paid administrative tax. The competent authority shall inform the construction inspectorate of the notification. The deadline for completion of works shall commence as of the date of filing the notification of commencement of works. If the construction permit has been issued by the ministry, or the autonomous province, the decision shall also be submitted to the unit of local self-government in whose territory the structure is to be constructed, for its information.

The notification shall state the date of commencement and the deadline for completion of works.

Prior to the commencement of construction, the investor shall provide: 1) marking of the building plot, 2) regulation, leveling, and building lines, in compliance with the regulations governing surveying works, 3) marking of the construction site with an adequate panel[133] which shall contain: data on the structure which is being constructed, the investor, the responsible designer, the number of the construction permit, the contractor, the commencement of construction and the deadline for completion of construction.

131 Rulebook on General Rules for Parcelization, Regulation, and Construction.
132 Article 148 of the Law on Planning and Construction regulates the notification of works.
133 Rulebook on Closing and marking of Closed Construction Site (Official Gazette of RS, No. 22/15).

Construction of the structure or the performance of works may be carried out by a company, or by other legal entity or by an entrepreneur (hereinafter referred to as: the contractor).

Construction of the structure or the performance of works on structures from Article 133 of the Law on Planning and Construction[134], may be carried out by a company or other legal entity inscribed in the relevant registry for construction of such structures or performance of such works, which has employees holding the license of responsible contractor and the relevant technical references (results in managing construction or cooperation in constructing at least two such structures).

The obligations of the contractor include: 1) prior to commencement of works to sign the designs for the performance of works, 2) to issue a decision appointing the contractor-in-charge at the construction site, 3) ensure for the contractor-in-charge the construction contract and the documentation based on which the structure is to be constructed, 4) ensure preventive measures for health and safety at work in compliance with the law.

The contractor-in-charge shall: 1) perform the works in compliance with the documentation based on which the construction permit is issued, i.e. based on the design for the performance of works; 2) organize the construction site in a manner ensuring access to the site; 3) ensure the safety of the structure and persons in the site and its surroundings; 4) ensure evidence of the quality of performed works; 5) maintain the daily building records, the building log, and ensure the inspection records; 6) to ensure measurements and geodetic surveillance of soil and structures behavior in the course of construction; 7) ensure the structures and the environs in case of suspension of works; 8) have the construction contract, the decision appointing the contractor-in-charge, and the design for the performance of works available at the construction site.

The investor shall ensure technical supervision of works during the construction of the structure or during the performance of works for which the construction permit has been issued. Technical supervision shall be performed by a person fulfilling the requirements prescribed by the Law on Planning and Construction regarding the responsible designer and the contractor in charge. Supervision of the structure cannot be performed by persons employed by the company or other legal person or entrepreneur performing the works of the specific structure nor persons engaged in issuing the construction permit in the competent authority issuing the construction permit.

If the works concern the connection to the transmission network, after obtaining the construction permit for the construction of the connection of the structure to the transmission network, the producer shall submit the application for signing of contract for monitoring of the connection construction, whereby it is initiating the procedure for commencement of construction of the connection. The application for monitoring of the connection construction shall be available at the website of the transmission system operator – JP EMS. Depending on the manner of constructing the connection which the producer has opted for in the stage of developing the urban planning and technical documents and obtaining of the necessary permits, according to the Energy Law, relevant contracts shall be signed for monitoring of

134 For which the construction permit has been issued by the ministry in charge of construction, or the competent authority of the autonomous province, as follows: 1) plants of capacity 10 MW and more, 2) plants for generation of energy from renewable sources, irrespective of their capacity, specifically: a) facilities within the boundaries of cultural assets registered in the List of World Cultural and Natural Heritage, facilities in protected environs of outstanding cultural assets with clearly defined borders of cadastral lots and facilities in the protected environs of outstanding cultural assets in the List of World Cultural and Natural Heritage, of facilities in protected areas in compliance with the act on protection of the cultural asset, as well as facilities within the boundaries of a national park and facilities within the boundaries of protection of protected outstanding natural asset; b) plants for treatment of non-hazardous waste by incineration or chemical treatment, with capacity exceeding 70 t per day; c) facilities of structural span exceeding 50 m, and d) facilities of height exceeding 50 m.

construction, specifically: 1) the transmission system operator as the investor shall supervise the connection construction at the expense of the investor, or 2) the transmission system operator, as investor, shall authorize the producer on behalf of the transmission system operator, and at his own expense, to construct the connection, in which case the producer manages the connection construction under the control of the transmission system operator.

3.2.10. Technical inspection of the structure and the operation permit

3.2.10.1. Technical inspection[135]

Fitness of the plant for use shall be confirmed by technical inspection, upon completion of construction.

Technical inspection of the structure shall be performed within 30 days of the submission of the request for technical inspection of the structure to the ministry in charge of construction, or the relevant unit of local self-government (depending on the competent authority which issued the construction permit).

This inspection shall be performed by the commission or a company, or another legal person, appointed by the investor to perform these tasks, which is inscribed in the relevant register for such activities. The composition of the commission is regulated by the Rulebook on Content and Manner of Technical Inspection of Structures, Composition of the Commission, Content of Proposed Decision of the Commission Regarding the Fitness of the Structure for Use, Surveillance of Soil during Construction and Use, and Minimum Guarantee Periods for Different Types of Structures. In cases when the subject of technical inspection is a structure for which special fire-fighting measures are required, one of the members of the commission shall be an engineer of fire-fighting protection holding a relevant license. In the course of performing technical inspection of a structure for which an environmental impact assessment has been made, one member of the commission shall be a person qualified in the field which is the subject of the EIA study and who has university qualification of the relevant field of expertise at the level of second level of academic studies – master studies, specialized academic studies, or basic studies lasting for at least five years.[136]

The commission shall issue a report / findings of technical inspection.

The costs of the technical inspection shall be covered by the investor.

Minutes shall be recorded regarding the technical inspection and shall be signed by members of the commission.

Should it be necessary, for the purpose of determining the fitness of the structure for use, to undertake preliminary testing and checking of installations, devices, plants, stability or safety of the structure, devices and environmental protection facilities, devices for fire-fighting or other testing, or if so envisaged by the technical documentation, the technical inspection commission or the entity entrusted to perform the technical inspection can approve trial

135 Rulebook on Content and Manner of Technical Inspection of Structures, Composition of the Commission, Content of Proposed Decision of the Commission Regarding the Fitness of the Structure for Use, Surveillance of Soil during Construction and Use, and Minimum Guarantee Periods for Different Types of Structures (Official Gazette of RS, No. 27/15).

136 By virtue of Article 31, paragraph 2 of the Law on Environmental Impact Assessment, the competent authority, which has managed the procedure of impact assessment, shall appoint the person who shall participate in the work of the commission for technical inspection. This appointed person may be employed or appointed in the competent authority, or in another authority and organization or be an independent expert, who has evidence of the professional background for participation in the work of the Technical Commission from Article 22 of this Law. The operation permit may not be issued if such appointed person does not confirm that the requirements referred to in the decision issuing the approval on the Impact Assessment Study have been fulfilled, in case the Decision that the Study must be made has been handed down.

operation of the plant, provided that it has determined that the necessary requirements have been fulfilled for this purpose, and shall so notify the competent authority. For the plant to be subject to trial run, it is necessary that it be connected to the energy network or the heat distribution mains.[137]

The act approving the trial run shall determine the duration of the trial run, which shall not be longer than one year, and it shall determine the obligation of the investor to monitor the results of the trail run and after its expiration to submit to the competent authority data on such results.

During the trial run, the technical inspection commission, or the entity entrusted to perform technical inspection, shall check the fulfillment of requirements for the issuing of the operation permit and shall submit to the investor the relevant report.

3.2.10.2. Operation permit[138]

A structure for which a construction permit is required can be used after obtaining an operation permit.

The competent authority in charge of issuing construction permits shall issue the operation permit within five working days of receiving the application for the operation permit.

The procedure for the *issuing of the operation permit* is initiated by filing the application to the competent authority, enclosing: 1) the design for performance of works certified and verified by the investor, the person performing technical supervision and the contractor confirming that the constructed structure is equivalent to the design if during the construction there were no deviations from the design for performance of works, or that the construction is in compliance with the rulebook regulating the content of technical documentation; 2) the report of the technical inspection commission, confirming that the structure is fit for use, proposing the issuing of the operation permit; 3) evidence of payment of prescribed taxes or compensations; 4) certificate of energy characteristics of the structure in cases when obtaining of energy certificate is prescribed; 5) evidence of payment of administrative taxes for the issuing of the permit; 6) report on geodetic works for the constructed structure and special parts of the structure; 7) report of geodetic works for underground installations.

The operation permit shall be issued for the whole of the structure or for a part of the structure which is a technical-technological whole and as such can be used separately.

The operation permit shall also state the guarantee period for the structure and for specific types of works as prescribed by separate regulations.[139]

137 More details on connecting the plants to the energy or heating network are available in Section 3 of this Guide.

138 The operation permit is one of the requirements for acquiring the status of privileged producer of electricity and the status of producer of energy from renewable sources. For more details see section 5 of this Guide.

139 The Rulebook on Minimum Guarantee Periods for Different Types of Structures and Works (Official Gazette of RS, No. 93/11).

If the structure requires the obtaining of an integrated permit it can be used only with the obtained operation permit and the integrated permit prescribed by a separate law.[140] This is applicable only to plants with heat input exceeding 50 MW.

The operation permit shall be submitted to the investor or the financier (if the construction permit is made out in its name), the competent construction inspection and holders of public powers.

The procedure for obtaining the operation permit is a two-instance procedure. Appeals can be lodged within 8 days of the decisions being served, to the ministry in charge of construction, or the autonomous province, if the structure is constructed in the territory of the autonomous province.

When the decision regarding the issuing of the operation permit is issued by the ministry in charge of construction, or the competent authority of the autonomous province, no appeal can be lodges, but an administrative dispute can be initiated within 30 days of the date of it being served.

It should be noted that within five working days of the issued operation permit being final, the competent authority shall *ex officio* submit the relevant permit to the authority in charge of state surveying and cadastre, as well as the report on geodetic works for the constructed structure and separate parts thereof, as well as the report on geodetic works for underground installations.

The above authority shall inscribe the property right on the structure and so notify the investor and the competent administrative authority within seven days of serving the operation permit. [141]

Besides obtaining the operation permit for the structure, it is necessary to obtain also the operation permit for the connection of the plant to the transmission and the distribution system.

3.3. The special case of constructing the plant[142]

A special case of constructing a plant is the case determined in the Law on Planning and Construction for which no construction permit is required. This case implies the construction of auxiliary structures[143] and economic structures[144] including the installation of utility plants fueled by renewable energy sources of capacity up to 50 kW, where construction is carried out on the basis of a decision approving the performance of such works and which is issued by the authority in charge of issuing construction permits.

140 The procedure for obtaining of integrated permit is described in section 2.2.6. of this Guide.

141 Article 158, para 11 and 12, of the Law on Planning and Construction, and the Rulebook on the Procedure for Integrated Permit (Official Gazette of RS, No. 113/15).

142 Article 145 of the Law on Planning and Construction.

143 Auxiliary structures are structures performing functions relevant to the main structure, built on the same land lot as the main residential, commercial or public structure (garages, storages, septic tanks, wells, water tanks, etc.) – Article 2, item 24, of the Law on Planning and Construction.

144 Economic structures are structures used for breeding animals (horse stables, cattle stables, units for breeding poultry, goats, sheep and pigs, as well as pigeons, rabbits, decorative poultry and birds); auxiliary structures for domesticated animals (gates for livestock, concrete surfaces for manure disposal, keeping of livestock; facilities for storage of animal feed (hay storages, storages of animal feed concentrate, concrete silo pits and silo trenches), facilities for storage of agricultural products (granaries) and other similar structures in farming estates (structures for machinery and vehicles, smoking and drying units, etc.) – Article 2, item 24a), Law on Planning and Construction.

The application for issuing the decision shall include: 1) evidence of property rights; 2) preliminary design according to the class of structure; 3) evidence of regulated relations with the unit of local self-government regarding contributions for arrangement of construction land, and 4) evidence of paid administrative tax.

For works related to construction/installation of plants in structures within boundaries of national parks, facilities within boundaries of protected natural assets of exceptional significance, and facilities within protected vicinities of protected cultural assets of exceptional significance and cultural assets inscribed in the List of the World Cultural Heritage, the decisions shall be made by the competent authority of the unit of local self-government in whose territory such structures are located.

The competent authority shall make the decision within five days of the filing of the application. The exception is when the competent authority rejects the application as their performance requires the issuing of the construction permit, in which case the deadline is eight days of the day of the application.

These decisions are subject to appeals within eight days of the serving of the decision, appealing to the ministry in charge of construction or the competent authority of the autonomous province if the structure or works are located in its territory.

The final decision approving the performance of works for such structures, which according to the law regulating inscription in public registries can be inscribed in public records, shall be the basis for the inscription of rights in public records of real property and rights thereon.

After the construction or the works are completed, the competent authority may issue the operation permit for the installed plants, at the request of the investor. If an operation permit has been issued at the request of the investor for the relevant structure or for relevant works, the basis for inscription in public registries shall be the final decision approving works and the final decision on operation permit.

4.

APPROVAL FOR CONNECTION OF THE PLANT TO THE ENERGY NETWORK

4. APPROVAL FOR CONNECTION OF THE PLANT TO THE ENERGY NETWORK

4.1. Connection of plants to the energy/electricity network[145]

After obtaining the operation permit, it is necessary to connect the plant to the energy/electricity network. The structure of the producer of electricity is connected to the transmission and distribution system under conditions and in the manner prescribed in the Law on Energy, the Decree on Conditions of Supply and Procurement of Electricity[146] and the Rules on operation of the transmission and the distribution system, in compliance with standards and technical regulations relevant to conditions for connection and use of energy facilities, devices and plants.

The costs of connection are determined by the system operator, according to the Methodology for determining costs of connection, adopted by the Agency[147]. The costs of connection cover also costs of procurement of measuring devices and are born by the applicant for the connection.

The calculated costs of connection depend on the location of the connection to the system, the approved capacity, the need to perform works and the need to provide services or the need to install necessary equipment and other objective criteria.

The procedure begins with the filing of the application for the approval for connection, filed to the energy entity for transmission or distribution of electricity to whose system the facility is to be connected. The form of the application is developed by the system operator, who is making it accessible at its offices and publishing it on its website.

The application for the issuing of the approval for connection of an electricity generating facility to the transmission or the distribution system shall contain data on: 1) owner of the facility, or the user of public property (for a natural person: personal data – name, family name and residence and the unique personal ID number; for the legal person or entrepreneur: legal name, registered seat, excerpt from the company registry, tax ID number, business registry number, account number, and name of responsible person; 2) the facility for which the approval for connection is applied for (address, type, and intended use of facility); 3) total installed power of the facility, the number, capacity and type of generating units; 4) the expected annual and monthly production of

145 It should be noted here that according to Article 118 of the Energy Law the connection of the power plant / facility to the transmission system is performed in a way in which the transmission system operator is the investor for this connection. Also, according to Article 140, para 6, of the Energy Law, the connection to the distribution system of facilities producing electricity is not performed within the integrated procedure. If there is need for the facility for production of electricity to be connected as a buyer to the distribution system, in such a case the obtaining of requirements is carried out as part of the integrated procedure.

146 The Decree on Conditions of Supply and Procurement of Electricity (Official Gazette of RS, No. 63/13).

147 Decision determining the methodology for calculation of costs of connection to the electricity transmission and distribution system (Official Gazette of RS, No..109/15).

electricity; 5) own consumption; 6) intended manner of operation (isolated operation, parallel, or combined operation); 7) the planned time of construction or the planned time of connection; 8) other data according to the rules. The application shall attach: 1) evidence of property right or right to use the facility; 2) construction permit for the facility being connected for the first time.

Should the application for approval of connection fail to include all data and documentation, the system operator who is requested to issue approval for connection to his systems shall, within 15 days of receipt of the application for connection of facilities producing electricity, so notify the applicant and set a deadline for provision of data missing in the application.

4.1.1 Connection to the transmission system

The rights and obligation of the transmission system operator and the producer in the procedure of connection shall be governed by contracts, specifically: 1) the contract on undertaking the study of connection of the facility to the transmission system; 2) the contract on development of planning and technical documentation and obtaining of necessary approvals for building of the connection; 3) the contract on supervision of construction of the connection.

The connection of the facility to the transmission system is performed on the basis of the approval for connection. The application for the approval for connection is submitted to the Public Enterprise Power Transmission Network Serbia - JP EMS, after obtaining the construction permit for the facility to be connected to the transmission system. The approval for connection is issued in form of a decision in written form within 60 days.[148] An appeal may be lodged against the decision to the Energy Agency within 15 days of the decision being served. The decision of the Agency under the appeal shall be final and an administrative dispute may be initiated under it.

Approval for connection is issued with a validity equivalent to the deadline for construction of the structure, or the deadline for completion of the works, in compliance with regulations on planning and construction of structures, but such deadline shall not exceed two years of the date of the approval. At the request of the applicant, the validity of the decision approving connection can be extended. The request for extension shall be filed at least 30 days prior to the expiration of the decision approving the connection.

The approval for connection of the structure to the transmission system shall contain especially: 1) the place of connection to the system; 2) the method and technical conditions for connection; 3) the costs of connection; 4) the necessary tests of compliance with the Rules of operation of the transmission system; 5) installed capacity; 6) approved rating; 7) place of taking over of energy and method of measurement of the energy and rating; 8) deadline for physical connection of the structure.

148 Article 120, para 4, of the Energy Law.

The technical and other conditions of connection to the system are determined by the transmission system operator in accordance with the Energy Law, the Decree on Conditions of Supply and Procurement of Electricity, technical and other regulations and Rules on operation of the transmission system.

After construction of the structure and after its connection to the transmission system, it is necessary to test the compliance with technical requirements stated in the approval for connection. The initiative is started by the producer by filing the request to the transmission system operator who shall, within 45 days of receipt, agree with the applicant the Protocol for starting the operation of the facility. After agreeing the Protocol, both parties shall sign the Protocol.

The transmission system operator is obliged to connect the structure of the producer to the transmission system within 15 days of fulfillment of the following requirements: 1) connection requirements, issued by the operator;[149] 2) that the act has been obtained for trial run of the facility or that the operation permit for the structure and the connection has been obtained; 3) that the buyer, or the producer, has submitted to the system operator the contract for electricity supply, not including commercial data; 4) that the balancing responsibility and access to the system have been agreed for the take-over point.

At the time of starting the operation of the facility the following regimes are possible: 1) test run – functional tests are performed on the facility with certain parts of the facility under voltage, 2) trial run – the facility is under voltage until obtaining of the operation permit, 3) permanent run – the facility is under voltage in continued exploitation regime.

After the time-frame for the implementation of the Protocol for the trial run of the structure is agreed, it shall be signed by the transmission system operator and the applicant. If there are any non-compliances with the Rules of operation of the transmission system, the transmission system operator shall in cooperation with the producer determine the deadline to remove the non-compliances. In accordance with the Protocol for the trial run, the producer shall, in cooperation with the transmission system operator and the technical inspection commission, organize the trail run (putting the structure under voltage until the operation permit). The trial run can begin only after obtaining the positive reports from functional testing and checking of compliance of the structure with the Rules of operation of the transmission system performed during the trial run. The costs of the transmission system operator in implementing the Protocol for trial run shall be determined at the time of agreeing the Protocol for trial run (depending on type of structure, type of equipment within the structure, location of the structure, etc.). The said costs are to be collected from the producer.

After the facility is in permanent run (after obtaining the operation permit for the connection and for the structure) and after completion of all activities and fulfillment of all mutual obligations in all stages of implementing the connection, the transmission system operator and the electricity producer shall close the project of connecting the facility to the transmission system.

It is forbidden to: connect the facility to the system without the approval for connection, connect the facility, equipment or installations to the system on one's own, and their setting into operation.

149 In the course of connection, prior to putting the facility and installations under voltage or running, apart from testing fulfillment of requirements of the Energy Law and of the Decree on Conditions of Supply and Procurement of Electricity, the system operator shall verify if devices and installations within the facility are compliant with technical and other requirements for connection. Fulfillment of requirements is tested by the system operator in the presence of authorized representatives of the investor of the structure and relevant minutes are recorded. Fulfillment of requirements is checked also in the case of connection of a facility which has previously been disconnected from the system.

In the course of connecting the facility to the transmission system, the transmission system operator and the producer shall sign the following contracts: the Contract on exploitation of the facility[150], Contract on balancing responsibility, Contract on access, Contract on supply, in accordance with the Rules of operation of the transmission system and the Energy Law.

In case of connection of the facility of the producer to a part of the distribution system operated by the transmission system operator, the approval for connection shall be issued by the transmission system operator. Prior to issuing approval for connection, the transmission system operator shall obtain from the distribution system operator the following: 1) technical requirement relevant to the distribution system; 2) a preliminary consent for the issuing of the approval for connection.

4.1.2 Connection to the distribution system

The facility of the electricity producer shall be connected to the electricity distribution system on the basis of the approval by the distribution system operator in accordance with the Energy Law, the Decree on Conditions of Supply and Procurement of Electricity, technical and other regulations and Rules on operation of the distribution system

The distribution system operator is the investor for the construction of the connection and, as a rule, builds the connection to the distribution system. At the request of the producer, the distribution system operator is obliged to issue the authorization to the producer to itself build the connection, in the name of the operator, at its expense. In such a case, the costs of building the connection shall be deducted from the costs of connection to the system in line with the methodology for determining the costs of connection to the transmission and distribution system. For the connection, it is necessary to obtain documentation in the name of the distribution system operator in line with the law regulating construction. The rights and obligations of the distribution system operator and the producer shall be governed by the contract which, apart from contractual obligations as set by the relevant laws, shall specifically contain provisions on: 1) supervision of construction of the connection; 2) the time-frame of works and deadlines; 3) technical supervision as determined by the investor, and 4) other issues. After the connection is built, it shall become an integral part of the distribution system.

Approval for connection is issued in form of a decision in an administrative procedure at the request of the owner or user of public property whose structure is being connected.[151] An appeal can be lodged to the Energy Agency against the decision within 15 days of the decision being served. The decision of the Agency is final, and an administrative dispute can be initiated under it.

Approval for connection is issued with a validity equivalent to the deadline for construction of the structure, or the deadline for completion of the works, in compliance with regulations on planning and construction of structures, but such deadline shall not exceed two years of the date of the approval. At the request of the applicant, the validity of the decision approving connection can be extended. The request for extension shall be filed at least 30 days prior to the expiration of the decision approving the connection.

150 The Contract on exploitation of the structure (connection), shall contain the following elements: 1) list of structures to be connected to the transmission system, to which the contract applies; 2) boundaries of property on the primary, secondary and other equipment; 3) competent management centers for the transmission system operator and the plant; 4) list of authorized personnel for technical cooperation; 5) exchange of technical documentation; 6) technical parameters relevant to measurement of electricity; 7) confidential data based on the criteria from the Rules on operation of the transmission system operator.

151 The competent energy entities shall issue the positive decision if all requirements have been met, based on the technical report, the calculation of costs of the connection and other available documents.

The distribution system operator is obliged to decide regarding the request for connection of the producer's facility within 45 days of receipt of the written request.

The approval for the connection of the facility to the distribution system shall contain especially: 1) the place of connection to the system; 2) the method and technical conditions for connection; 3) approved rating; 4) place and method of measuring energy; 5) deadline for connection, and 6) costs of connection.

The technical and other conditions of connection to the distribution system are determined by the distribution system operator in accordance with the Energy Law, the Decree on Conditions of Supply and Procurement of Electricity, technical and other regulations and rules on operation of the distribution system.

The distribution system operator is obliged to connect the structure of the producer to the distribution system within 15 days of fulfillment of the following requirements: 1) connection requirements stated in the approval;[152] 2) that the act has been obtained for trial run of the facility or that the operation permit has been obtained; 3) that the producer has submitted to the distribution system operator a contract on supply of electricity; 4) that the balancing responsibility and access to the system have been agreed for the take-over point.

As of the time of the structure being connected the connection shall become an integral part of the system to which it is connected.

Should it be necessary to connect a facility for which trail run has been approved in accordance with a separate law, it is possible to issue an approval for temporary connection of the facility. Issuing of the approval for temporary connection and supply of electricity shall be done under conditions, in a manner and under procedure prescribed for the issuing of approvals for connection.

It is forbidden to: connect the facility to the system without the approval for connection, connect the facility, equipment or installations to the system on one's own, and their setting into operation.

4.2. Connection to the heat distribution network[153]

Connection of the facility to the heat distribution network shall be done in accordance with the Energy Law and special regulations, if adopted.[154]

152 In the course of connection, prior to putting the facility and installations under voltage or running, apart from testing fulfillment of requirements of the Energy Law, the system operator shall verify if devices and installations within the facility are compliant with technical and other requirements from the approval for connection. Fulfillment of requirements is tested by the system operator in the presence of authorized representatives of the investor and relevant minutes are recorded. Fulfillment of requirements is checked also in the case of connection of a facility which has previously been disconnected from the system.

153 One of very important elements for a justified connection of the production facility to the heat supply pipeline is the harmonization of the Law on Public Utility Services with the Energy Law, i.e. separation/distinction of the energy-related activity of the heat production from its distribution. Also important is the separation/distinction of heat distribution from heat supply. In any case, heat distribution must be separated from the activities comprising elements of sale, so that the costs of heat distribution could be assessed (as network activity), thus enabling achievement of competitiveness of the produced heat, with clearly defined price, competing with other heat producers, or other ways of pro-viding heat.

154 As special regulations are considered the regulations of the local self-government unit related to the manner of performing public utility services of heat production and distribution and of securing the function of performing this activity, its continuity and the rights and obligations of the entity performing public utility services of heat distribution and supply. These regulations also include the Codes of operation of the heat distributor, if adopted.

Facilities for co-generation of heat and electricity need not be connected to the heat generation network if such a facility uses the heat for its own needs.[155]

Connection of the facility to the heat distribution system is carried out on the basis of the approval of the energy entity for heat distribution to whose system the facility is being connected, provided that the equipment and installations of the facility to be connected meet the conditions prescribed by the law, technical and other regulations governing the conditions and manner of the activity of heat distribution.

155 Article 56, item 3) and Article 56, item 5), 6) and 9) of the Energy Law – are relevant also to acquiring the status of privileged producer of electricity.

5.

ACQUIRING THE RIGHT TO PERFORM THE ACTIVITY OF PRODUCTION OF ELECTRICITY / THERMAL ENERGY

5. ACQUIRING THE RIGHT TO PERFORM THE ACTIVITY OF PRODUCTION OF ELECTRICITY / THERMAL ENERGY

5.1. Acquiring the right to performs the activity of public interest

There is a separate procedure for acquiring the right to engage in the activities of production of electricity and/or heat in plants, depending on whether that activity belongs to the activities of public interest. Electricity generation and combined heat and power production are regulated as market activities, while the production of heat belongs to the activities of public interest – public utility services[156].

There are several ways of acquiring the right to engage in the activity of production of heat:

1) directly: 1.1) by entrusting the right to perform public utility services,
1.2) concession on engaging in the activity of public interest;
2) indirectly: investment into a public (utility) enterprise, or company performing utility services.

In order to engage in the activity of production of heat, besides acquiring the right to engage in this activity as the activity of public interest, it is necessary to obtain the license for the said activity. The license for performing the activity of production of heat is issued by the competent authority of the local self-government unit, town, or the City of Belgrade.[157]

5.1.1. Entrusting the right to perform public utility activity

Entrusting of the right to perform public utility activity is regulated by the Law on Public Utility Services.

The Law on Public Utility Services prescribes that the activity of heat production is a part of one unique activity: heat production and distribution.[158]

The right to engage in public utility activities is acquired by entrusting the performance of a specific activity. Entrusting the right to perform public utility activity is understood as a time-limited contractual relation related to the engagement in public utility activity or

156 The Energy Law and the Law on Public Companies (Official Gazette of RS, No. 15/16) prescribe that utility activities are activities of public interest.

157 Article 361 of the Energy Law.

158 The Energy Law prescribes three types of energy activity: production of thermal energy, distribution of thermal energy, and supply of thermal energy. It is also prescribed that the producer of thermal energy, who has been entrusted by an act on establishment or an act of being entrusted with the activity of production of thermal energy for final users, shall be obliged to supply the produced thermal energy to the energy entity performing the activity of supplying final users with thermal energy, in line with the needs of such final users. Such a producer of thermal energy and the energy entity performing the activity of supplying heat to final users, when it is not one and the same enterprise (legal person), shall sign an annual contract for sale of thermal energy for the needs of final users. This contract shall be signed in written form. Since there is inconsistency between the Law on Public Utility Activities and the Energy Law, until these two laws are harmonized, the supply of thermal energy shall most probably be considered as an element of activity "production and distribution of thermal energy".

certain activities in the framework of public utility services between one or several local self-government units and the entity performing public utility activities, aimed at rendering utility services at the territory of one or several local self-government units or at a part of the territory of a local self-government unit.

Entrusting of public utility activity is done on the basis of: 1) decision of the assembly of the local self-government unit on the manner of performance of public utility services and 2) contract on entrusting the public utility service(s).

In case of establishing a public company for performing of utility activity, the agreement for entrusting these activities is not required, but the provider of public utility services may be appointed in the decision on the manner of performing public utility services.

Depending on the manner of financing the public utility activity, there are different procedures for entrusting the right to perform such activities. There are two options: 1) when the contractor obtains the right to secure financing of providing of public utility services in whole or in part through the collection of fees from the service users, and in such a case the provisions of the law regulating concessions are applied and 2) when the performing of public utility activity is financed from the budget of the local self-government unit, in which case the provisions of the law regulating public procurement are applied.

The assembly of the local self- government unit sets by its decisions: 1) the manner of performing the public utility activities, as well as 2) general and specific rights and obligations of the entity performing public utility activities and users of services on its territory, including: 2.1) the manner of payment of the price of the utility service, 2.2) the manner of monitoring the use and collection of payment for the utility service and 2.3) authorization of the entity performing the public utility services with respect to monitoring and 2.4) measures that the controllers are entitled to undertake.

5.1.2. Concessions for the performance of utility activities[159]

The Law on Public-Private Partnership and Concessions defines that the right to engage in an activity of public interest can be acquired through a concession[160].

The procedure of acquiring a concession is regulated in details by the Law on Public-Private Partnership and Concessions. In some elements of the procedure there is a reference to the Law on Public Procurement. The legal basis of the concession is the concession agreement.[161]

The concession can be granted for a minimum of 5 and a maximum of 50 years[162], unless otherwise regulated by another law.

It is prescribed that the setting of the terms and the procedure of concluding a concession agreement is based on the principles of: 1) protection of public interest, 2)

159 The Law on Public-Private Partnership and Concessions (Official Gazette of RS, No. 88/11 and 15/16) stipulates that the concession is a contractual public-private partnership with elements of concession, where the public agreement governs commercial use of a natural resource, or assets in public use which are public property or engagement in an activity of public interest, entrusted by the public body in charge to a domestic or foreign person, for a specific period of time, under specific conditions, against payment of concession fee by the private, or public partner, and where the private partner bears the risk related to the commercial use of the object of concession.

160 The Law on Public-Private Partnership and Concessions stipulates that the concession is a contract on public-private partnership with elements of concession, where the public agreement governs commercial engagement in an activity of public interest entrusted by the competent public body to a domestic or foreign person, for a specific period of time, under specific conditions, against payment of concession fee by the private, or public partner, and where the private partner bears the risk related to the commercial use of the object of concession.

161 The procedure of signing the agreement is elaborated in more details than the procedure of the contract on entrusting the activity. On the other hand, in view of the prescribed deadlines and stages, the procedure of obtaining the concession right can be of a more longer-term nature than the entrusting of engagement in an activity of public interest through the relevant agreement.

162 General time period for concessions is determined by the Law on Public-Private Partnership and Concessions

efficiency, 3) transparency, 4) equal and unbiased treatment, 5) free market competition, 6) proportionality, 7) protection of environment, 8) autonomy of will and 9) equal status of the parties to the agreement. When conducting the concession granting procedure, the grantor shall also apply, with respect to all participating parties: 1) the principle of free movement of goods, 2) the principle of free provision of services, 3) the principle of non-discrimination and 4) the principle of mutual recognition.

5.1.2.1. Concession granting procedure

The concession granting procedure is carried out by a public body[163].

Every public contract (including public contract with elements of concession – concession deed) is granted through a procedure launched by publishing a public call in Serbian and a foreign language commonly used in the foreign trade. The Law on Public-Private Partnership and Concessions[164] prescribes the concession granting procedure, the deadline for receipt of offers (minimum 60 days)[165], confidentiality and secrecy of data from the submitted offer etc.

5.1.2.2. Concession deed setting procedure

The concession granting procedure is preceded by a procedure determining the proposed concession deed. This procedure begins with developing the draft concession deed. Before developing the proposal for the adoption of the concession deed, the public body nominates an expert team for the preparation of tender documentation which performs: 1) assessment of the concession value; 2) prepares the feasibility study for the granting of concession and 3) undertakes all other activities preceding the concession granting procedure. The motion to adopt the concession deed for the granting of concession on the production of heat is submitted to the assembly of the local self-government unit.

After the adoption of the motion on adopting the concession deed the drafted concession deed becomes a concession deed, containing all elements of the draft, i.e.: 1) subject matter of the concession; 2) reasons for granting the concession; 3) possible revoking of entrusted activities and revoking the right to use property items for performing the entrusted activities; 4) data on the impact of concession activity on environment, infrastructure and other fields of economy, as well as on efficient functioning of technical and technological systems; 5) minimum technical and financial qualifications and experience that the participant in the procedure must fulfill in order to qualify to participate in

163 Pursuant to the Law on Public-Private Partnership and Concessions, the public body is: 1) government authority, organization, institution and other direct or indirect budget beneficiary in term of the laws governing the budget system and the budget, as well as organization for mandatory insurance; 2) public company; 3) legal person performing the activity of public interest provided that one the following conditions is met: 3.1) that more than one half of the managing body(ies) of that legal person are representatives of the public body; 3.2) that the representatives of the public body have more than one half of votes in the managing body of that legal person; 3.3) that the public body performs supervision of the operation of that legal person; 3.4) that the public body has more than 50% of stocks, or share in that legal person; 3.5) that more than 50 % is financed from the public body finances; 4) legal person is established by the public body, which is also engaged in an activity of public interest and fulfills at least one of the conditions from the previous item.

164 The Law on Public-Private Partnership and Concessions is applied to all public contracts which are not exempted and whose estimated value not including VAT is equal to or higher than the lower limit below which public bodies are not obliged to apply the law regulating public procurements, as set in the law regulating the annual budget of the Republic of Serbia.

165 Article 37 of the Law on Public-Private Partnership and Concessions.

the procedure of selection of the concessionaire and negotiations; 6) validity of the concession, including justification of the proposed time period; 7) data on required financial and other means and the time schedule of their investment, manner of payment, presentation of guarantees or other securities for performing concession-related obligations, rights and obligations of the concessionaires towards the customers/ users of services which are the subject matter of the concession and issues related to the complaints by these users, issues of the terms and manners of performing supervision, and prices and general terms of utilizing the assets and performing the activity; 8) data on fees payable by grantor and concessionaire[166]; 9) estimate of the number of job positions and qualified labor related to the execution of concession, if it is proposed to be a component part of the concession deed.

A particularly important role is that of the expert team of the public body, which, besides the activities on the preparation of the concession deed, also has the following tasks in the concession granting procedure: 1) providing expert assistance to the public body in the preparation of necessary analyses, or feasibility studies on granting the concession, in the preparation and elaboration of requirements and tender documentation, rules and conditions for evaluation of the bidders and received bids, as well as criteria for the selection of the bid; 2) reviewing and evaluation of the received bids; 3) defining the draft decision on the selection of the best bid for granting the concession or proposal of the decision to annul the procedure of granting the concession and the justification of these proposals; 4) carrying out other activities necessary for completing the concession granting procedure. The expert team for concessions records minutes about its work and makes other documents that are signed by all team members.

When preparing the feasibility study on concession granting, the public body specifically takes into consideration the public interest, environmental impacts, working conditions, protection of nature and cultural assets, financial effects of the concession on the budget of the Republic of Serbia, or the budget of the autonomous province and the unit of local self-government.

5.1.2.3. Concession agreement concluding procedure

The concession granting procedure starts on the date of publishing the public call in the "Official Gazette of the Republic of Serbia", and ends on the date of final decision on selection of the most favorable bid or making of the final decision on annulment of the concession granting procedure.

166 It is unclear what concession granting fees apply to the grantor.

The tender documentation shall contain: 1) the bid form, 2) contents of the bid, 3) validity of the bid, 4) description of the subject matter of the concession (technical specifications), 5) draft of the public concession agreement, 6) requirements and evidence that the bidders should submit with the bid as proof of their qualification, 7) request for submission of the full list of subsidiaries, 8) deadline for the decision on the selection of the most favorable bid, as well as 9) all other terms and conditions to be met by the bidder.

It should be stressed that if the grantor or other public body is entitled, on the grounds of special regulation, to set the price to be paid by the users to the concessionaire for his services, or to give approval to the concessionaire on the tariff on his public services, such right, as the component part of the provisions of the public concession agreement which is the subject matter of the concession granting procedure, should be an integral part of the tender documentation. This is particularly important in case of the heat production for tariff buyers.

The public call shall include the following data: 1) contact data of the grantor; 2) subject matter of the concession, including the nature and scope of the concessionary business, place of the concessionary business and the concession validity period; 3) deadline for submission of bids, address to which the bids are to be delivered, language and script of the bids; 4) personal, professional, technical and financial conditions that the bidders must comply with, as well as documents proving such compliance; 5) criteria for the selection of the most favorable bid; 6) date of delivery of the notice on the result; 7) name and address of the body in charge to decide on appeals for the protection of rights, as well as data on terms for their submission.

Prior to the commencement of the concession granting procedure, the grantor is obligated to indicate in the tender documentation and pubic call the obligation of the bidder to submit a bid bond (hereinafter referred to as "the bid bond"). The grantor shall determine the amount of the bid bond in an absolute figure. The bid bond shall not exceed 5% of the estimated value of the concession.[167]

The criteria upon which the grantor's decision on the most favorable bid is based are: 1) in case of the economically most favorable bid from the grantor's point of view, the criteria related to the subject matter of the concession, such as: quality, amount of fee, price, technical solution, esthetic, functional and environmental features, price of the service for the end users, operation expenses, cost-efficiency, servicing after the hand-over and the technical assistance, delivery date and deadlines for delivery or for the completion of works or 2) the highest offered concession fee.[168]

167 Other characteristics of the bid bond are determined in Article 38 of the Law on Public-Private Partnership and Concessions.

168 In case of use of natural assets or goods in general use the obligation of the private partner to pay a fee is quite clear. On the other hand, concession fee for the right to perform an activity of general interest, in the specific fee production of thermal energy, which is at the same time the obligation of the private partner, has direct impact on increasing the price of produced thermal energy. There is certainly a need in the future to consider if concession fee for performing an activity of general interest of producing thermal energy should be

The grantor shall make its decision on the selection of the most favorable bid for which it will propose signing of the public concession agreement. The grantor shall not sign the public concession agreement before expiry of the stay, amounting to 15 days from the date of delivery of the decision on the most favorable bid to each bidder.

The deadline for the decision on the most favorable bid must be appropriate and it starts on the date of expiry of the time for submission of bids. Unless otherwise indicated in the tender documentation, the deadline for the decision on the most favorable bid is 60 days.

Decision on the most favorable bid includes: 1) name of the grantor with the number and date of the decision; 2) name of the bidder; 3) subject matter of the concession; 4) nature, scope and the place of performing the concessionary business; 5) validity period of the concession; 6) special conditions to be met by the concessionaire during the concession period; 7) amount of the concession fee or grounds for defining the amount of the concession fee to be paid by the concessionaire or by the grantor[169]; 8) time period within which the most favorable bidder should sign the public concession agreement with the grantor; 9) time period within which the grantor may invite other bidders to sign the concession agreement in case that the most favorable bidder fails to do it, as well as the obligation to extend the period of bid binding and the period of validity of the bid bond; 10) justification of the reasons for selection the most favorable bidder; 11) remedy; 12) signature of the responsible person and the stamp of the grantor.

5.1.2.4. Concession agreement

The concession agreement governs the rights and obligations of the state/government as the grantor and the user of the concession (concessionaire). The agreement specifically sets the time, place and manner of using the concession and the obligation to pay the concession fee.

Concession agreement is concluded by the competent authority of the local self-government unit on behalf and for the account of that local self-government unit, against the prior written approval of the Government[170], in accordance with the Law on Public-Private Partnership and Concessions and the Concession Deed.

a mandatory part of the concession agreement. This is probably not exclusively linked to production of thermal energy, as an activity of general interest, but is also linked to other instances of performing activities of general interest. The need to consider this issue favors the opinion that production of thermal energy should not be an activity of general interest, but a commercial activity, and in such a case public-private partnership for the performing of activity of production of thermal energy would not have the elements of concession.

169 It is unclear what concession granting fees apply to the grantor.

170 This is also confirmed in Article 46, paragraph 3, of the Law on Public-Private Partnership and Concessions. If a public agreement, irrespective of which public body concludes it, contains provisions which in any way whatsoever imply accountability of the Republic of Serbia or have direct impact on the budget of the Republic of Serbia, it is necessary to acquire the approval of the Government. Still, Article 47, paragraph 5 of the said Law prescribes that the Governmental approval of the final draft of the public agreement in which the Republic of Serbia is not a party, does not imply the responsibility of the Republic of Serbia for any conflicts arising from that agreement between the public and private partners.

executed and/ or services to be rendered by the private partner and the conditions for their provision, provided that they were specified in the public call; 2) distribution of risk between the public and the private partner; 3) provisions on the minimum required quality and standard of services and works in the public interest or the users of services or public facilities, as well as the consequences of non-fulfillment of these requirements regarding quality, provided they do not mean the increase or reduction of remuneration to the private partner from the item 9) of this paragraph; 4) scope of exclusive rights of the private partner, if any; 5) possible assistance of the public partner to the private partner in acquiring permits and approvals necessary for the execution of the concession; 6) requirements concerning the special purpose company[171] regarding: legal form, establishment, minimum capital and minimum other resources or human resources, shareholders' structure, organizational structure and business premises, as well as business activities of the company; 7) ownership over the assets related to the project and, if and when necessary, obligations of the parties to the agreement to acquire project assets/means and possibly easement rights; 8) the amount and the method of calculation of the concession fee, if any; 9) remuneration of the private partner, irrespective whether it concerns tariffs or fees for provided facilities or services, method and formula for setting, periodical harmonization and adaptation of these tariffs or fees, possible payment that the public partner is to make to the private partner; 10) mechanisms for increasing or reducing the remuneration (irrespective of the legal form) to the private partner, depending on the good or poor quality of his services/facilities; 11) procedure used by the public partner to consider and approve designs, construction plans and specifications, as well as procedures for testing and final inspection, approval and commissioning of an infrastructure facility, as well as of performed services, if necessary; 12) procedures for changing designs, construction plans and specifications, if unilaterally defined by the public partner and procedures for the approval of possible extension of deadlines and/or increase of the fee (including costs of financing); 13) scope of the private partner's commitment to provide, depending on the case, change of structures or services during the validity of the agreement, in order to meet the change in actual demand of the service, its continuity and its providing to all users under the essentially same conditions, as well as the effects of that on the fee (and costs of financing) for the private partner; 14) possible scope of changes in the public agreement after its conclusion, persons entitled to request it and the mechanism for harmonizing these changes; 15) possible rights of the public partner to approve to the private partner conclusion of the most important sub-contracting agreements or agreements with the daughter companies of the private partner or with other related persons; 16) securities to be provided by the private partner or public partner (including the securities of the public partner to the financiers); 17) insurance coverage that should be ensured by the private partner; 18) available remedies in case that any of the parties fails to fulfill its contractual obligations; 19) degree to which any of the

171 Pursuant to the Law on Public-Private Partnership and Concessions, the special purpose company is a commercial company which can be established by a private, or public partner for the purposes of concluding a public agreement, or for the purposes of implementation of a public-private partnership project

parties can be exempt from responsibility for non exercising or for being in delay in exercising its contractual obligations due to circumstances which are realistically beyond its control (force majeure, change of laws etc.); 20) validity period of the public agreement and the rights and obligations of the parties after its expiry (including the status of the assets when they are handed over to the public partner), procedure of extending the contracted deadline, including its consequences on project financing; 21) compensation and clearing of debts; 22) consequences of harmful change of regulations; 23) reasons and consequences of the premature termination (including the minimum amount to be paid to the public or private partner), penalties and corresponding provisions foreseen in the item 19) of this paragraph; 24) possible limitations of responsibilities of the parties to the agreement; 25) all accessory or related contracts that should be made, including the ones intended for an easier financing of the project costs, as well as effects of these contracts on the public agreement. That particularly covers special provisions allowing the public partner to conclude a contract with the financiers of the private partner and secure the rights to assign the public agreement to the person indicated by the financiers, under specific conditions; 26) competent law and mechanism for settling disputes; 27) circumstances under which the public partner or certain third party may (temporarily or in some other way) undertake management of the facility or other function of the private partner in order to ensure effective and continuous execution of the service and/or facilities being the subject matter of the contract in case of serious failures of the private partner to perform its obligations; 28) taxation and fiscal issues – if any.

Public agreement may be concluded upon obtained approval of the local self-government unit. Having obtained the said approval, the public partner must offer to the selected most favorable bidder the opportunity to sign the public concession agreement within the time period determined in the decision on the selection of the most favorable bid.

The concessionaire or the grantor[172] shall pay monetary fee for the concession in the amount and manner as regulated by the public concession agreement, except if the payment of the concession fee is not economically justifiable. The concession fee is determined depending on the kind of natural resource, type of activity, validity period of the concession, business risk and expected profit, equipment and area of the asset in the public use, i.e. public asset.

The public agreement may be financed by the private partner through a combination of direct capital investments or through borrowing, including without limitations structured or project financing etc. provided by international financial institutions, banks, or third parties (hereinafter: financiers).

Upon prior approval of the public partner, the private partner will be authorized to assign, mortgage, pledge, for a time period and scope in compliance with Law on Public-

172 It is assumed that this is a technical error in the text of the law, because the concessionaire should not be paying the concession fee to itself.

Private Partnership and Concessions, or the law regulating public property, any of his right or obligation from the public agreement or other property related to the project, in favor of the financiers, with an aim to secure payment of any occurred or future debt concerning the construction and financing, or refinancing of the concession.

At the request of the financiers and private partner, the public partner may accept to provide certain reasonably requested securities and to undertake certain responsibilities required by the private partner with respect to any liability from the public agreement, provided that such requests do not violate the distribution of project risks defined in the signed agreement.

It should be stressed that the status of the parties within the concession is protected by the fact that it is prescribed that, in the case of change of regulations after the conclusion of the public agreement, which worsen the position of the private or public partner, the agreement may be changed without limitations, in the scope necessary to bring the private, or public partner in a position where he used to be at the moment of signing the public agreement, provided that the period of validity of the public agreement can by no means be longer than fifty years, with the possibility of extending the period along with selection of the private partner in the manner and under the procedure prescribed in the Law on Public-Private partnership and Concessions.[173]

5.1.3. Investing in a public (utility) company, i.e. company performing utility activity

Investing in a public (utility) company or company performing utility service is carried out in compliance with the Law on Utility Services, the Law on Public Companies and Engaging in Energy Activities and the Company Law[174].

An important element of such an investment is that the assets of such companies are clearly defined. Investment into an economic entity does not only change the structure of ownership over its capital, but can also be reflected in its management structure, as well as the very nature or subject matter of that economic entity.

Pursuant to the Article 69 of the Law on Public Companies, in order to protect the public interest in the public company, the founder gives approval on capital investment, changes of status and the act on the valuation of the state capital, as well as on the program and decision on ownership transformation, and other decisions in compliance with the law regulating performing of activity of public interest and of the founding act.[175]

173 Article 52 of the Law on Public-Private Partnership and Concessions.
174 Company Law (Official Gazette of RS, No. 36/11, 99/11, and 5/15).
175 Article 76 of the Law on Public Companies prescribes that there are exceptions from application of provisions of this law on the legal position of public companies and other forms of organizations which perform activities of public interest, when the legal position of these entities is determined by special laws or confirmed international agreements.

5.2. License[176,177]

License is an administrative act on fulfillment of requirements prescribed by the Energy Law and the Rulebook on Licenses for Performing Energy Activity and Certification.[178]

The license is issued by the Energy Agency of the Republic of Serbia (hereinafter: the Agency), except in cases of activity of production, distribution and supply of thermal energy. The license is issued within 30 days of filing the application, provided that all prescribed requirements are fulfilled. An appeal can be lodged against the decision on issuing the license within 15 days and it is to be filed to the ministry in charge of energy.

For energy entities performing energy activities by means of plants, the license is issued for the performing of the following energy activities: 1) production of electricity, 2) electricity and heat co-generation, or 3) production of thermal energy. Licenses for the first two activities are issued by the Energy Agency of the Republic of Serbia. In the case of production of thermal energy, the license is issued by competent authorities of units of local self-government.

The license is the last in the series of legal acts necessary in order to perform energy activities. The license is mandatory for persons who already possess a plant, and in case of persons who perform the activity of production of thermal energy such a person must also possess the right to perform this activity obtained on the basis of the decision on founding, the contract entrusting the performance of activity of public interest or on the basis of a concession agreement.

The requirements for receiving the license are as follows: 1) that the applicant is registered for engaging in the energy-related activity for which the license is issued; 2) that the operation permit for the facility is issued, except for facilities for which, under the prevailing regulations, no operation permit is required; 3) that the energy structures and other equipment, installations or plants required for performing the energy activity meet conditions and requirements set by the technical regulations, energy efficiency regulations, fire and explosion protection regulations, as well as regulations on environmental protection; 4) that the applicant meets prescribed conditions regarding the professional staff for performing technical management, operation and maintenance of energy facilities, i.e. conditions regarding the number and expertise of the employed persons for performing activates of maintenance of energy facilities, as well as the activities of operators in these facilities ; 5) that the applicant possesses financial means required for engaging in energy-related activities; 6) that the plant manager, or members of the management have no valid sentence for criminal offences related to economic activities; 7) that the applicant has not been prohibited to engage in that activity or that the legal consequences of

176 After acquiring the right to engage in the electricity production, energy entity producing electricity should contact the ministry in charge of water management, or the secretariat in charge of water management (if he is in the territory of Autonomous Province of Vojvodina) for setting the fee for the use of surface, underground and mineral waters, with a request for calculation of the fee for the use of water. This fee has been set only for the public power industry.

177 License to perform the energy activity is one of the requirements necessary for acquiring the status of privileged producer of electricity and the status of producer of electricity from renewable sources. For more details see section 4.2 of this Guide

178 The Rulebook on Licenses for Performing Energy Activity and Certification (Official Gazette of RS, No. 87/15).

the imposed measure have ceased; 8) that the applicant has evidence on the legal grounds for the use of energy facility in which the energy–related activity is being performed; 9) that the applicant is not subject to any bankruptcy or liquidation procedure. Apart from the above requirements, the applicant for performing of activity of general interest must be founded for the purpose of performing such activity or that it performs such activity as delegated (entrusted) activity in line with the prevailing law, including private-public partnership.

License for electricity generation, combined heat and power production and production of thermal energy is issued for a period of 30 years.[179] At the time of license issuance a fee shall be paid to the Agency. In addition, an annual remuneration shall be paid to the Agency for the possession of license.[180] In case of the license for the production of heat, these fees and remunerations will depend on the decisions of the competent authorities of the local self-government units.

In case that the license holder ceases to fulfill any of the requirements prescribed for granting the license, or fails to meet any other regulations related to the performance of energy-related activity, the license can be suspended or permanently revoked.

Exceptionally, the license shall not be required for: 1) production of electricity in plants of approved capacity of connection of up to 1 MW or less, except when the same energy entity is engaged in producing electricity in two or more energy facilities of total capacity exceeding 1 MW, irrespective of whether they are connected to the system via one or several connections; 2) production of electricity exclusively for one's own needs; 3) production of thermal energy in facilities of total capacity up to 1 MWt and production of thermal energy exclusively for one's own use; 4) combined heat and electricity power production in thermal plants-heating plants of up to 1 MW of total approved electrical capacity of the connection and 1 MWt of total heat capacity, as well as electricity and heat co-generation exclusively for one's own use.

The Rulebook on Licenses for Performing Energy Activity and Certification defines forms to be used for filing requests for the issuing of licenses for performing energy activity for production of electricity. For production of electricity there are different forms to be used depending on the type of facility for electricity generation.[181]

179 Article 20, para 2, of the Energy Law.

180 License fee is set by the following acts of the Energy Agency: Criteria and standards for determining the amount of fee for the license on engaging in energy-related activities and the Decision on the value of the coefficient for the calculation of the fee for the license on engaging in energy activity for the particular year, www.aers.org.

181 The forms for requests for issuing of energy license from the Rulebook on Requirements and Content of Requests for Issuing, Amending and Revoking the Licenses for Performing of Energy Activity and Maintaining the Registry of Issued and Revoked Licenses: 1) General Form OO1 – when the request for issuing of license is submitted to the Agency or General Form OO2 – when the request for issuing of license is submitted to the authority of unit of local self-government; 2) Form PO 1.5 – Request for issuing of license for production of electricity for other power plants, 3) Form PO 2.1 with Form PO 2.2 - Request for issuing of license for power and heat co-generation with data on emission of gasses and solid particles; 4) Form PO 18 - Request for issuing of license for production of thermal energy.

Along with the request for the issuing of the license to perform energy activity, the following shall be attached: 1) the act of establishment and excerpt from the registry according to the regulation on company registration, and the act on entrusting the performance of the activity of general interest or the concession agreement; 2) the operation permit or the act issued by competent authority confirming that operation permit is not required; 3) report by competent inspector stating that energy facilities and other devices, installations or plant necessary for performance of energy activity fulfill the conditions and requirements prescribed in technical regulations, regulations on energy efficiency, fire-fighting and environmental protection; 4) evidence of fulfillment of financial requirements for performance of energy activity, specifically: 4.1) the statements of competent authority on fulfillment of all tax obligations; 4.2) business program or plan for the year in which the request for the issuing of license is filed; 4.3) confirmation by commercial bank on turnover and average daily balance of assets on all current accounts of the applicant for the two preceding years, 4.4) balance sheet and profit and loss statements for the two preceding years 4.5) standardized report on the applicants creditworthiness: BON 1 – complete report on indicators of creditworthiness, BON 2 – report on financial standing and business operations; 5) certificate by competent authority that the director and the members of the management body have not been sentenced by final court decisions for criminal offences related to business activity; 6) document by competent authority confirming that the applicant has not been banned from performing business activity or that the legal implications of pronounced measures have ceased; 7) the legal basis for the use of the energy facility in which the energy activity is performed; 8) act by competent authority that no bankruptcy or liquidation proceeding shave been initiated; 9) statement by applicant that he has not been the owner and has not had shares and has not been employee in any energy facility from whom the license has been permanently revoked, which statement shall include the same statement for spouses, children and relatives of the first order irrespective of degree of kinship or distant relatives to the second degree of consanguinity; 10) evidence of payment of administrative tax (if the applicant has been performing its activity for less than two years, the items 4.3 – 4.5) shall be changed and shall read: 4.3) confirmation by commercial bank on turnover and average daily balance of assets on all current accounts of the applicant since the date of opening the current account until the date of submitting the request to the commercial bank, 4.4) balance sheet and profit and loss statements for the preceding year, or the opening balances in case that the energy entity is just commencing its activity; 4.5) a certificate by the commercial bank or the mother company that it can make available to the applicant the necessary financing or other securities in line with the scope of planned activities).

The licenses are not transferable.

The Energy Law prescribes that units of local self-government shall issue licenses for performing of energy activities of production, distribution and supply of thermal energy. The competent authority of the unit of local self-government shall maintain records of producers of thermal energy of capacity from 0.1 MW to 1 MW. [182]

A Registry Book of issued and revoked licenses shall be maintained, and this registry book shall be maintained as a public registry in form of a registry book (printed format) and as a single database (electronic format).

The Registry Book of issued and revoked licenses shall be available at the website of the Energy Agency of the Republic of Serbia or the competent authority of the unit of local self-government, and access and insight into the register can be exercised in the official premises of the Energy Agency of the Republic of Serbia or the competent authority of the unit of local self-government.

182 Article 361 of the Energy Law.

6.

ACQUIRING THE STATUS OF (PRIVILEGED) ELECTRICITY PRODUCER FROM RENEWABLE SOURCES

6. ACQUIRING THE STATUS OF (PRIVILEGED) ELECTRICITY PRODUCER FROM RENEWABLE SOURCES

6.1. Status of electricity producer using a plant

The Energy Law prescribes the possibility of acquiring different types of status for producers of electricity in plants using ground water sources. Energy entities and natural persons can acquire the status of preliminary privileged electricity producer, the status of privileged electricity producer, and the status of producer from renewable energy sources.

Energy entities possessing plants may acquire the status of preliminary privileged producer of electricity, or status of producer from renewable energy sources, provided that: in the production process they use renewable energy sources, produce electricity in newly built or reconstructed plants with built-in unused equipment and if they fulfill other requirements prescribed by the Energy Law and the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources[183]. There is one additional limitation for natural persons with respect to acquiring the status of privileged electricity producer, status of preliminary privileged producer and the status of producer from renewable energy sources, and it is that such status can be acquired for only one plant using renewable sources, in this specific case the plant of installed capacity up to 30 kW.

The Energy Law stipulates that privileged electricity producers shall be entitled to: 1) incentives, such as: 1) the obligation of electricity purchase from a privileged producer, 2) the prices at which such electricity shall be purchased, 3) the period of validity of the obligation to purchase the electricity; 4) the taking over of balance responsibility, 5) other incentives prescribed by a by-law adopted on the basis of the Energy Law, as well as to other laws and regulations governing taxes, customs duties and other fees, environmental protection and energy efficiency.

Incentives shall be available for energy entities and natural persons who have acquired the status of privileged producer and status of preliminary privileged producer in line with the Energy Law and by-laws adopted under this law[184].

The privileged producer and the preliminary privileged producer shall exercise the right to incentives as of the coming into effect of the power purchase agreement signed with the guaranteed buyer, in line with the Energy Law and by-laws adopted under this law.

The Energy Law also regulates the procedure for the filing of applications for the status of preliminary privileged producer of electricity, the status of privileged producer of electricity and the status of producer from renewable sources. On the basis of the Energy Law, the Government has adopted the Decree on Requirements and Procedure for Acquiring

183 The Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary privileged Electricity Producer and Electricity Producer from Renewable Energy Sources (Official Gazette of RS, No. 56/16).

184 The Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary privileged Electricity Producer and Electricity Producer from Renewable Energy Sources, the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy (Official Gazette of RS, No. 56/16) and the Decree on Power Purchase Agreement (Official Gazette of RS, No. 56/16).

the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources[185], the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy[186] and the Decree on Power Purchase Agreements[187]. The Government has also adopted the Decree on Fees for Incentives for Privileged Electricity Producers[188], and the Decree whereby it regulated the amount of incentives fee for 2016.[189] The fee is to be set every year.

Energy entities and natural persons cannot at the same time have the status of producer from renewable energy sources and the status of privileged producer for the same plant.

The Energy Law[190] prescribes that plants which fulfill the prescribed requirements may, prior to acquiring the status of privileged electricity producer, acquire the status of preliminary privileged electricity producer.

The Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources prescribes certain obligations of the privileged electricity producer, preliminary privileged electricity producer and electricity producer from renewable energy sources.[191]

6.1.1. Acquiring the status of preliminary privileged electricity producer

Energy entities and natural persons can, prior to acquiring the status of privileged producer, acquire the status of preliminary privileged electricity producer, provided that:

1) They can begin constructing the plant for which it is possible to acquire the status of privileged electricity producer[192], according to the Law on Planning and Construction;
2) They have obtained the financial security instrument[193], in case that they do not acquire the status of privileged electricity producer for a plant of installed capacity exceeding 100 kW;
3) It is visible from the technical documentation that the planned plant can acquire the status of privileged electricity producer, as regulated in more detail by Article 5, item 3) of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

185 The Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary privileged Electricity Producer and Electricity Producer from Renewable Energy Sources (Official Gazette of RS, No. 56/16).
186 Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy (Official Gazette of RS, No. 56/16).
187 The Decree on Power Purchase Agreement (Official Gazette of RS, No. 56/16).
188 The Decree on Fees for Incentives for Privileged Electricity Producers (Official Gazette of RS, No. 12/16).
189 The Decree on the Amount of Special Fee for Incentives for the Year 2016 (Official Gazette of RS, No. 12/16).
190 Article 71 of the Energy Law.
191 Articles 27-29 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.
192 Requirements from Article 70, para 1 and 2, of the Energy Law.
193 Financial security instrument is determined in more detail in Article 7 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources (Official Gazette of RS, No. 56/16), in form of a money deposit or bank guarantee. The webpages of the ministry in charge of energy (http://www.mre.gov.rs/energetska-efikasnost-obnovljivi-izvori-procedure.php) states the number of the account to which deposits are paid and the model bank guarantee.

Application for acquiring the status of preliminary privileged electricity producer shall be filed to the ministry in charge of energy by using the form O-1[194]. Along with the applications, the following attachments should be provided: 1) for legal persons or entrepreneurs: excerpt of registered data (business name, legal form, registered seat, business activity, tax identification number, corporate identification number); 2) for a natural person: a photocopy of the identity card or citizenship certificate or a photocopy of the passport if the applicant is a foreign national; 3) final and enforceable building permit or final and enforceable approval for construction, unless for the power plant it is not necessary to obtain decision of the competent authority for construction, in which case information on the location not older than 6 months; 4) copy of excerpt of design for the purpose of acquiring the building permit, or the preliminary design or other technical documents on the basis of which the power plant is built, in accordance with the law governing the planning and construction of structures; 5) document (opinion, conditions, etc.) about the possibility for connection to the distribution or transmission system issued by the operator of the transmission or distribution system obtained in previous procedures for purpose of issuance of the building permit and preparation of technical documentation for the plant; 6) confirmation of payment of the cash deposit, or the original copy of the bank guarantee obtained in accordance with the provisions of this Decree; 7) evidence of payment of administrative tax.[195/196]

The status of preliminary privileged producer shall be valid for a period of three years of the date of the decision on acquiring the status of preliminary privileged electricity producer becomes enforceable.

The status of preliminary privileged producer can be extended for the following reasons: 1) only once by a maximum of one year, provided that the application for extension provides evidence that the plant has been constructed[197] or 2) for a period necessary to remove consequences of unpredictable events[198] which prevent the preliminary privileged producer to acquire the status of privileged producer according to the Energy law. The period needed to remove consequences of unpredictable events cannot be longer than the period of validity of the status of preliminary privileged producer.

This application can be filed at the latest 30 days before the expiry of the validity of the privileged producer status. The decisions regarding the application is made by the competent ministry in charge of energy within 30 days of the date of filing the application. Appeals can be lodged against such a decision to the Government within 5 days of receipt thereof.

194 Form O-1, version of 16 June 2016, www.mre.gov.rs, (Request for issuance of decision on granting the status of preliminary privileged electricity producer).

195 Article 21 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

196 The webpages of the ministry in charge of energy (http://www.mre.gov.rs/energetska-efikasnost-obnovljivi-izvori-takse.php) contains the model payment order for this tax.

197 Article 23 of the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy prescribes the evidence to be attached to the application for extension of the validity of status of preliminary privileged producer when the plant is constructed.

198 Such unpredictable circumstances are regulated in more detail in Article 15 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources, and documents attached as evidence of unpredictable circumstances are prescribed by Article 24 of this Decree.

The status of preliminary privileged producer can be revoked.[199]

The preliminary privileged producer can exercise the right to incentive measures according to the Energy Law, the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy, the signed power purchase agreement with guaranteed supplier under suspended conditions[200].

The guaranteed supplier is obliged, at the request of the preliminary privileged producer, to sign the power purchase agreement with suspended condition within 30 days of the date of filing the request. The preliminary privileged producer who, according to the Energy Law (Official Gazette of RS, No. 145/14), acquires the status of privileged producer is entitled only to such incentive measures as were valid on the date of filing the application for such status of temporary privileged producer.[201]

The rights and obligations of the preliminary privileged producer with respect to using incentives during the trial run of the plant are prescribed by the bylaws adopted under the Energy Law[202].

6.1.2. Acquiring the status of privileged electricity producer

Energy entities and natural person can acquire the privileged electricity producer status (hereinafter: privileged producer) for a plant or a part thereof, provided that: 1) in the process of power production they use renewable energy sources and fulfill requirements on installed capacity; 2) it is built and fit for use according to the law regulating construction; 3) it has ensured the special measurement, separate from measurement in other technological processes, to measure the taken and delivered power from and to the system, with clearly marked measuring devices installed according to the Energy Law and codes of operation of the transmission or distribution system; 4) it produces power in newly built or reconstructed plants with installed unused equipment; 5) it holds a license to perform energy activity according to the Energy Law; 6) it also fulfills other requirements according to the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

The above decree prescribes that for the hydrogeothermal plant the energy value of the primary geothermal energy for electricity production at annual level shall be not less than 90% of the total energy value of used primary energy.[203] It is also prescribed that additional fuel can be used, and this additional fuel can be fossil fuel, waste technological gas with organic fraction, waste sludge from wastewater treatment plants or other renewable energy source. [204]

199 The status of preliminary privileged producer shall be revoked if: 1) the decision granting the status was made on the basis of false data; 2) it does not fulfill the obligations prescribed by the Energy Law and acts adopted on the basis of this law; 3) the acts based on which the status of privileged producer have been suspended, annulled or put out of effect by enforceable decision; 4) it does not maintain the financial security instrument during the validity of the privileged producer status.

200 Elements of the Power Purchase Agreement are regulated in more detail by the Decree on Power Purchase Agreements (Official Gazette of RS, No. 56/16), and the model agreement is available at www.mre.gov.rs.

201 Article 77, para 3, of the Energy Law.

202 The Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy (Official Gazette of RS, No. 56/16).

203 Article 27 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

204 Article 5 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

The privileged electricity producer status is issued for installed capacity of the plant or part thereof which is equivalent to the total approved power approved by the system operator for connection of the plant or part thereof to the distribution or the transmission system.[205]

A producer performing power generation activity in more than one plant using renewable sources which fulfill the criteria for acquiring of the privileged electricity producer status under the said decree, shall file a request for acquiring the privileged electricity producer status for each plant separately.

A producer performing power generation activity in a plant consisting of different generation units, may acquire the privileged status only for such production units which fulfill the requirements prescribed by the Energy Law and the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

It is prescribed that at points of connection to the transmission and distribution systems of the production unit for which the application for status of privileged producer is submitted there must be special measuring devices installed to measure electricity with its characteristics according to the Energy Law and codes of operation of the distribution and transmission systems. Apart from measuring devices, these production units also must have marked measuring points at which to measure total produced heat, return heat and consumption of primary energy.

The application for the privileged producer status shall be filed to the ministry in charge of energy by using the Form O-2.[206]

Application for acquiring the status of privileged electricity producer shall enclose evidence of fulfillment of requirements, specifically: 1) for legal persons or entrepreneurs: excerpt of registered data (business name, legal form, registered seat, business activity, tax identification number, corporate identification number); 2) for a natural person: a photocopy of the identity card or citizenship certificate or a photocopy of the passport if the applicant is a foreign national; 3) operation permit in compliance with the law regulating planning and construction or certificate by competent authority that the plant or part thereof does not require an operation permit; 4) for reconstructed plants: evidence of plant reconstruction stating the date of construction and start of operation of the reconstructed plant, in cases when evidence from item 3) does not demonstrate that the plant is reconstructed; 5) approval for connection of the plant and diagram of measuring devices; 6) evidence that the installed equipment has not been used before, such as: data on year of production, invoices for procurement of works and equipment, contract with contractor/supplier, producer's/supplier's declaration or other similar evidence showing beyond doubt that the installed equipment has not been used before; 7) certified statement of the responsible person of the producer stating under material and criminal liability that the installed equipment as not been used before; 8) a license to perform energy producing activity according to the Energy Law; 9) evidence of paid administrative tax.[207,208]

205 Article 3, para 2, of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

206 Form O-2, version of 16 June 2016 (Request for issuance of decision on granting the status of privileged electricity producer), www.mre.gov.rs.

207 Article 20 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

208 The webpages of the ministry in charge of energy (http://www.mre.gov.rs/energetska-efikasnost-obnovljivi-izvori-takse.php) contains the model payment order for payment of this tax.

The privileged producer status is granted by the ministry in charge of energy by its decision which is to be made within 30 days of filing the application for acquiring the privileged producer status, provided that all requirements are fulfilled. Appeals can be lodged against such a decision to the Government within 15 days of receipt thereof.

The privileged electricity producer is obliged to notify the ministry in charge of energy of all changes of data from the prescribed form, i.e. all changes of the planned technological process, types of primary fuels and other characteristics of plant which are relevant for the acquisition of the privileged electricity producer status according to the Energy Law and the said Decree, not later than 30 days prior to commencement of planned works.

A special obligation of the privileged electricity producer is to keep records on the consumed primary fuel (basic and auxiliary fuel) with data on the quantity and average lower calorific values of the consumed fuel.[209]

The status of privileged producer can be revoked if: 1) the decision granting the status was made on the basis of false data; 2) it does not fulfill the obligations prescribed by the Energy Law and acts adopted on the basis of this law; 3) the producer produces electricity contrary to conditions under which the status of privileged electricity producer was granted; 4) if the acts based on which the status of privileged producer status was granted have been suspended, annulled or put out of effect by enforceable decision.

The Ministry in charge of energy shall keep the register of privileged electricity producers, preliminary privileged producers, and producers from renewable sources. The register shall consist of the main and auxiliary registries. The webpages of the ministry[210] shall, within the main registry, separately present the data on producers who have the status of privileged electricity producers, preliminary privileged producers, and producers from renewable sources, and separately data on producers whose status has expired. The auxiliary registries shall contain data relevant to maintaining of data and transparency of inscription of data on wind and solar plants into the main registry. According to the prevailing regulations, the ministry shall update data in the main registry without delay when finding out about reasons for updating and shall present the most recent updating date visibly at its webpage. The auxiliary registry shall be updated and published once a month.

6.1.2.1. Incentives for electricity producers in hydrogeothermal plants

Incentives for privileged electricity producers are prescribed by the Energy Law and the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy[211] and they include: 1) the incentive period lasting for 12 years, starting from the day of taking the reading of electricity in the plant or part thereof, on the day following the day of granting the status of privileged electricity producer, except when the duration of the period of incentives

209 The Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer also prescribes the manner of providing evidence regarding the accuracy of these records: 1) copies of invoices for supplied fuel with accompanying documents, and in case that the plant owner has its own fuel production plant – measured values of utilized volume of each fuel, registered through installed and sealed measuring-regulation devices for continued metering of utilization of each type of fuel which is not purchased from outside; 2) test results for lower caloric value of the representative sample, for each fuel delivery, made by accredited institutions, and in case of using fuel produced by electricity producer itself – test results of representative samples of each type of fuel performed once in three months.

210 http://mre.gov.rs/doc/registar%2023.06.2016.html

211 The Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy (Official Gazette of RS, No. 56/16).

is otherwise determined by the above Decree or power purchase agreement; 2) the incentive feed-in tariffs[212] at which the privileged and preliminary privileged producers sell the relevant amount of produced power to the guaranteed supplier during or before the period of incentive measures; 3) taking over of balancing responsibility at the point of taking-over the electricity of the privileged producer by the guaranteed supplier during the incentive period; 4) taking over the costs of balancing the privileged producer by the guaranteed supplier during the incentive period; 5) free access to the power transmission and distribution systems.

Incentive measures can also be prescribed by regulations governing taxes, customs and other duties, or subsidies and other incentives, environmental protection and energy efficiency.

Preliminary privileged producer is entitled, as of the date of power purchase agreement until the expiry of the incentive period, to exercise the said incentive measures.[213]

The Energy Law[214] and the Decree on Power Purchase Agreements[215] regulate in more detail the contents and other provisions of power purchase agreements. The model agreement is available at the webpage of the ministry in charge of energy.[216]

Along with the request for the signing of this agreement, which is submitted in writing, the privileged producers shall submit to the guaranteed supplier the decision granting the status of privileged electricity producer, and the preliminary electricity producer the decision of acquiring the status of preliminary electricity producer, as well as other documents stipulated in the power purchase agreement. For parts of plants no separate agreement is signed, but an annex which makes up an integral part of the power purchase agreement for the plant to which the part belongs.

The guaranteed supplier is obliged to sign an agreement with the privileged producer and the temporary privileged producer within 30 days of receipt of the request. The privileged producer and the temporary privileged producer have the right to terminate the agreement before expiry of the incentives period and are obliged in such a case to notify in writing the guaranteed supplier at least 30 days prior to termination. An agreement terminated by the privileged producer in this manner cannot be signed again for the same plant of the privileged producer.

The Energy Law and the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy prescribe the obligations of the privileged electricity producer: 1) to sell the total amount of produced electricity exclusively to the guaranteed supplier; 2) to maintain records of utilized energy sources; 3) to submit operation plans to the guaranteed supplier, when the installed capacity of the plant exceeds 5 MW and to fulfill other obligations towards the guaranteed supplier set forth in the power purchase agreement; 4) to notify

212 The incentive feed-in tariff is a form of operational state aid to privileged and preliminary privileged power producers according to state aid rules aimed at promoting power generation from renewable energy sources and from high-efficiency co-generation of power and thermal energy.

213 Article 3, para 2, the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy.

214 The Energy Law prescribes the mandatory elements of the power purchase agreements: 1) type and installed capacity of the privileged producer's plant; 2) place of taking-over the energy into the system; 3) place and method of measurement; 4) the price of electricity and the conditions for price change; 5) the method and dynamics of calculations, invoicing and payment; 6) interest rate in case of late payments; 7) payment security instruments; 8) obligation of guaranteed supplier with respect to taking over the balancing responsibility and of the privileged producer with respect to planning the operation of the plant; 9) incentive measures during the trial run period, when the agreement is signed by the preliminary privileged producer; 10) and other elements in line with the by-laws adopted under the Energy law.

215 The Decree on Power Purchase Agreements (Official Gazette of RS, No. 56/16).

216 http://mre.gov.rs/dokumenta-efikasnost-izvori.php

the ministry if the guaranteed supplier does not fulfill obligations from the power purchase agreement; 5) to notify the ministry of actions by state authorities, holders of public powers, authorities of autonomous province or authorities of units of local self-government which are relevant to the exercising of obligations or exercising of rights with respect to incentive measures.

The Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy prescribes the incentive feed-in tariffs which differ depending on the type of plant and its installed capacity and the maximum effective operation hours.

In case of geothermal plants there is only one privileged category, as follows:

Type of plant	Installed capacity P (MW)	Incentive feed-in tariffs (c€/kWh)	Maximum effective operation hours[217] (h)
Geothermal plant	-	8.2	8600 per year of the incentive period[218]

The same decree prescribes maximum amount of power produced[219] and the feed-in tariff[220] of electricity. It is necessary to make a distinction between the incentive feed-in tariff and the purchase price of electricity. Namely, this decree prescribes the obligation of the privileged producer to sell the total amount of produced electricity exclusively to the guaranteed supplier, and in case that such a producer produces more energy than the quantity for which incentive feed-in tariffs are agreed, that surplus shall be governed by provisions on purchase prices for electricity produced by the privileged producer. Under this rule, until the expiry of every year within the incentive period, the additional electricity on top of the maximum produced electricity shall be purchased by the guaranteed supplier from the privileged producer at the purchase price which is 35% of the incentive feed-in tariff.

The privileged electricity producer for reconstructed plants can exercise the right to incentive feed-in tariffs in the amount of 70% of the prescribed total price, while the preliminary privileged producer as of the beginning of the incentive period exercises the right to incentive feed-in tariffs in the amount of 50% of the prescribed total price.

Incentive feed-in tariffs are expressed in (c€/kWh) and rounded to two decimal points.

The Decree on Incentive Measures for production of electric energy from renewable

217 The maximum effective time of operation of the plant or a part of the plant is the prescribed effective time of operation which is calculated for a year of the incentive period which is equivalent to the amount of produced power for which the privileged producer is entitled to incentive feed-in tariffs.

218 A year of the incentive period is a part of the incentive period lasting for one year, where the first year of the incentive period begins as of the first day of the incentive period.

219 The maximum produced electricity which can be purchased at incentive feed-in tariffs is calculated as: $E_{el\ max} = P * t_{max}$, where: $E_{el\ max}$ – maximum produced electricity for which the privileged producer is entitled to incentive feed-in tariffs by the guaranteed supplier at tariffs stated in the above table, expressed in kWh; P – installed capacity of the plant or part thereof, expressed as kW; t_{max} – maximum effective time of operation as stated in the table, expressed in h.

220 The purchase price is the price of electricity at which the guaranteed supplier purchases from the privileged producer the additional produced electricity above the maximum produced electricity for the year within the incentive period or by a quarter of the incentive period.

energy sources and from high-efficiency combined production of electric energy and thermal energy prescribes the formula to be used for regular annual adjustments of incentive feed-in tariffs due to inflation in the Euro-zone. Such adjustments are made in February every year, starting from the year 2017.

This Decree shall be in effect until 31 December 2018. The transitional provisions stipulate the rules for privileged producers who have already signed power purchase agreements for power produced from renewable sources and the protection of their rights.

The reading of the electricity meters at the location of the privileged producer who has signed a power purchase agreement with the guaranteed supplier shall be performed every first day of the month, free of charge, by the transmission and distribution system operator and at the latest by the fifth day of the month such read values for the preceding month shall be notified to the privileged producer and the guaranteed supplier. The operator of the transmission and the distribution system shall be obliged, prior to signing the agreement[221] to read the meter and notify the read values to the privileged producer and the guaranteed supplier within three days of the day of receiving the request of the privileged producer.

The Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy prescribes numerous provisions in order to achieve legal certainty for all parties related to exercising the incentive measures for power production from renewable sources.

The right to incentive measures shall cease as of the moment when the status is lost, or the power purchase agreement is suspended or terminated under conditions stated in the power purchase agreement and according to other prescribed conditions. This right shall cease irrespective of the will of the guaranteed supplier and the privileged producer in cases and under conditions stipulated in the power purchase agreements.[222]

6.1.3. *Status of electricity producer from renewable sources*

Apart from the status of privileged electricity producer and the status of preliminary privileged electricity producer, there is also the status of electricity producer from renewable sources.

The energy entity may acquire the status of electricity producer from renewable sources (hereinafter: producer from renewable sources) for the specific plant provided that: 1) in the process of production the plant uses renewable energy sources; 2) the plant is constructed and fit for operation according to the law on construction; 3) the plant has facilities for measurement, separate from measurement in other technological processes, intended to measure the supplied and taken over electricity or thermal energy into the system; 4) the producer has a license to perform the specific activity according to the Energy Law; 5) it also fulfills other requirements prescribed by the Energy Law and the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

221 The exception to this rule is when the power producer from renewable sources, who has acquired the preliminary power producer status and then signed the power purchase agreement with suspended condition – with the guaranteed supplier, in which case the power purchase agreement was already signed before the plant was already constructed and the measuring instrument installed. In such cases the above described reading of the meter shall be done at the time when the agreement comes into use or when the conditions suspending the implementation of the agreement cease to exist, which is the acquisition of the privileged power producer status.

222 Article 13 of the Decree on Incentive Measures for production of electric energy from renewable energy sources and from high-efficiency combined production of electric energy and thermal energy.

The status of electricity producer from renewable sources can be acquired also by a natural person which produces electricity from renewable sources for only one plant of installed capacity up to 30 kW under the conditions prescribed by the Energy Law. Energy entities and natural persons cannot at the same time have the status of producer from renewable sources and the status of privileged producer for the same plant.

The request for acquiring the status of producer from renewable sources shall be filed to the ministry in charge of energy using the Form O-3[223], along with documentation whose content is prescribed by the Energy Law and the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

The request for status of producer from renewable sources shall attach the following: 1) for legal person or entrepreneur: excerpt of registered data (business name, legal form, registered seat, business activity, tax identification number, corporate identification number); 2) for a natural person: a photocopy of the identity card or citizenship certificate or a photocopy of the passport if the applicant is a foreign national; 3) operation permit in compliance with the law regulating planning and construction or certificate by competent authority that the plant or part thereof does not require an operation permit; 4) approval for connection of the plant and diagram of measuring devices; 6) a license to perform energy producing activity according to the Energy Law; 9) evidence of paid administrative tax.[224]

The status of producer from renewable sources is granted by the ministry in charge of energy within 30 days of filing of the application.

Appeals against the decision can be lodged to the Government within 15 days of receipt thereof.

Producer from renewable sources has the right to receive the guarantee of origin and has prior right to sell the produced energy to the transmission and distribution network, except in cases when the security of supply or safety of operation of the transmission or distribution system is at risk.[225]

The status of producer from renewable sources shall be revoked if: 1) the decision granting the status was made on the basis of false data; 2) it does not fulfill the obligations prescribed by the Energy Law and acts adopted on the basis of this law; 3) the producer produces electricity contrary to conditions under which the status of producer from renewable sources was granted; 4) if the acts based on which the status of producer from renewable sources have been suspended, annulled or put out of effect by enforceable decision.

The status of producer from renewable sources shall be terminated as of the day of enforceability of decision on revoking the status of producer from renewable sources or

223 Form O-3, version of 16 June 2016 (Request for issuance of decision on granting the status of power producer from renewable energy sources), www.mre.gov.rs.

224 Article 25 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources.

225 Article 162, para 1, of the Energy Law.

the date of the decision granting such status is no longer in effect, as well as on the basis of statement of the producer requesting the termination of the decision granting it such status of producer from renewable sources.

6.2. Acquiring the status of privileged producer of thermal energy and incentive measures

The Energy Law prescribes that privileged producers of thermal energy are such producers who in the process of producing thermal energy use renewable energy sources and fulfill energy efficiency requirements.

The Energy Law prescribes the possibility of providing incentive measures and conditions for producers of thermal energy. Units of local self-government prescribe incentive measures and conditions for acquiring the status of privileged producer of thermal energy, the criteria for fulfillment of such requirements and the manner and procedure for acquiring such status. At the time of writing of this Guide such acts were not yet adopted.

Units of local self-government shall maintain registries of privileged producers of thermal energy which shall contain particularly data on plants for production of thermal energy, locations where such plants are located, the installed capacity of the plant, time planned for exploitation, conditions for construction and operation of such plants, the type of primary fuel used, and entities who perform energy activity of producing thermal power in such plants.

At the request of the ministry, and at least once a year, the unit of local self-government shall inform the ministry of the data contained in the registry, using a form prescribed by the minister in charge.

The competent authority of the unit of local self-government from the territory of the autonomous province shall submit to the provincial authority in charge of energy the data from the registry by end of June of the current year from the situation as of 31 December of the preceding year.

7.

SPECIAL PROCEDURES – GUARANTEE OF ORIGIN

7. SPECIAL PROCEDURES – GUARANTEE OF ORIGIN[226]

Guarantee of origin is a document the exclusive function of which is to prove to the end buyer that the given share or quantity of energy has been generated from renewable energy sources, as well as from combined heat-and-power generation plants with a high efficiency coefficient of the primary energy. The Guarantee of origin is issued exclusively to producers generating energy from renewable energy sources who have acquired the status of electricity producer from renewable sources[227].

The guarantee of origin for energy produced from renewable energy sources shall contain in particular: 1) name, location, type, and power of the production capacity; 2) date of commissioning of the facility or part thereof; 3) data on transmission system operator in charge of issuing the guarantee of origin; 4) date of commencement and finalization of production of energy for which the guarantee of origin is issued; 5) information from the written statement of the applicant as to whether an investment backing from national funds has been used for construction of the production capacity and the type of such backing; 6) information whether the feed-in tariff was used; 7) date and country of issuing and company identification number; 8) the unique identification number of the guarantee of origin.

For power produced in a generating plant which is at the same time a facility for combined heat and power production with a high efficiency of primary energy – guarantee of origin shall also contain: 1) lower calorific value of the fuel that is used for generation of electricity for which the guarantee of origin is issued; 2) purpose for which heating energy produced in a plant for combined heat and power production is used for which the guarantee of origin is issued; 3) the degree of effective use of the plant at annual level.

Applications for the issuing of guarantees of origin shall be submitted by energy entities which have acquired the status of electricity producer from renewable sources.

Applications for the issuing of guarantees of origin shall be submitted only for the part of delivered electricity produced from renewable sources.

Applications for the issuing of guarantees of origin shall be submitted from the user account in the registry of guarantees of origin.

Decisions regarding the applications for guarantees of origins hall be made by the transmission system operator.

Guarantees of origin shall be issued only for the part of electricity which is produced from renewable sources or the part which is proportional to the share of electricity produced from renewable sources in the total produced electricity.

The day of commencement of validity of the guarantee of origin shall be the last day of the calculation period of production to which the guarantee refers.

Guarantees of origin shall be issued only once for one quantity of electricity of 1 MWh produced in a certain time period.

Guarantees of origin shall be valid for a period of one year after the last day of the period of production for which they are issued.

226 The Rulebook on guarantees of origin for electricity produced from renewable sources.
227 Article 82 of the Energy Law. For more details see the footnote 213 of this Guide.

Guarantees of origin shall be transferable. The transfer of guarantee of origin from one to another user account shall be performed on the basis of transparency and non-discrimination. Such transfer shall be made by the transmission system operator at the request of the owner of the guarantee of origin.

Guarantees of origin shall cease to be valid when: 1) the owner decides to use it; 2) the validity period expires; 3) the transmission system operator withdraws the guarantee.

When an owner of the guarantee of origin decides to use the guarantee of origin and submits the request for its use, the transmission system operator shall issue the statement of use within eight days.

Guarantees of origin can be used only once.

Guarantees of origin which have ceased to be valid shall be recorded in the registry book.

The transmission system operator shall establish and maintain the registry book of guarantees of origin in electronic form and in accordance with the law, the Rulebook on guarantees of origin for electricity produced from renewable sources and international standards of the European system of power certification.

It should be noted that guarantees of origin issued in other countries shall be valid under conditions of reciprocity also in the Republic of Serbia and in line with the confirmed international agreements.

Relevant Laws, Strategic Documents, Plans and Bylaws

Laws

1. The Energy Law, Official Gazette of RS No. 145/14
2. The Law on Mining and Geologic Explorations, Official Gazette of RS No. 101/15
3. The Law on the Spatial Plan of the Republic of Serbia, Official Gazette of RS No. 88/10
4. The Law on Environmental Protection, Official Gazette of RS No. 135/04, 36/09, and 14/16
5. The Law on Integrated Pollution Prevention and Control, Official Gazette of RS No. 135/04 and 25/15
6. Law on Planning and Construction, Official Gazette of RS No. 72/09, 81/09, 64/10 – decision of the Constitutional Court 24/11, 121/12, 42/13 - decision of the Constitutional Court 50/13 - decision of the Constitutional Court 98/13 - decision of the Constitutional Court 132/14 and 145/14
7. The Law on Forests, Official Gazette of RS No. 30/10 and 93/12
8. The Law on Waters Official Gazette of RS No. 30/10 and 93/12
9. The Law on Nature Protection, Official Gazette of RS No. 36/09, 88/10, 91/10 and 14/16
10. The Law on Air Pollution, Official Gazette of RS No. 36/09 and 10/13
11. The Law on Environmental Impact Assessment, Official Gazette of RS No. 135/04 and 36/09
12. The Law on Strategic Environmental Impact Assessment, Official Gazette of RS No. 135/04 and 88/10
13. General Administrative Procedure Law, Official Gazette of RS No. 18/16
14. The Law on Public Utilities, Official Gazette of RS No. 88/11
15. The Law on Public-Private Partnership and Concessions, Official Gazette of RS No. 88/11 and 15/16
16. The Company Law, Official Gazette of RS No. 36/11, 99/11, and 5/15
17. The Law on Public Companies, Official Gazette of RS No. 15/16
18. The Law on Spas, Official Gazette of RS No. 80/92

Strategies and Plans

1. The Strategy of Development of the Energy Sector of the Republic of Serbia until 2025 with Projections until 2030, Official Gazette of RS No. 101/15
2. National Renewable Energy Action Plan of the Republic of Serbia, Official Gazette of RS No. 53/13

Decrees

1. The Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources, Official Gazette of RS No. 56/16
2. The Decree on the List of Projects for which the Environmental Impact Assessment Is Mandatory and on the List of Projects for which the Environmental Impact Assessment May be Requested, Official Gazette of RS No. 114/08

3. The Decree on Protection Regimes, Official Gazette of RS No. 31/12
4. The Decree on Location Requirements, Official Gazette of RS No. 35/15
5. The Decree on Conditions of Supply and Procurement of Electricity, Official Gazette of RS No. 63/13
6. Decree on Incentive Measures for Production of Electricity from Renewable Energy Sources and from High-efficiency Combined Production of Electricity and Heat, Official Gazette of RS No. 56/16
7. Decree on Power Purchase Agreement, Official Gazette of RS No. 56/16
8. The Decree on Fees for Incentives for Privileged Electricity Producers, Official Gazette of RS No. 12/16
9. The Decree on the Amount of Special Fee for Incentives for the Year 2016, Official Gazette of RS No. 12/16

Bylaws

1. The Rulebook on Energy Permit, Official Gazette of RS No. 15/15
2. Rulebook on the contents of geologic exploration designs and studies on results of geologic explorations, Official Gazette of RS No. 51/96
3. The Rulebook on Contents of Information on Location and on Contents of Location Permit, Official Gazette of RS No. 3/10
4. Rulebook on Content, Method and Manner of Development and Performing Control of Technical Documentation According to Class and Intended Use of the Structure, Official Gazette of RS No. 23/15
5. Rulebook on Classification of Structures, Official Gazette of RS No. 22/15
6. Rulebook on General Rules of Parcelization, Regulation and Construction, Official Gazette of RS No. 22/15
7. Rulebook on Contents and Form of the Application for Issuing Water acts and Contents of Opinion in the Procedure of Issuing Water acts, Official Gazette of RS No. 74/10, 116/12 and 58/14
8. Rulebook on Contents of the Application Concerning the Need for Impact Assessment and Contents of the Application for Determining Scope and Contents of the Environmental Impact Assessment Study, Official Gazette of RS No. 69/05
9. Rulebook on Contents of Environmental Impact Assessment Study, Official Gazette of RS No. 69/05
10. The Rulebook on the Content and Manner of Issuing the Construction Permit, Official Gazette of RS No. 93/11 and 103/13 – decision of the Constitutional Court
11. Rulebook on the Procedure for Integrated Permit, Official Gazette of RS No. 113/15
12. Rulebook on Closing and Marking of Closed Construction Site, Official Gazette of RS No. 22/15
13. Rulebook on Content and Manner of Technical Inspection of Structures, Composition of the Commission, Content of Proposed Decision of the Commission Regarding the Fitness of the Structure for Use, Surveillance of Soil during Construction and Use, and Minimum Guarantee Periods for Different Types of Structures, Official Gazette of RS No. 27/15
14. The Rulebook on Minimum Guarantee Periods for Different Types of Structures and Works, Official Gazette of RS No. 93/11
15. The Rulebook on Licenses for Performing Energy Activity and Certification, Official Gazette of RS No. 87/15
16. Decision Determining the Methodology for Calculation of costs of Connection to the Electricity Transmission and Distribution System, Official Gazette of RS No. 109/15