



USAID
FROM THE AMERICAN PEOPLE

**PIERCE
ATWOOD**
— LLP —
ATTORNEYS AT LAW

COMPLIANCE WITH EXISTING LEGISLATION

**Maya Hristova
Pierce Atwood LLP**

USoA and Regulatory Reporting Workshop

**September 12-14, 2007
Zagreb, Croatia**



USAID
FROM THE AMERICAN PEOPLE

USoA Development

Steps for Development:

- Development of primary and secondary energy legislation allowing the regulatory accounting implementation
- Development of the main USoA components for each energy sub-sector – Electricity, Natural Gas and Heat Supply
- Review and discussions between the Regulator and the Licensees within the sector
- Regulator's approval of the USoA packages and their official announcement on the Regulator's web site

The USoA must ensure the achievement of:

- Consistency for comparative purposes
- Transparency in funding of activities
- Integration of budget, financial, tax and regulatory reporting
- Ability to quickly identify irregularities



USAID
FROM THE AMERICAN PEOPLE

NATIONAL LEGISLATION - ENERGY ACT

- **The Primary Legislation is the key tool in order to define the responsibilities belonging to the Regulator:**
- The rules for performance for keeping separate accounts by energy companies, including assets for the purposes of pricing by groups of consumers, as well as the form and content of the financial statement for regulatory purposes - USoA development and implementation;
- Approves the general terms of the contracts under the Energy Law;
- Drafts the secondary legislation under the Energy Act;
- The terms and procedure for issuance, modification, supplementing, termination and withdrawal of licenses, for issuance of permits, for approval of the general terms of contracts, for supply of electricity, as well as for voluntary dispute settlement;
- The Commission imposes compulsory administrative measures and administrative penalties;
- Adopts and controls the implementation of a methodology for setting of prices and methods of price regulation of the rules for their price formation or setting and modification, the procedure for providing information, the introduction procedures for the presentation of proposals on prices;



USAID
FROM THE AMERICAN PEOPLE

COMMON RULES ON THE ESTABLISHMENT OF THE REGIONAL ELECTRICITY MARKET IN SOUTH EAST EUROPE AND ITS INTEGRATION INTO THE EUROPEAN COMMUNITY INTERNAL MARKET IN ELECTRICITY

Right of access to accounts:

- Participants or any competent authority they designate, including the Electricity Regulatory Authorities, shall, insofar as necessary to carry out their functions, have right of access to the accounts of electricity undertakings;
- Participants and any designated competent authority, including the regulatory authorities shall preserve the confidentiality of commercially sensitive information. Participants may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Unbundling of accounts:

- Participants shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with the requirements;
- Electricity undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law;
- Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office;
- Electricity undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution;
- They shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers. Revenue from ownership of the transmission/distribution system shall be specified in the accounts.
- They shall keep consolidated accounts for other, non-electricity activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.
- The regulatory audit verifies that the obligation to avoid discrimination and cross-subsidies referred to in the third paragraph is respected.



USAID
FROM THE AMERICAN PEOPLE

EU Legislation - ELECTRICITY and NATURAL GAS INTERNAL MARKET DIRECTIVES 2003/54 and 2003/55

The unbundling regime of the new electricity and gas directives

- In order to ensure non-discriminatory access to the network and avoid conflicts of interest it is necessary to separate the network business (natural monopoly) from those activities of vertically integrated companies which compete on the market, namely production and supply.
- Achieving this separation is the purpose of the unbundling provisions in the new electricity and gas directives, which are considerably strengthened in comparison to the previous directives.
- The basic elements of the new unbundling regime are the following:
- 1. Legal unbundling of the transmission system operator (TSO) and distribution system operator (DSO) from other activities not related to transmission and respectively distribution.
- 2. Functional unbundling of the TSO and DSO, in order to ensure its independence within the vertically integrated undertaking.
- 3. Possibility of exemptions from the requirement of legal and functional unbundling for DSOs.
- 4. Accounting unbundling: requirement to keep separate accounts for TSO and DSO activities.



USAID
FROM THE AMERICAN PEOPLE

Issues encountered in the development of regulatory reporting and accounting systems frameworks

- **Misunderstandings of roles, rules and policies:**
 - Regulatory accounting policies are specifically related to regulatory activities and do not repeat the policies and procedures within accounting legislation
 - The Regulator must have an IAS cognizant staff
 - Confusion between financial audit and regulatory audit – need to be clear what is the role of the regulatory audit and auditor
 - The National Audit Office and the Public Procurement Agency also plays complimentary roles, but are not focused on regulatory issues.
 - Regulatory auditing is a special profession that requires expertise not normally found in SE Europe.



USAID
FROM THE AMERICAN PEOPLE

Time and resources

- Need time to address the required changes (involvement of all key players in decision making);
- Commissioners want to understand concepts fully before adopting;
- Starting date is January 1 for any changes to Regulatory Chart of Accounts (RCoA);
- Conversions to new RCoA of historical data;
- New process may see negative response from those benefiting from non-transparency;
- Utility needs time to change policies, procedures, accounting software and so forth;
- Training personnel in utility and regulator.



USAID
FROM THE AMERICAN PEOPLE

Functional cost identification needs before unbundling occurs

- Identify the accurate regulatory reporting data, as the major bases for the further development of the regulatory accounting approach;
- Develop the CoA before the unbundling occurs – what will be needed for tariff applications and for license monitoring after unbundling;
- Understand the allocations proposed between holding companies and subsidiaries before approving unbundling plans;
- Develop the RCoA for each unbundled entity before they are unbundled and agree on the accounting rules, the reporting forms and instructions to the reporting forms;



USAID
FROM THE AMERICAN PEOPLE

Challenges Ahead

- Full compliance with the EU Directives concerning the Energy Legislation;
- Optimization of the regulatory accounting practices according the legally unbundled Licensees' Entities;
- Implementation of the regulatory auditing procedures within the Energy Sector – optimization of the legal bases;
- Further privatization in the energy sector;
- Other assignments as part of regulator's activities;
- Regional Energy Integration.



USAID
FROM THE AMERICAN PEOPLE

**PIERCE
ATWOOD**
— LLP —
ATTORNEYS AT LAW

THANK YOU
FOR
YOUR ATTENTION