Central Heating Project

FRAMEWORK FOR REAL ESTATE ACQUISITION AND ESTABLISHMENT OF THE RIGHT OF SERVITUDE

FOR THE NEEDS OF RECONSTRUCTION AND EXTENSION OF THE DISTRIBUTION NETWORK

Zagreb, November 2005
I. GENERAL

Under a WB loan the HEP-Toplinarstvo d.o.o. (Heating Division) plans to finance the following projects:

1) reconstruction of the main hot water line by replacing worn-out pipes
2) construction of hot water piping to Dubrava community (replacement of the existing boiler plants)

To this end it will be necessary to settle property and legal issues with the owners of properties through which the distribution network will pass or the owners of adjacent properties which will be occupied on a temporary basis for the accommodation of workforce, materials, machinery etc. required for project construction. In this respect, current regulations of the Republic of Croatia will be applied, both the laws and bylaws being adopted by the Croatian Government, local governments and authorities, some legal entities, etc. Major laws covering the above issues are as follows:

- The Energy Act
- The Act on the Production, Distribution and Supply of Thermal Energy
- The Act on Ownership and Other Real Rights
- The Mandatory Relations Act
- The Expropriation Act
- The Construction Act
- The Zoning Act
- The Land Register Act
- The Act on Official Measurement and Cadastre of Real Property

The principles applied by HEP-Toplinarstvo d.o.o. in any procedure involving the acquisition of rights on a real property or a part thereof are:

1) settle property and mandatory legal issues in agreement with the owners without seeking court mediation
2) expropriation to a minimum extent
   - wherever possible, use public surfaces, i.e., real property owned by the City of Zagreb
   - incomplete expropriation is an established practice (to a maximum width of 10 m), complete expropriation an exception to the rule
   - the distribution network runs along boundaries, bypassing buildings, agricultural crops, monuments, forests and the like
3) compensate for the value of the acquired title and the caused damage respectively
4) determine the amount of compensation in a fixed sum of money, with the amount depending on who owns the real property, but never being below the market value of the property (in case of complete expropriation), or below the appropriate percentage of the market value of the property (in case of incomplete expropriation and compensation)
II. ACQUIRING THE TITLE

Prior to starting the works, HEP-Toplinarstvo d.o.o. prepares a preliminary design and applies for required location permits to the City Office for zoning, environmental protection, urban development, public utilities and transport. The next step is settling the legal property issues with the owners of properties in question. As already mentioned above, it is the policy of HEP-Toplinarstvo d.o.o. to solve the property and mandatory legal issues in agreement with the owners, typically in the form of purchase contracts, servitude agreements and out-of-court compensation arrangements.

Should HEP-Toplinarstvo d.o.o. and the property owners be unable to reach a settlement, an expropriation proceeding would be instituted, as described in detail in the Expropriation Act. The Energy Act (Article 4) and the Act on the Production, Distribution and Supply of Thermal Energy (Article 3) stipulate that the construction of energy facilities, their maintenance and use, as well as the provision of energy services are of interest to the Republic of Croatia. Consequently, HEP-Toplinarstvo d.o.o., as a legal entity engaged in the energy services of production, distribution and supply of thermal energy is entitled to be the expropriation beneficiary.

In addition to the above, it is important to note that pursuant to Article 32 of the Energy Act HEP-Toplinarstvo d.o.o has the right to use real properties which are not owned by it for installation and maintenance of networks or systems serving for energy conveyance and distribution. In this regard legal and natural persons are obligated to allow HEP-Toplinarstvo d.o.o. access to their respective properties while reserving the right to indemnification.

After settling the property issues, titles are entered in land registers, building permits are requested from the City Office for zoning, environmental protection, urban development, public utilities and transport and the performance of works is started.

III. REPORTING TO THE WORLD BANK

Having settled the property and mandatory legal issues with the owners of properties through which the distribution network will pass, HEP-Toplinarstvo d.o.o. will submit to the World Bank the following data for each category of property owners separately on the number of:

1. purchased plots, their surface areas and the paid compensation
2. plots on which the right of servitude has been established, their surface areas and the paid compensation
3. plots occupied on a temporary basis, their surface areas and the paid compensation.
IV. THE EXPROPRIATION ACT

Unless otherwise envisaged in a separate law, a real property may be expropriated if the following requirements are met:

1) construction of certain facilities or performance of certain works is in the interest of the Republic of Croatia
2) it is assessed that the utilisation of a property slated for expropriation will bring more benefit in a new function than it did in the previous function.

The expropriation procedure must be carried out within two years of the date on which a special interest of the Republic of Croatia has been established, if and only if negotiations between the expropriation beneficiary and the property owner have failed to yield results.

There are two types of expropriation:
- complete expropriation – the expropriation beneficiary becomes the owner of the property concerned
- incomplete expropriation – title is restricted (servitude and lease)

The whole procedure must be legally and publicly transparent.

Expropriation procedure

Expropriation proposal is filed by the expropriation beneficiary and must specify the expropriation beneficiary, the property proposed for expropriation, the owner and holder of the property proposed for expropriation, including his residence or business seat, and the project or the works on account of which expropriation is proposed. Along with the expropriation proposal the expropriation beneficiary shall submit the following documents:

1) evidence of the expropriation beneficiary’s previous attempt to settle the acquisition of title with the property owner
2) transcript from land or other public registers where title entries are made containing data on the property proposed for expropriation, or cadastral or other data in absence of such registers or if the state of land registers is at variance with the existing state of possession
3) possessory title transcript
4) evidence of the established stake of the Republic of Croatia in the project construction or the performance of works on the property concerned
5) evidence of a vested interest of the State and the value of the real property for which expropriation is requested (expert finding and opinion, etc.)
6) proof that the expropriation beneficiary holds corresponding funds deposited with a bank set aside for paying compensations to owners and for coverage of procedural costs, or a proof of a secured equivalent alternative property.
7) zoning terms and conditions of development, or expropriation plan for project construction or for performance of works on account of which expropriation is proposed.
Based on the expropriation proposal, the expropriation procedure will be recorded *ex officio* in land or other public registers where title entries are made, of which the owner will be notified in writing by the competent authority.

The expropriation beneficiary acquires the right of getting possession of the expropriated property with the day on which the expropriation decision becomes legally valid, provided that the previous owner has been compensated.

**Costs and compensations**

The costs of the expropriation procedure shall be covered by the expropriation beneficiary, except for the costs arising from a rejected complaint lodged by the property owner.

The compensation for an expropriated property is provided, as a rule, in the form of an equivalent alternative property in the same municipality or the same town, whereby the owner of the property intended for expropriation is given the same conditions of use as offered by that property. If the owner of the property intended for expropriation refuses to accept as a compensation the alternative equivalent property or if the expropriation beneficiary is unable to provide such property, the compensation shall be determined in money in the amount of the market value of the property intended for expropriation.

If servitude is established, compensation shall be determined in an amount which, due to the established servitude, is reduced by the market value of the property.

If a lease is established, compensation shall be determined in the amount of rent achieved on the market. The same applies to a compensation for occupying a property on a temporary basis.
## V. Determining the Compensation

<table>
<thead>
<tr>
<th>Project Part</th>
<th>Legal Status</th>
<th>Property Owner</th>
<th>Criteria for Determining the Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Reconstruction of the Old Hot Water Piping</td>
<td>temporary use</td>
<td>Zagreb City</td>
<td>restoring the property into the previous state, and returning it to the owner’s possession, compensation for disturbance, destruction of crops etc., in an amount determined by the court-appointed expert</td>
</tr>
<tr>
<td></td>
<td></td>
<td>legal person</td>
<td>all real estate transactions over the relevant period in the reference area, as well as the city area where the land is situated</td>
</tr>
<tr>
<td></td>
<td></td>
<td>natural person</td>
<td>the amount of compensation is determined by the responsible person or service in that legal entity in accordance with the internal rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Zagreb City</td>
<td>market value of the property, the value of which is determined by the court-appointed expert</td>
</tr>
<tr>
<td>2. Construction of a New Hot Water Piping</td>
<td>owned by</td>
<td>Zagreb City</td>
<td>30% of the estimated value of land</td>
</tr>
<tr>
<td></td>
<td>servitude</td>
<td>legal person</td>
<td>in most cases, 30% of the estimated value of land</td>
</tr>
<tr>
<td></td>
<td></td>
<td>natural person</td>
<td>reduced value of land, the amount of which is determined by the court-appointed expert</td>
</tr>
<tr>
<td></td>
<td>temporary use</td>
<td>Zagreb City</td>
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