

Chairman of ROMGAZ Board of Directors
Dan Drăgan

To: ROMGAZ General Meeting of Shareholders

Subject: Settlement Agreement ROMGAZ - DURO FELGUERA (IERNUT Project)

1. Background

1.1. Brief Information on the Initial Works Contract and its Termination

SNGN ROMGAZ SA (hereinafter referred to as **ROMGAZ**), as Purchaser, and the Consortium consisting of DURO FELGUERA S.A. and ROMELECTRO S.A. (collectively referred to as the **CONSORTIUM**), as Contractor, concluded on October 31, 2016 the Works Contract no. 13384/2016 (hereinafter referred to as the *Initial Works Contract*) with the scope of “Developing CTE Iernut by building a new 430MW combined cycle gas turbine power plant” (the Investment).

On April 2, 2021, ROMGAZ did not accept the claims raised by the CONSORTIUM for continuing the works, and it sent the Notice no. 10872/April 2, 2021 regarding the termination of the Initial Works Contract (Notice of Termination), which produced effects after 5 days from its receipt by the CONSORTIUM, according to Article 11.3 of the Initial Works Contract.

Upon request of and with the approval of the CONSORTIUM, ROMGAZ suspended the effects of the Notice of Termination as of April 8, 2021, and such suspension was thereafter extended several times. The last extension for suspending the effects of the Termination Notice was set for June 16, 2021, in order to identify and agree with the CONSORTIUM a solution to continue and complete the works.

Despite the fact that ROMGAZ undertook all possible efforts to negotiate solutions to secure the continuation and completion of works by the CONSORTIUM in compliance with the legal provisions, negotiations have failed mainly because the CONSORTIUM did not waive claims regarding contract price adjustment, adjustments which ROMGAZ could not fully agree to due to the following reasons:

- a) The offer submitted by the CONSORTIUM, upon award of the *Initial Works Contract*, was not broken down by cost elements (constituent elements of the price)¹, to allow for identification of cost elements on which the offer was based, cost elements that have changed over time from offer submission and, last but not least, the amount of these changes so that, as a consequence, an adjustment could be made to the contract price by updating the cost elements on which the offer was based and which have changed over time.
- b) From another point of view, neither the adjustment of the contract price, by revision, could be applied in this case, since the awarding documentation for the *Initial Works Contract* did not provide for the possibility to adjust the contract price by means of an adjustment clause/formula. In case an adjustment formula clause had been inserted in the *Initial Works Contract*, that was not provided for and published by the awarding documentation of the Works Contract and, thus, made known to all potential bidders, the provisions of Law No. 99/2016 on sector specific procurement would have been infringed.

Considering that the Parties had not reached a mutual agreement by June 16, 2021, the *Notice of Termination* became effective and the *Initial Works Contract* was terminated as of June 17, 2021. At the same time, ROMGAZ executed the contract performance bonds provided by the two Consortium members, namely DURO FELGUERA SA and ROMELECTRO SA.

1.2. Brief information concerning the completion stage of works related to the Investment

According to the reports made by ROMGAZ - SPEE Iernut, based on the independent technical audit report "Annual Report on Physical and Value Stages", the physical stage of completion of the site works, on March 25, 2021, was approx. 90% in terms of Turnkey Project.

On February 16, 2021, ROMGAZ - SPEE Iernut, as Purchaser, and TUV AUSTRIA ROMANIA, as Provider, concluded the Service Contract No. 30.727 (*Service Contract*), having the following scope:

- a) Providing technical and economic professional services for determining the stage of completion of works, and to determine the works to be executed, respectively, in order to reach the final scope of the "*Development of CTE Iernut by building a new combined cycle gas turbine power plant*" project;
- b) Elaborating the Tender Specifications for Procurement of Remaining Works to be performed (remaining works) in order to reach the final scope of the "*Development of CTE Iernut by building a new combined cycle gas turbine power plant*" project;

¹ The offer submitted by the CONSORTIUM is global price offer

The Evaluation reports of works performed and the Draft Tender Specifications for procurement of remaining works to be performed (*Deliverables*) were sent by TUV AUSTRIA ROMANIA to ROMGAZ with great delay compared with the contracted delivery deadline. Following observations and requests for clarifications from ROMGAZ - SPEE Iernut, the final documents were sent on December 03, 2021.

Among the conclusions of the Technical Evaluation Report prepared by TUV AUSTRIA ROMANIA the following are mentioned:

- a) Works completed less than 90%;*
- b) From a general point of view, the "TURNKEY PROJECT (design, performance, training, training courses, etc.), investment is approximately 80% completed, and*
- c) From the performance point of view (performance which is part of the investment), works are approximately 65 - 70% completed,*

noting that this calculation took into consideration the remaining works as designed as well as the works for which there are no designs yet.

2. Amendment of Law 99/2016 by means of GEO 54/2022

GEO No. 54/2022 on amending Law No. 99/2016 on sector specific procurements was published in the Official Gazette of Romania on April 21, 2022, providing as follows:

"Article 117¹

By way of exception from Article 117, the beneficiary is entitled to use the negotiated procedure without prior publication to award sector specific procurement contracts the scope of which is to perform the remaining works in order to carry out and develop electric power generation capacities, when such represent less than 40% of the investment works completion stage."

2. At Article 180, after paragraph (6) a new (6¹) paragraph is introduced, providing as follows:

"(6¹) In the case of contracts awarded pursuant to Article 117¹, the beneficiary may decide not to exclude from the awarding procedure the economic operators provided under paragraph (1) item g)."

3. Solution to Complete the Investment (remaining works), in the context of the legal amendment provided under item 2

For completion of works (remaining works) related to the Investment the following solution was identified:

- a) Conclusion of a settlement agreement between ROMGAZ and DURO FELGUERA (or, as the case may be, the Consortium)
- b) Conclusion of a works contract for the remaining works in accordance with the applicable legal provisions.

4. The Settlement Agreement

4.1. General Information on the Settlement Agreement

The Settlement Agreement (hereinafter referred to as *the Settlement*) was negotiated by taking into account the entire legal situation created by the conclusion of the *Initial Works Contract*, by the occurrence of various unpredictable events during performance of works and by termination of that contract, respectively.

Moreover, another important aspect is the amendment of Law No. 99/2016 by GEO No. 54/2022.

Therefore, as shown at item 2, GEO No.54/2022 introduced Article 117¹ in Law No.99/2016, expressly allowing the contracting authority to use the negotiated procedure without prior publication to award sector specific procurement contracts the scope of which is to perform the remaining works in order to carry out and develop electric power generation capacities, when such represent less than 40% of the investment works completion stage.

According to the same law, the negotiation procedure referred to in Article 117¹ may be carried out with the operator/operators with whom a contract was previously concluded and that terminated before the term.

Within this legal context, the conclusion of a new works contract was initiated, in line with legal provisions, with DURO FELGUERA (*The New Works Contract*) for completion of works (remaining works to be performed to complete the *Investment*).

The procurement procedure was completed and *by Resolution No.36 of March 29, 2023, the Board of Directors agreed on the conclusion of the procurement contract for "Completion of works and commissioning of investment: Development of CTE Iernut by building a new combined cycle gas turbine power plant" with Duro Felguera and authorizes the executive management to sign the procurement contract.*

The *Settlement* takes into consideration and it is based on the agreement with DURO FELGUERA, inclusively, on completion of works related to the *Investment*.

The main reasons for concluding the Settlement were, but not limited to:

- a) ROMGAZ interest to complete the works as soon as possible and to commission the **Investment** in order to generate electric power into the system;
- b) Risks related to the project, which, if they were to materialise, would be likely to lead to the extension of the time by which the works were to be completed for an indefinite period of time, resulting in additional difficulties related to completion of works (the risk of damage to equipment and installed works increasing as time goes by without the works being completed).

4.2. Enforcement of the Settlement

Effectiveness of the **Settlement** is conditional upon a series of events, conditions to ensure for all the parties involved the possibility to obtain all required agreements and approvals.

One of the conditions precedent for enforcing the **Settlement** is for Romgaz to provide a valid GMS Resolution to approve the **Settlement**.

4.3. Documentation Relating to the Approval of the Settlement

The documentation relating to the approval of the Settlement between ROMGAZ and DURO FELGUERA, including the Settlement Agreement together with its annexes, is available 30 days prior to the Ordinary General Meeting of Shareholders convening date at SNGN ROMGAZ SA headquarters located in Medias at C.I Motas Square, no. 4, Sibiu County, and at SNGN Romgaz S.A. Bucharest Office located in Bucharest, Sector 1, at Grigore Alexandrescu Str., no. 59, floor 5. The documentation is available for consultation by interested shareholders at SNGN ROMGAZ SA Headquarters and Bucharest Office until the date of the Ordinary General Meeting of Shareholders subject to filing a request and to signing a confidentiality agreement to be made available to shareholders for this purpose.

Information on requesting access to consult the documentation relating to the approval of the Settlement is included in ROMGAZ Ordinary General Meeting of Shareholders Convening Notice for May 10, 2023.

5. ROMGAZ Board of Directors Resolution no. 37/March 29, 2023 for Endorsing the Settlement

In the meeting of March 29, 2023, the Board of Directors adopted by Resolution no. 37 the following resolution:

Based on documentation no. 12902/March 29, 2023, the Board of Directors endorses the conclusion of the Settlement Agreement between Romgaz and Duro Felguera (together with its Annexes), presented as annex to documentation no.12902/March 29, 2023.

Considering that the Board of Directors endorsed the Settlement Agreement:

- i) it shall be signed with all of its annexes by Romgaz managers with mandate and shall be submitted to Duro Felguera (and, as the case may be, to Romelectro and GE);*
- ii) it shall be submitted for approval of ROMGAZ General Meeting of Shareholders (considering the condition precedent specified at item 1 of this Contract, following that the Settlement Agreement enters into force in 5 days after the date when all conditions precedent are fulfilled).*

6. Draft Resolution Submitted for the Approval of ROMGAZ General Meeting of Shareholders

Approval of Settlement Agreement between SNGN ROMGAZ SA and DURO FELGUERA SA (with all its Annexes).

**CEO
Răzvan POPESCU**

**Deputy CEO
Aristotel JUDE**

**CFO
Gabriela Trânbițaș**

**Head of Legal
Monica STAFIE**