



**Republika e Kosovës**  
**Republika Kosova - Republic of Kosovo**

**ZYRA E RREGULLATORIT PËR ENERGJI**  
**REGULATORNI URED ZA ENERGIJU**  
**ENERGY REGULATORY OFFICE**



**Rule ERO/Nr. 14/2017**

**Energy Regulatory Office**  
**(ERO)**

# **Rule on Certification of Transmission System Operators**

April, 2017

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Board of the Energy Regulatory Office (“ERO”), in accordance to the Article 11.5 and 12 of the Law on Electricity nr. 05/L-085, Article 39 of the Law on the Energy Regulator nr. 05-L/084, and Article 16 of the Law on Natural Gas nr. 05/L – 082, on the session held on \_\_\_\_\_, adopted this:

## **RULE ON CERTIFICATION OF TSOs**

### **CHAPTER I GENERAL PROVISIONS**

#### **Article 1 Purpose**

1. The purpose of this Rule is to set a transparent and credible certification procedure that ensures that the Transmission System Operator (“the TSO”) fully complies with the unbundling criteria as set down in Chapters IV and V of Directive 2009/72/EC<sup>1</sup> and Chapters III and IV of Directive 2009/73/EC, and transposed into Kosovo law through Article 11 of the Law on Electricity and Article 15 of the Law on Natural Gas. Certification is the process by which ERO confirms that there is sufficient separation of control over the TSO on the one hand, and over production and/or supply interests on the other hand and that the energy enterprise has complied with the unbundling provisions relevant to it.
2. Certification of the TSO is required for the purpose of ensuring that the TSO is performing its functions independently from any other business in the energy sector and consequently to ensure that such TSO will provide free and non discriminatory access to its transmission network. By issuing this Rule, ERO is fulfilling mandatory requirements of the Law on Electricity, Law on Energy Regulator and Law on Natural Gas in compliance with the unbundling provisions referred to in paragraph 1 above.
3. This Rule is issued in compliance with Article 39 of the Law on the Energy Regulator. Article 39 obliges ERO to draft and approve rules, criteria and procedures for certification of an energy enterprise that fulfils the unbundling criteria as a TSO.

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<sup>1</sup> - Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55 of 14.8.2009;

- Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94 of 14.8.2009.

### **Article 2 Unbundling Model**

1. The Law on Electricity and the Law on Natural Gas foresee the ownership unbundling model for a TSO. The ownership-unbundling model requires the appointment of the owner of the transmission system as TSO and its independence from production or supply interests.

### **Article 3 Objective and scope of certification**

1. The objective of this Rule is to ensure that every certification procedure carried out by ERO will be performed consistently and transparently in line with applicable legislation. This document aims at enhancing the efficiency of the certification process and at the same time ensuring a high level of predictability regarding the review process for all stakeholders.
2. This Rule determines the procedure for application for certification of a TSO, criteria for application, and the conditions and deadlines for submission of documents required for certification. It further prescribes the manner how the certification procedure shall be conducted by ERO and how the EnCS will assess the Preliminary Decision issued by ERO on certification. This Rule also contains the reporting and monitoring procedure with regard to certification compliance.

### **Article 4 Applicability**

1. No energy enterprise may be designated and approved as a Transmission System Operator in terms of Article 10 of Directives 72/2009/EC and 73/2009/EC until it has been certified by ERO as meeting the unbundling requirements required by law.
2. The energy enterprise which operates the electricity transmission system in Kosovo under a licence granted by ERO prior to the coming into force of the Law on the Energy Regulator 05/L-084 shall continue to operate under the terms of that licence until it is issued with a permanent licence under paragraph 4 below.
3. Any energy enterprise other than the one referred to in paragraph 2 above, which wishes to operate a transmission system shall apply to ERO for a licence under Article 39 of the Law on the Energy Regulator and the Rule on Licensing of Energy enterprises in Kosovo issued by ERO. Any licence granted by ERO following such application shall be considered as temporary until the energy enterprise has been certified.
4. Within 1 (one) month of issuing its Final Decision on certification under Article 18 below ERO shall issue a permanent licence to the TSO which shall be effective from the date of certification.

### Article 5 Definitions and Interpretation

1. The terms used in these Rule have the following meanings:
  - 1.1 "Applicant" refers to an energy enterprise that applies to ERO for certification;
  - 1.2 "Board" refers to the Board of ERO;
  - 1.3 "Confidential information" means data, documents or other information, whether commercial or technical, relating to the design, rehabilitation, insurance, operation, maintenance, and financing of energy related operations or activities which is not already in the public domain and may endanger the commercial interest of applicants and licensees if disclosed
  - 1.4 "Control" means rights, contracts or other means which, separately or in combination and having regard to the considerations of fact or law involved, confer the possibility to exercise decisive influence over an energy enterprise, especially by:
    - ownership or the right to use all or part of assets of an energy enterprise;
    - rights or contracts that confer decisive influence on the composition,
    - voting or decisions of the organs of an energy enterprise;
  - 1.5 "Distribution System Operator" means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity.
  - 1.6 "Transmission System Operator" is a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission For the purpose of this Rule it may be KOSTT or another TSO – interconnector , in electricity or in gas sector;
  - 1.7 "Licensee" refers to the holder/s of the TSO licence/s.
  - 1.8 "Supplier" is an energy enterprise licensed to perform supply activities.

The terms not used in this Rule shall have the meanings specified in the Law on Electricity nr. 05/L-085, Law on Natural Gas nr. 05/L – 082 and the Law on the Energy Regulator nr. 05-L/084.

## CHAPTER II

### APPLICATION FOR CERTIFICATION

#### Article 6 Obligations for certification

1. An energy enterprise applying for certification shall document to ERO that it fulfils the unbundling requirements of the Article 11 of the Law on Electricity, Article 15 of the Law on Natural Gas and the certification criteria of Article 12 in this Rule.

#### Article 7 Application for certification

1. The energy enterprise referred to in the Article 6 (hereinafter “the Applicant”), shall submit to ERO an application for certification containing:
  - a) A written request for certification;
  - b) Documents and information required in order to document criteria as per the Article 12 of this Rule; and
  - c) Completed Questionnaire for certification of the TSO, in a form as provided by the European Commission, as further described in Article 10 below.
2. The Applicant will follow the procedure for application as set in Article 39 of the Law on Energy Regulator and in this Rule.
3. When the Applicant considers that his application is substantially complete, it shall discuss its intended submission with ERO prior to final submission. This will allow ERO and the Applicant to discuss the proposed submission informally and in particular the scope of the information to be submitted. This will enable the TSO to identify any additional information that may be required, or provide any clarification over information already included.

#### Article 8 Request for certification

1. The Applicant for certification shall submit to ERO a written request that provides the reasons for the application for certification. A list of all documents submitted in support of the application should be enclosed to the request.
2. The request for certification shall be signed by the Managing Director or, in his absence from post, his official deputy.

#### Article 9 Documents and information

1. The Applicant shall submit all documents and information required for certification in accordance with the criteria set forth in Article 12 of this Rule to ERO. All documents contained in the submission shall be in both the Albanian and English languages, and in

both written and electronic form. Documents shall be submitted in the original, or in notarised copies.

2. Throughout the certification procedure, ERO has the right to obtain from the Applicant any additional information it deems necessary for ensuring that the unbundling criteria are fulfilled. This right is extended to the Energy Community Secretariat (“EnCS”), which in reviewing the Preliminary Decision on certification issued by ERO, has the right to full access to documents and information that are related to the certification issue. For such purpose, EnCS has the right to contact the TSO applying for the certification, as well as other stakeholder in the energy sector (such as generators and suppliers).
3. To support its application, the Applicant shall provide clarifications and explanatory notes wherever necessary to explain any particular document, lack of any information, or to point out the relevance of facts and references to any legal document.

#### **Article 10 Questionnaire**

1. The Applicant will submit to ERO the Questionnaire referred to in paragraph 3 below, completed with information specific to the unbundling requirements, together with the supporting documents.
2. The Questionnaire aims to describe the information which is necessary for the ERO for its Preliminary Decision in the certification and for EnCS for its assessment of such Preliminary Decision.
3. The Questionnaire referred to is COMMISSION STAFF WORKING PAPER on certification of Transmission System Operators of networks for electricity and natural gas in the European Union, issued by the European Commission on 21.9.2011, nr. SEC(2011) 1095, or any document which replaces it.
4. Additional information or documents that are not explicitly requested by the Questionnaire shall be submitted by the Applicant if ERO or the Applicant considers that such information or documents are relevant for the assessment of the certification request.

#### **Article 11 Verification**

1. It is the responsibility of the Applicant to ensure that all necessary documentation and information is provided in support of his application. However, where the Applicant is unable to obtain any item of documentation or information then he should immediately raise this issue with ERO or with any public authority in Kosovo that may assist him in obtaining it.
2. It is the responsibility of the Applicant to ensure that documentation and information provided in support of his application is verified prior to submission as accurate, true and

complete. Where it considers necessary, the Applicant shall provide notarised copies of original documents.

3. The verification procedure described in paragraph 2 above include the obligation of the Managing Director to ensure that each document or statement contained within the application is accurate, true and complete. This verification will be used as assurance of the veracity of the information provided to ERO and enable ERO to place reliance on the information, without needing to duplicate the verification process.

### **CHAPTER III CERTIFICATION CRITERIA**

#### **Article 12 Certification Criteria**

1. The criteria that an applicant shall fulfil in order to be certified by ERO are those described in Article 12 of the Law on Electricity, in Directive 2009/72(EC) and the Regulation EC No. 741/2009 in respect of electricity, and those described in Article 16 of the Law on Natural Gas, in Directive 2009/73/EC and Regulation (EC) No. 715/2009. The Applicant and ERO shall assess the Applicant's compliance by reference to those criteria.
2. The documents provided should include material which will demonstrate that the Applicant complies on all points in practice as well as in law.

#### **Ownership of the transmission system by the TSO**

3. When applying for certification, the Applicant will need to present documents that demonstrate that it meets the criteria in Article 11.1 of the Law on Electricity or in respect of natural gas, that the Applicant owns the transmission system.
4. In demonstrating its ownership over the transmission system under paragraph 2 above, the Applicant should have particular regard to present:
  - 4.1 Legal documents which demonstrate the acquisition by, or the transfer to, the Applicant of the assets which form the transmission system;
  - 4.2 Any relevant provisions of primary or secondary legislation, including provisions in any ERO rule, decision or licence
  - 4.3 The governing documents of the Applicant, where these make reference to its ownership of the transmission system
  - 4.4 Any other relevant document that would reveal the Applicant's ownership of the transmission system.



### **Control and Ownership over the TSO**

5. When applying for certification, the Applicant will need to present documents that demonstrate that it has met:
  - 5.1 In respect of electricity, the criteria in Articles 11.2 to 11.4 inclusive, Article 13 and Article 14 of the Law on Electricity, or
  - 5.2 In respect of natural gas, that the criteria in Articles 15.2 to 15.6 inclusive, Article 19, 20 and 21 of the Law on Natural gas.
6. In demonstrating how the Applicant's shareholder or shareholders exercise their rights over it under paragraph 5 above, the Applicant should have particular regard to:
  - 6.1 Legal documents which demonstrate the identity of the shareholder or shareholders, including the percentage of the holding of each shareholder, including copies of any share certificate
  - 6.2 Any relevant provisions of primary or secondary legislation which describe the voting rights of shareholders on any matter relating to the transmission system;
  - 6.3 Any relevant provisions of primary or secondary legislation which describe the authority of the shareholder to appoint members of the Applicant's supervisory board, administrative board or any body legally representing the Applicant
  - 6.4 Any relevant provisions of primary or secondary legislation which describe any limitation on the shareholder(s) in the ownership interests in production and supply;
  - 6.5 Where the Applicant is publicly owned, it will need to demonstrate how the competences of the legal person who exercises control over the TSO or the transmission system are distinct and separate from the competences of the person who exercises control over any enterprise which undertakes production or supply;
  - 6.6 Any relevant internal procedures, codes, declarations, training documents, staff guidelines etc. which demonstrate the measures taken by the Applicant to ensure that there is (a) no conflict of interest that might influence the Applicant's decision making in the operation of the transmission system and (b) no breach of any rules of confidentiality of user data.

### **Tasks of the TSO**

7. When applying for certification, the Applicant will need to present documents that demonstrate that the Applicant has the powers by law to carry out the tasks listed in Article 16 of the Law on Electricity or Article 18 of the Law on Natural Gas.

## CHAPTER IV REVIEW OF APPLICATION

### Article 13 Review of Application

1. When ERO receives the application, as referred to in Article 7 above, it will review all documents submitted. The information submitted by the Applicant will be assessed on a case by case basis for every TSO applying for certification.
2. Under Article 39.5 of the Law on Energy Regulator, ERO shall issue its Preliminary Decision within four (4) months period of the day of acceptance of a complete application for certification in terms of Article 7.1 above.
3. Within the four month review period, ERO may request from the Applicant further, supplementary information, and the Applicant should make every effort to respond quickly and completely to any further information request.
4. Where, after submitting its application to ERO, the Applicant becomes aware of any change in the documents, data or information presented in its application, it shall notify ERO immediately upon become aware of such change and shall present revised or explanatory documents and information as necessary to document such modification.

### Article 14 Pre-notification consultations with EnCS

1. At least 6 (six) weeks before a formal submission to EnCS of its Preliminary Decision, ERO will inform EnCS of the intended notification and request a consultation meeting and will notify Transmission System Operator of the action taken, and the date planned for any meeting.
2. Where requested by EnCS, ERO may provide, in advance of any consultation meeting:
  - 2.1 A description of the compliance/lack of compliance of the TSO with the requirements of Article 9 Electricity or Gas Directives as appropriate;
  - 2.2 The language of the notification,
  - 2.3 the approximate number of pages of the draft Preliminary Decision and the approximate number of pages of the completed Questionnaire and reasoning
  - 2.4 The number of pages of supporting documents.
3. In providing the information outlined in paragraphs 2.1 to 2.4 above, ERO shall clearly indicate sections which have been identified as relevant by it for issuing the Preliminary Decision.

## CHAPTER V DECISIONS ON CERTIFICATION

### Article 15 Preliminary Decision on certification

1. Pursuant to Article 39.5 of the Law on Energy Regulator, ERO shall prepare its Preliminary Decision on Certification of the TSO within four (4) months from the day of acceptance of the application for certification with supporting documents.
2. If the Preliminary Decision on Certification is not issued within the deadline mentioned above, it will be considered that the ERO has granted certification. It will be considered that the ERO has granted certification.
3. Immediately upon making its Preliminary Decision on Certification, ERO shall notify the Applicant setting out its full reasoning.
4. Regardless if the Preliminary Decision is adopted, or is tacit as per paragraph 2 above, it shall be immediately notified to the EnCS by ERO together with all supporting documentation.

### Article 16 Submission of documents and information to the EnCS

1. The Preliminary Decision, even if it is negative, must be submitted to the EnCS.
2. In submission to EnCS, the ERO should attach to its Preliminary Decision including:
  - a) the Questionnaire filled in together with the supporting documents.
  - b) Additional information/documents that were not explicitly requested by the Questionnaire, but which the Applicant submitted to ERO and which ERO has relied on in its assessment of the certification request. In such case, ERO shall list all additional information/documents, provide a brief description of its content and explain why it considers additional information/documents relevant for the assessment of the certification request.
3. Where any energy enterprise in Kosovo (whether or not an Applicant for certification) is requested by EnCS to provide information or documentation to it, such enterprise will comply with the request as soon as practicable as though such request were made by ERO under its powers in Article 12 of the Law on the Energy Regulator. The enterprise shall submit a copy of all information or documentation provided to EnCS to ERO.
4. Where the energy enterprise referred to in paragraph 3 above is unable to meet the request for any reason, it shall immediately notify both the EnCS and ERO and explain the reasons for its inability to respond.

### **Article 17 Review of the Preliminary Decision by the EnCS**

1. The deadline for review of the Provisional Decision of ERO by EnCS is 4 (four) months from the date of ERO's notification.
2. In the absence of an opinion by the EnCS within the period of 4 (four) months after the day of receipt of the EROs submission, it shall be deemed that there are no objections to the Preliminary Decision taken by ERO.
3. In the case of a negative Opinion by EnCS, ERO shall take utmost account of the comments provided in preparing its Final Decision.

### **Article 18 Final Decision of ERO**

1. Within two (2) months after receipt of the opinion of the EnCS, ERO will issue a Final Decision regarding the certification of the TSO. ERO will take the utmost account of such opinion of the EnCS and publish on its web site its final decision on certification together with the opinion of the EnCS.
2. When the Final Decision of ERO differs from the Opinion of the EnCS, ERO shall publish, on its official web site, its Final Decision on certification together with the reasoning underlying that Decision, together with the Opinion of the EnCS.

## **CHAPTER VI CERTIFICATION IN RELATION TO THIRD COUNTRIES AND REOPENING THE CERTIFICATION PROCESS**

### **Article 19 Certification in relation to third countries**

1. Where an Applicant for certification is controlled by one or more persons from a country or countries outside Kosovo, ERO shall notify the EnCS.
2. ERO shall notify EnCS without delay where it becomes aware of any circumstances that could lead one or more persons from one or more third countries to gain control over a transmission system or a TSO.
3. The certification procedure in relation to third countries will follow the same procedure and deadlines set forth in Chapter II to Chapter V in this Rule and the requirements laid down in Article 40 of the Law on Energy Regulator.

### **Article 20 Reopening of the certification procedure**

1. Pursuant to its powers to monitor the compliance of TSOs with requirements for independence and separation of activities, ERO will reopen a certification procedure to ensure compliance in the following events:
  - a) Based on notification by the TSO that its circumstances may have changed, or may be about to change, and that such change may effect its compliance with unbundling criteria.
  - b) On its own initiative, when it becomes aware of a certain changes in the rights or the influence on TSO that could result in violation of the relevant requirements for independence and separation of activity of TSO from production and supply activities or when there are credible reasons to believe that such violation may have occurred; or
  - c) Based on reasoned request by the EnCS.
2. Where, following a Final Decision by ERO, an Applicant becomes aware that information, on which ERO had relied in making its Final Decision, has changed it shall notify ERO immediately. If ERO believes that the altered information is material, it may open a new certification procedure for the Applicant.
3. For the purpose of this Article, a certification procedure reopened by ERO will be implemented in the same manner as foreseen in this Rule for any new request for certification.
4. Reopening of the certification procedure will result in a new decision on the certification of the TSO, which may result in the issuance of a new license to the TSO.

## **CHAPTER VII REPORTING AND MONITORING PROCEDURE**

### **Article 21 Reporting on the Certification**

1. The appropriate application of this Rule will be safeguarded, monitored and supervised by ERO.
2. The TSO Licensee will submit to ERO, no later than on 31 January of each year, a report on the certification compliance in the preceding calendar year. The report will be provided in a format suitable for publication and in Albanian, Serbian and English-language.
3. Where the report contains confidential information, the Licensee will provide a full version of the report for review by ERO and a separate version suitable for publication.
  - a) The report will be signed by the Managing Director of the TSO or its authorized person.

- b) The report will be reviewed by ERO and published on its official website. Alongside the report, ERO will publish its assessment of the report which will, in particular, identify if there is any breach of the Certification compliance and any proposed penalties and / or remedies that ERO proposes to apply for such breach.

### **Article 22 Investigations**

1. ERO may, at its own discretion conduct investigations into the operation of the TSO.
2. The TSO is required to facilitate such investigations and, in particular, to make available all documentation, access to its premises and access to its employees and contractors as may reasonably be required by ERO for the purposes of the investigation.
3. ERO will publish the conclusions of its investigation on its official website.
4. The TSO will be provided with an opportunity to review the draft conclusions ahead of publication and may provide responses and request the redaction of confidential information. Any responses provided by the TSO will be published alongside the conclusions of ERO's investigation.

## **CHAPTER VIII FINAL PROVISIONS**

### **Article 23 Confidentiality**

1. Where documents or information submitted by the Applicant to ERO, contain confidential information, the Applicant must clearly specify which parts of documents or information should be considered confidential.
2. Where none of the document is marked as confidential, ERO or the EnCS will consider that information submitted by the Applicant may be publicly disclosed.
3. Where any of the documents submitted in the process of certification is marked as a confidential, ERO and EnCS shall protect such confidential information and shall ensure that such documents are not publicly disclosed.

### **Article 24 Official Language**

1. This Rule is issued in the Albanian language and shall be translated into the Serbian and English languages. In the event of discrepancies, the Albanian version shall prevail.

### **Article 25 Interpretation**

2. In the event of uncertainty over any provision of this Rule, the Board will provide clarification.

**Article 26 Amendments of the Rule**

1. This Rule is subject to review and amendment by the Board.
2. Procedures for amendment or modification of this Rule are the same as the one applicable for its adoption.

**Article 27 Entry into Force**

3. This Rule shall come into force on the date of its adoption by the Board. It shall be published on the official website of ERO.

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