



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

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



ERO/Rule No. 02/2017

## **RULE ON CONFIDENTIAL INFORMATION**

**Pristina, 16 March 2017**

Pursuant to authority given under Article 9, paragraph 1, subparagraph 1.7, Article 12, paragraph 2, Article 26 and Article 58, paragraph 2 of Law on Energy Regulator (Law No. 05/L-084), the Board of Energy Regulatory Office in its session held on 16 March 2017 adopted the:

## **RULE ON CONFIDENTIAL INFORMATION**

### **CHAPTER I GENERAL PROVISIONS**

#### **Article 1**

##### **Purpose**

The purpose of this Rule is to stipulate which special material shall be considered as confidential information (secret), as well as which are the procedures for stipulation and access to such confidential information.

#### **Article 2**

##### **Scope**

1. This Rule shall be applied for all documents that are archived or received by the Regulator.
2. According to Law on Energy Regulator, the Regulator enjoys the right to request from each energy enterprise or public authority any necessary information, data and other document, including accounts and other financial and accounting information, as well as confidential information, which are required for fulfillment of its functions and duties in accordance with applicable legislation.
3. For purposes of exercising such rights the Regulator shall:
  - 3.1. ensure transparency by enabling the licensee, customers and the public to have open access to information;
  - 3.2. ensure that all non-confidential information is at public disposal under the same conditions and easily accessed by them;
  - 3.3. protect competing interests of licensees, or any party, from unauthorized disclosure of commercial sensitive information; and
  - 3.4. make sure to build sufficient level of trust and knowledge for all market participants.
4. All information received by the Regulator for fulfillment of its regulatory activities shall be considered as public information, unless defined as confidential information by this Rule and applicable legislation.

#### **Article 3**

##### **Definitions**

1. The terms used in this Rule have the following meaning:
  - 1.1. **“Applicant”** – any party which has applied to the Regulator to obtain a license for performing any energy activity, to obtain an authorization, dispute resolution, approval of

codes, tariffs and prices, obtain a Certificate of Origin or that may have required from the Regulator to perform any activity in compliance with Law on Energy Regulator;

- 1.2. **“Confidential Information”** - data, documents or other information, commercial or technical, that are related to design, rehabilitation, security, operation, maintenance and funding of energetic actions or activities that do not fall under public domain, whose announcement may jeopardize commercial interests of the applicants or licensees;
  - 1.3. **“Interested party”** - any party that might show interest for any information received from the Regulator;
  - 1.4. **“Claimant of Document”** – any natural or legal person that may have some interest, without discrimination of any kind, in the manner or under conditions stipulated by this rule or any other applicable law;
  - 1.4. **“Public Information”** – any information gathered, collected or preserved by the Regulator that is not considered confidential;
  - 1.5. **“Energy Regulatory Office”** – (hereinafter: the Regulator) an independent agency in the energy sector, established by Law on Energy Regulator;
  - 1.6. **“Board”** - the Board of Energy Regulatory Office, as stipulated in Chapter II of Law on Energy Regulator;
2. Terms used in this Rule have the same meaning as the ones used in the Law on Energy Regulator, Law on Energy, Law on Electricity, Law on Thermal Energy, Law on Natural Gas, Law on Access to Public Documents, Law on Classification of Information and Security Clearances and other applicable legislation.

## **CHAPTER II CONFIDENTIAL INFORMATION**

### Article 4

#### **Criteria for Determination of Confidential Information**

1. The Information shall be considered confidential if it fulfills the following criteria:
  - 1.1. information is commercially sensitive;
  - 1.2. disclosure of information will infringe competitive interests of licensees or other parties who request the Regulator to treat the information as confidential;
  - 1.3. the party that requested the information to be treated as confidential, made reasonable efforts to preserve the confidentiality of the information; and,
  - 1.4. the potential harm that results from disclosure of information may be more severe than the public interest to disclose the same.
2. Appendix 1 presents instructions on kinds of information that may be treated as confidential, if the criteria from paragraph 1 of this Article are fulfilled.

## **CHAPTER III TREATMENT OF CONFIDENTIAL INFORMATION**

## Article 5

### **Delivery of Information Considered as Confidential**

1. The information that is received from the Regulator is considered to be public and provide full access to all interested parties unless the Regulator determines that such information is confidential according to the provisions of this Rule and Law on Access to Public Documents.
2. Every applicant, licensee or third party seeking from the Regulator to treat a respective information as confidential, according to Appendix 3 of this Rule, shall mark the same as "Confidential Information" and the Regulator shall treat the same as such until the determination of a special decision by the Board on acceptance or denial of confidentiality of such information.
3. If the Regulator is requested to disclose such information, the Board will review whether disclosure of such information may harm the party or others, under certain conditions, and therefore it is necessary to classify such information as confidential.
4. Information marked by the party as confidential must fulfill the criteria of Article 4, paragraph 1, of this Rule.
5. For information stipulated in paragraph 4 of this Article, the party may request the Regulator in writing to treat such information as confidential. The request shall contain a justification for this determination. The Regulator shall review the request and shall define this information, in accordance with Article 7 of this Rule.

## Article 6

### **Review by the Regulator**

1. The Regulator's staff members, who deal with documents that contain information that is marked as "Confidential Information", shall treat such information accordingly.
2. Following the receipt of the request in accordance with Article 5, paragraph 5 of this Rule, the Regulator shall consider the information as confidential.
3. The information required to be treated as confidential shall be treated as such by all employees and Board of the Regulator until a third party requests access to such information.
4. Following the request by any third party for access to documents, in line with paragraph 2 of this Article, the Board will take a decision on whether the document is considered confidential or not.
5. The documents shall be saved as confidential and marked as such by ERO, pursuant to Rule on Public Register;

## Article 7

### **Defining Confidentiality**

1. Information marked as confidential shall not be disclosed until the Regulator's Board has not determined its confidentiality.

2. If the Board determines that respective information does not meet the criteria for confidentiality, such information shall be made publicly available, in accordance with procedures set forth by rules and applicable laws.
3. If the Board determines that respective information meets the criteria for confidentiality it shall treat it as confidential, and shall justify it with a decision.
4. In order to prevent the unauthorized access to confidential information, they shall be preserved, archived and managed in compliance with this Rule and other applicable legislation.

## **CHAPTER IV ACCESS TO DOCUMENTS**

### Article 8

#### **The Right for Access to Documents**

1. Any party requesting access to a document enjoys the right to have access to Regulator's documents, in accordance with this Rule and Law on Access to Public Documents.
2. Any party requesting a document is not obliged to provide reasons for access to Regulator's documents.
3. If the request is not sufficiently correct, the Regulator requires the claimant to clarify the request and assists him/her on this issue.
4. Documents shall be accessible for public based on a direct request, or based on a request in writing or electronically, except for information classified as confidential, which shall be treated in accordance with this Rule and applicable laws.
5. The claimant shall not use documents received from the Regulator for propaganda, denigration, commercial or other purposes.

## **CHAPTER V REFUSAL TO ACCESS DOCUMENTS**

### Article 9

#### **Exceptions of the Right to Access Documents**

1. The Regulator may reject the access to documents if its disclosure may jeopardize protection of public interest, as stipulated in Article 12 of Law on Access to Public Documents.
2. The Board may close any part of public session for all parties, when the material that is considered confidential is being reviewed by all parties, except for the people who are appointed by the Board to have access to confidential Information.
3. If the information is classified as confidential, each party including the Regulator's staff members shall comply with the criteria for access to confidential information as defined by the Board.
4. If the request for access to confidential Information is refused or accepted, the Regulator shall provide reasons for such refusal in order not to harm protected interests.

5. The information classified as confidential by the the Board may be disclosed before public and judicial authorities in accordance with procedures set forth by rules of the Regulator and other applicable laws.
6. Authorized representatives of interested parties who attend Board sessions may request from the Board to review confidential information. The Board may grant access to such confidential information under the following conditions:
  - 6.1. after it is concluded that the interested party is requesting access in order to provide adequate evidence in a case in which the information is required; and
  - 6.2. once the written statement is given by the authorized representative stating that the information will not be disclosed to other people to whom the access was not granted in advance or to the public and that any violation of the agreement shall be sanctioned.

#### Article 10

#### **Obligations of Board Members and Regulator's Staff Members**

1. Each Board member and staff member who during the performance of his/her official duties has access to confidential information shall be obliged not to disclose any confidential information to any other party. The same applies to experts employed by institutions or other parties engaged in regulatory activities, consultations, monitoring, auditing and other activities carried out by the Regulator.
2. The obligation stipulated by paragraph 1 of this Article is applicable during entire employment time at the Regulator, as well as after expiry of the labor contract with the Regulator. The Board members and Regulator's staff members shall not disclose or use such information for personal benefit or other reasons.
3. Use of such information for personal financial gain or for benefit of others, shall not only be considered as serious violation of the labor contract, but may even result in an initiation of civil or criminal procedure.

#### Article 11

#### **Unauthorized Disclosure of Confidential Information**

1. In case there is an unauthorized disclosure of confidential information, the Board, in accordance with Law on Energy Regulator and Rule on Administrative Measures and Fines shall render administrative measures or fines against any staff member due to such unauthorized disclosure of confidential information.
2. If a prohibition of disclosure pursuant to Article 9 paragraph 6 of this Rule is violated, the Board shall have the right to prohibit attendance of authorized representative in any consultation process of the Regulator and in future access to any confidential information, and if necessary the same shall be entitled to render administrative measures or fines, in accordance with Rule on Administrative Measures and Fines.
3. Information classified as confidential may be declassified five (5) years after the date when the Board has classified the same as confidential, in line with Law no. 03/L-178 on Classification of Information and Security Clearances

4. If it is requested from the party that the information is kept confidential even after expiration of the period stipulated in paragraph 3 of this Article, the Board may extend such duration for another time period.

## **CHAPTER VI TRANSITIONAL AND FINAL PROVISIONS**

### Article 12 **Interpretation**

In case of any uncertainty concerning the provisions of this Rule, the Board shall issue explanatory information.

### Article 13 **Amendment**

1. The Regulator has the right to amend or modify any provision of this Rule.
2. Procedures for amendment or modification of this Rule shall be the same as those for its adoption.

### Article 14 **Abrogation**

This Rule abrogates Rule on Confidential Information (June 2011), issued pursuant to Law on Energy Regulator (Law No. 03/L-185).

### Article 16 **Entry into Force**

The Rule shall enter into force on the day of approval by the Board and shall be published on Regulator's official website.

#### **The Board of Energy Regulatory Office**

\_\_\_\_\_  
Krenar Bujupi, Acting Chairman

\_\_\_\_\_  
Arsim Janova, Member

\_\_\_\_\_  
Besim Sejfijaj, Member

## **APPENDIX 1**

### **List of some information considered as confidential:**

The list does not mean that only or all information given below shall be qualified as confidential:

1. commercial or technical information related to the design, rehabilitation, security, operation, maintenance and activities that are related to funding and functioning of energy sector;
2. data related to intellectual property, records and information, labor secrets, patents, protected products, copyrights, business, marketing and service plans, database and any data and financial report that is not published;
3. data that may infringe individual's privacy and integrity according to Law on Protection of Personal Data;
4. data on internal accounting, business plan etc;
5. data that is related to documents under compiling stage;
6. data that may be used for access to computer networks of the company;
7. data that are related to applicant's plan to address certain markets; strategies of the applicant regarding certain competitors; and applicant's market studies and analyses, if those are not meant for public disposal;
8. projecting statements, cost data, project evaluations, project correspondence that is required to be confidential and capital development plans;
9. information that is directly linked to bids, proposals or negotiations on sales or purchase of energy or energy services, whose disclosure may inflict competing interests to energy companies or their clients;
10. data, which if not revealed, will have an impact on inspections, investigations and auditing, unless its disclosure is of a crucial interest for the public;
11. communications between licensees and various authorities, unless public interest is more important than the reason for confidentiality;
12. disclosure of any record or information that is prohibited by applicable laws or regulations, etc.



**APPENDIX 2**

**The Model for Access to Public Documents of Energy Regulatory Office**

Date: \_\_\_\_\_, Pristina

**The Form of Written Request to Energy Regulatory Office:**

To: Energy Regulatory Office

Mr/Mrs \_\_\_\_\_

Address: St. "Dervish Rozhaja" No.12, Pristina

From: Mr/Mrs \_\_\_\_\_, Citizen from \_\_\_\_\_

Contacts:

Mob: \_\_\_\_\_

E-mail: \_\_\_\_\_

Personal no.: \_\_\_\_\_

Subject: **Request for Access to Public Documents**

Dear \_\_\_\_\_,

Based on Law on Access to Public Document (O3/L-215) I require a copy of the document:

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Sincerely (name, surname, signature)

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*According to Law on Access to Public Documents:*

*The claimant is not obliged to provide reasons in order to have access to documents.*

*The claimant of a document has the right to remain anonymous towards third parties.*

**APPENDIX 3**

**THE MODEL OF THE REQUEST FOR TREATING INFORMATION AS CONFIDENTIAL  
AT THE ENERGY REGULATORY OFFICE**

Date \_\_\_\_\_, Pristina

The form of written request to Energy Regulatory Office

To: Energy Regulatory Office

Mr/Mrs \_\_\_\_\_

Address: St "Dervish Rozhaja", no. 12, Pristina

From: Mr/Mrs \_\_\_\_\_, Citizen from \_\_\_\_\_

Contacts:

Mob: \_\_\_\_\_

E-mail \_\_\_\_\_

Personal no. \_\_\_\_\_

Subject: **REQUEST FOR TREATING INFORMATION AS CONFIDENTIAL**

Dear \_\_\_\_\_

Based on Article 6 of this Rule, we require from the Board of the Regulator to treat the attached information/documents as confidential: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sincerely (name, surname, signature)

\_\_\_\_\_