



Pristina, 27.11.2019

ERO Code V_1205_2019

The Board of Energy Regulatory Office

Based on:

- Provisions of Article 9, Article 16, paragraph 1, sub-paragraphs 1.8 and 1.10, Article 25, Article 55, paragraph 1, sub-paragraphs 1.2 and 1.5, Article 54, paragraph 1, sub-paragraph 1.1 and 55, paragraph 1, sub-paragraphs 1.1, 1.2 and 1.5 of the Law on Energy Regulator, Law No.05/L-084,
- Provisions of Article 3, paragraph 2, sub-paragraph 2.1, paragraphs 3, 4, 5, 6 and 7, Article 4, paragraph 1, Article 6, paragraph 1, sub-paragraph 1.1 and Article 8, paragraph 1, sub-paragraphs 1.1 and 1.3 of the Rule No. 06/2017 on Administrative Measures and Fines,
- Provisions of Article 27 of the Distribution System Operator License, issued to KEDS JSC.,
- VB_114_2018 and VB_117_2018, dated on 05 November 2018 issued by ERO Board,
- Notice No. 520/19, dated on 05 September regarding the findings presented in the monitoring reports,
- Response of KEDS JSC, dated on 07 October 2019, regarding the Notice No. 520/19, issued by ERO Board,
- Written Explanation No. 87/2019, dated on 16 October 2019, issued by Public Procurement Regulatory Commission, regarding the issue raised by ERO through the letter No. 68/2019, dated on 29 September 2019,

in the session held on 27 November 2019 issued the following:

DECISION

- I. Kosovo Electricity Distribution Company KEDS JSC is **OBLIGED** to terminate immediately the activities that cause the violation of the terms and conditions set forth in Article 11 of the DSO License.
- II. Kosovo Electricity Distribution Company KEDS JSC is **OBLIGED** that within 30 (thirty) days from the date of receipt or publication of this Decision, to compensate all customers who were charged for Electro-energetic Consents for payment of the metering group.

REASONING

- o On 05 November 2018, ERO Board, in line with the legal competences granted by the Law on Energy Regulator and the Decisions VB_114_2018 and VB_117_2018 established the working groups with the purpose of monitoring the Capital Investments and Monitoring of Complaints as well as other issues related to customer protection.



- ERO's working groups have undertaken concrete actions, and through written communication and visits in the field, they focused on monitoring the procedural, technical and financial aspect, in order to see whether the public procurement criteria have been fulfilled as well as monitoring the provision of customer services from KEDS.
- During the monitoring of capital investments, the monitoring group has selected and analysed several projects. During the evaluation of selected projects, it was noticed that there are deficiencies in the procurement process in KEDS and it was not carried out in line with Article 11 of the DSO License, procedures foreseen by Law on Public Procurement; more accurately, it was concluded that KEDS has not published the Expression of Interest on its website or any of the official gazettes. Also, the identification of participants in the process and then the selection of the winner was not carried out based on previously defined technical and economic criteria.
- In monitoring the process of providing customer services, the monitoring team found that KEDS in some cases regarding Electro-energetic Consents has requested payment of the metering group or even the setting of the metering group by the applicant itself. This action conducted by KEDS is in contradiction with Article 54 of the Law on Electricity, since the metering equipment for the metering of electricity is owned by the distribution system operator.
- ERO's monitoring groups, following the completion of the supervision, have prepared the Report on Monitoring of Capital Investments and the Report on Monitoring the Provision of Customer Services, with the findings on any contested violations, which were submitted to the ERO Board for review.
- The Board of Energy Regulatory Office, in its meeting held on 28 August 2019, based on the findings proven in the monitoring reports and in accordance with the provisions of the Law on Energy Regulator, reviewed the monitoring reports and requested from KEDS that not later than 30 days from the date of receipt of the Notice on non-compliance to inform the ERO Board on the actions that will be undertaken in order to correct the irregularities found in the monitoring reports.

On 07 October 2019, KEDS submitted to ERO the comments on non-compliance notice. KEDS in its comments stated that it is not a public enterprise owned by the Republic of Kosovo as defined in Law no. 03 / L-087 on Publicly Owned Enterprises, but is a private company with private equity, pursuant to Law no. 06 / L-016 on Business Organizations.

- Furthermore, they note that the Implementation Agreement also allowed to procure goods and services on commercial terms and on the basis of a handshake deal (based on agreement with the trading parties) or their proximity. KEDS through internal procurement procedures already guarantees selection based on competition, commercial conditions and handshake deal. Following the privatization, through internal procedures, which were drafted based on



the requirements of the Law on Public Procurement, KEDS has followed the general principles of the Law on Public Procurement. However, in order to avoid any misinterpretation and to clarify the legal requirements clearly, KEDS has requested legal clarification from the Public Procurement Regulatory Commission (PPRC).

- In its comments, KEDS stated that it would improve issues related to tendering processes by making the necessary preparations for their announcement through the website, including notifications on key material specifications and others, in the context of making procurement processes for goods, services and works consistent with the legal framework.
- On 29 September 2019, the Energy Regulatory Office through the letter No.68/2019 notified the Public Procurement Regulatory Commission with the findings of the Monitoring Report and requested interpretation of the provisions of LPP.
- On 17 October 2019, the Energy Regulatory Office by letter no. 87/2019 received the required clarifications from the Public Procurement Regulatory Commission. In their letter, the Public Procurement Regulatory Commission made it clear that under Article 2 of the Law on Public Procurement, contracting authorities are obliged to comply with the procedural and substantive requirements of this law while carrying out their procurement activities. Therefore, Article 2 of the LPP applies to any Public Service Operator (both public or private) who is required to comply with the procedural and substantive requirements of this Law in carrying out their procurement activities.
- KEDS in its responses regarding the provision of services to consumers, emphasized the fact that this has been an inherited process despite the fact that over the years KEDS has consistently minimized the application of this process. KEDS has agreed with ERO's findings that this charge shall not apply and in this context all customers who have been subject to this charge during the monitoring period will be compensated, even though this value has been deducted as an unregulated revenue during the determination of Maximum Allowed Revenues (MAR) for the respective year. Furthermore, KEDS has already begun to take the necessary measures in this regard by notifying the affected customers of this process and requesting them to submit the necessary information for compensation of funds.
- The Board of Energy Regulatory Office, after evaluating and analysing all the documentation related to the monitoring process and responses submitted by KEDS JSC, has concluded that the responses provided by KEDS JSC have not contested the violations identified in the monitoring reports by the ERO monitoring groups, and based on what was explained above it is decided as in the enacting clause of this decision.

III. The decision is issued and published on the official languages of the Republic of Kosovo.

IV. The Decision shall enter into force on the date of approval by the Board of the Regulator and will be published on the official website of the Regulator.



Legal Advice: The party dissatisfied with this Decision may initiate an administrative dispute at the Competent Court, within thirty (30) days from the date of receipt of this Decision or the date of its publication on ERO's website, whichever occurs last.

ERO Board:

Arsim Janova, Acting
Chairman

Besim Sejfijaj, Member

Selman Hoti, Member

Izet Rushiti, Member

This Decision is sent to:

- KEDS JSC
- The Regulator's Archive