



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

## **RULE ON CONFIDENTIAL INFORMATION**

**Prishtina, 17 June 2011**



The Energy Regulatory Office Board, pursuant to the authority given by Article 8, paragraph 1, sub paragraph 1.6, Article 14, paragraph 2, sub paragraph 2.16 and 25 of the Law No. 03/L-185 on Energy Regulator, during its session held on 17.06.2011 adopted this:

## **Rule on Confidential information**

### **CHAPTER I GENERAL PROVISIONS**

#### Article 1

##### **Purpose**

Purpose of this Rule is to stipulate which special material shall be considered as confidential information, as well as which are the procedures for stipulation and access in such confidential information.

#### Article 2

##### **Scope**

1. This Rule shall be applied for all documents that are archived, compiled or received by the ERO.
2. According to the Law on Energy Regulator, ERO enjoys the right to request from each Applicant that is licensed or public authority, information, data and other documents that are required for fulfillment of its functions, duties and competencies.
3. For purposes of exercising such right ERO shall:
  - 3.1. Ensure transparency enabling the Licensee, clients and the public have opened access in the information;
  - 3.2. Make sure that all non-confidential information is in disposal to the public under same conditions and easily accessed by them;
  - 3.3. Protect competing interests of licensees, or any part, from unauthorized disclosure of commercial and sensitive information; and
  - 3.4. Make sure to build sufficient level of trust and knowledge for all participants in the market.
4. All information received by ERO for fulfillment of its regulatory activities shall be considered as public information, unless defined as confidential information by this Rule and applicable laws.



## Article 3

### Definitions

1. Terms used in this rule have the following meaning:
  - 1.1. **“Applicant”** – each party that has applied at the ERO to obtain license to perform energy activity, obtain authorization, resolving of disputes, approval of codes, tariffs and prices, certificate of origin, of all those who have requested from ERO to perform any activity in compliance with the Law on Energy Regulator;
  - 1.2. **“Confidential Information”** - data, documents or other information, commercial or technical, that have related to design, rehabilitation, security, operation, maintenance and funding of energetic actions or activities that do not fall under public domain and that their 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 ERO;
  - 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 ERO that are not considered confidential;
2. Terms used in this Rule, have the same meaning with those used in the Law on Energy Regulator, Law on Energy, Law on Electric Energy, Law on Central Heating, Law on Natural Gas, Law on Access in Public Documents and Law on Classifying of Information and Verifying of its Safety.

## CHAPTER II CONFIDENTIAL INFORMATION

### Article 4

#### Criteria for determination of Confidential Information

1. The Information shall be considered confidential if fulfills the following criteria:
  - 1.1. Information is commercially sensitive;
  - 1.2. Disclosure of the information will infringe competitive interests of Licensees or other parties who request from ERO that the information is kept as confidential;
  - 1.3. Party that requested that the information is kept as confidential, made reasonable efforts to preserve the confidentiality of the information; and,



- 1.4. Potential harm that results from disclosure of the information may be more severe than the public interest to disclose the same.
2. Annex 1 presents instructions on kinds of information that may be considered confidential, if the criteria from paragraph 1 of this Article are fulfilled.

### **CHAPTER III**

#### **TREATING OF INFORMATION THAT IS CONSIDERED CONFIDENTIAL**

##### Article 5

##### **Delivery of the information that is considered as confidential**

1. All information that is received from ERO are considered to be public and provide full access to all interested parties, unless ERO determines that such an information is confidential according to the provisions of this Rule.
2. Every Applicant, Licensee or third party seeking from ERO that a respective information is treated as confidential, shall mark the same as “Confidential Information” and ERO will treat the same as such.
3. If it is requested from ERO that such information is made public, ERO Board will review whether disclosure of such information may harm the party or others, under certain condition, and if because it is necessary to classify such information as confidential.
4. Information marked by the party as confidential, must meet criteria of the Article 4, paragraph 1, of this Rule.
5. For the Information stipulated by paragraph 4 of this Article, party may request from ERO in writing that such information is treated as confidential. The request shall contain a justification for such treatment. ERO shall review the request and shall define the information as such, in accordance with Article 7 of this rule.

##### Article 6

##### **Review by ERO**

1. ERO staff members that deal with documents that contain information that is marked as “Confidential Information” shall treat such information accordingly.
2. ERO staff members that receive a request to treat information as confidential shall raise this issue before the ERO Board.
3. Within fifteen (15) calendar days from the day when the request is submitted in accordance with Article 5 paragraph 5 of this rule, ERO shall notify interested parties related to the request made to treat the information as confidential.
4. Notification from paragraph 3 of this Article must include a description of the type and nature of the information and the possibility to reject such classification.



#### Article 7

#### **Defining of Confidentiality**

1. Information marked as confidential shall not be disclosed until the Board has not determined the confidentiality.
2. If the Board of ERO determines that respective information does not meet the criteria for confidentiality, such Information may be in the disposal of public, in accordance with procedures set forth by ERO Rules and applicable laws.
3. If ERO Board determines that respective information does not meet the criteria for confidentiality the same shall issue a notice in writing announcing the information as confidential, along with a justification in this regard.
4. In order to prevent unauthorized access in confidential information, the same shall be preserved, archived and managed in compliance with procedures set forth by Rules on Public Records, other ERO rules and applicable laws.

### **CHAPTER IV**

### **ACCESS IN THE DOCUMENTS**

#### Article 8

#### **The right to access in the Documents**

1. Any party requesting a document enjoys the right to have access to ERO documents, in accordance with this Rule, Rule on Public Records and Law on Access to Public Documents.
2. Any party requesting a document is not obliged to provide reasons for access in ERO documents.
3. Documents shall be accessible for the public based on a direct request, or based on a request in writing or electronically, except for the information that is classified as confidential, which shall be treated in accordance with this rule and applicable laws.
4. Party requesting a document, shall not use documents received from ERO for propaganda, denigration, commercial or other purposes.
5. In case the request for access in the documents is not clear, ERO may request clarification.



## **CHAPTER V REJECTION TO ACCESS DOCUMENTS**

### Article 9

#### **Exceptions of the right to access Documents**

1. As stipulated by Article 12 of the Law on Access to Public Documents, ERO may reject the access at documents if its disclosure may jeopardize protection of public interest.
2. ERO Board may close any part of public session when the material that is considered confidential is being reviewed by all parties, except for the persons who are assessed by the Board that can have access confidential Information.
3. If the information is classified as confidential, each party and ERO Staff members shall comply with the criteria for access in the confidential Information as defined by ERO Board.
4. If the request on confidential Information is refused, ERO shall provide reasons for such refusal in order not to harm protected interests.
5. The information classified as confidential by ERO Board may be disclosed before public and judicial authorities in accordance with procedures set forth by ERO Rules and other applicable laws.
6. Authorized representatives of interested parties who attend ERO Board sessions may request from ERO Board to review confidential information. ERO Board may grant access is such confidential information under the following conditions:
  - 6.1. After it is concluded that 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 persons to whom the access was granted in advance or before the public and that any violation of the agreement will be sanctioned.

### Article 10

#### **Obligations of Board members and ERO staff members**

1. Each Board member and staff member who during performance of his/her official duties, has access in confidential information will be obliged not to disclose any confidential information to any other party. The same applies for experts employed by institutions or other parties engaged in regulatory activities, consultations, monitoring, auditing and other activities conducted by ERO.
2. The obligation stipulated by paragraph 1 of this Article is applicable during entire employment time in ERO, as well as after expiry of the work contract with ERO. Members of the Board and



ERO staff members shall not disclose, benefit or use such information for personal or other reasons.

3. Use of such information for personal financial gain or other benefits, not only that will be considered as serious violation of the work 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, ERO Board 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, ERO Board shall have the right to prohibit attendance of authorized representative in any consultation process of ERO and in future access in any confidential information, and if necessary the same shall be entitled to render administrative measures or fines, in accordance with the Rule on Administrative Measures and Fines.
3. Confidential Information may be disclosed five (5) years after the date when the Board has classified the same as confidential.
4. If it is requested from the party that the information is kept confidential even after expiration period stipulated in paragraph 3 of this Article, ERO Board may extend such duration for another time period.

### **CHAPTER VI**

### **FINAL AND TRANSITIONAL PROVISIONS**

#### Article 12

#### **Official Language**

This Rule is issued in Albanian, and will be translated in Serbian and English language. In the event of a dispute between the versions, the Albanian version shall prevail.

#### Article 13

#### **Modification**

1. ERO withholds the right to change or modify any provision of this rule.
2. Procedures for change or modification of this rule shall be the same as those for its adoption.

#### Article 14

#### **Interpretation**



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

Article 15  
Abrogation

This Rule abrogates the Rule on Confidential Information, issued pursuant to the Law No.2004/9, on Energy Regulatory adopted by the Board of the Energy and Regulatory Office on 06.11.2006.

Article 16  
Entry into Force

The Rule enters into force on the date of its adoption by the Board of ERO and shall be published on ERO web site.

**ERO Board**

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Dr. Ali Hamiti, Chair person

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Përparim Kabashi, Member

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Blerim Koci, Member



## **Annex 1**

### **List of some information that is considered as confidential**

1. The List does not mean that only or all information given below shall be qualified as confidential:
  - 1.1. Commercial or technical nature that are related to the design, rehabilitation, security, operation, maintenance and activities that are related to funding and functioning of energy sector;
  - 1.2. Data that is related to intellectual property, records and information, work secrets, patents, protected products, copyrights, business, marketing and service plans, database and any data and financial report that is not published.
  - 1.3. Data that may infringe individual's privacy and integrity according to the Law on protection of personal data;
  - 1.4. Financial report including data on internal accounting, business plan etc;
  - 1.5. Data that is related to those documents which are still in the compiling stage;
  - 1.6. Data that may be used for access in computer networks of the company;
  - 1.7. Data that are related to the plan of the applicant 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;
  - 1.8. Projecting reports, expenditure data, project evaluations, project correspondence that is required to be confidential and capital development plans;
  - 1.9. Information that is directly linked with 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;
  - 1.10. Data, which if revealed, will have an impact on inspections, investigations and auditing, unless its disclosure is of a crucial interest for the public;
  - 1.11. Communications between Licensee and various authorities, unless public interest is more important than the reason for confidentiality;
  - 1.12. Disclosure of any record or information that is prohibited by applicable laws or regulations, etc.