

Pursuant to authority given under Article 13 of the Law on Energy Regulator, the Board of Energy Regulatory Office on a session held on 14.01.2008 adopted the:

RULE ON CONFIDENTIALITY OF INFORMATION

CHAPTER 1

GENERAL PROVISIONS

Article 1

General Provisions

- 1.1 This Rule is based on the authority of the Energy Regulatory Office (“ERO”) to make the determination as to whether specific material constitutes confidential information and the policy and procedures for the designation and access to such confidential information.
- 1.2 Pursuant to the Law on the Energy Regulator, ERO has the right to require from any Applicant, licensee or public authority information, data, and documents necessary for the fulfillment of its functions, duties and powers.
- 1.3 In carrying out this authority ERO shall:
 - a) Provide transparency by assuring that the licensee, the customers and the public have open access to information;
 - b) Ensure that all nonconfidential information is publicly available under similar conditions and easily accessible;
 - c) Protect the competitive interests of the licensee, or any other party, from unwarranted disclosure of commercially sensitive information; and
 - d) Ensure that there is a sufficient degree of confidence and knowledge for the market participants to operate in the market.
- 1.4 All information received by ERO in the performance of its regulatory activities shall be considered as public information unless determined as confidential under this Rule.

Article 2

Definitions and Interpretation

- 2.1. Terms used in this Rule shall have the following meaning:

“Applicant” means any party who applied to ERO for a license, dispute resolution, approval of codes, tariffs and prices, certificate of eligibility, certificate of renewable or who has requested ERO to perform any activity from those that it is empowered to regulate by the Law on Energy Regulator;

“Confidential information” means the information relating to the 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 disclosure of which may endanger the commercial interest of applicants and/or licensees.

“Interested party” means applicant for a license, Licensee, party in dispute or any party that might have any interest in any information received by ERO during its ordinary course of business;

“Public information” means information collected, assembled, or maintained by a governmental institution or where the governmental or any other institution has a right of access, or any information in ERO’s possession that is not confidential.

“Staff member” means any ERO staff member including the Chairman and the Members of the Board of ERO.

- 2.2. Terms used in this Rule shall have the same meanings as the terms used in the Law on Energy Regulator and other laws and regulations applicable in Kosovo.

CHAPTER 2

CONFIDENTIAL INFORMATION

Article 3

Criteria for Determination of Confidential Information

- 3.1 To consider that information is confidential it should meet all of the following criteria:
- a) the information is commercially sensitive;
 - b) disclosure of the information would inflict harm on the competitive interests of the licensee or other parties requesting confidentiality;
 - c) the requesting party has made a reasonable effort to maintain the secrecy or confidentiality of the information, and
 - d) the potential harm from disclosure outweighs the public interests in disclosure.

- 3.2. Annex 1 is providing illustrative guidelines for the types of information which may become confidential if the criteria in Article 3.1 are met.

CHAPTER 3

TREATMENT OF INFORMATION CONSIDERED CONFIDENTIAL

Article 4

Submittal of Information Considered Confidential

- 4.1. All information received by ERO is considered to be a public record and is subject to full disclosure to all interested parties unless ERO determines that such information is confidential under the provisions of this Rule.
- 4.2. The Board of ERO recognizes that disclosing certain information may harm the party or others under certain conditions and that maintaining confidentiality may be necessary. Therefore, any Applicant, Licensee or third party may request that certain information be treated as confidential.
- 4.3. The party requesting confidentiality of information must demonstrate that the information they seek to be treated as confidential meets the criteria listed in Article 3.1.
- 4.4. The information referred to in Article 4.3 must be marked by the interested party as “Confidential Information” and such party shall request the Board of ERO to designate the marked information as confidential. The request must contain justification for such designation.

Article 5

Review by ERO

- 5.1. The Staff member of ERO that is dealing with documents containing the information that is marked as confidential or that receives a request for determination of confidentiality shall bring the matter to the Board of ERO.
- 5.2. Within fifteen (15) calendar days of a request submitted under Article 4.4, ERO shall notify interested parties that the claim of confidentiality has been made.
- 5.3. The notification shall include a description of the type and the nature of the information and the opportunity to object to the designation.
- 5.4. The Board of ERO shall specify a reasonable period of time within which interested parties may object to the designation and request an opportunity to argue against such a request. The opportunity shall be provided through one or more of the following means:

- a) sufficient opportunity for written comments;
- b) oral arguments at a session of the Board of ERO.

Article 6
Determination of Confidentiality

- 6.1. The information marked as confidential shall not be disclosed until a determination of confidentiality is made by the Board of ERO.
- 6.2. If the Board of ERO determines that the designated information does not meet the criteria for confidentiality, such information shall be made available to the public in a manner described in rules adopted by ERO.
- 6.3. If the Board of ERO determines that the designated information meets the criteria for confidentiality it will issue a written decision declaring it confidential with justification.
- 6.4. The confidential information shall be kept and managed in accordance to procedures set forth in the Manual of Operations and Rule on Public Register to prevent unauthorized access and disclosure.

CHAPTER 4

ACCESS AND DISCLOSURE

Article 7
Access to Confidential Information

- 7.1. As envisaged in Article 4.1. of the Law No. 2003/12 On Access to Official Documents, ERO shall refuse access to a document for which a Government institution has determined that disclosure would undermine the protection of public interest such as public security, defense and military matters, international relations, the financial, monetary and economic policy of the Government.
- 7.2. As provided in Article 18.1 of the Statute of ERO, the Board shall close the portion of any public session where material deemed confidential is being considered, to all parties except those persons who have been certified by the Board to have access to the confidential information.
- 7.3. If information is determined as confidential, any party including the staff members of ERO must adhere to the terms of access to confidential information as set forth by the Board of ERO. This obligation remains in force after completion of the proceeding.

- 7.4 If a request for access to the confidential information is refused ERO shall provide the reasons for its decision in a manner which does not harm the interests protected.
- 7.5 Access to confidential information shall be granted to any person approved by the party considering the information as confidential.
- 7.6 The provisions of the Articles 8.2 to 8.4 of the Law on Access to Official Documents and Article 11 of the Rule on Public Register regarding the access, registration and handling of the confidential information shall apply.
- 7.7 As provided in Articles 13 and 50 of the Law on the Energy Regulator, information determined by the Board of ERO to be confidential may be disclosed to the judiciary and public bodies according to procedures established by the Rules of ERO.
- 7.8 Authorized representatives of interested parties participating in ERO Board Sessions and consultations may request authorization from the Board of ERO to review confidential information. The Board of ERO shall authorize such access to confidential information under the following conditions:
 - a) Conclusion that the interested party requires access in order to make adequate arguments in an ERO proceeding on an issue for which the information is relevant;
 - b) Written statement by the authorized representative that the information will not be disclosed to any other individuals not previously authorized access or to the general public and that any violation of the agreement will be subject to penalties.

Article 8

Obligations of ERO Staff Members

- 8.1. The Board of ERO will nominate the Staff members of ERO who shall be allowed access to confidential information.
- 8.2 Each Staff member who has access to the confidential information shall be under obligation not to disclose to any parties any information of a confidential nature that may come to their knowledge in the course of their work. The same applies to experts employed by institutions or other parties engaging in regulatory activities, consulting, monitoring, auditing and other activities performed in ERO.
- 8.3. Obligation imposed to the persons under Article 8.2 is valid at anytime during or after employment in ERO. Such person shall not disclose, use or share such information for trading purposes or for any purpose other than to perform his/her activities in ERO.

- 8.4. Use of such information for personal financial benefit or to bring benefit to the others, is not only to be deemed a serious breach of the contractual obligations but may result in the initiation of civil or penal proceedings.
- 8.5. In the event that the member of the Board disclosed the confidential information, Chairman of the Board and the other members of the Board of ERO will consider elements set forth in Article 8.2, 8.3 and 8.4.

Article 9 Unauthorized Disclosure

- 9.1. In the event of unauthorized disclosure of confidential information, the Board of ERO will consider the imposition of penalties or sanctions allowed by the Law on Energy Regulator, Code of Conduct and Ethics and other rules issued by ERO on any Staff member, person or entity responsible for unauthorized disclosure of confidential information.
- 9.2. Where a non-disclosure under Article 7.8 has been violated, the Board of ERO shall have the authority to bar the authorized representative from participation in any ERO consultative process, and future access to any confidential information and consider imposing fine as set forth in Rule on Administrative Measures and Fines.

Article 10 Disclosure of Private and Personally Identifying Information

- 10.1 Private information may include the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, load profile and amount of use of service or products subscribed to by a customer, that is available to the licensee solely by virtue of the customer-licensee relationship.
- 10.2 A licensee shall not disclose or use any private information related to its customer to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the licensee has first obtained the customer's written permission to do so.
- 10.3 The licensee may collect and release customer information in form of summary provided the summary information does not allow any specific customer to be identified.

CHAPTER 5

MISCELLANEOUS PROVISIONS

Article 11 Modification

- 11.1. This Rule may be modified from time to time if it is necessary to further the objective of ERO. ERO may initiate a proceeding to modify the rule upon a proposal of Staff members of ERO, the licensee, or any other party.
- 11.2. Procedures for approval of amendments to the Rule shall be the same as for adoption of this Rule.

Article 12 Official Language of the Rule

- 12.1 This Rule is issued in Albanian, Serbian and English language.
- 12.2 In case of any conflict regarding the meaning of the terms used in this Rule based on language, the English version shall prevail.

Article 13 Interpretation

In the event that there are unclear points and disagreements in the provisions of this Rule, the Board of ERO shall issue explanatory information.

Article 14 Entry into Force

This Rule enters into force on the date of adoption by the Board of ERO and publication on ERO web site.

ANNEX 1

To be deemed confidential by ERO, information must meet the criteria in Article 3.1. As a guideline, this Annex provides examples of the types of information that may qualify as confidential.

The list does not imply that all information listed or only information under the list may qualify as confidential.

- a) commercial or technical information relating to the design, rehabilitation, insurance, operation, maintenance, and financing of energy related operations or activities;
- b) data related to intellectual property such as trade secrets, patents, copyrights, as well as business, marketing and service plans, geological prospects and interpretations, engineering, geological, geophysical and manufacturing ideas, designs, databases, records, and any unpublished financial data and reports.
- c) data that may violate the privacy and the integrity of the individual, in reference to the Article 10.1 of this Rule, based on applicable legislation regarding the protection of personal data.
- d) financial statements that are not customarily available to business competitors, including the internal accounting data, business plans, etc ;
- e) data that is related to currently pending legal proceedings;
- f) data that could be used to gain access to company computer networks;
- g) data that relates to applicant's plan to address specific markets; applicant's strategy regarding specific competitors; and applicant's market studies and analyses, if they are not already made publicly available;
- h) project statements, cost data, project appraisals, project correspondence requested to be confidential and capital development plans;
- i) information directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, the disclosure of which might cause a competitive disadvantage to the energy enterprises or its customers;
- j) data, which if disclosed, would undermine the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure;

- k) communications between the Licensee and different governmental authorities of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final determination of policy or action except if the public interest outweighs reason for confidentiality;
- l) any records or information the disclosure of which is prohibited by other laws or regulations.

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