



Prishtinë: 29.12.2011
ERO Code: V_400

The Board of Energy Regulatory Office

Based on:

- Article 8 paragraph 1 sub-paragraph 1.6, article 14 paragraph 2 sub-paragraph 2, 14 and 25 of the Law on Energy Regulator No. 03/L-185;
- Article 18 of the Regulation on Dispute Resolution Procedure in Energy Sector;
- Request for Dispute submitted by KOSTT j.s.c. against KEK j.s.c. on issues: refusal to pay transmission services and return of bills for months of November and December 2010; failure to pay reconciled amounts for 2008 and 2009; failure to sign connection agreement KOSTT – KEK, date 11.02.2011; and
- Evidence submitted by the parties,

in the session held on 29.12.2011, issued this:

DECISION

- I. The request of KOSTT related to payment of bills from KEK for the months of November and December 2010 is hereby **APPROVED**. As presently ERO is in the stage of regular tariff review, while the bills remain unsettled, the value will be reconciled during the determination of Maximum Allowed Revenues for KEK during this review (ETR6).
- II. The request of **KOSTT** for payment of reconciliation bills from KEK for years 2008 and 2009 is hereby **REFUSED**.
- III. The review of KOSTT's request for signing of Connection Agreement with KEK is **CANCELLED**.

Justification

The Energy Regulatory Office (ERO) on 11.02.2011 admitted KOSTT's request for initiating a dispute against KEK with respect to:

- Refusal to pay for transmission services and return of bills for month of November and December 2010;
- failure to pay reconciliation bills for year 2008 and 2009; and
- failure to sign Connection Agreement for KOSTT – KEK.

I. Refusal to pay for transmission services and return of bills for month of November and December 2010 from KEK

Disagreements between KOSTT and KEK emerged following an exchange of correspondence with KEK, dated 22 December 2010 and 20 January 2011, in which KEK refused to make the payment of bills for the months of November and December 2010 for services of transmission network usage, and KOSTT's note of 30 December 2010. The dispute was brought to ERO by KOSTT on 11 February 2011. After this date, in response to the dispute initiated by KOSTT submitted a reply dated 03 March 2011 against the dispute initiated by KOSTT.

On 22 December 2010, KEK sent a note to KOSTT detailing its refusal to pay the bills for transmission services for the months of November and December 2010. The note stated that "on November 2010 KEK received eight (8) bills from KOSTT for transmission services". The note further states that "KEK



will pay KOSTT for transmission services in line with ERO approved tariffs and that it was unable to pay KOSTT for any amount exceeding that prescribed under Maximum Allowed Revenues by ERO". It also stated KEK's position towards the Consultation Report submitted to ERO on 5 March 2010. Bills of KEK/KOSTT transactions for 2010 were also attached to the document.

Evidence: KEK's note submitted to KOSTT on 22 December 2010

On 30 December 2010, KOSTT responded to KEK regarding its note of 22 December 2010. KOSTT's response mainly referred to legal basis (Law on Energy, Law on Energy Regulator, Tariff Methodology and Pricing Rule), and explained that the issue raised by KEK was in full competence of ERO. KOSTT found KEK's action of returning the bills on the amount of approved revenues as interference towards lowering transmission tariffs. KOSTT's note states that any change in KOSTT and KEK revenues will be subject to reconciliation and reopening the price review. In the given case, involving revenues which are higher than allowed as a result of greater flow of energy, ERO may commence the process of reopening the price review. KOSTT stated further that since ERO did not initiate the process of reopening the price review, it will continue to process bills in line with ERO's Decision No V_230_2010 date 24 March 2010 on Transmission Tariffs.

Evidence: KOSTT's response submitted to KEK on 30 December 2010.

On 20 January 2011, KEK addressed again a note regarding the bills and payments for transmission services. KEK expressed willingness to pay KOSTT for transmission services in line with tariffs approved by ERO, with the justification that KEK did not possess financial resources to pay KOSTT bills for any amount exceeding the Maximum Allowed Revenues as approved by ERO. KEK recommended KOSTT to lower any charges related to use of transmission systems, system operator and market operator, so that KEK may pay KOSTT the final amount for 2010, estimated to reach 12,497,000 €, included with the tariff. The note also contained some numerical data on mutual obligations.

Evidence: KEK's note submitted to KOSTT on 18 January 2010.

KOSTT and KEK held several meetings to address the issue above, however, these failed to yield any results.

According to data presented and confirmed by concerned parties, KEK paid all bills submitted by KOSTT by end of October 2010, with the outstanding bills for months of November and December 2010 amounting to 3,880,811€. Also, KOSTT paid its bills to KEK up to October 2010, with outstanding bills for November and December 2010 amounting to 1,008,143€.

Evidence: Payments balance (bills).

KOSTT's request under the dispute raised in ERO is as follows:

- KEK should pay KOSTT bills for months of November and December 2010 amounting to 3,880,812€;
- KOSTT should pay KEK bills for purchase of energy amounting to 1,008,143€;
- KOSTT should pay KEK for reconciliation for purchase of power in 2010 amounting to 70,091€; and
- Upon expiry of deadline for payment of bills, KOSTT will calculate an interest of 8% of the debts amount, which KEK should pay KOSTT for delays in payment of bills.

All amounts listed here include VAT.

On 03 March 2011, KEK submitted to ERO a written response to the dispute initiated by KOSTT. KEK's response is based mainly on previous notes, through which it submitted its arguments described



above. In its notes, KEK also cited sections for KOSTT Consultation Report “Fifth Electricity Tariff Review ETR5 (2011-2012)”.

In its response, KEK also notes that in 2010 retail sales suffered a decline of 1% below the level assumed by the Energy Balance, that 45% of transmission tariffs were fixed, and that the amount of KOSTT payment for transmission losses was 19% lower than projected.

Evidence: KEK’s note submitted to KOSTT on 03 March 2011.

Dispute analysis

According to Article 14, paragraph 2 of the **Law on Energy Regulator**, in order to complete its duties, ERO has the authority and the responsibility to draft/approve tariff methodologies; to resolve disputes related to licences issued by ERO between consumers and enterprises, system operators and power companies, as well as between two power companies; and finally, to issue rules and individual decisions.

According to Article 43, paragraph 1 of the **Law on Energy Regulator**, ERO shall approve tariffs on regulated power services based on tariff methodology for regulated tariffs and on proposals for tariff reviews submitted by power companies.

Article 43, paragraph 3, of the **Law on Energy Regulator** states that “in approving or setting the tariffs, the Energy Regulatory Office will ensure that the licensee is allowed an opportunity to recover all reasonable costs”.

Article 42 of the **Law on Energy** states that: “*all regulated tariffs and tariff methodologies shall allow the regulated energy companies to charge tariffs and recover full annual costs for services.*”

Article 1 paragraph 1 of the **Tariff Methodology for Electricity Sector**, states that *the Methodology covers setting of total allowed revenues that may be obtained under the regulated tariffs.*

Paragraph 4.11.1 of the **Tariff Methodology for Electricity Sector** states that “*the actual value (AV) of allowed revenues for TSO should be reconciled with projected allowed costs. However, it is not required that allowed revenues and allowed costs may be equal every year.*”

According to Article 65 of the **Market Rules**, Market Operator (MO) shall submit monthly bills to Trading Parties and others related to use of transmission system, which shall include all applicable taxes.

Article 67 of **Market Rules** states, *inter alia*, that: “*Trading Parties shall submit all funds related to a bill (and MO shall pay all monies owned by Trading Parties) on the 7th working day upon bill issuance. This article also states that: Trading Parties may submit any complaints related to a bill. In such cases, they shall pay the undisputed amount of the bill while the remaining portion shall be settled upon complaint settlement. Undisputed payment of a disputed bill is also prescribed under article 69 of the Market Rules.*”

Note: Taking into account that the dispute was registered with ERO on 11.02.2011 and contains legal provisions, which are related to a period before and after the approval of energy sector laws, references were applied in line with the applicable law. With respect to the said contest, changes introduced to the applicable laws produce no effects.

ERO carried out electricity tariff review and approvals for 2010 for both KOSTT and KEK. Revenues allowed for KOSTT were 12,497,000€, while for KEK were 156,200,000€.

ERO calculated the average retail price for consumers in general based on the allowed revenues, along with tariffs for system use. This means that the total value of revenues for use of system will be calculated based on unit price for MWh under the formula:

$$\text{Allowed price [€/MWh]} = \text{value of allowed revenues [€]} / \text{volume of transmitted energy [MWh]}$$

The value of allowed revenues for KOSTT should be reconciled to allowed costs determined by ERO, however, it is not a requirement for allowed revenues and allowed costs to be equal every year, as described in item 4.11.1 of Tariff Methodology for Electricity Sector. Any possible difference which



may occur as a result of inaccurate projection of the volume of transmitted energy shall be corrected through reconciliation of revenues allowed for subsequent year.

ERO states that power companies (in this case KOSTT and KEK) are not competent to evaluate the threshold of allowed revenues of any party. In concrete case, KEK/Supply has no right to decide on revenues allowed for KOSTT.

In KEK's response dated 03 March 2011, it states that there was a connection agreement between the parties (KOSTT and KEK), and that KOSTT's dispute is based upon Market Rules that are not fully implemented yet.

ERO concurs that full Market Rules are not fully implemented, however, transitional Market Rules approved by ERO are implemented, which fully cover the billing and payment process (Chapter 15). In the meantime, the issue of connection agreement has also been resolved.

KEK, among other things, also cited sections from KOSTT Consultation Report (ETR5):

"...ERO proposes that KOSTT allowed revenues under ETR5 should be set based on Ceiling Revenues.", and

"...This will allow KEK to pay for only the level of Allowed Revenues for KOSTT and thus allows KOSTT its Allowed Revenues."

In this sense (regarding this), it should be pointed that KEK bypassed parts from KOSTT Consultative Report (ETR5) in which it is clearly explained the ERO position on the matter, as follows:

"In view of the fact, ERO proposes that KOSTT Allowed Revenues under ETR5 should be set based on Ceiling Revenues. ERO sets Allowed Revenues, which do not include losses, although losses depend on the level of energy flow and KOSTT tariff charges. If the level of losses is different from the projected level, the balance should be adjusted in the following tariff review. This will allow KEK to pay only for the level of KOSTT Allowed Revenues and, in this way, allows KOSTT its Allowed Revenues."

Tariff Review (ETR5) cannot be taken into account in this case as it is not a referring document for the dispute. However, paragraph 4.1 of the KOSTT Consultative Report (ETR5) makes the issue of allowed generated revenues clearer compared to allowed revenues.

It is important to mention that KEK's failure to collect (which KEK mentioned in several occasions) is not KOSTT's responsibility and it has no impact on increase of collection rate, therefore it is not required to participate in compensating the loss caused due to under-collection. Issues related to loss and failure to collect are pertinent to KEK alone and if arising as issues of dispute, should be resolved with ERO.

In the meantime KOSTT informed ERO, and further proved through receipts, that it had made the payment of bills for transmission losses for the months of November and December 2010 for KEK.

Based on analysis deriving from relevant party documents as well as applicable legislation, ERO concludes as follows:

With the payments, KOSTT received from KEK an amount equal to the value of ceiling revenues allowed for 2010. Based on the formula above for calculation of monthly revenues and as a result of higher volume of transmitted energy, KOSTT needed to receive an additional portion of revenues from KEK. Such a situation was caused as a result of inaccurate forecast values of energy volume, peak and loss, declared by KOSTT and KEK in their 2010 annual statements and in the tariff review process for that year. Such a circumstance is allowed for under the tariff methodology, taking into account the transition (transitory period) in energy sector and subsequently allows for the possibility of review of values during the year, use of correction factors, or reconciliation at the end of the year in order to eliminate the possible mistakes in forecasts.

In order to avoid additional complications with implementation of revenues reconciliation, ERO finds that the portion of revenues above the allowed value to KOSTT should not be transferred from KEK to KOSTT and then deducted from KOSTT at the next tariff review, but to rather deduct this simple portion from KEK from the total allowed revenues at the next review, which would be beneficial for



consumers due to return of revenues above the allowed value. This would avoid unnecessary circulation of cash, while the effect would remain the same, which would reflect on the price the consumers pay for supplied power.

As the dispute between the KOSTT and KEK related to payment of bills in the tariff review period for 2011 (ETR5) was underway, at the time ERO considered the issue as the part of dispute, and therefore ERO shall, in the next tariff review (ETR6) deduct the value of allowed revenues for KEK commensurate with the value of outstanding bills.

II. Failure to pay reconciliation bills for 2008 and 2009

With respect to the dispute submitted to ERO for failure to pay reconciliation bills for 2008 and 2009, KOSTT initially submitted the legal basis from the tariff methodology for electricity sector citing paragraphs 4.11.3 and 4.11.4. KOSTT states that the value of revenues for regulatory period of three (3) years (2007 – 2009) allowed by ERO, was not exceeded cumulatively. The dispute note asks KEK to pay the remaining debt for 2008 and 2009 (reconciliation bills) in line with ERO decisions no. D_103_2008 and V_172_2009. KOSTT further in the note presented a few tables with data on KEK debt for period 2008 and 2009 and data for allowed revenues under various tariff reviews along with generated revenues.

Evidence: KOSTT note dated 09.02.2011

In reacting to the dispute submitted by KOSTT related to failure to pay reconciliation bills for 2008 and 2009, KEK stressed that it paid KOSTT more than allowed under the retail tariffs for 2009 and that the additional amount asked by KOSTT should not be paid. On 27 May 2010, KEK gave a justification that they were going to pay KOSTT the amount for transmission services in line with ERO approved tariffs and that it would not pay any other amount that exceeds the amount included in the ERO approved Allowed Revenues. KEK also stressed in its note that it would pay KOSTT every month the amount based on ERO approved tariffs, as it has no financial resources to pay KOSTT beyond the amounts included in the amounts allowed by KEK. KEK presented a table with data on debts and payments for year 2009, as well as in their note of 27 May 2010 with monthly transactions for year 2009.

Evidence: KEK's notice of date 03.03.2011



Dispute analysis

Article 4.11.1 of the **Tariff methodology for electricity sector** states that *“actual value (AV) of the revenues allowed to TSO should be reconciled to allowed set costs. However, it is not a requirement for allowed revenues and allowed costs to be equal every year”*.

Article 4.11.3 of the **Tariff methodology for electricity sector** states that *“price controls shall take the form of “ceiling” revenues, where the maximum value of allowed revenues to be generated every year of the price control period shall be fixed, irrespective of transmitted volume. A correctional factor shall be employed to adjust the difference between the actual generated revenues and the levels allowed during the previous year.”*

Article 4.11.4 of the **Tariff Methodology for electricity sector** states that *“there is a risk that KOSTT will generate either extremely high or extremely low profit under any price control, taking into account the level of inaccuracy over actual and future costs in Kosovo.”* In case of inconsistency, ERO undertakes a periodic price review that will contain a review of projected changes against the actual costs of revenues and expenditures, along with an adjustment of price control so that TSO should be brought to a position where the allowed revenues is within the frameworks determined by the price control.

KOSTT requested that reconciliation bills for 2008 and 2009 to be paid to a total of 2,123,297 €. Based on its legal competencies, ERO issued decisions for approving KOSTT tariffs no. D_103_2008 for the year 2008 and decision no. V_172_2009 for year 2009. Revenues allowed by ERO for KOSTT in 2008 were 14,709,533€ and 18,446,782€ for 2009.

According to Tariff methodology, a correctional factor will be employed to adjust the difference between the actual generated revenues and allowed revenues.

In its tariff review, ERO calculated the average retail price for consumers in general as well as tariffs for use of system in particular, based on revenues allowed for KOSTT and KEK. The total value of generated revenues for use of system is based on the volume of transmitted energy and the price €/MWh.

KOSTT presented data for payment of bills and the portion for reconciliation for year 2008 and 2009. KEK presented data only for year 2009 and the total value of the charge for KEK does not match KOSTT data, but KEK did not present any data for 2008. Based on that, we may conclude that the calculated values are not disputable by neither party, however the portion of reconciliation bills for 2008 and 2009 remain a matter of dispute.

In view of analysis based on relevant documents as well as the applicable legislation, ERO concludes as follows:

KOSTT received the value of allowed revenues for year 2008 and 2009. Based on the reconciliation carried out by KOSTT and KEK for years 2008 and 2009, KOSTT requests from KEK to make additional payment for this period.

with the revenues generated during this period, KOSTT carried out necessary activities of successful system functioning and has met all financial obligations for normal functioning of investment, system operation and maintenance.

As far as KEK is concerned, it is necessary to take into account that consumer debts have accumulated over the years, collection rate has improved although not yet satisfactory and high commercial loss, which ERO duly acknowledges. It is therefore evident that the situation arose not only as a result of internal circumstances (KEK organizational issues) but of external as well, those related to regular functioning of KEK.

In light of the evaluations above, ERO finds that KEK shall not pay the amount of additional revenues to KOSTT based on their reconciliation for 2008 and 2009. Justification for this conclusion lies in the fact that if the payment were to be made, in the next tariff reviews this amount would be deducted from KOSTT, from its total of allowed revenues. Also, in its financial statements presented in the next



tariff reviews, KEK would have an additional item for the value payable to KOSTT, which would necessitate approval of additional revenues for KEK compensating for such amount, for normal functioning during the ensuing tariff periods. ERO has taken into account the factors above in the tariff review in deciding on allowed revenues for KOSTT and KEK, ensuring that generating such revenues would ensure a normal functioning of KOSTT and KEK.

III. Failure to sign the connection contract proposed by KOSTT

The third item of dispute between KOSTT and KEK on Connection Agreement has not been reviewed by ERO, as in the meantime the Connection Agreement was signed by the parties.

Evidence: Connection Agreement signed between KOSTT and KEK, dated 15.11.2011

Legal remedy: Parties wishing to challenge this Decision may initiated an administrative dispute with the competent court in the course of thirty (30) days upon receipt of Decision or upon its publication on ERO's website, whichever occurs last.

ERO Board

Dr. Ali Hamiti, Chairperson

Përparim Kabashi, member

Blerim Koci, member

Enver Halimi, member