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**Pristina, 13.09.2006**

## **COMMENTS ACCEPTED BY KEK JSC, KOSTT, TRIANGLE, consultants NERA and KEMA, EGL**

Herewith you will find the summary of all comments and responds received until 13.09.2006 from the Applicants for Licenses and from Consultants NERA (funded by EAR and KEMA (funded by World Bank) which we received on the last version of the draft licenses. All comments are considered.

Comments were received by:

- KEK J.S.C (Applicant for Licenses for Generation, Distribution, Supply/Trade and Public Supply);
- KOSTT (Applicant for License for Transmission System and Market Operator Licenses);
- Triangle (Applicant for License for Generation)
- EGL (Applicant for Licenses for Supply/Trade) and
- Consultants KEMA and NERA

### **Comments of KEK on draft License for Supply/Trade with Electricity**

**KEK** – Denomination is License for Supply/Trade with Electricity  
We propose to be – **License for Trade with electricity**

**ERO** – Denomination of the License is based on Article 3.2 g) of the Rule on Licensing of Energy Activities in Kosovo. Except the Supply/Trade license, KEK will be provided with Public Supply License, while other suppliers/traders will have no right for Public Supply License, but only for Supply/Trade License.

In the Public Session regarding the Rule on Licensing of Energy Activities in Kosovo, we all together (with KEK and other institution representatives) have analyzed this issue and after this the Rule has been approved by Board of ERO.

#### **KEK - Part I: Terms of license, point 3.**

Is that the License is issued for buying of electricity capacities from 100MW to 400MW.  
We propose **‘The License is issued for buying of electricity capacities up to 400MW’**

**ERO-** Annex A of the Tariff Statement, Rule approved by Board of ERO, defines three types of taxes depending on the capacity. You have applied for taxes in Category A.2.2, so this comment cannot be accepted because of reasons mentioned above.

**A.2 Public Supply License and Supply/Trade License**

A.2.1 under 100 MW	€ 2000
A.2.2 over 100 MW but less than 400 MW	€ 3000
A.2.3 over 400 MW	€ 5000

**KEK - Article 2:** Is – Separate accounts for Trade, Supply Business and Cross-Border Business. We propose: **Separate accounts for Trade Business and Cross-Border Business**

**ERO** – This comment is linked up with other previous two comments and because the denomination of the license has remained the same this comment cannot be accepted.

**KEK - Article 6: paragraph 3 of this article to be explained**

**ERO-** This comment is accepted because the translation from English language has changed the meaning of the provision. Article 6, point 3 is changed as follows:

“The Licensee can be discharged from obligations in paragraph 1 submitting the needed information for each:

- a) in case when the consumer begins to be supplied by the licensee; and after this:
  - (i) when the invoices or statement regarding the payment charge for electricity supply have been submitted to the consumer, in three months bases or more often (sufficient information to be included in any invoice or statement); or
  - (ii) in other cases, in annual bases; and
- b) Publishing this information in order to attain an adequate publicity.”

**5. KEK - Article 10: An explanation is required on how the trader is going to accomplish these obligations.**

**5. ERO-** After the preliminary review that we have done and based on some comments taken from there Suppliers/Traders we have changed the license for KEK as well (but also for there 3 suppliers/traders who have applied for license).

Article 10.1 assures in the license since this provision is based on Article 30.2. a) and g) of the Law on Energy regulator where condition for license issuance are: a) security, g) protection of peoples health and environment. Regarding Article 10.2 and 10.3 that can cause high expansions due to appointing of an independent expert, we have accepted this

comment as a reasonable comment and the supply/trade license now contains only article 10.1 while articles 10.2 and 10.3 are deleted.

## **KEK for License for Public Supply with electricity**

### **KEK- Part I: Terms of the license, Point 4. a)**

Is – sell, in exclusive bases, electricity to eligible consumers with an adjusted price and tariff, so in accordance to this license we propose: to sell, in exclusive bases, electricity to **tariff** consumers with an adjusted price and tariff, in accordance to this license.

**ERO-** This comment is accepted and it will be used adjusted (tariff).

**KEK - point 4:** b) term generator to be replaced with **producer**

**ERO-** This comment is not accepted because using of term “producer” or “generator” does not change the essence or meaning of the sentence.

### **KEK - Article 7: point 3 of this article to be explained**

**ERO-** Article 7, point 3 obligated the licensee to operate in accordance to instructions or decisions of ERO made by legislation. Legislation is defined in Article 1 of the License: **“Legislation”** means Law on Energy (2004/8), Law on Energy Regulatory (2004/9), Law on Electricity (2004/10) and any other primary or secondary legislation issued for execution of primary legislation which regulates the energy sector.

Therefore the licensee (KEK-u) will act (operate) according to the instructions or decisions issued by ERO based on the above mentioned legislation.

**KEK - Article 17:** point 7 to be matched based on the Rule on General Conditions of supply with electricity.

**ERO -** Article 17, point 7 is based in Article 57.5 of Law on Energy regulator and does not contradict the provisions of the Rule on General Conditions of Supply with Electricity.

## **KEK’s for Generation License of Electricity for Kosova A and for Kosova B**

**KEK- Part I: Terms of License** – Where word Station was used we propose Central

**ERO-** This comment is accepted

**KEK-** Point 5 a): to be explained

**ERO-** Point 5 a) which in current version is 6 a) now reads:

6. Licensee can sell electric energy which produces and its capacities of electric central with freely negotiable prices to:

a) Local eligible customer through contracts communicating taxed services to the Transmission and Distribution System Operators etc.

**KEK - point 6 b):** word energetic to be replaced with Electric  
ERO- This comment is accepted

**KEK - Page 9: Article 7: Word distribution to be replaced with dispatching**  
ERO – Accepted

**KEK - Page 10: Article 9, Point 3: Word “competency” not in inverted commas**  
ERO- Accepted

### **KEK Comments in the draft of License for DSO with conditions**

**KEK DSO - Part II CONDITIONS OF LICENSE,** Article 1 Definitions and Interpretations, alignment 10 where it is said “financial year” should be replaced with the word business (business year).

**ERO-** In all acts issued by ERO is used the term “financial year” which in English version is used the expression “financial year” which is the adequate translation of expression.

**KEK DSO, Article 4 – term 2,** should be precise, after consultation with the licensee **(DSO)**

**ERO –** This comment is not accepted since the above mentioned Article mentions the consultation are made with the Licensee (expression which is used in every Article of License of DSO) and since DSO is defined as Licensee the name DSO is not needed to be given in this Article.

**KEK DSO - Article 11 alignment 1,** deadline six (6) months to be extended in a deadline of twelve (12) months.

**ERO - Accepted:** The deadline is extended from 6 to 12 months.

**KEK DSO Article 12 alignment 1,** deadline of six (6) months to be extended into twelve (12) months.

**ERO Accepted:** It is extended from 6 to 12 months

**KEK DSO - Article 13 alignment 2,** deadline of six (6) months to be extended into twelve (12) months.

**ERO -** This comment is not accepted because ERO has worked a lot with KEK related to minimal standards for implementation of Distribution and you could use and finalize the

material from presentations of officials of ERO. Therefore we consider that the deadline of six (6) months is sufficient.

**KEK DSO - Article 27 alignment 4**, value of 15% of gross income of the Licensee from the exerted activity for the previous business year, is very high and we think it should be decreased in a value of 5% of gross incomes of Licensee from the exerted activity for one month (for previous year).

**ERO-** This comment can not be accepted because it is based on the Article 57.2 of the Law on Energy Regulator

**KEK DSO Article 27 alignment 5**, value of 300% of monthly payment, to be decreased in a value of 30% of monthly payment

**ERO -** This comment can not be accepted because it is based on the Article 57.3 of the Law on Energy Regulator

## **Comments from EGL which are related to Supply/Trade License**

**1. Comment EGL** to the Article 7 of the draft License: Overall and Minimum Standards of Performance for the Supply/ Trade Business - **What is exactly expected from our company under this provision?**

**1. Respond by ERO:** Respond to this and other similar questions can be found in Rule on Licensing of Energy Activities in Kosovo which is adopted on the public session of the Board of ERO and applicable in Kosovo. Rule can be downloaded from ERO official web site: [www.ero-ks.org](http://www.ero-ks.org) (in folder “secondary legislation”) where you will find also different rules adopted by ERO and applicable in Kosovo.

In accordance to the Article 29.2 e) and f) of the Rule on Licensing of Energy Activities in Kosovo at the request of ERO, the licensee shall submit the following:

- e) Information on standards of performance offered to the customers including the quality of services and security and reliability of supplies;
- f) Indicators measuring the continuity of supply (duration, frequency, number of interruptions and minutes lost per customers) and the system services (connection of new customers in time, restoration of system failures, keeping the timing of meter reading agreements, general metering information);
- h) Other information that ERO may request in relation to the licensed activity.

Article 24.5 of the Rule on Licensing of Energy Activities in Kosovo also responds to this question.

Within six (6) months after your license is issued, the Licensee shall prepare and submit to ERO for its approval a proposal for standards of performance for trading activities which shall contain elements as set forth in Article 7 .2.of the License. When ERO

approves your proposed standards of performance for supply/trade business than ERO will monitor performance.

**2. Comment** regarding the Article 8- Procedures for the detection and prevention of theft, damage and meter interference:

Article 8.1. "The Licensee shall in respect of its Supply /Trade business take all reasonable steps to detect and prevent:

- a) The **theft** of electricity at premises which are supplied by it;

**EGL- Can it be influenced?**

**2. Respond by ERO-** In case of performing only trading activities this clause does not apply. But since the same form of license is used for supply businesses as well, we have decided to leave this disposition as a general in all forms of supply/ trade licenses despite the fact that in practice in case of trader it does not apply. We may delete it as well but in reality it does not produce any effect in case of trading business since your company can nor report something that due to activity cannot see or be aware.

**4. Comment to the Article 10- Health and Safety: This provision seems to request from EGL unusual and disproportional amount of information.**

"10.1.The Licensee shall take all reasonable steps to protect persons and property from injury and damage that may be caused by it when carrying out the licensed activities.

10.2. The Licensee shall ensure that an independent expert whose appointment is approved by ERO undertakes a technical and safety audit in respect of the supply system **on an annual basis.**

10.3. The Licensee shall provide to ERO the results of such audits within three (3) months of their completion or from the moment when ERO asks for it. "

**4. Respond by ERO-** Disposition is based on the Article 30.2 a) and g) of the Law on Energy Regulator where the general criteria for issuance of any license is : a). the safety, security, and quality of the electricity system and heat and natural gas supply services and based on g) protection of human health, safety and the environment. But we take into consideration that in case of supply/trading license it is not relevant and therefore we will leave in your license the general clause included in Article 10.1 and delete the 10.2 and 10.3. We will do the same for other traders and inform them accordingly.

**5. Comment** regarding the Article 13- Provision of Information to ERO: "Again, a very extended rights for information should be granted here":

"13.1. The Licensee shall submit to ERO, in manner and at such times as ERO **may** require, such information and such reports as ERO **may** consider necessary in the light of any Article or condition of this license or for the purpose of performing the functions assigned or transferred to it under Article 29 of the Rule on Licensing of Energy Activities in Kosovo or other applicable **Legislation.**"

**5. Respond by ERO:** “*Legislation*” is defined as “Law on Energy (2004/8), Law on Energy Regulator (2004/9), Law on Electricity (2004/10) and other primary legislation, or secondary legislation issued in execution of primary legislation regulating energy sector”; This legislation is applicable in energy sector of Kosovo in any case and there is no possibility to avoid any obligation that is included in any of the legislation mentioned above. Article 29 (mentioned in this Article is saying that “ERO may require...” information and therefore of course that ERO will require information related to your businesses. But in order to be more specific we will instead of reference to the Article 29 include reference to 29.1. But general requirement of data collection has to remain in your license since it is connected with Article 13 of the Law on Energy Regulator: ”13.1. The Energy Regulatory Office shall have the right to require from any energy enterprise or public authority information, data, and documents, including confidential information, necessary for the fulfillment of its functions, duties and powers.”

### **TRIANGLE – Comments on the Draft License on Generation**

**TRIANGLE:** we ask for the Hydropower Plant in our License, NOT to be named as KOZHNJER but “LUMBARDH Hydropower Plant” since we have changed the name with the consent of KEK as independent generator since after we initiated the commercial operation.

**ERO-** as for the first comment, we shall use the name Lumbardh and Kozhnjer, but you have to officially change this name into the Business Registers. This will be done because there is no evidence in the PPA or Lease Contract which can testify for the change of Kozhnjer into Lumbardh, except for the change in the Water Permit issued by MESP.

**TRIANGLE:** We ask that in article 2, which is regarding accounting issues, in accordance with the applicable accounting laws in Kosovo, to be clearly specified that the ACCOUNTING SYSTEM THAT WILL BE USED IS THE INTERNATIONAL ACCOUNTING STANDARDS WHICH IS IN FORCE ACCORDING TO THE APPLICABLE LAWS IN KOSOVO. We consider that in Kosovo is not possible to be used two ways and two kind of accounting standards.

**ZRRE-** Regarding the second comment – we have approved it and on the Article 2. paragraph 1. we have added the sentence “based on the international standards that are incorporated to the applicable legislation in Kosovo”.

**Triangle:** we want to inform you that in accordance to the renting contract that we have with KEK it is determined that the commercial operation date is the date when the mutual obligation, between the two contractual parties, starts. Based on this fact we want to inform you that the commercial operational start date is 01.10.2006 therefore on the 1 PART – Terms of the Licence, article 8 the date of the licence validity should be 01.10.2024.

**ZRRE** – the comment can not be accepted because we do not have any fact to evidence that the operation of HPP has started on 1.10 2004. If you have the needed proofs please sent it to us so we can extend the licence for another 5 months, till on 1.10 2004. (until to the day when this comments were summarised we did not receive any prove on this issue. Therefore also the date has remained the same.

## Comments from KEMA and NERA Consulting Firms

### Draft License on Market Operator

**Article 1**, Market Rules definition. The license now refers to Transitional Market Rules (for example in Article 2.1.a), but only the term “Market Rules” is actually defined. For clarity, it would probably be desirable to expand the definition of Market Rules to include transitional market rules, in whatever form. The question of transitional market rules has been raised by KEMA, and is the subject of a separate note.

**Article 3:** paragraph 5 previously ended with the phrase “*for the purposes of this Article*”, but this has been deleted. This deletion makes the paragraph entirely general, apparently giving ERO unlimited rights to issue directions, therefore we suggest that this phrase is added back. This point also applies to the other licenses.

**Article 7**, Condition 2: this refers to the TSO and DSO signing the Framework Agreement, but I believe this should also say the generators and suppliers.

**Article 19:** this condition has now been extended to apply to the Capital Structure as well as to control. Though the general intention is clear, there are the difficulties that (i) the term “capital structure” is not defined, and (ii) even a minor change in the capital structure (for example a small change in the level of bank borrowings?) would need ERO’s permission. There are a number of options available to address this: (i) the references to capital structure could be deleted altogether, (ii) capital structure could be defined, or (iii) some qualification could be given to the need for ERO’s approval, for example by defining the changes to capital structure that need permission, or perhaps by adding “and such approval shall not be unreasonably withheld”. KEMA have also raised this point, and I believe that potentially they would find any of these options acceptable. Other points raised by KEMA are as follows. None are substantive, and I have proposed suitable amendments where appropriate:

1. **Article 1**, definition of “Affiliate”: they think there is some confusion caused by “in direct” and “indirect” in the first line. To clarify this, I would propose changing the first line slightly, to the following: ***"Affiliate" means, in relation directly or indirectly to the Licensee, any Holding Company.....*** This would apply to all other licenses.
2. **Article 2:** paragraph 1, they point out that this refers to Article 27.3 of the Electricity Law, but that the listed items (a) to (j) do not correspond to what that article of the law says. The listing appears appropriate, so I would suggest simply deleting the reference to Article 27.3.
3. **Article 9**, paragraph 1: Market Rules themselves specify the IT equipment and software needed, and to avoid any conflict they propose that either this paragraph is

deleted or that a reference to “in accordance with the Market Rules” should be added. I believe either solution would be acceptable.

4. **Article 9**, paragraph 4: Market Rules themselves specify which Parties are allowed access to what data, and that this paragraph is potentially in conflict with that. It is proposed that this paragraph be deleted, which seems fine to me.
5. **Article 10**, paragraph 1: Market Rules themselves specify this register, and to avoid any conflict they propose that either this paragraph is deleted or that a reference to “in accordance with the Market Rules” should be added. Either solution looks acceptable.
6. **Article 11**, paragraph 1: Market Rules themselves provide for this register, and to avoid any conflict they propose that either this paragraph is deleted or that a reference to “in accordance with the Market Rules” should be added. Either solution looks acceptable.
7. **Article 12**: the entire Article could be deleted, as they say that the Market Rules themselves cover all this, so the Article serves no real purpose and may only cause conflict. Deletion looks acceptable to me, but should be checked with the Market Rules experts within ERO.
8. **Article 16**: Market Rules provide for invoice formats, and so this is unnecessary. They propose that either this paragraph is deleted or that a reference to “in accordance with the Market Rules” should be added. Deletion looks acceptable to me, but should be checked with the Market Rules experts within ERO.
9. **Article 21**, paragraph 1(b): this is intended to mean that a licensee could request its own license to be cancelled, but KEMA had interpreted it to mean that a licensee could request *another* licensee’s license be cancelled. To avoid doubt, I suggest changing it to: ***b) a request received from the licensed energy enterprise in respect of its own license.***

## **Draft License on Transmission System Operator**

Definition of “Affiliate”: same point as raised above

Definition of Market Rules: This is the same point that was made for the MO license. This definition could be changed to include any transitional market rules within the definition; so that wherever there is reference to market rules (in particular Article 21) all eventualities are covered.

**Article 2**, paragraph 6: this is a similar point to that raised for the MO, and it is proposed that the phrase “*for the purposes of this Article*” is added to the end of the paragraph.

**Article 5, paragraph 4**: there are some typos, so that in the 2<sup>nd</sup> line “the” should be replaced by “to”, and in the 3<sup>rd</sup> line the first “to” should be deleted.

**Article 9**: some words have been omitted in paragraph 1, and as a consequence “they” in the first line no longer refers to network users and it needs to be reworded. I would suggest amending paragraph 1 to:

1. The Licensee shall ensure that actual and potential users of the transmission system have non-discriminatory access to the information they need for

efficient access to the system, in accordance with Article 13.1 (f) of the Law on Electricity.

**Article 25:** this is the same Capital Structure point raised above. The same option used elsewhere should also be adopted here.

1. **Article 28**, paragraph 1(b): this is a similar point to one raised above, and I suggest changing it to: ***b) a request received from the licensed energy enterprise in respect of its own license.***

**Other points:** ERO has asked whether additional provisions were needed regarding pricing to encourage competition. The detailed tariff provisions are not in the license, of course, and Part I contains provisions about encouraging competition and Article 5 general provisions on pricing. But having reviewed it, I think perhaps the Article 5 general provisions on terms for connection and use of the system could be reinforced. I would therefore suggest amending the new paragraph 5 in Article 5 to read as follows:

- 5.5 In setting its tariffs and charges for connection to and use of the transmission system, the Licensee shall provide appropriate and non-discriminatory pricing signals and ensure that such tariffs and charges:
  - a) Encourage competition in the power sector and facilitate new entrants into the market; and
  - b) Are in accordance to the Tariff Methodology approved by ERO.

### **Draft License on Public Supply**

Definition of “Affiliate”: same point as raised above.

Definition of Market Rules: This is the same point about including the transitional market rules that was made earlier.

**Article 2**, paragraph 5: this is a similar point to that raised for the MO, and it is proposed that the phrase “*for the purposes of this Article*” is added to the end of the paragraph.

**Article 3:** There is a small error in the existing wording, and “each other or” should be deleted from the third line. In addition, I would suggest adding a provision regarding cross subsidies between eligible and non-eligible customers. On this basis, I propose the following revised text for the Article:

1. The Licensee shall ensure that the public supply business does not give any subsidy or cross-subsidy (direct or indirect) to, nor receive any subsidy or cross-subsidy (direct or indirect) from, any other business of the Licensee and/or any Affiliate or related enterprise of the Licensee and/or any other person.
2. The Licensee shall also ensure that it does not allow any cross-subsidy (direct or indirect) between its eligible customers and non-eligible customers, nor between any other of its customers or classes of customers.

**Article 13:** this is the same Capital Structure point raised above. The same option used elsewhere should also be adopted here.

**Article 15:** in paragraph 6 the term Cross Border Trade needs to have capital letters as it is now a defined term.

2. **Article 16**, paragraph 1(b): this is a similar point to one raised above, and I suggest changing it to: ***b) a request received from the licensed energy enterprise in respect of its own license.***

## **Draft License on Distribution System Operator**

Definition of “Affiliate”: same point as raised above.

Definition of Market Rules: This is the same point about including the transitional market rules that was made earlier.

**Article 2**, paragraph 6: this is a similar point to that raised for the MO, and it is proposed that the phrase “*for the purposes of this Article*” is added to the end of the paragraph.

**Article 23**: this is the same Capital Structure point raised above. The same option used elsewhere should also be adopted here.

3. **Article 26**, paragraph 1(b): this is a similar point to one raised above, and I suggest changing it to: ***b) a request received from the licensed energy enterprise in respect of its own license.***

## **Draft License on Electricity Supply/Trade**

Definition of “Affiliate”: same point as raised above.

Definition of Market Rules: This is the same point about including the transitional market rules that was made earlier.

**Article 3**: the term Cross Border Trade needs to have capital letters as it is a defined term.

**Article 12**: this is the same Capital Structure point raised above. The same option used elsewhere should also be adopted here.

4. **Article 14**, paragraph 1(b): this is a similar point to one raised above, and I suggest changing it to: ***b) a request received from the licensed energy enterprise in respect of its own license.***

## **Draft License on Generation License (both for Kosovo A and Kosovo B)**

Definition of “Affiliate”: same point as raised above.

Definition of Market Rules: This is the same point about including the transitional market rules that was made earlier.

**Article 2**, paragraph 5: this is a similar point to that raised for the MO, and it is proposed that the phrase “*for the purposes of this Article*” is added to the end of the paragraph.

**Article 16**: this is the same Capital Structure point raised above. The same option used elsewhere should also be adopted here.

5. **Article 19**, paragraph 1(b): this is a similar point to one raised above, and I suggest changing it to: ***b) a request received from the licensed energy enterprise in respect of its own license.***

**Article 20**: there is the general point that we already discussed about whether the fees should be based on the nominal or operational capacity, but I believe that issue is already in hand.

There have been no comments related to district heating.