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Comments from MEM and KEMA/ KOSTT on draft licenses reviewed after the public session held on 14.09.2006

Until 13.09.2006 we analyzed comments received from KEK.J.S.C, KOSTT, Triangle, EGL and consultants KEMA and NERA. These comments were taken into consideration in draft licenses send to all applicants and public received these summary during the public session held on 14. 09.2006. The summary of comments and responds to comments is also published on our web site: www.ero-ks.org.

On public session held on 14. September we have analyzed the process of applications, dispositions included in the licenses for each one individually and legal basis of each the dispositions included in different draft licenses.

In mean time we received comments from MEM on generation (for both Kosovo A and Kosovo B), public supply, and supply/trade draft license, and from KOSTT/ KEMA on draft licenses for Market Operator and Transmission System Operator.

Comments from MEM on draft Generation Licenses for KEK J.S.C. (for Kosovo A and Kosovo B):

MEM- Comment to Part I, Article 5 and 6 is based on the fact that both Kosovo A and B are needed to fulfill the requirement of Kosovo customers, as provided to them by KEK pursuant to Public Supplier License. KEK's generation should not permit or suggest that any of these limited power supplies could be sold to any other purchaser except when seasonal of diurnal variations in load may provide opportunities for economic sales or exchanges that provide a net benefit for KEK retail customers.

We suggest amendment to paragraph 6) by “ **Subject to meeting requirement of the public supplier in paragraph 5**” the Licensee may sell the electricity generated by it or the capacity of its power plants at freely negotiated prices to.....”

ERO- Language of Article 5 in Part I, where “the Licensee **is required to offer** the electricity generated by its power plants **to the public supplier at a regulated price**” and Article 6 where” The Licensee **may sell** the electricity generated by it or the capacity of its power plants **at freely negotiated prices to....**” are clearly defining the priorities. Public Service obligation is also included in separate Article 17 of the both generation licenses.

However we have accepted this comment in order to strengthen the public service obligation for generation license. This is included now in both licenses for KEK Sh.A (Kosovo A and Kosovo B).

MEM- Article 7c) in Part I, provides for the right of the Licensee to “... conclude contracts for the sale of electricity under the Rule on General Conditions of Energy Supply”; This language should be stricken since all the capacity and energy of both Kosovo A and B are dedicated to the public supply.

ERO- After the public service obligation is fulfilled under Article 17, KEK shall be able to sell energy (e.g. during the summer period of time). Therefore we have included relevant reference in 7 c) in order to clarify this issue.

7c) now reads: “...conclude contracts for the sale of electricity subject to fulfillment of requirement set forth in Part I, Article 5 and Article 17”.

Comments from MEM on KEK Public Supply License

MEM- In Article 6, paragraph 4, ERO asserts its regulatory responsibility to review power purchase agreement in accordance to the Article 21.4 of the Law on Electricity.

However in Article 1 paragraph 4c) there is the sentence: c) purchase capacity and electricity from other generators **at unregulated price**, which shall be deleted since although it is based on the Law on Electricity, it contradicts the power of ERO to approve the purchase done by the public supplier.

ERO- We amended Article 1. paragraph 4c) which now reads:c) purchase capacity and electricity from other generators subject to the procedure set forth in Article 6, paragraph 4 of this license.

MEM- In various section of this draft there are references to “cross –border trade” and “transit”. We suggest removing these terms from the license. While the public supplier may engage in import and export, any “transit” activity is beyond the scope of its mandate.

ERO- We agree on this issue fully; the definition of “cross- border trade” is removed as unnecessary and “transit” is deleted from this license.

Comments from MEM on KEK Electricity Supply/ Trade License

MEM- While this license is consistent with the provisions of the Electricity Law, there are a limited number of activities which KEK might properly pursue under its license. It would be more appropriate if this license was amended to recognize a more restrictive authorization. KEK has not power on its own to sell, since all KEKs existing generation is devoted exclusively to its public supply responsibilities and it needs authorization to engage in import/export agreements for the limited purpose of supplying its retail customers.

ERO – In order to clarify this issue we made some modification to the Article 4 in Part I which in the draft was:

“4) The Licensee shall be permitted to:

- a) sell capacity and electricity to eligible customers at unregulated prices;
- b) purchase capacity and electricity from producers at unregulated prices;
- c) purchase and sell capacity and electricity from other traders at unregulated prices
- d) import, export and transit capacity and electricity;...”

This Article now reads:

4. Subject to the public service obligation set forth in Article 51.3 of the Law on Energy Regulator, the Licensee shall be permitted to:

- a) sell capacity and electricity to eligible customers at unregulated prices;
- b) purchase capacity and electricity from producers and other traders in accordance to the Article 23.3 of the Law on Electricity;
- c) purchase capacity and electricity from the public supplier at a regulated price if the customer’s demand is reduced below the contracted capacity;
- d) import, export and transit capacity and electricity in accordance to the Article 36 Law on Electricity ...”

ERO- We have further analyzed the definition of trade in each license and we found out that -for example - In the Supply/ Trade License previous definition was: “**trade** : means the business of the Licensee and any Affiliate or related enterprise of the Licensee the purchase of capacity and electricity from producers, at unregulated prices, the purchase and sale of capacity and electricity from, other traders at unregulated prices, the purchase of capacity and electricity from the public supplier at regulated prices, and any associated billing, collection, and customer service activities”.

The same language from this definition is already included in Part I, Article 4 of the same license. In order to avoid repetitions we replaced it now by the definition which is just giving reference to the relevant Article in the License so that the definition of Trade reads:

“**Trade** means the business of the Licensee and any Affiliate or related enterprise of the Licensee as a Trader in accordance to the part I, Article 4 of this license”.

This we did for each license which contains the definition of trade.

ERO – For the Supply/Trading Licenses (for EZPADA, EFT and EGL) – proposal from our Consultant - Pierce Atwood.

In Part I add new Article 5 in order to secure that the traders will register their companies in Kosovo in the moment when they start to supply the eligible customer. This addition is suggested to resolve the issue of registration of traders in Kosovo.

Legal basis: Article 30 of the Law on Energy Regulator requires that the energy enterprises who apply for license shall be registered in accordance to the law applicable in Kosovo. UNMIK Regulation no. No 2001/6 on Business Organization in Article 1.2 is setting forth that this Regulation is applicable only to the profit organization in Kosovo.

- a) Traders are foreign companies which are not physically present in Kosovo and physically do not trade in Kosovo because the energy is submitted to the border of Kosovo where the Transmission (KOSTT) transmits it to KEK.
- b) Traders have a commercial contract with KEK and they are not supplying anybody else in Kosovo (KEK imports based on its license and KOSTT is doing the transmission based on their license)
- c) Traders do not have any assets in Kosovo;
- d) Registration or non registration of Traders in Kosovo does not influence the Kosovo Consolidated budget since they do not pay taxes and electricity is exempted for payment of any customs duties (taxes).
- e) Traders have been operating in Kosovo for a few years and have not had to be register during this time under existing Kosovo law.
- f) It is in interest of Kosovo, KEK and all customers to have a bigger number of licensed traders who will apply to tender to KEK in order for KEK to buy a cheaper energy and import it for public supply need in Kosovo.

Therefore we included the new Article 5 in order to secure that in the moment when traders will start supplying eligible customers they will need to register their business in Kosovo.

“5. Before the Licensee engage in any of supply functions under Article 4, the Licensee shall register its activity under Article 30 of the Law on Energy Regulator and UNMIK Regulation No 2001/6 On Business Organizations and provide to ERO a relevant document of registration.”

Comments from KOSTT / KEMA to the draft License for Market Operator

KOSTT/KEMA – Reference in Article 2.1 to the Article 27.3 of the Law on Electricity in Article 2.1 shall be replaced with reference to the Market Rules

ERO- This comment is accepted.

KOSTT/ KEMA - In Article 2.1 KOSTT believes that it will be necessary to include the definition of Transitional Market Rules.

ERO- The definition of Market Rules include the sentence that covers this issue“This includes any transitional transaction arrangements that may be approved by ERO”.

KOSTT/ KEMA- In Article 4.2 - given the recent decision of KOSTT to be responsible for managing the volume of transmission losses and the need for KOSTT to potentially purchase energy, it will be important to ensure that this activity is excluded from the activity of trading.

ERO- This comment is not related to the MO license but to the transmission and the ancillary services and losses are included in TSO license.

KOSTT/ KEMA – regarding Article 5 it would be helpful for KOSTT to understand whether this was intended to prohibit the cross subsidies between the KOSTT MO and KOSTT TSO activities; for example in the short term there will be cost savings if some activities such as HR,IT and Regulatory Activities were shared by the businesses. The implication of this condition is that this is not permitted even during the transitional phase.

ERO- Sharing of costs for HR or IT and common services is not considered as cross subsidies and will be allocated on proportional basis between the two licensees.

KOSTT/ KEMA - In Article 7.1 insert the appropriate number of days from the date of issuance of the license to 1 December 2006.

ERO- in Article 7.1 we are saying within 120 days from the issuance of the present license or such shorter deadline as ERO may determine ... which solves the need to have in place the Interim (or Transitional) Market Rules on 1 January 2007. The deadline of 3 months is also included in the Article 15.2 (j) of the Law on Energy Regulator.

KOSTT/ KEMA in Article 7.3 add “following appropriate consultations with affected parties”

so that the Article 7.3 reads : “The Licensee shall be responsible for managing any proposal for modification of the Market Rules, according to the relevant provisions of the Market Rules, and submit any proposed modifications to ERO for approval following appropriate consultations with affected parties.

ERO – Accepted;

KOSTT/ KEMA - In Article 18, add at the end of the sentence “where such approval shall not be reasonable upheld”.

ERO – Change in control affect the activities of the Licensee and therefore the Licensee shall apply to ERO for approval of such change. It is mandate of ERO to review this issue and does not have to do with any reasonable upheld of approval. Therefore this comment is not accepted.

KOSTT/ KEMA – In Article 20.1 b) instead of “the licensed energy enterprise” use the term KOSTT.

ERO- We agree and the term “the licensed energy enterprise” is replaced with the defined term “The Licensee”.

Comments from KOSTT / KEMA to the draft License for Transmission System Operator License

KOSTT / KEMA - Article 10.3 a) – because of better clarification we suggest to replace the expression “from territory to territory” with “ from the territory where the Licensee performs its activities to the other Transmission System Operator outside territory”;

ERO – This comment is accepted.

KOSTT / KEMA – Article 10.4 now reads:

“The Licensee shall review on a daily basis the statement referred to in paragraph 3 and in case of modification immediately submit to ERO for approval”

We propose that the text of Article 10.4 may be replaced by the following: “ The licensee shall review on a regular basis the daily available capacities identified in the statement referred to in paragraph 3 and in case of modification shall immediately submit a revised statement to ERO for approval”.

ERO- We are in agreement.