

REGULATION NO. 2004/20

**ON THE PROMULGATION OF
A LAW ADOPTED BY THE ASSEMBLY OF KOSOVO
ON THE ENERGY REGULATOR**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution (UNSCR) 1244 (1999) of 10 June 1999,

In conformity with sections 8.1, 9.1.44 and 9.1.45 of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation No. 2001/9),

Taking into account a communication from the President of the Assembly of Kosovo, dated 20 May 2004, concerning the Law on the Energy Regulator adopted by the Assembly of Kosovo on 29 April 2004,

Noting the reserved powers and responsibilities of the Special Representative of the Secretary-General under sections 8.1 (q) and (r) of the Constitutional Framework for Provisional Self-Government in Kosovo,

Recalling and without prejudice to UNMIK Regulation No. 2002/12 of 13 June 2002 on the Establishment of the Kosovo Trust Agency,

A. Hereby promulgates effective as of the date of signature, subject to section B below, the Law on the Energy Regulator (Law No. 2004/9) attached to the present Regulation, and

B. Determines that:

(a) The provisions of the Law shall be without prejudice to the authority of the Special Representative of the Secretary-General in respect of his reserved powers and responsibilities under the Constitutional Framework for Provisional Self-Government;

(b) The following first preambular paragraph shall be deleted: “Pursuant to the authority given to him under United Nations Security Council Resolution 1244 (1999) of 10 June 1999”;

(c) The words “international agreements to which Kosovo is a party or an associated member” in Article 4.1 shall be deleted;

(d) The term “permanent residents of Kosovo” in Articles 6.1 and 8.3 shall be replaced with the term “habitual residents of Kosovo”;

(e) The term “secondary legislation” in Articles 9.1(f), 13.2, 15.2 (h), 17.3, 18.2, 21(d), 24.9, 25.3, 34(a), 58.5 and 58.6 shall be interpreted to mean “rules” issued by the Energy Regulatory Office pursuant to the Law;

(f) The following provision shall be included as the last sentence of Article 19 after sub -paragraph c):

“As far as these revenues do not cover the operating costs, including staff salaries, of the Energy Regulatory Office, such costs shall be financed by the Kosovo Consolidated Budget notwithstanding sub -paragraph c) above.”;

(g) In view of sub -paragraph (f) above, the following words shall be added to the beginning of Article 22.5: “Subject to Article 19”;

(h) The following provision shall be included as the last sentence of Article 26.3:

“In reviewing such a decision, the court shall not substitute the technical discretion of the Energy Regulatory Office with its own discretion.”;

(i) The word “not” shall be included in Article 26.2(a) between the words “does” and “remedy”;

(j) The words “a local or foreign enterprise” in Article 40.4 shall be replaced with the words “an enterprise incorporated in or outside of Kosovo”;

(k) The references to “the Law on Natural Gas” in Articles 49.2 and 49.6 shall be interpreted to mean “any legislation on natural gas”;

(l) The reference to “Article 5.4 (b)” in Article 58.9 shall be replaced with “Article 5.6”;

(m) The following sentence shall be added as the last sentence of Article 58.10:

“In such case, the SRSG shall appoint a new member to serve the remainder of the term of the dismissed member, subject to Article 58.8.”;

(o) The terms (i) “distribution network”, (ii) “distribution system”, (iii) “transmission network” and (iv) “transmission system” used in the Law, the Law on the Energy (UNMIK Regulation No. 2004/21) and the Law on Electricity (UNMIK Regulation No. 2004/22) shall be interpreted to be used interchangeably between (i) and (ii), and (iii) and (iv), respectively.

These changes shall be reflected in the final official text of the Law.

Signed on this 30th day of June 2004.

Charles Brayshaw
Acting Special Representative of the Secretary-General



PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No. 2004 / 9

On the Energy Regulator

The Assembly of Kosovo,

Pursuant to the authority given to him under United Nations Security Council Resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation 1999/1 of 25 July 1999, on the Authority of the Interim Administration in Kosovo,

Based on the authority granted to the Provisional Institutions of Self-Government by UNMIK Regulation No. 2001/9 of 15 May 2001, "On a Constitutional Framework of Self-Government," in particular Section 5.1 (d), 9.1.26 (a), and 11.2 thereof,

Taking into account the authority reserved to the Special Representative of the Secretary General pursuant to Section 8.1(r) of the Constitutional Framework,

Recognizing the need to establish an independent regulatory authority for the energy sector to ensure a reliable, safe, and environmentally sound supply of energy to the consumers of Kosovo, and to promote, establish and protect a competitive energy market based on principles of objectivity, transparency, and non-discrimination,

Hereby adopts the following:

LAW ON THE ENERGY REGULATOR

Chapter 1
General Provisions

Article 1

This law establishes an independent Energy Regulatory Office and defines the powers, duties and functions of the Energy Regulatory Office, the conditions for issuing licenses to carry out energy activities, the procedures for granting permits for the construction of new generating capacity, the criteria for regulating prices, and the conditions of energy supply.

Article 2

The purposes of this law are to establish a regulatory framework for the energy sector that will ensure:

- a). the transparent and non-discriminatory functioning of an energy market based on free market principles;
- b). the transparent and non-discriminatory performance of energy activities which are subject to public service obligations;
- c). the transparent and open criteria for issuing licenses and granting permits;
- d). that prices for energy activities which are regulated are reasonable and fixed on the basis of a tariff methodology;
- e). that no energy enterprise abuses its dominant position and that anti-competitive practices are prohibited;
- f). that, where technically and economically feasible, all customers shall have the right to connect their facilities to the networks and to receive a universal supply of energy;
- g). that customers and licensees are protected with adequate dispute settlement procedures;
- h). that the interests between customers and energy enterprises are adequately balanced;
- i). the implementation of appropriate measures to strengthen the social and economic cohesion throughout Kosovo;
- j). that the standards of environmental protection are gradually improved;
- k). security of supply of electricity, heat, and natural gas through the maintenance and construction of necessary generation and transmission capacity and network infrastructure including interconnection capacity.

Article 3

3.1. The following terms used in this law shall have the following meanings:

“confidential information” means 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 may endanger the commercial interest of applicants and licensees if disclosed;

“dispute settlement procedures” means the procedures established by the Energy Regulatory Office pursuant to this Law that shall provide the basis for the resolution of disputes in the energy sector;

“Energy Regulatory Office” means the independent regulatory body established by this Law;

“performance-based rates” means the incorporation into an energy tariff incentives for improved services, including a productivity factor, requiring the regulated enterprise to improve efficiencies over time, or penalties for the failure to meet defined performance standards;

“projects document” means a document produced by the Energy Regulatory Office that sets out proposed project plans for a calendar year;

“public service obligation” means a duty imposed upon energy enterprises entrusted with the operation of services of general economic interest, which takes into account general social, economic and environmental factors;

“repeat violation” means an offence committed by an offender who has been penalized for the same type of offence within the past one year;

“security of supply” means the technical safety, as well as assurance of an adequate amount of energy to serve customers;

“tendering procedure” means the published procedures for conducting a tender specifying required forms, instructions and documentation by which planned additional requirements and replacement capacity are covered by supplies from new or existing generation capacity;

“vertically integrated energy enterprise” means an enterprise engages in two or more functions (transmission, distribution, generation, supply) within the same energy area (electricity, gas, district heating).

3.2. The other terms in this Law shall have the meaning stipulated in the Law on Energy or in the Law on Electricity.

Chapter 2 Organization of the Energy Regulatory Office

Article 4

4.1. The Energy Regulatory Office is hereby established as an independent body under Section 11.2 of the Constitutional Framework with its headquarters in Pristina for the regulation of activities in the energy sector in Kosovo.

4.2. The Energy Regulatory Office shall perform the tasks given to it under this law, other laws, and international agreements to which Kosovo is a party or an associated member.

Article 5

5.1. The Energy Regulatory Office shall be directed by a board of five members, (“the Board”) including a Chairman. Each member shall serve on a full-time basis.

5.2. Within 60 days of the promulgation of this Law, the initial members of the Board shall be appointed as follows:

- a) three members, including the Chairman, shall be appointed by the SRSG after consultation with the DSRSG of the EU Pillar and the Assembly of Kosovo;
- b) two members shall be proposed by the Government, approved by the Assembly, and appointed by the SRSG;

5.3. The term of the initial members of the Board appointed pursuant to Article 5.2 (a) shall be:

- a). 2 years for the Chairman;
- b). 2 years for one member;
- c). 3 years for one member.

5.4. The term of the initial members of the Board appointed pursuant to Article 5.2 (b) shall be:

- a). 4 years for one member;
- b). 5 years for one member.

5.5. Subsequent members of the Board shall be proposed by the Government and appointed by the Assembly.

5.6. The terms of each subsequent member of the Board shall be five years.

5.7. Each member of the Board, including the initial members, may be reappointed for one additional five-year term.

Article 6

6.1. With the exception of the Chairman appointed for the initial term, all members of the Board shall be permanent residents of Kosovo.

6.2. Each member of the Board shall have a university degree and five (5) years of work experience in engineering, economy, management, accounting or law.

6.3. The members of the Board shall not:

- a). be government officials;
- b). be an active member or perform duties in political parties or political associations;
- c). be, or have a spouse or direct relative who is, a shareholder, partner, owner or manager of an energy enterprise subject to this law;
- d). perform work for an energy enterprise subject to this law;
- e). perform any other activity that may give rise to a conflict of interest described in the Code of Professional Conduct.

Article 7

7.1. The authority who appoints the members of the Board shall dismiss a member before the expiration of their term only if the member:

- a). offers his or her resignation;
- b). seriously breaches his professional duties;
- c). is convicted of a criminal offense under this law or another law;
- d). is mentally or physically incapable of performing his duties for a period longer than three consecutive months;
- e). breaches the Code of Professional Conduct established pursuant to this Law; or
- f). violates the conditions prescribed in Article 6 ;
- g). has failed to attend more than three consecutive meetings, or five meetings in a calendar year, for reasons other than justified medical reasons.

7.2. In the cases referred to in paragraph (1), a new member shall be appointed to serve the remainder of the term in accordance with the provisions set out in Article 5.

Article 8

8.1. No member of the Board shall have the status of a civil servant.

8.2. Each member of the Board shall be paid a monthly salary and other allowances in an amount determined by the SRSG for the initial members and the Government for subsequent members.

8.3. The monthly salary for members of the Board who are permanent residents of Kosovo shall not be less than five average monthly salaries of a public sector official.

8.4. The monthly salary for an international member of the Board shall be determined by the SRSG based on the his or her experience, the responsibilities of the position, and funds available.

8.5. For a period of one year after ceasing to be a member of Board, such person shall be prohibited from appearing before the Board on behalf of an energy enterprise licensed under this law, or with an entity directly or indirectly controlled by such licensee.

Article 9

9.1. In addition to the other responsibilities set out in this law, the Board of the Energy Regulatory Office shall:

- a). approve regulatory and operational policies;
- b). organize and supervise the management activities of the Energy Regulatory Office;
- c). supervise the budget and financial management of the Energy Regulatory Office and approves the reports and financial statements of this office;
- d). appoint and supervise the management and staff of the Energy Regulatory Office;
- e). approve the terms and conditions of employment for the management and staff of the Energy Regulatory Office;
- f). issues the secondary legislation prepared by the Energy Regulatory Office pursuant to this Law.

9.2. The Chairman of the Board shall represent the Energy Regulatory Office before third parties.

9.3. The Board shall prepare and adopt Statutes that govern the operation of the Energy Regulatory Office, including the activities of the office, the structure of the office, the procedures for employing administrative and managerial staff, and issues related to the organization of the work.

9.4. The Statues shall prescribe procedures for hiring managerial and administrative staff on the basis of a contract for a specified period of time. The administrative staff shall carry out administrative and technical tasks needed to support the office.

9.5. The Statutes shall also set out the requirements and procedures for an external public audit of its functions and activities.

Article 10

The Chairman of Energy Regulatory Office shall submit to the Assembly and the SRSG an annual report no later than three (3) months after the end of each calendar year. The report shall be made public and shall include:

- a). a survey of the developments within the scope of the Energy Regulatory Office's functions, duties, and powers, including, in particular the development of competition in the energy market;
- b). a summary of all individual acts and dispute decisions and any enforcement proceedings taken by the Energy Regulatory Office during the previous year;
- c). a survey of its licensing and other regulatory activities during the previous year;
- d). a report on the financial operations of the Energy Regulatory Office for the preceding year, including an accounting of fees collected by the Energy Regulatory Office and expenses incurred;
- e). any other matter that the Assembly and the SRSG may require.

Article 11

11.1. The members of the Board of the Energy Regulatory Office shall draft and issue a Code of Professional Conduct applicable for the members and other employees to ensure that they perform their duties honestly and capably, avoiding actual or apparent conflicts of interest.

11.2. The Code of Professional Conduct shall prohibit members of the Board and other employees of the Energy Regulatory Office from:

- a). accepting any beneficial financial gain, directly or indirectly, from any energy enterprise including, but not limited to cash, stocks, real estate, gifts, travel, or personal services;
- b). owning an interest, or exercising management control over the operations of, any energy enterprise, its successor, or any entity directly or indirectly controlled by such enterprise.

Article 12

The Energy Regulatory Office may appoint consultants or advisors as it deems necessary to assist it in the exercise of its powers, functions and duties through open, transparent and non-discriminatory principles set out in the Statutes. Any fees due to a consultant or advisor engaged under this Article shall be competitive and form part of the expenses of the Energy Regulatory Office.

Article 13

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.

13.2. The Energy Regulatory Office shall make the final determination as to whether specific material constitutes confidential information in accordance with a secondary legislation issued by the Energy Regulatory Office.

13.3. Information obtained that constitutes confidential information shall not be disclosed except to the judiciary and other public bodies which is required by law.

Article 14

14.1. All public authorities, independent bodies, and energy enterprises, together with its officials, shall give the Energy Regulatory Office any assistance that is required to perform its functions, powers, and duties.

14.2. In exercising its functions, powers, and duties, the Energy Regulatory Office may cooperate with persons or organizations that represent or protect the interests of consumers.

Chapter 3 Powers of the Energy Regulatory Office

Article 15

15.1. The Energy Regulatory Office shall be responsible for the establishment and enforcement of a regulatory framework for the energy sector in Kosovo, ensuring non-discrimination, effective competition, and the efficient functioning of the energy market.

15.2. To meet its responsibilities, the Energy Regulatory Office shall have the power to:

- a). grant, modify, suspend, transfer, and withdraw licenses;
- b). supervise and control compliance with licenses;
- c). fix and approve tariffs and tariff methodologies for regulated energy services;
- d). grant permits for the construction and operation of new generation capacities and gas pipeline systems including direct pipelines and direct electricity lines;

- e). monitor the unbundling of the legal form, organization, decision making, and accounts of energy enterprises;
- f). prescribe the general conditions for energy supply and the standards of service to be met by licensees;
- g). resolve disputes among customers and energy enterprises, system operators and energy enterprises, and between two energy enterprises;
- h). issue general acts, individual acts, and secondary legislation in accordance with this law;
- i). revise, approve, and control compliance with all codes including the grid code, the distribution code, the consumer protection code, the electrical equipment code, electricity standards code, the trade code, and the metering code;
- j). revise, approve, and control compliance with all technical rules including the trade rules and rules of access;
- k). enforce the provisions of this law and impose fines for violations;
- l). perform other duties assigned to under this and other laws.

15.3. While exercising its powers, the Energy Regulatory Office shall:

- a). grant its consent for the separation, merger, or reduction in initial capital of energy enterprises that hold licenses;
- b). grant its consent for the disposal of property used for conducting licensed activities which could lead to disturbances in the reliability of supply due to the indebtedness of the energy enterprise;
- c). make decisions regarding the classification of electricity lines, heat pipes, natural gas pipelines, and their ancillary facilities, within the transmission or distribution network, and to provide access to them on the terms of proposals from the respective transmission or distribution enterprise;
- d). review the requests from the energy enterprises for compensation for non-recoverable stranded costs and make decisions regarding the amount and method for compensating them;
- e). issue certificates of origin of electricity, generated from renewable energy resources from waste and from co-generation of electricity and heat.

15.4. The Energy Regulatory Office shall also be responsible for ensuring, in particular:

- a). that the terms, conditions, and tariffs for connecting new producers of electricity or heat are objective, transparent, and non-discriminatory and take into account the costs and benefits of renewable energy resources, new technologies, distributed generation and combined heat and power;
- b). that the transmission and distribution network operators fulfill their tasks;
- c). the creation and maintenance of competitive markets when practicable, and the prevention and punishment of any predatory or anti-competitive conduct;
- d). the establishment of mechanisms to deal with congested capacity within the electricity and gas systems;
- e). fair and non-discriminatory rules for the management and allocation of interconnection capacity.

Article 16

16.1. The Energy Regulatory Office shall take such measures necessary to prevent or remedy:

- a). the abuse of a dominant position by any licensee; or
- b) the conclusion, or the attempt to conclude, an agreement by any licensee which has the object or effect of restricting or distorting competition.

16.2. Any action taken by the Energy Regulatory Office pursuant to paragraph 1 shall conform with the provisions of the Law on Energy and any competition law applicable in Kosovo.

Article 17

17.1. The Energy Regulatory Office shall establish procedures for resolving disputes in the energy sector, including complaints:

- a). by customers against licensees concerning the services provided;
- b). by licensees against other licensees related to the performance of the licensed activity;
- c). regarding third party access to the transmission or distribution electricity or natural gas networks and cross border transmission of electricity or natural gas.

17.2. The dispute settlement procedures may assign to an energy enterprise, an arbitration panel, or another alternative dispute resolution body the authority to handle certain complaints. The procedures may also provide that the Energy Regulatory Office shall make a decision on the dispute or issue an opinion on the dispute which contributes to the settlement of the dispute.

17.3. The procedures for the settlement of disputes shall be established by the Energy Regulatory Office in secondary legislation to the Law.

Article 18

18.1. The Energy Regulatory Office shall maintain a public register of:

- a). all licenses issued, together with the details of such licenses;
- b). all certificates of origin issued, together with details about the holder, the qualified producer, the quantities of electricity to be issued, and the period and location of generation;
- c). all persons granted the status of eligible customers who requests to be on such register.

18.2. The procedures for maintaining the public register and the details to be recorded in the public register shall be established by the Energy Regulatory Office in a secondary legislation to this law.

Chapter 4

Financing the Energy Regulatory Office

Article 19

The activities of the Energy Regulatory Office and of its administration shall be financed from the following revenues:

- a). fees set and collected by the Energy Regulatory Office under this law and any interest thereon;
- b). donations from persons, excluding licensees, persons directly or indirectly controlled by licensees, and lobby groups or associations of customers;
- c). For the initial period of one calendar year after the establishment of the Board shall be financed by the Kosovo Consolidated Budget.

Article 20

20.1. For purposes of meeting expenses incurred by the Energy Regulatory Office, the Office shall open a bank account and deposit into this account all revenue received pursuant to Article 19.

20.2. All funds collected by the Energy Regulatory Office shall be deposited and maintained pursuant to the rules in UNMIK Regulation No. 2003/17 "On the Law on Financial Management and Accountability" and the accounting legislation applicable in Kosovo.

20.3. All surplus funds collected by the Energy Regulatory Office shall remain in its bank account and may be used for expenses incurred in subsequent years with the exception of expenses for the payment of salaries, remuneration, and other individual financial benefits for members of the Board, managers and staff of the Energy Regulatory Office.

Article 21

The Energy Regulatory Office shall use the funds deposited in its bank account for the following purposes:

- a). financing the activities of the Energy Regulatory Office and its administration, including the operating costs, salaries, wages, benefits of members, employees and staff, costs for studies, and analyses and expert appraisals and assessments related to the functions of the Energy Regulatory Office under this law;
- b). capital expenditure for developing material assets;
- c). improving the qualifications of the Board members, management, and other employees;
- d). making payments that are legally owed as a result of the exercise of any function, power or duty of the Energy Regulatory Office pursuant to this law or a secondary legislation.

Article 22

22.1. The Energy Regulatory Office shall draft a projects document before the beginning of each calendar year that contains a general description of the projects and other work that it proposes to undertake during the next calendar year.

22.2. The projects document together with the annual financial report shall be submitted to the Assembly for review.

22.3. The Energy Regulatory Office shall prepare a budget for each calendar year which includes:

- a). the expected costs of the projects listed in the projects document;
- b). a detailed estimate of the expenditures that the Energy Regulatory Office expects to incur during the year;
- c). an estimate of the revenues which the Energy Regulatory Office expects to collect during the year;
- d). an estimate of the amount, if any, of funds required from the Kosovo Consolidated Budget for that year.

22.4. To receive an appropriation from the Kosovo Consolidated Budget, the Energy Regulatory Office shall submit its budget request as a budget organization of the Assembly in accordance with the procedures established in the Law on Financial Management and Accountability.

22.5. Such appropriation shall not be construed as an obligation or guarantee for the Kosovo Consolidated Budget to cover any shortfall between the total expenses and the costs incurred by the Energy Regulatory Office and the revenues it collects pursuant to Article 20.

22.6. The budget of the Energy Regulatory Office shall provide an estimate of the balance between the total costs and expenses of the Energy Regulatory Office and the total revenues of the Energy Regulatory Office, from both its own revenues and any appropriation from the Kosovo Consolidated Budget.

22.7. In estimating its revenues, the Energy Regulatory Office shall allow a reasonable amount for bad debts equivalent to at least ten (10) percent of the total amount of fees anticipated to be collected from energy enterprises other than a socially owned enterprise.

22.8. The Minister of Finance and Economy shall appoint a qualified external auditor to audit the accounts and activities of the Energy Regulatory Office.

Chapter 5 Fees

Article 23

The Energy Regulatory Office shall collect fees for reviewing applications, licensing fees, fees for issuing certificates of origin, and fees for the resolution of disputes.

Article 24

24.1. Fees for reviewing applications shall be paid at the time the application is submitted.

24.2. License fees shall consist of:

- a) initial fees for the issuance or modification of the license, the expenses for the preparation of the license, and for carrying out the regulatory activity until the end of the current calendar year;
- b) annual fees for carrying out the regulated activity each subsequent year.

24.3. Annual fees shall be paid by the licensee at the beginning of each calendar year or through monthly installment payments agreed to by the Energy Regulatory Office and the licensee and must always be paid into a bank account.

24.4. Fees for the issuance of certificates of origin shall be paid for each certificate issued.

24.5. Fees for the resolution of disputes shall be paid on or before the date the dispute is heard. Each party to a dispute may be required to pre-pay a part of these dispute resolution fees. Upon a final settlement of dispute, the party that has failed may be required to repay the prevailing party its share of pre-paid fees.

24.6. With the exception of annual fees, fees charged pursuant to this Article shall be calculated in accordance with the administrative expenses reasonably incurred in the processing of the acts to which such fees refer.

24.7. Annual fees shall be determined in a manner that allows the financial self-sustainability and effective and cost-efficient operation of the Energy Regulatory Office as per adequate benchmarks with regulatory authorities operating under similar and comparable circumstances and may not exceed in any event an amount equivalent to 2% (two per cent) of the gross turnover of energy enterprises required to pay such annual fees.

24.8. Fees may be paid in cash or by deposit to the Energy Regulatory Office's bank account. For each payment made in cash, the Energy Regulatory Office shall issue a receipt and maintain a copy of such receipt. For each payment deposited at the bank, the deposit receipt shall be submitted the Energy Regulatory Office.

24.9. The procedures and deadlines for the payment of fees shall be determined in an a secondary legislation issued by the Energy Regulatory Office.

Chapter 6 Administrative Procedure

Article 25

25.1. The sessions of the Board of the Energy Regulatory Office shall be convened by the Chairman. Sessions may be held when at least four of the five members are present.

25.2. The Chairman of the Board shall propose the agenda for Board sessions and submit such agenda to the members at least five (5) working days before each session.

25.3. The sessions of the Board are normally open to the public. The Energy Regulatory Office may decide that a session or a debate on a particular item on the agenda will be closed. Such decision must be based on a secondary legislation that defines the circumstances under which a session may be closed.

25.4. Decisions of the Board shall be adopted by a majority of the members present at the session and shall be taken during an open session.

25.5. Each member of the Board shall have an equal right and obligation to participate fully in the sessions. This right shall include, but not be limited to, the right to initiate decisions, to vote on all proposed decisions, and to take part on an equal basis with other members in the discussions.

25.6. Decisions adopted by the Board shall be recorded in writing in its minutes, and unless such matter is classified as confidential, shall be disclosed to the public.

25.7. The Board shall meet at least ten (10) times per year.

Article 26

26.1. In exercising its powers, duties, and responsibilities, the Energy Regulatory Office may issue:

- a). general acts which prescribe rules for regulating activities in the energy sector;
- b). individual acts, including decisions related to licenses and tariffs;
- c). decisions resolving disputes referred to in Article 17.

26.2. The acts and decisions of the Energy Regulatory Office shall be made in an open manner, independent of outside political, industrial or other influence.

26.3. Individual acts and decisions must be subject to an administrative review procedure within the Energy Regulatory Office. After such review, the decisions may be appealed to a court of competent jurisdiction.

26.4. The general acts of the Energy Regulatory Office shall be published in an Official Gazette and on an Energy Regulatory Office official web-site.

26.5. The individual acts and other decisions related to licenses and tariffs shall be set out in summary form in an Energy Regulatory Bulletin. The Bulletin shall be published at least once every six months and posted on the Energy Regulatory Office's official web-site.

Article 27

27.1. The Energy Regulatory Office may carry out consultations on issues that have a significant impact on the energy market.

27.2. Any consultation carried out by the Energy Regulatory Office shall:

- a). be announced in a newspaper circulating in Kosovo and published on the Energy Regulatory Office's official web-site;
- b). identify the issues to which the consultation relates;
- c). allow all interested parties to respond in writing within 14 days of the publication;
- d). establish procedures to preserve confidential information.

27.3. The Energy Regulatory Office may, in its discretion, as part of any consultation:

- a). publish a draft general act, draft individual act, or draft decision;
- b). specify that a public hearing shall be a part of the consultation process.

Chapter 7 Licenses

Article 28

28.1. Energy activities shall be carried out by energy enterprises on the basis of licenses granted by the Energy Regulatory Office.

28.2. Licenses shall be required in order to perform the following energy activities:

- a). the generation of electricity or heat or the co-generation of electricity and heat;
- b). the transmission of electricity or natural gas;
- c). the distribution of electricity, heat or natural gas;
- d). the storage of natural gas;
- e). the supply of electricity, heat, or natural gas;
- f). the trade of electricity or natural gas;
- g). the cross-border transmission (import, export, transit) of electricity and natural gas;
- h). any transmission or distribution network operator.

28.3. The Energy Regulatory Office shall grant licenses on the basis of criteria which are non-discriminatory, public, and transparent.

Article 29

No license shall be required for:

- a). the generation of electricity by power plants with capacity not exceeding 5 MW;
- b). the heat generation by heating plants with capacity not exceeding 1 MW;
- c). the generation of electricity or heat for self-consumption;
- d). storage of natural gas below 10,000 cubic meters.

Article 30

30.1. A license shall be issued to any energy enterprise registered under Kosovo law who:

- a). possesses the technical and financial capability, material and human resources, and organizational structure for meeting the regulatory requirements under the license;
- b). holds property rights over or a legal right to use the energy facilities to be used to perform the activity;
- c). provides evidence that the energy facilities to be used to perform the activity meets safety and environmental protection requirements;
- d). is not insolvent or in a process of liquidation or bankruptcy;
- e). has not had a license for the same activity withdrawn within five years of the date that the application is submitted.

30.2. The criteria for granting the license shall relate to:

- a). the safety, security, and quality of the electricity system and heat and natural gas supply services;
- b). protection of the environment;
- c). land use and siting;
- d). use of public land;
- e). energy efficiency;
- f). the nature of the primary energy sources;
- g). characteristics particular to the applicant, such as technical, economic and financial capabilities;
- h). public service obligations;
- i). consumer protection;
- j). the promotion of a competitive energy market.

Article 31

31.1. A license may be granted for a period up to 30 years.

31.2. The term and validity of the licenses shall be fixed as follows:

- a). for activities listed in 28.2 items (a)-(d), 28.2 (h) on the basis of the lifespan of the assets used for performing the relevant activity with a maximum length of 30 years;
- b). for activities listed in 28.2 item (e), on the basis of the applicants financial

circumstances with a maximum length of 10 years;

- c). for activities listed in 28.2 item (f), on the basis of the applicants financial circumstances, but not more than 2 years and not less than 1 year;
- d). for activities listed in 28.2 item (g), on the basis of the applicants financial circumstances, but not more than 3 years and not less than 1 year.

31.3. The duration of any license may be extended for a period that does not exceed the period of the time specified in paragraph 2 provided that the licensee meets all its obligations and requirements under the license and has submitted a written application for its extension at least one year, but not more than 18 months, before the expiration of the initial term.

Article 32

32.1. Only one license shall be issued for the whole territory of Kosovo for:

- a). the transmission network operator of electricity or natural gas;

32.2. Only one license shall be issued for each distinct territory in Kosovo for the distribution network operator of electricity, heat or natural gas.

32.3. The energy enterprise who holds a license for the transmission network operator of electricity may not obtain a license for the generation, distribution, supply or trade of electricity, or for the generation of heat.

32.4. The energy enterprise who holds a license for the transmission network operator of natural gas may not obtain a license for the generation, distribution, supply or trade of natural gas.

32.5. An energy enterprise who holds a license for the distribution network operator of electricity may not obtain a license for any other activity in electricity subject to licensing under this law.

32.6. An energy enterprise who holds a license for the distribution network operator of natural gas may not obtain a license for any other activity in natural gas subject to licensing under this law.

Article 33

33.1. The procedure for obtaining a license shall be commenced by submitting a written application supported by all required documents.

33.2. Within 90 days of the submission of the application, the Energy Regulatory Office shall either issue the license, issue the license with conditions, or refuse to issue the license in a justified way.

33.3. Any applicant refused a license pursuant to paragraph 3 may not reapply until 90 days after the date of the decision, or, if applicable, the effective date of a court ruling on the decision.

Article 34

The Energy Regulatory Office shall refuse to issue a license if:

- a). the energy enterprise does not meet the requirements and conditions of this law or its secondary legislation;
- b). another energy enterprise has been selected to conduct an activity for which only one license is issued; or
- c). there exists a substantial risk of endangering the life or health of citizens, of damage to third parties' properties, and of damage to customer interests by disturbing the reliable supply of electricity, heat or natural gas.

Article 35

A license may be modified by the Energy Regulatory Office:

- a). at the request of the licensee; or
- b). on the Energy Regulatory Office's own initiative under certain limited circumstances defined in the licensing procedures, such as a risk to the security of supply, national security or to the life and health of citizens or the protection of the environment.

Article 36

36.1. A license shall be terminated:

- a). on the expiration of its term;
- b). at the request of the licensee, provided that the obligations of the licensee shall be carried out by another licensee or that customers are not disadvantaged by the termination of the license;
- c). upon withdrawal by the Energy Regulatory Office.

36.2. The Energy Regulatory Office shall withdraw the license if:

- a). the licensee defaults or violates any material conditions or obligations covered by the license and does not remedy such default by the deadline set by the Energy Regulatory Office;
- b). the licensee's operation is terminated by a declaration of insolvency or liquidation;
- c). the licensee has presented false information which was used as the basis for granting the license.

36.3. A license may be withdrawn only if the obligation of the licensee shall be carried out by another licensee or customers are not disadvantaged by the termination of the license.

36.4. The Energy Regulatory Office may transfer a license that has been withdrawn to another licensee.

Article 37

37.1. The Board of the Energy Regulatory Office shall prescribe the terms, conditions, and procedures for issuing, modifying, or terminating licenses as well as the rights and obligations to be included in the licenses.

37.2. In adopting licensing procedures and issuing licenses, the Energy Regulatory Office shall take into account all policies, rules, and regulations related to the production of energy from renewable energy sources.

Chapter 8 Construction of New Generating Capacity, Gas Networks, Direct Lines and Direct Pipelines

Article 38

38.1. The construction of new generating capacity, new gas transmission and gas distribution networks, and new direct electricity lines and direct pipelines for the transit of natural gas shall be based on either a authorizing procedure or a tendering procedure.

38.2. The authorization procedure for the construction of facilities referred to in paragraph 1 shall be conducted in accordance with objective, transparent and non-discriminatory criteria. The criteria for granting permits shall relate to the criteria set out in Article 30 paragraph (2).

38.3. Where an application for a permit is refused, the Energy Regulatory Office shall inform such applicant of the reasons for the refusal. The reasons must be objective, non-discriminatory, well founded and duly substantiated.

Article 39

39.1. A tendering procedure for the construction of facilities referred to in Article 38 shall be launched only if an authorization procedure has not resulted in the building of sufficient capacity to ensure security of supply or to meet environmental targets.

39.2. The tendering procedure shall be conducted by the Energy Regulatory Office, which will be responsible for the organization, monitoring and control of the tendering procedure.

39.3. The tendering procedure shall be conducted in accordance with objective, transparent and non-discriminatory criteria. The criteria for selecting a successful tenderer shall relate to the criteria set out in Article 30 paragraph (2).

39.4. The terms of the tendering procedure shall comply with the Law on Public Procurement.

Article 40

40.1. An announcement of upcoming tenders, as well details of the tendering procedures, shall be posted on the Energy Regulatory Office's official internet web-site at least six months prior to the closing date for tenders.

40.2. The tender specifications shall be distributed to any person who requests such specifications.

40.3. The tender specifications shall contain a detailed description of the contract specifications, the procedure to be followed by a tenderer, and an exhaustive list of criteria governing the selection of a tenderer and the award of the contract.

40.4. A tenderer may be either a local or foreign enterprise, including a corporation, partnership, trust or unincorporated body.

Article 41

41.1. In the invitations to tender, consideration must be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements for supply can be met in this way.

41.2. A short list of tenderers shall be obtained by pre-qualification procedures as set out in the invitations to tender.

Article 42

42.1. In the case where no application or only one application is received within the deadline, the deadline may be extended by the Energy Regulatory Office by a period not exceeding 60 days from the date that the publication of notice of extension is posted on the web-site.

42.2. The Energy Regulatory Office shall cancel the tender and announce a new tender, where:

- a). only one tenderer has responded; or
- b). the proposal of all of the tenderers do not meet the tender requirements.

42.3. In cases where, after a repeated announcement of the tender only one tenderer responds, the Energy Regulatory Office shall commence negotiations with that sole tenderer and shall declare that tenderer a successful if the negotiation is satisfactory to the Energy Regulatory Office.

Article 43

The Energy Regulatory Office shall inform in writing all tenderers of the final decision for the successful tenderer within 3 working days after the decision is taken.

Article 44

44.1. Any successful tenderer shall be granted a facility construction permit as well as a license for the respective energy activity.

44.2. The permits and licenses issued pursuant to paragraph 1 shall contain terms and conditions for constructing energy facilities and deadlines for commencing the licensed activity.

Chapter 9 Price Regulation

Article 45

45.1. Prices in the energy sector shall be regulated or unregulated, depending upon whether a market exists to sustain an unregulated price.

45.2. Regulated prices in the energy sector shall include:

- a). charges for the use of the transmission or distribution systems;
- b). charges for energy production or energy supply stipulated as subject to regulation in the Law on Electricity or the future Laws on District Heating and Natural Gas.

45.3. Notwithstanding paragraph 2, the prices of energy supplied shall be unregulated if the energy is sold to an eligible customer.

Article 46

46.1. The regulation of prices shall be governed by a tariff methodology, which shall be developed and issued by the Board of the Energy Regulatory Office.

46.2. The tariff methodology shall be based on the following principles:

- a). prices shall be reasonable, non-discriminatory, based on objective criteria, and determined in a transparent manner;

- b). prices shall be primarily dependent upon the justified costs, including non-recoverable stranded costs related to the transition to a competitive energy market, and including a reasonable return of investment;
- c). the Energy Regulatory Office shall be permitted to establish performance-based rates;
- d). prices shall take into consideration environmental and consumer protection concerns;
- e). prices for the individual groups of customers shall conform to the costs of delivery of electricity, heat, and natural gas to those customers;
- f). cross-subsidies of customer classes shall not be permitted;
- g). cross-subsidies of activities of integrated enterprises shall not be permitted;
- h). interruptible rates, load balancing rates and other mechanisms to improve energy efficiency and demand side management shall be encouraged, including consideration of the development of renewable energy sources;
- i). seasonal and time-of-use rates are permitted, with prices adjustable according to the cost of peak and off-peak service;
- j). connection fees may be included for connection to the network or substantially increasing load.

Article 47

47.1. The Energy Regulatory Office shall review, approve or fix tariffs based on proposals by energy enterprises and the tariff methodology.

47.2. In approving or fixing tariffs, the Energy Regulatory Office shall ensure that licensees are permitted to recover all reasonable costs including:

- a). the costs of fuel maintenance and fuel reserves, wages and salaries;
- b). the costs of management, operation, maintenance, replacement and construction of energy facilities, the cost of decommissioning energy facilities and facilities for storage of fuel reserves;
- c). the costs of maintenance of reserve and regulating capacities, required for ensuring reliable supply to customers;
- d). the costs of capital depreciation;
- e). the cost of public service obligations and other obligations imposed on the licensee.

47.3. The Energy Regulatory Office may release an energy entity from the regulated tariff if it finds that the entity operates in the competitive market.

47.4. The procedures for reviewing, approving, and fixing the prices and tariffs shall be established by the Energy Regulator Office.

Article 48

48.1. Energy enterprises shall be entitled to apply for compensation for non-recoverable, stranded costs resulting from investments made and transactions concluded prior to the promulgation of this law.

48.2. Energy enterprises shall submit applications to the Energy Regulatory Offices specifying the amount of such costs together with supporting documentation about the reasons for incurring such costs.

48.3. The Energy Regulatory Office shall determine the maximum amount of accepted non-recoverable stranded costs for each enterprise and the amount to be reimbursed to each enterprise for a specified period of time, taking into account the duty of the enterprise to mitigate such costs.

48.4. Compensation for non-recoverable stranded costs shall be born by all customers in a non-discriminatory, open and transparent manner.

Chapter 10 Unbundling and Transparency of Energy Enterprises

Article 49

49.1. Energy enterprises operating the electricity transmission or distribution networks shall be independent in terms of its legal form, organization, and decision making in accordance with the Law on Electricity.

49.2. Energy enterprises operating the natural gas transmission or distribution networks shall be independent in terms of its legal form, organization, and decision making in accordance with the Law on Natural Gas.

49.3. All energy enterprises shall separate their internal accounts for their generation, transmission, distribution, and supply activities as if the activities in question were carried out by separate enterprises, with a view to avoiding discrimination, cross-subsidies, and distortion of competition.

49.4. All energy enterprises shall have separate accounts for energy activities and non-energy activities.

49.5. Electricity suppliers shall have separate accounts for the supply of eligible and non-eligible customers as if they were carried out by separate enterprises.

49.6. The Energy Regulatory Office shall monitor the effective legal and accounting unbundling of integrated energy enterprises in accordance with this Law, the Law on Electricity, the Law on Natural Gas, and any UNMIK legislation or guidance on this issue.

Article 50

50.1. The Energy Regulatory Office shall have the right to access the accounts of the energy enterprises to carry out their functions.

50.2. The Energy Regulatory Office shall not disclose confidential information obtained pursuant to paragraph 1, except to members of the judiciary or other public bodies according to procedures established by law.

Chapter 11 Public Service Obligations

Article 51

51.1. Energy activities shall be carried out in accordance with rules that regulate them as market-based or as public services.

51.2. The following activities shall be carried out as public services:

- a). the transmission of electricity or natural gas;
- b). the distribution of electricity, heat, or natural gas;
- c). the public supply of electricity, heat, or natural gas.

51.3. The Energy Regulatory Office shall impose public service obligations on enterprises carrying out public services. Such obligations shall be clearly defined, non-discriminatory, and verifiable and shall be dictated by the general economic interest. The obligations shall relate to the security, regularity, quality and price of supply and to environmental protection.

51.4. Energy enterprises that provide public services shall organize themselves in a manner that enables them to receive information from customers and potential customers about disruptions or other problems that prevents such customers from obtaining energy supply.

Chapter 12 Conditions of Energy Supply

Article 52

52.1. All final customers shall have the right, where it is technically and economically feasible, to enjoy a universal service of energy supplies from the networks of energy enterprises carrying out public services in accordance with the General Conditions of Energy Supply.

52.2. All final customers shall have the right to connect their energy facilities and equipment (electricity, heat, and gas) to the networks of energy enterprises carrying out public services in accordance with the General Conditions of Energy Supply.

52.3. All final customers shall have a right to transparent contractual relations with energy suppliers pursuant to the General Conditions of Energy Supply.

52.4. The Energy Regulatory Office shall prescribe the General Conditions of Energy Supply, which shall include:

- a). the obligations of granting connection to the network and supply of energy to customers;
- b). the conditions of connection and supply to energy customers;
- c). the issuance of approvals and the conditions under which connection will be effected;
- d). the conditions of energy delivery, constraints and interruptions in energy delivery;
- e). measurement devices and the manner of measuring delivered or consumed energy and engaged capacity.

Chapter 13 Bankruptcy of Licensees

Article 53

53.1. In the event of a liquidation or bankruptcy of a licensee, the Energy Regulatory Office shall have the power to terminate the license and to transfer the obligations of the licensee to another licensee who is willing to assume the obligations, or who is required to perform the obligations, under a provision of last resort.

53.2. If no existing licensee is willing or able to assume the obligations of the bankrupted or liquidated licensee, the Energy Regulatory Office shall have the power to transfer those assets to the new licensee at their market value.

53.3. The Energy Regulatory Office may include in any license an obligation of last resort which requires a licensee to assume the obligations of supply of a liquidated or bankrupt licensee for a fixed period of time under the same terms and conditions of supply.

53.4. The Energy Regulatory Office shall have the power to appoint a supplier of last resort by imposing in a license an obligation to supply energy to any customer who has lost supply because of the bankruptcy or liquidation of a supplier.

Chapter 14 Supervision

Article 54

The Energy Regulatory Office shall exercise supervision over:

- a). the compliance with the terms and conditions of licenses;
- b). implementation of prices and tariffs;
- c). implementation of acts, decisions, and instructions issued to licensees.

Article 55

In the course of exercising its supervisory powers, the Energy Regulatory Office shall:

- a). carry out inspections through persons authorized by it;
- b). notify public authorities or independent bodies of measures that should be carried within the scope of their competencies;
- c). suspend, modify, or withdraw licenses;
- d). impose compulsory administrative measures and administrative fines set out in this law or another law regulating the energy sector in Kosovo.

Article 56

56.1. The Energy Regulatory Office shall, after receiving a complaint or on its own initiative, investigate whether a licensee, its employees or representatives, has violated:

- a). a license term or condition;
- b). an act, decision or instruction issued by the Energy Regulatory Office.

56.2. If, after carrying out an investigation under paragraph 1, the Energy Regulatory Office finds a violation of any provision, it shall have the power to:

- a). enjoin the licensee from repeating the illegal action, or if the action has stopped, to issue a regulatory decision requiring that a particular action be taken; or
- b). impose an administrative fine on the persons responsible for such violation.

56.3. The Energy Regulatory Office shall provide proper justification for any regulatory decision that it issues under this Article.

Chapter 15

Penalties

Article 57

57.1. A fine shall be imposed on any person who:

- a). employs persons without qualifications required by this law;
- b). fails to perform his duties under this law;
- c). fails to provide information required pursuant to Article 13;
- d). improperly discloses confidential information;
- e). fails to provide the assistance required by Article 14;
- f). fails to comply with the measure imposed pursuant to Article 16 to prevent the abuse of a dominant position;
- g). engages in energy activities subject to licensing without obtaining a license;
- h). fails to comply with the terms or conditions of a license;
- i). constructs facilities regulated by Chapter 8 without obtaining a permit;
- j). charges prices or tariffs subject to regulation which have not been approved by the Energy Regulatory Office;
- k). maintains its accounts in a manner that is inconsistent with the requirements of Article 49;
- l). refuses to allow the Energy Regulatory Office access to its accounts in accordance with Article 50;
- m). refuses to enter in a contract for supply of energy or to provide access to the networks without a justified reason;
- n). removes, damages, or hinders the effectiveness of a metering device;
- o). connects to a network without obeying the relevant conditions.
- p). carries out operations in violation of this Law, the Law on Electricity, the Law on Energy, the secondary legislation to these laws, or relevant technical rules, standards, or codes.

57.2. If the fine mentioned in paragraph 1 is imposed on an energy enterprise, it must not exceed 15% of the revenues that the fined enterprise received in the previous tax year.

57.3. If the fine mentioned in paragraph 1 is imposed on an individual, it must not exceed 300% of the individual's monthly remuneration.

57.4. In the case of repeat violations, the fine imposed may be three times greater than the amount authorized in paragraph 2 or 3.

57.5. In imposing a fine under this Chapter, the Energy Regulatory Office shall take into account the degree of social harm of the action, the prior behavior of the person, and the financial standing of the person.

57.6. When imposing a fine under this Chapter, the Energy Regulatory Office shall notify the person of the infringement and give the person an opportunity to respond, in writing, within 14 days of the notification.

57.7. If a fine imposed by the Energy Regulatory Office is not paid, the Energy Regulatory Office shall initiate court proceedings for the collection of the fine as a civil debt.

57.8. All fines collected under this Chapter shall be paid into the Kosovo Consolidated Fund.

Chapter 16 **Transitional Provisions**

Article 58

58.1. Not later than sixty (60) days after the appointment of the initial members of the Board, the Board shall adopt the Code of Professional Conduct for the Energy Regulatory Office.

58.2. Not later than sixty (60) days after the appointment of the initial members of the Board, the Board shall adopt the Statutes of the Energy Regulatory Office

58.3. Not later than ninety (90) days after the appointment of the initial members of the Board, the Board shall adopt Dispute Settlement Procedures effectively to address complaints from affected parties.

58.4. Not later than ninety (90) days after the appointment of the initial members of the Board, the Board shall implement a schedule of the fees that will be charged for application processing, registration, licensing, and for granting Certificates.

58.5. Not later than four (4) months after the appointment of the initial members of the Board, the Board shall develop and approve a secondary legislation on licensing.

58.6. Not later than four (4) months after the appointment of the initial members of the Board, the Board shall prepare and approve secondary legislation on pricing.

58.7. Not later than four (4) months after the appointment of the initial members of the Board, the Board shall prepare and approve General Terms and Conditions for Energy Supply. The rules on disconnection, however, shall be issued not later than four (4) months after the appointment of the initial members.

58.8. Not later than twelve (12) months after the appointment of the initial members of the Board, the SRSG, in consultation with the Provisional Institutions of Self-Government, shall review the market structure and assess the degree of liberalization of the electricity market. Based on the result of such reviews, the SRSG may decrease or increase by one year the length of the initial term of the members of the Board appointed by him pursuant to Article 5.

58.9. Should the SRSG determine, under paragraph 58.9, a decrease of initial term of all members of the Board appointed by him pursuant to Article 5.2, the Assembly shall immediately re-appoint the two members appointed under Article 5.2 (b), in accordance with Article 5.4 (b).

58.10. The SRSG shall have the authority to review the performance of the initial members of the Board appointed by him pursuant to Article 5 and to dismiss a Board member who fails to perform his or her professional duties in a satisfactory manner.

Article 59

This Law shall enter into force after it is approved by the Assembly and on the date that it is promulgated by the SRSG.

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29 April 2004