



Pristina, 05 May 2023  
ERO Code: V\_1738\_2023

The Board of Energy Regulatory Office,

Based on:

- Provisions of Article 9, Article 16, Article 25, Article 26, Article 28, paragraphs 1 and 2, Article 30, paragraph 1, Article 55, paragraph 1, sub-paragraph 1.5, Article 56, paragraph 1, sub-paragraph 1.2 and Article 57, paragraph 2, sub-paragraphs 2.2, 2.7, 2.8 and 2.14 in relation to paragraph 3, paragraphs 6,7,8 and 9 of the Law on Energy Regulator no. 05/L-084;
- Provisions of Article 7, paragraph 1, sub-paragraphs 1.1, 1.2, 1.4 and 1.10, Article 22, paragraph 5 and Article 32, paragraph 3 of the Law on Electricity no. 05/L-085;
- Provisions of Article 8, paragraph 1, Article 9, Article 11, paragraph 10 and Article 12, paragraphs 1 and 3, Article 13, paragraph 1 of the Electricity Trading Procedure.
- Provisions of Article 2, paragraphs 2.1.2, 2.1.3 and 2.1.6 of Market Rules;
- Provisions of Article 3, Article 4, Article 5, Article 7, Article 8 and Article 9, paragraph 2, sub-paragraph 1.2, 1.7, 1.8 and 1.14 in relation to paragraphs 2, 4, 6, 7, 10, 12 and 13 of the Rule no. 06/2017 on Administrative Measures and Fines;
- Provisions of Article 3, paragraphs 1 and 2, Article 13 and Article 24 of the license no. ZRRE/Tr\_05/17 for Kosovo Energy Corporation "KEK" JSC.;
- Notice of ERO, no. 112/23, dated on 24 February 2023, in relation to the ascertained violations during the sale-purchase of electricity from the public generator Kosovo Energy Corporation "KEK" JSC; and
- Responses to the Notice, received on 13.03.2023 from Kosovo Energy Corporation "KEK" JSC.,

in the session held on 05 May 2023 issued the following:

## DECISION

- I. **IMPOSITION OF THE SENTENCE WITH A FINE** – to Kosovo Energy Corporation "KEK" JSC due to the ascertained violations for energy purchases, payments and nominations, in the amount of **3,229,905.00 € (three million two hundred twenty-nine thousand nine hundred and five Euros)**.
- II. The Kosovo Energy Corporation "KEK" S.A. is **OBLIGED** within 30 (thirty) days from the receipt of this decision to pay the fine in the account no. 1000 4300 7000 8375 of the Budget of the Republic of Kosovo, in the amount determined as in point I. of the enacting clause, under the consequences of enforced bailiff.
- III. The Kosovo Energy Corporation "KEK" JSC is **OBLIGED** to implement the electronic platform for electricity trading.

## REASONING



The Energy Regulatory Office (ERO) in line with the powers granted by the Law on Energy Regulator has monitored the sale and purchase of electricity from the Kosovo Energy Corporation (hereinafter: KEK J.S.C).

The monitoring was focused on collecting the necessary data, evaluating, analysing and highlighting deviations from the principles of legality, giving a compliance opinion in relation to electricity trading, electricity exchange and whether the procedural aspects were carried out in accordance or not with the legal provisions in force.

The aim was to verify eventual violations on: a) evidence of deviations from the principles of legality and b) on the handling of electricity produced by KEK JSC., including the import, export and exchange of electricity with KESH.

ERO, in the framework of the monitoring related to the sale and purchase of electricity from the public generator KEK JSC. has prepared a report with findings which was presented to ERO Board.

The ERO Board, in the session held on 16 November 2022, reviewed the findings in the report prepared by ERO experts and on 17 November 2022 through the document Monitoring Report on the Sale and Purchase of Electricity from the Public Generator "Kosovo Energy Corporation" (KEK JSC.) has notified the party regarding the findings of the monitoring.

Also, the ERO Board, based on Article 7, paragraph 2 of the Rule on Administrative Measures and Fines, required from "KEK" JSC. to provide written answers regarding the findings in the report within fifteen (15) calendar days.

ERO, on 02.12.2022, received from "KEK" JSC the Comments on the Monitoring Report on the Sale and Purchase of Electricity from the Public Generator "Kosovo Energy Corporation" (KEK) dated on 16.11.2022, presenting the responses on the findings and ascertainment evidenced by the ERO Monitoring Report.

ERO evaluated the comments sent by "KEK" JSC. regarding the monitoring of the sale and purchase of electricity from the public generator KEK JSC.

ERO evaluated that based on the legislation in force, the activity of electricity supply and trading can only be exercised with a license issued by ERO for legal entities that are registered in Kosovo, including the possibility that according to the principle of reciprocity these activities are allowed even without licenses by ERO for traders who have licenses in their countries and which can be recognized in Kosovo only after fulfilling the criteria set out in the Rule on Amendment/Supplement of the Rule No. 07/2017 on Licensing of Energy Activities in Kosovo.

ERO evaluated that in December 2020, KOSTT, following the signing of the Connection Agreement with ENTSO-E, sent an official email to all commercial parties operating in Kosovo, requiring from them to be licensed in accordance with legislation in force.

ERO evaluated that the justifications provided by KEK regarding the trading of electricity with traders whose branches are not licensed in Kosovo or with mutual recognition according to legal requirements are not relevant.

ERO evaluated that KEK did not provide relevant arguments to contradict the findings in the ERO Report, therefore "KEK has not acted in compliance with Article 28, par.1 and par. 2 and Article 30,



par.1 of the Law on Energy Regulator; Article 32, par.3 of the Law on Electricity; Article 2, par. 2.1.2, 2.1.3 and 2.1.6 of the Market Rules and Article 8, par. 1 of the Electricity Trading Procedure".

ERO evaluated that the internal procedures for electricity trading are legal requirements according to Article 2, par. 2 of the Electricity Trading Procedure which is binding to all parties since the approval of this procedure.

ERO evaluated that the repetition of the electricity sales process even in cases where there were valid offers is in violation of Article 13, par. 1 of the Electricity Trading Procedure.

ERO evaluated that the selection of winning bids was not made in accordance with Article 11, par. 10 and Article 12, par. 1 and 3 of the Electricity Trading Procedure.

ERO evaluated that KEK JSC. did not offer any arguments in the finding of the report, as the letter which KEK was referred to states as follows: "Furthermore, we are now addressing you with a request to consider the possibility of implementing the Kosovo compensation program – return of debt from the region, i.e. the return of the energy withdrawn during the months of December 2017, January and February 2018". From this it can be seen that the letter that KEK was referred to is not related to the energy to cover the losses in the north of the country, but with the return of energy withdrawn from the interconnection through the compensation program. Moreover, the part of the agreement between the parties that deals with system losses, after the Ruling from the competent court, should not be valid and the parties cannot use an agreement for system losses to trade energy for the northern part of the country.

ERO evaluated that it remains in the conclusion given earlier that KEK, by receiving the license from ERO, has also accepted the obligation of the Supplier of Last Resort (SoLR) in accordance with the legislation in force, therefore it should act in accordance with the legal provisions.

ERO has reviewed the responses/comments sent by "KEK" JSC, on the Monitoring Report regarding the sale and purchase of electricity from the public generator KEK JSC, and has concluded that the violations ascertained through the Monitoring Report are evident.

The ERO Board, in the session held on 27.01.2023, following the review of the responses/comments sent by "KEK" JSC, on the Monitoring Report regarding the sale and purchase of electricity from the public generator, has ascertained that: i) KEK JSC. during the sale and purchase of electricity, has signed Framework Contracts with commercial companies whose branches are not registered and licensed in Kosovo, respectively the license issued by the relevant countries is not recognized, according to the Principle of Reciprocity; ii) KEK JSC. did not act in compliance with Article 28, par.1 and par. 2 and Article 30, par. 1 of the Law on Energy Regulator; Article 32, par. 3 of the Law on Electricity; Article 2, par. 2.1.2, 2.1.3 and 2.1.6 of the Market Rules; Article 8, par. 1 of the Electricity Trading Procedure; iii) KEK JSC. has not approved the internal procedure based on their function in the market. Based on this, electricity trading without an internal procedure is in contradiction with Article 2, par. 2 of the Electricity Trading Procedure; iv) KEK JSC has repeated the process of selling electricity even in cases where there were valid offers. Such an action by KEK JSC. is in contradiction with Article 13, par. 1 of the Electricity Trading Procedure; v) KEK JSC during the selection of the winning bids did not use the same selection standard in all cases. Based on this, the selection of the winning bids was not carried out in line with Article 11, par. 10 and Article 12 par. 1 and 3 of the Electricity Trading Procedure; vi)



KEK JSC, by selling electricity to KOSTT JSC. to cover the losses in the northern part of the country, under the terms of the agreement for covering system losses, has acted in violation of Article 2 of the Electricity Trading Procedure, which defines that electricity trading must be subject to the free and competitive market; and vii) KEK JSC - Generation has signed an agreement for the sale of electricity with KEK JSC - Supplier for providing the service of the Supplier of Last Resort, not being subject to the competition criteria and tendering procedures. Based on this, the signing of the contract for the sale and purchase of electricity in this manner contradicts Article 22, par. 5 of the Law on Electricity.

The Board of ERO, based on the above, confirmed that in no case and with no fact, whether formal or material, KEK JSC was able to dispute/argue the findings through the Monitoring Report regarding the sales and purchases of electricity from the public generator KEK JSC, therefore issued a Notice regarding the ascertained violations for the sale and purchase of electricity from the Public Generator ("KEK" JSC).

ERO, in line with the provisions of Article 57, par. 7 of the Law on Energy Regulator, sent the above-mentioned Notice on 24.02.2023 to "KEK J.S.C in order to be able to respond in writing regarding the committed violations, within fourteen (14) days from the receipt of the Notice in question.

ERO, on 10.03.2023, received from "KEK" JSC the written responses, in relation to the violations ascertained in the above-mentioned Notice, where the justifications regarding the violations found by ERO as well as other justifications other than those found through the ERO Notice were presented in written form.

ERO Board, in the session held on 05.05.2023, has evaluated and analysed the responses on the Notice, submitted by "KEK" JSC, and reached the conclusion that the responses of "KEK" JSC. do not dispute with any formal or material argument the violations ascertained through the Notice and evidenced by ERO, however in order to evaluate and eliminate any ambiguity they were handled very carefully and in compliance with the legislation in force.

The ERO Board, upon issuing this decision, has rightly evaluated this procedural issue in the case of imposing a fine due to the fact that within the responsibilities of ERO it has carried out the monitoring based on the law, the Energy Trading Procedure, the License of the Kosovo Energy Corporation KEK JSC. and the Market Rules, and in order to reach to the material situation has correctly verified the factual situation and after the correct verification of this issue in relation to the actions of the licensee, the claims of "KEK" JSC were evaluated as ungrounded.

The ERO Board has also handled very carefully the other issues mentioned in the responses of "KEK" J.S.C, which are not relevant, since in no case and with no facts was it able to dispute/argue the findings confirmed by ERO through the Monitoring Report, but the same has only made a description and assessments and in this case the same has acted in complete opposition to the obligations of the license and the obligation issued by the ERO Board and in contradiction with the legal provisions mentioned in the introductory section of this Decision.

The Board of ERO, in the case of imposing the fine, also evaluated the mitigating circumstances as well as the previous behaviour of "KEK" JSC with ERO throughout this process.



The ERO Board also evaluated the aggravating circumstances when imposing the fine due to the fact that the purpose of this fine is not to damage the enterprise but to improve it, so in future actions for the benefit of the legal security of the licensee itself it complies with the terms of the license and the applicable mandatory legal requirements in force.

The ERO Board, in terms of the amount of the fine as in the enacting clause under point I. of this decision, has taken into account the ascertained violations and cumulatively of all the violations, a fine was proposed based on the revenues that the enterprise has accumulated during the previous fiscal year which are based on the Independent Auditor's Report and the Financial Statements for the year 2021 of KEK JSC. and sent to ERO.

The decision on imposition of the fine was taken in accordance with the legal provisions of Article 57, par. 2, subpar. 2.2, 2.7, 2.8, and 2.14 related to par. 3 of the Law on Energy Regulator and the provisions of Article, 2 subpar. 1.2 1.7, 1.8 and 1.14 related to par. 2 and 4 of Rule no. 06/2017 on Administrative Measures and Fines, issued by ERO.

The decision on payment of the fine was taken in line with the legal provisions of Article 57, paragraph 9 of the Law on Energy Regulator.

- III. The decision is issued and published in official languages of the Republic of Kosovo.
- IV. The decision enters into force on the date of approval by the Board and will be published on the official website of ERO.

**Legal advice:** The party dissatisfied with this Decision may initiate an administrative dispute at the competent court, within thirty (30) days from the date of receipt of the decision or the date of its publication on ERO's website, whichever occurs last.

**The Board of the Regulator:**

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Ymer Fejzullahu, Chairman

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Lutfije Dervishi, Member

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Gani Buçaj, Member

**This decision is sent to:**

- The party,
- ERO Archive.