



Pristina, 05 May 2023

ERO Code: V_1739_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 paragraphs 3, 6, 7, 8 and 9 of the Law on Energy Regulator no. 05/L-084;
- Provisions of Article 16, paragraph 1.22, Article 19 and Article 22, paragraphs 2 and 3, Article 32, paragraph 3 of the Law on Electricity no. 05/L-085;
- Provisions of Article 8 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 2.5.1.1 of Balancing Code;
- Provisions of Article 9 of the Contract for Services of Manual Frequency Restoration Reserve;
- Provisions of Article 3, Article 4, Article 5, Article 7, Article 8 and Article 9, paragraph 2, sub-paragraphs 1.2, 1.7, 1.8 and 1.14 in relation to paragraph 2, paragraphs 4,6,7,10,12 and 13 of the Rule no. 06/2017 on Administrative Measures and Fines;
- Provisions of Article 3, Article 28 and Article 37 of the License no. ZRRE/Tr_15/17 for the Transmission System Operator "KOSTT" JSC.;
- Notice of ERO, no. 111/23, dated on 24 February 2023, in relation to the ascertained violations for energy purchases, payments and nominations from the Transmission System Operator for "KOSTT" JSC.; and
- Responses on the Notice, received on 13.03.2023 from the Transmission System Operator for "KOSTT" JSC.,

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

DECISION

- I. **IMPOSITION - OF THE SENTENCE WITH FINE** to the Transmission System Operator for "KOSTT" JSC due to legal violations ascertained for electricity purchases, payments and nominations in the amount of **439,405.00 € (four hundred thirty-nine thousand four hundred and five Euros)**
- II. The Transmission System Operator for "KOSTT" JSC is **OBLIGED** within two (2) years in four (4) instalments to pay the fine in the account no. 1000 4300 7000 8375 in the Budget of the Republic of Kosovo, in the amount determined as in point I. of the enacting clause, under the consequences of forced bailiff.

REASONING



The Energy Regulatory Office (ERO) in line with the competences granted by the Law on Energy Regulator has monitored electricity purchases, payments and nominations for the Transmission System Operator for (hereinafter) KOSTT JSC.

The monitoring was focused on the collection, evaluation, analysis and evidence of deviations from the principles of legality, providing the compliance opinion related to electricity trading and whether the material and procedural aspects were conducted in accordance or not with the legal provisions in force.

The aim was to verify possible violations in relation to the ascertainment of deviations from the principles of legality on: a) billing and payments between licensees; b) energy purchases from KOSTT to cover losses in the transmission network; c) energy purchases from KOSTT to cover losses in the northern part of the country; d) deviations of the system in relation to the interconnection network; e) use of regulatory reserves and f) use of the Renewable Energy Fund (REF).

ERO, within the monitoring related to electricity purchases, payments and nominations for the Transmission System Operator for "KOSTT" JSC., has prepared a report with findings which was presented to ERO Board.

ERO Board, in the session held on 16.11.2022, reviewed the findings in the report prepared by ERO experts and on 16.11.2022, through the document Monitoring Report regarding Electricity Purchases, Payments and Nominations for the Transmission System Operator for "KOSTT" JSC. notified the parties regarding the findings of the monitoring.

Also, the ERO Board, based on Article 7, par. 2 of the Rule no. 06/2017 on Administrative Measures and Fines, requested from "KOSTT" JSC. within fifteen (15) calendar days to provide written answers regarding the findings in the report.

ERO, on 02.12.2022, received from "KOSTT" JSC. the comments on the Monitoring Report for electricity purchases, payments and nominations of the Transmission System Operator for "KOSTT" JSC., dated on 16.11.2022, presenting the responses to the findings and ascertainment evidenced by the ERO Monitoring Report.

ERO, on 31.01.2023, sent to KOST JSC. the request to provide clarifications regarding the activation of the mFRR, the reasons for the refusal to provide the service by KESH as the Service Provider Party, the deviation costs due to the rejection of the mFRR, as well as mFRR costs, realized according to monthly agreements.

ERO evaluated the comments sent by "KOSTT" JSC. regarding the monitoring of electricity purchases, payments and deviations in energy nominations from the Transmission System Operator for "KOSTT" JSC.

ERO evaluated that the non-implementation in time of the enforcement provisions according to the contract between the parties has caused financial problems and endangered the financial stability of KOSTT which as a public company should have reacted in time.

ERO evaluated that by not implementing the financial guarantee, KOSTT is not in compliance with Article 8 of the Market Rules and the Market Rules Procedure for the Financial Guarantee.



ERO evaluated that KOSTT has not provided relevant arguments to contradict the findings in the ERO Report therefore "KOSTT 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; Article 8, par. 1 of the Electricity Trading Procedure".

ERO evaluated that the trading of electricity between KOSTT and KEK for unbilled energy for the northern part of Kosovo represents a violation of the Law on Electricity, Article 22, paragraphs 2 and 3 and considers that the justifications given by KOSTT regarding the trading of electricity with unlicensed traders in Kosovo or with mutual recognition according to legal requirements are not relevant.

ERO reiterates that KOSTT has not provided relevant arguments to challenge the findings in the ERO Report therefore "KOSTT 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; Article 8, par. 1 of the Electricity Trading Procedure".

ERO evaluated that KOSTT committed a violation because it did not use all the mechanisms foreseen by the Balancing Code, Article 2.5.1.1, to prevent the occurrence of energy shortages (measures taken such as imports, injections or balancing actions cannot fulfill total demand), but has gone directly to the last mechanism by ordering KEDS to apply load reduction in the distribution network.

ERO Board, in the session held on 27.01.2023, reviewed the responses/comments sent by "KOSTT" JSC. on the Monitoring Report regarding electricity purchases, payments and nominations for the Transmission System Operator (KOSTT) and found that the violations ascertained through the Monitoring Report are evident, as well as required additional clarifications regarding the activation of mFRR and the costs incurred in the monitoring period.

ERO, on 31.01.2023, sent to KOSTT the request to provide clarifications regarding the activation of mFRR where on 06.02.2023 and on 16.02.2023, ERO received the explanatory reports.

In the reports sent for the reporting period, KOSTT presented the amount of capacity required for mFRR, the reasons for the refusal by KESH on provision of the service as Service Provider Party, the costs of deviation due to the rejection of mFRR as well as the costs of mFRR realized according to monthly agreements.

Based on the data sent by KOSTT for the reporting period, in some cases the Service Provider Party (SPP) has failed to provide the energy declared for mFRR activation, causing deviations in the interconnection system. According to the Contract for Services of Manual Frequency Restoration Reserve between the parties KOSTT and KESH as SPP, respectively Article 9, *in case SPP of mFRR fails to activate fully or partially the capacity previously declared and requested by KOSTT, then SPP of mFRR is subject to the responsibility of the balancing mechanism in the LFC area in which it operates.*

As presented in KOSTT's reports regarding the activation of mFRR as well as according to the statements in the meeting held on 30.01.2023, in some cases KOSTT has not implemented Article 9 of the mFRR contract, taking over also the costs of deviations caused by non-compliance of mFRR activation by SPP. In addition, KOSTT has activated mFRR even in cases where it was not necessary but was activated for the needs of balancing the system.

Consequently, it is worth emphasizing that based on the Rule on Determination of Maximum Allowed Revenues of TSO and MO, within the allowed revenues ERO also determines the allowed costs for



auxiliary services, part of which are the automatic and manual regulatory reserves, and for which KOSTT JSC. has failed to fulfil such obligations by acting in contradiction to the legal requirements.

ERO evaluates that the clarifications given by KOSTT regarding the RES Fund are clear and well-argued with financial tables, where, among other things, KOSTT responsibly declares that it has never used the resources of the RES Fund for covering the losses in the four northern municipalities of Kosovo and that since 1 December 2017 the customers of Kosovo have never paid for the losses in the northern municipalities of Kosovo through KOSTT's tariffs and for this reason ERO evaluates KOSTT comments as reasonable.

ERO Board, in the session held on 27.01.2023 following the review of responses/comments sent by "KOSTT" JSC on the Monitoring Report regarding electricity purchases, payments and nominations for the Transmission System Operator ("KOSTT" JSC) has ascertained that: i) KOSTT JSC. by not acting in time in implementing the enforcement provisions according to the contract between the parties has caused financial problems and endangered the financial stability of KOSTT JSC. which as a public company should have reacted in time; ii) KOSTT JSC. has not implemented the financial guarantee, acting in non-compliance with Article 8 of the Market Rules and the Market Rules Procedure for the Financial Guarantee; iii) KOSTT 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, the provisions of 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; iv) KOSTT JSC. traded electricity with KEK JSC. for unbilled energy for the northern part of Kosovo, in violation of Article 22, par. 2 and 3 of the Law on Electricity; v) KOSTT JSC. has acted in violation of Article 9 of the Contract for Services of Manual Frequency Restoration Reserve related to KESH as a Service Provider Party (SPP), affecting the operating costs of KOSTT JSC. and consequently also of the final customers since such a cost of mFRR is a cost that is recognized with the approval of Maximum Allowed Revenues of KOSTT JSC. in accordance with Article 12 of the Rule on TSO/MO Revenues; and vi) KOSTT JSC, with the activation of mFRR for the needs of balancing the system, has acted in contradiction with the legal requirements of Article 13 par. 2 of the Rule on TSO/MO Revenues.

ERO Board, based on the above, has confirmed that in no case and with no fact, whether formal or material, KOSTT JSC. was able to dispute/argue the findings through the Monitoring Report regarding electricity purchases, payments and nominations for the Transmission System Operator KOSTT, except for the RES Fund, therefore issued a Notice regarding the ascertained violations for electricity purchases, payments and nominations from the Transmission System Operator ("KOSTT" JSC.).

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

ERO, on 13.03.2023, received from "KOSTT" JSC the written answers in relation to the ascertained violations on 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.



The ERO Board, in the session held on 05.05.2023, evaluated and analysed the responses submitted by "KOSTT" JSC on the Notice and reached the conclusion that the responses of "KOSTT" JSC. do not challenge with any formal or material argument the violations found through the Notice and evidenced by ERO, but in order to evaluate and eliminate any ambiguity they were handled very carefully, 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 Transmission System Operator KOSTT JSC, the Market Rules, the Balancing Code and the Contract for Services of Manual Frequency Restoration Reserve therefore, in order to reach the material condition has correctly verified the factual situation and after the correct verification of this matter regarding the actions of the licensee, the claims of "KOSTT" JSC. were evaluated as ungrounded.

The Board of ERO also carefully handled the other issues mentioned in the responses of "KOSTT" JSC., which are not relevant, since in no case and with no fact it was 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 contradiction with the obligations of the license and the obligation issued by 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 sentence with a fine and the division in instalments for the period of 2 (two) years has also taken into account the mitigating circumstances, taking into account the previous behaviour, the financial situation of the licensee also affected by the COVID 19 pandemic as well as the circumstances that were influenced by the financial energy situation and the above-mentioned actions of the licensee. ERO has also evaluated as a mitigating circumstance the behaviour and cooperation of "KOSTT" JSC. with ERO throughout this process.

The Board of ERO also evaluated the aggravating circumstances when imposing the fine due to the fact that the purpose of this sentence 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 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 for the Financial Statements for Specific Purposes of the Regulator for 2021 of KOSTT 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 to pay the fine was taken in line with the legal provisions of Article 57, par. 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 shall enter into force on the date of approval by the Board and will be published on the official website of the Regulator.

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 the website of the Regulator, whichever occurs last.

The Board of the Regulator:

Ymer Fejzullahu, Chairman

Lutfije Dervishi, Member

Gani Buçaj, Member

This decision is sent to:

- The party,
- ERO Archive.