



Pristina: 21.09.2023  
ERO Code: V\_1761\_2023

The Board of Energy Regulatory Office,

Based on:

- Article 9, paragraph 1, sub-paragraph 1.7, Article 15, paragraph 1.8 and Article 17, paragraph 1.2, Article 25, Article 26, paragraph 1, sub-paragraph 1.2 of the Law on Energy Regulator (No. 05/L-084);
- Article 16, paragraph 1, sub-paragraph 1.19, Article 25, paragraph 1, Article 28, paragraph 1, sub-paragraph 1.21 of the Law on Electricity (No. 05/L-084);
- Article 2, paragraph 2, sub-paragraph 2.3, Article 4, paragraph 1, sub-paragraph 1.2 and Article 13, paragraph 2, Article 14, Article 17, Article 18 of the Rule no. 04/2017 on Resolution of Complaints and Disputes in the Energy Sector;
- Article 11, Article 16, Article 18.2.2, Article 18.3.3, Article 18.3.4 and Article 18.5.2 of Market Rules;
- Complaint/Dispute of KOSTT JSC, no. 2559, dated on 20.12.2022, initiated against KEK JSC in relation to the contestation and non-payment of the invoice for the month of 2021 for imbalances caused by KEK JSC;
- Recommendation of CPD of ERO **ZRRE/DMK\_R\_2445\_08\_23**;
- Evidence presented by parties;

in the session held on 21.09.2023 issued the following:

#### DECISION

- I. **APPROVAL** – of the complaint of the Transmission System and Market Operator (KOSTT JSC) as grounded.
- II. The Kosovo Energy Corporation (KEK JSC) is **OBLIGED** to pay to KOSTT JSC the invoice no. 0963/1 for the imbalances caused by KEK in December 2021, in the total amount of €299,212.60.

#### Reasoning

The Energy Regulatory Office (ERO), on 20.12.2022 received from the Transmission System and Market Operator (KOSTT) JSC, the request on initiating the dispute against Kosovo Energy Corporation (KEK JSC) in relation to the:

Non-payment of the invoice for the month of December 2021 for imbalances caused by KEK JSC.



KOSTT JSC explained in its request the reasons on initiating the dispute, emphasizing that as a Market Operator it is obliged to realize the process of final settlement for all parties responsible for balancing in the Regulatory Area of KOSTT JSC.

KOSTT JSC clarified that on 18 January 2022, it issued the invoice number 0963 for the imbalances caused by KEK during December 2021 in the amount of €1,537,398.80. On 15 February 2022, KEK JSC returned the invoice along with the letter with protocol number 837, in which the invoice issued by KOSTT is disputed for imbalances, referring to the Report of the Joint Professional Commission regarding the investigation and evaluation of the failure of Generating Units A3 and A5 in TPP Kosova A, of KEK, dated 6 December 2021.

On 24 February 2022, KOSTT issued the invoice 0963/1 corrected for imbalances, with protocol number 309, in the amount of €299,212.60, which is a replacement of the invoice 0963 with the value of €1,537,398.80.

On 21 March 2022, KEK sent to KOSTT the letter with protocol number 1541, where it stated that even the invoice corrected for imbalance is not accepted because the effects of imbalances caused by KEK on 6 December 2021 were not corrected for about 18 hours as the units A3 and A5 of TPP Kosova A were out of operation.

On 24 March 2022, KOSTT sent to KEK JSC the letter with protocol number 611, informing them on the obligations of KEK JSC as a signatory party to the Market Rules Framework Agreement, on the basis of which it is obliged to strictly implement all obligations and responsibilities arising from the Market Rules approved by the Board of the Energy Regulatory Office.

On 5 April 2022, KOSTT received from KEK the response to the above-mentioned letter through the letter with protocol number 2036, where it claims that the obligations imposed on invoice number 0963/1 by KOSTT for imbalance are ungrounded, referring to the Report of the Joint Commission and requests from KOSTT to make corrections to the document "Calculations of Final Settlement for KEK from 01.12.2021 until 31.12.2021".

On 15 April 2022, KOSTT notified KEK by means of the letter number 761 on non-elimination of the violation of Market Rules.

On 22 April 2022, KEK sent to KOSTT the letter with protocol number 2461, where it stated that on 15.04.2022 it received the letter number 761 on non-elimination of the violation of the Market Rules by the commercial party KEK JSC regarding the obligation to pay the invoice number 0963/1, dated on 24.02.2022 for the imbalances, despite the disputes made by KEK through the letter number 1541, dated on 21.03.2022 and the letter number 2036, dated on 06.04.2022.

On 4 May 2022, KOSTT sent to the Energy Regulatory Office the letter with protocol number 851, with the Notice of Violation of Market Rules by the commercial party "KEK".

On 6 May 2022, KOSTT received from ERO the response via email stating that KOSTT's request does not fulfil the criteria to be presented to the ERO Board without arguing and proving KEK's claims regarding the dispute raised by them, requesting that the handling of the case be done according to the Rule on Resolution of Disputes in the Energy Sector.



KOSTT JSC. emphasized that there is an undisputed responsibility of KEK JSC. to pay the invoice for imbalances based on the applicable legislation, presenting legal references and legal interpretations regarding the initiated dispute.

KOSTT JSC. emphasizes that based on the Law on Electricity, namely the legal provisions of Article 16, par. 1, subpar. 1.19, the duty and responsibility of the Transmission System Operator is to balance the electricity system in accordance with the Transmission Network Code and Market Rules where Article 25, par. 1 defines that each participant in the electricity market has balancing responsibility.

KOSTT JSC. emphasizes that based on the Market Rules, namely Article 18.2.2, it is emphasized that: All commercial parties are required to approve the data of the metered energy and the data of the provisional invoices in accordance with the procedures of the Market Rules compiled in accordance with par. 5.1.2(b). If the commercial parties fail to confirm the data of the metered energy or the provisional invoices, the values will be considered to be correct and the MO will continue the billing process.

Also, based on Article 18.3.3. of Market Rules, it is defined that: the Balancing Responsible Party (BRP) and the trading parties shall pay the entire amount of money for the invoices issued to them (and the MO shall pay the money that belong to BRP and the trading parties) no later than five (5) business days after the invoice is issued. While Article 18.3.4. states that for any non-payment on time, the annual statutory interest with an interest rate of 4.5% will be calculated on the unpaid amount as defined by the Law on Obligational Relationships, unless the unpaid amount is treated as a matter of good faith.

Whereas Article 18.5.2 emphasizes that: When a BRP or a commercial party raises a true (bona fide) Invoice Dispute, in all cases the obligation to pay this invoice must be made by the specified date. A genuine dispute is a dispute based on correct evidence, where correct evidence is defined as original data that supports proving the incorrectness of the Final Settlement. In case of debt to or from a BRP account or trading party, payment of the total amount shall be conducted as invoiced.

So, according to the party KOSTT JSC., based on the aforementioned articles of the Law on Electricity, KEK JSC. is responsible for balancing, in which case KEK JSC. has committed a legal violation by not fulfilling its obligations in question as well as refusing to pay for the received services.

KOSTT JSC., emphasizes that based on Article 4 of the Rule on Resolution of Complaints and Disputes in the Energy Sector, it has requested from ERO to resolve the dispute in the shortest possible time, respectively to force KEK JSC. to accept the bill for the month of December 2021 and pay the same as before.

ERO, on 13.02.2023 through the letter prot. no. 106/23 forwarded the Notice on Response of KEK JSC., regarding the initiation of the dispute by KOSTT JSC., no. 2559, dated on 20.12.2022, to present the responses regarding the disputed invoice for the imbalances for the month of December 2021.

KEK JSC., on 20.02.2023, provided the response in the letter no. 106/23, dated on 13.02.2023 "Response of KEK JSC., to the initiation of the dispute of KOSTT JSC. against KEK JSC. regarding the disputed invoice for the imbalances for the month of December 2021.



KEK JSC. emphasizes that it rejected the invoice of imbalances for the month of December 2021 and requested from KOSTT that the same be corrected due to the fact that the effect of the deviation with negative imbalances applied by KOSTT to KEK is due to the fact that on 06.12.2021, there was failure of generating units A3 and A5 of TPP Kosova A and this failure of generating units was caused as a result of the failure or collapse of TR-35/220kV, ZK\_1 side 220kV, L1-N owned by KOSTT, as it is presented in the joint commission report of KEK-KOSTT.

ERO has administered the evidence, respectively: Invoice no. 0963, dated on 18.01.2022; invoice no. 0963/1, dated on 24.02.2022; Letter no. 837, dated on 15.02.2022; Letter no. 338, dated on 18.02.2022; Letter no. 1541, dated on 21.03.2022; Letter no. 611, dated on 24.03.2022; Letter no. 2036, dated on 06.04.2022; Letter no. 761; dated on 15.04.2022; Letter no. 2461, dated on 22.04.2022; Letter no. 851, dated on 04.05.2022, the report of the KOSTT-KEK joint commission as well as the request for the initiation of the dispute by the Transmission System and Market Operator (KOSTT JSC) no. 2559, dated on 20.12.2022.

### **The analysis of the dispute**

ERO evaluated the dispute initiated by KOSTT JSC., in accordance with Article 17, par. 1, subpar. 1.2 of the Law on the Energy Regulator and Articles 17 and 18 of Rule No. 04/2017 on Resolution of Complaints and Disputes in the Energy Sector and the evidence administered in the review session, where it was concluded that the request of KOSTT JSC is grounded.

ERO evaluates that based on the administered evidence, it is verified that KOSTT has made the calculations of the final settlement for KEK's account for the period 01.12.2021 to 31.12.2021, based on the confirmed metered energy and the approved contractual nomination for the account of KEK.

Also, from the documents of the case it is observed that KEK JSC. has not disputed the metered energy and has not presented evidence on the incorrectness of the final settlement, therefore, the invoice for the month of December 2021 prepared by KOSTT JSC., for the payment of imbalances as provided in Article 15 and Article 16 of the Market Rules is accurate and correct. The return of the invoice by KEK JSC has no legal support and as such is in complete contradiction with the Market Rules. Furthermore, it is worth emphasizing that Article 15.5.2 of the Market Rules expressively describes that when a commercial party raises an invoice dispute, in all cases the obligation to pay this invoice must be made by the date specified in invoice. Non-acceptance of the invoice and its return by KEK JSC., without legal support, has caused material consequences for KOSTT JSC.

Regarding the claims of KEK JSC., that it was not able to fulfill the contractual obligations stated for the hours from 06 to 24 on 06.12.2021, they do not stand as the contractual nominations of this date approved by the Market Operator, regarding which KEK was notified according to Article 11.2.8 of the Market Rules, have not changed even for the hours from 06 to 24 of this date, so they are the same values as those approved in D-1 that the responsibility for the unplanned failure of the generating units falls on the KOSTT plants, where as a result the deviation of electricity generation was caused.

ERO evaluates that KOSTT JSC. acted correctly and implemented the legal framework whereby it prepared the corrected invoice 0961/1, which was sent to KEK JSC., but the latter did not accept it,



which verifies the fact that KEK JSC has acted in contradiction with the above-mentioned legal provisions.

ERO evaluates that KOSTT JSC., in the role of the Market Operator, is obliged to carry out the final balancing process for all responsible parties, including KEK JSC., for balancing in the regulatory area and in a fair manner has invoiced KEK JSC for the energy of imbalances, for the month of December 2021, correctly applying the legal provisions in force.

Therefore, referring to the documents of the case and the administration of evidence, it is confirmed that KEK JSC bears full responsibility to fulfill the legal obligations regarding the invoice for imbalances for the month of December 2021, and to pay the total amount of 299,212.60 Euros, within thirty (30) days from the receipt of this decision under the consequences of forced execution.

The ERO Board, following the review, analysis and administering of the evidence presented by the parties in dispute, has evaluated that the request of KOSTT JSC. is well-grounded, therefore based on the legal provisions of the Law on Electricity No. 05/L-085, Market Rules, after the analysis of everything that was emphasized above, has decided as in the enacting clause of this decision.

- III. This decision is issued 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 ERO's official website.

**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.

**ERO Board:**

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Ymer Fejzullahu, Chairman

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Lutfije Dervishi, Member

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Gani Buçaj, Member

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Arta Isufi, Member

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Adnan Preniqi, Member

**This decision is sent to:**

- The licensee: **KOSTT**
- KEK. JSC and
- ERO Archive