

Regulation on Procedures for Assets Transferring of the Licensee

FIRST PART

GENERAL PROVISIONS

Article 1

Authority

This regulation is issued according to Article 20 of Law No.9072, dated 22.05.2003 “On Power Sector” and ERE’s Board of Commissioners decisions on the approval of electricity sector licenses and ERE’s Rules of Practice and Procedure.

Article 2

Scope

The scope of this regulation is to provide a fair and transparent treatment to all licensees in the electricity sector in generation, transmission, distribution activity, filing with the ERE a request for sale, rent, transfer or other disposals of any asset or property used for electricity generation, transmission and distribution.

Article 3

Object

This regulation defines the procedure applied by the ERE and the principles to examine requests for sale, rent, transfer or other disposals of any asset or property used for electricity generation, transmission and distribution according to Law No. 9072, dated 22.05.2003 “One Power Sector”.

Article 4

Application

1. This regulation shall be applied to all licensees in the electricity sector that request to transfer any generation, transmission or distribution assets according to the law definitions.
2. For the licensees in the generation activity ERE’s approval for transferring of assets shall be required for an installed capacity higher than 500kw. For all the

- other licensees ERE's approval for transferring of assets shall be required when the value of the asset to be transferred is higher than 5.000.000 lek .
3. For the transferring of assets in the process of privatization in the public sector this Regulation will not be applied.
 4. The request for business transfer from the licensees will be regulated according to the procedures ascribed from ERE in the Rules of licensing procedure.

Article 5

Definitions

The following terms and sentences used in this regulation shall have the meaning:

1. "Law" shall mean Law No. 9072, dated 22.05.2003 "On Power Sector" and Law No. 9512, dated 10.04.2006 "On some changes and amendments to Law No. 9072, dated 22.05.2003 "On Power Sector".
2. "Board of Commissioners" shall mean the decision-making body of the ERE composed by five members appointed according to the procedures provided by Law No. 9072, dated 22.05.2003 "On Power Sector" and Law No. 9512, dated 10.04.2006 "On some changes and amendments to Law No. 9072, dated 22.05.2003 "On Power Sector".
3. "ERE" shall mean the Electricity Regulatory Authority.
4. "License" shall mean an authorization issued to a person according to Third Part of Law No. 9072, dated 22.05.2003 "On Power Sector".
5. "Licensee" shall mean a person that holds a license granted according to Third Part of Law No. 9072, dated 22.05.2003 "On Power Sector".
6. "Procedure" shall mean a set of actions performed to implement the legislation in force.
7. "Asset" shall mean the long term active material handled by the licensee and that serves to the realization of one of the activities of generation, distribution and transmission.
8. "Transfer of assets" shall mean any action that established a relationship of rent, sale, grant, or other disposal of assets necessary for the licensed activity.
9. "Business" shall mean the licensed activity from ERE for generation, transmission and distribution of electricity.

SECOND PART

SUBMISSION PROCEDURES OF AN ASSET TRANSFER REQUEST

Article 6

Proposal to start the procedure for transfer of assets

The procedure for asset transfer shall start with the submission by the license holding person of a request for sale, rent, transfer or other disposal of any asset necessary for the licensed activity.

Article 7

Contents of the transfer request

1. Each license submitting to ERE a request for asset transfer should include in the request in the way and form required by this regulation, the following information:
 1. Licensee's full name;
 2. Licensee's full address or the address of the person authorized to follow this procedure to ERE, including phone and fax number, and electronic mail address, if any;
 3. Description of the Licensee containing information on:
 - a. all Licensee's businesses
 - b. licensed activity
 - c. financial state of the company in the time of request submission and expected state after the approval of the asset transfer
 - d. a description of the proposed candidate for asset transfer indicating the general information on the activity of the company involved in transaction of the three last years and of the last year when the company has less than three years of establishment, financial state
 - e. reasons for the transfer
 - f. effect of the transfer on Licensee's activity
 - g. effect on the regular and reliable supply of its customers and on the licensed activity tariffs;
 - h. pre-elementary agreements between the parties for the transfer of the assets
2. The requests of the article 7, point a and c, are obligatory also to the candidate proposed for transferring.
3. The request, information and attached documentation should be signed by the person or persons authorized to represent the license holder, or to the proposed candidate.
4. If the Board of Commissioners judges it necessary may ask for additional information from the licensee, which should be submitted within 8 days from the notice day.

5. Parts of the documentation that the licensee requires not to be disclosed to the public should be specified in the transfer request as well as the reasons for this.

Article 8

Request review

1. The reviewing of the request shall start after the Board of Commissioners decision on starting of review procedures.

Article 9

Verification of the documentation and additional information

1. Persons authorized by the Board of Commissioners to review the transfer, may verify the authenticity of data presented from the license by the inspection in site.

Article 10

Deadline of request review

1. The reviewing of the request for transfer shall be completed within 45 days from the decision to start the review procedures.
2. If the documentation has not been submitted in the form required by the article 7, but the decision has been taken to start the review procedures, the deadline defined in paragraph 1 of this article shall start from the day of the complete submission of the whole documentation requested by ERE. If the information is not sent within 2 month after the decision has been taken, the decision for starting of procedures becomes void and the license shall present a new request to ERE.
3. In case of transferring of assets from the company of transmission, distribution and generation of electricity from the plants with higher capacity than 10MW, the deadline ascribed in point 1 of this article is 90 days.

Article 11

Transfer request approval

1. After the expiration of the deadline established in article 7 of this Regulation, the Board of Commissioners shall decide to approve or refuse the transfer request based on the following principles and criteria:
 - a. Whether the transfer affects public interests
 - b. Whether the person proposed for the transfer is willing and able to continue the activity in the sector after the transfer

- c. Whether the transfer affects the financial situation of Licensee and the person proposed for transfer.(maintains the same level, improves or deteriorates the financial state)
- d. Whether the transfer affects the improvement of the quality of service of the licensed activity
- e. Whether the transfer affects the customers service tariffs and provides benefits for them
- f. Whether the transfer affects the market operators competition
- g. Whether the transfer affects the community economy in the case of public companies
- h. Whether the person proposed for the transfer is financially and technically able to continue the assets operation and perform the necessary repairs, if necessary.
- i. Opportunities of the person proposed for the transfer to finance for the effects that may be caused by the assets transfer.

Article 12

Notice of Decision

1. At the end of asset transfer procedure, ERE shall inform the Licensee on the Board of Commissioners decision and shall send a copy to the Licensee within 5 days.
2. The Decision of the Board of Commissioners on the request for assets transfer shall be published in the Official Journal.

Article 13

Court review

The Licensee may appeal in the court the Board of Commissioners Decision on assets transfer within 30 days from the publication in the Official Journal.

THIRD PART

FINAL PROVISIONS

Article 14

Regulation Amendments

This Regulation shall be subject of review and amendments with the decision of ERE's Board of Commissioners according to ERE's Rules of Practice and Procedures.

Article 16

Entering in Force

This Regulation shall enter in force after the publication in the Official Journal of the Republic of Albania.