



REPUBLIKA E SHQIPËRIË

ENERGY REGULATORY AUTHORITY

BOARD

DECISION

No. 170, Dated, 04.11.2020

ON

THE REQUEST OF THE UNIVERSAL SERVICE SUPPLIER/FSHU COMPANY ON SOME AMENDMENTS ON THE “THE STANDARD CONTRACT FOR ELECTRICITY SALE PURCHASE BETWEEN THE ELECTRICITY PRODUCTION COMPANY/KESH COMPANY, WHOSE SHARES ARE FULLY/PARTIALLY CONTROLLED BY THE STATE AND THE UNIVERSAL SERVICE SUPPLIER/FSHU COMPANY FOR THE SUPPLY OF THE END-USE CUSTOMERS”

Based on articles 16 and 20, letter h, of Law no. 43/2015 “On Power Sector” as amended, Council of Ministers Decision No. 244, dated 30.03.2016 “*On approving the conditions for setting public service obligation, that shall be implemented to the licensees on power sector, which exercise the production, transmission, distribution and electricity supply activities*” as amended and articles 15 and 26 of the “*Regulation on ERE organization, operation and procedures*”, approved with ERE Board Decision no.96, dated 17.06.2016, ERE Board, on their meeting dated 04.11.2020, after reviewing the report drafted by Technical Directories protocol no. 116/6, dated 30.10.2020, regarding some amendments on the “*Standard Contract of electricity sale purchase between the electricity production company/KESH company, whose shares are fully/partially controlled by the state and the universal service supplier/FSHU company for the supply of the end use customers*”,

Observed that:

- ERE is charged with the obligation to approve the standard contract of electricity sale purchase between the electricity production company/KESH company, whose shares are fully/partially controlled by the state and the universal service supplier/FSHU company for the supply of the end use customers
- ERE Board with Decision no. 73, dated 22.04.2020, decided to approve the standard contract of electricity sale purchase between the electricity production company, whose shares are

fully/partially controlled by the state and the universal service supplier for the supply of the end use customers.

- On 07.05.2020, the Universal Service Supplier/ FSHU Company with official letter protocol no. 3882, submitted the request to review ERE Board Decision no. 73/2020.
- ERE Board with Decision no. 93, dated 08.06.2020, decided : to extend the administrative procedure by 30 days in order to review the request of the Universal Service Supplier/FSHU Company on the review of ERE Board Decision no. 73/2020.
- Following this decision, ERE with official letter protocol no. 675/5, dated 18.06.2020, addressed the Universal Service Supplier/FSHU Company with the request for more extensive information regarding the legal causes that led to such a request for the review of the provisions of the approved contract as well as the request for a reasoned analysis regarding the financial impact that according to the Universal Service Supplier/ FSHU Company can cause the provisions of the contract approved by ERE after a long consultation process with the contracted parties as well as the interested parties.
- The Universal Service Supplier/FSHU Company with official letter protocolled at ERE with no. 675/6, dated 06.07.2020, addressed ERE with the explanation regarding the issues as well as the request on the extension of the term of ERE Decision regarding the request to review ERE Board Decision No.73/2020.
- Following the above mentioned request , ERE Board with Decision no. 122, dated 17.07.2020, decided: to accept the request of the Universal Service Supplier /FSHU Company on the suspension of the administrative procedure to review ERE Board Decision no.73 / 2020, “On approving the standard contract of electricity sale purchase between the electricity production company, whose shares are fully/partially controlled by the state and the universal service supplier/ FSHU Company for the supply of the end use customers, until the end of the negotiations between the contracted parties, for the amendments on article 9 of this contract.
- Recently with official letter protocol no. 1115, dated 24.09.2020, KESH Company and the Universal Service Supplier/ FSHU Company, addressed ERE with the request to approve the Contract for electricity sale purchase signed between KESH Company and the Universal Service Supplier/FSHU Company, for 1 January - 31 December for 2020 and 2021.
- Following the above, the Universal Service Supplier/FSHU Company also submitted at ERE an explanatory official letter regarding this proposal, with protocol no. 5204/2, dated 07.10.2020, informing that:
- The parties in this contract after the negotiations agreed on the contract submitted for approval with official letter protocol no. 1115, dated 24.09.2020.

- The Universal Service Supplier/FSHU Company withdraws from the request for sole revision of Article 9 of the standard contract for which ERE opened the procedure with decision no. 8/2020, adding other provisions to it for which it is required the review from ERE.
- The Code of Administrative Procedures provides the right of the parties to request a review, on the assumption that new circumstances or written evidence relevant to the case are discovered, that were not publicly acknowledged to be and could be acknowledged from it during the course of the administrative procedure that led to the issuance of the administrative act.
- The extension of the procedural term at the request of the interested party, is related exclusively to the extension of this term in order that the claiming party shall provide the necessary explanation that may lead ERE to make a different decision as well as the agreement with KESH Company.
- As above, the extension of the procedural term for the review of the request does not legitimize the claiming party to change the object of the request by expanding it.
- It should be emphasized that even amendments in the object of the request by extending it with the proposal to change some points of the contract, are not substantiated, while both the parties have operated based on the terms of the Standard contract approved with ERE Board Decision no.73 / 2020.
- Considering the lack of evidence or explanations to legitimize the review of the Standard contract approved with ERE Board Decision no.73 / 2020, giving a retroactive effect in the last months of the calendar year, it is estimated that for 2020 the relationship between KESH and FSHU Companies should be treated according to the provisions of the contract approved with ERE Board Decision no. 73, dated 22.04.2020.
- Since the proposal received from the parties with official letter protocol no. 1115, dated 24.09.2020, was submitted before the beginning of 2021 and the parties are familiar with the terms set out in the contract (ex ante) and consequently have all the necessary time to carry out the relevant planning / scheduling by taking into consideration the submissions of the agreed contract it is considered that the parties are entitled to propose amendments on the Standard contract in order to regulate the future contractual and commercial relationship between them.

For all of the above mentioned, ERE Board,

Decided:

1.To withhold the request of the Universal Service Supplier/FSHU Company to review ERE Board Decision no.73 / 2020, “On approving the standard contract of electricity sale purchase between the electricity production company, whose shares are fully/partially controlled by the state and the universal service supplier/ FSHU Company for the supply of the end use customers,

for the proposed amendment of article 9 of this contract, as unreasonable and unsubstantiated by evidence.

2. To open the procedure to review the request of the Universal Service Supplier/ FSHU Company and KESH Company on reviewing ERE Board Decision No.73 / 2020, On approving the standard contract of electricity sale purchase between the electricity production company, whose shares are fully/partially controlled by the state and the universal service supplier/ FSHU Company for the supply of the end use customers for the following amendments:

Article 1 - changes: the expression is added (..together with its Annexes...).

Article 2 - changes: the expression has been removed (or compensate financially).

In point 3 the expression changes to (..with the HUPX price for that moment ...).

In point 4 the expression changes to (..within the term set by the seller ...).

Article 3 - the title changes (Definitions).

1. Definitions: The terms used in the Contract shall have the meanings given in Annex 1.
2. Interpretation: Titles and subtitles are for convenience only and do not affect the interpretation of Contract.
5. "Working Day" shall mean one day (except Saturday and Sunday) on which the commercial banks are open for the general business at the countries where each Party has its registered office;
6. "Balancing Responsibility" any participant in the electricity market is responsible for electricity balancing
7. "The Central European Time" or "CET" shall mean the Central European Time and shall include the Winter Central European Time and the Summer Central European Time according to the implementation;
8. "Confirmation" shall have the meaning specified on Article 5 and 6;
9. "Capacity of the Contract" regarding an Individual Contract shall mean the capacity set between the 4 Parties, expressed in MW; 3 FSHU ICSH
10. "Price of the Contract" regarding to an Individual Contract shall mean the price set from the General Assembly of the Seller according to Council of Minister's Decision no. 244/2016 as amended;

11. "Quantity of the Contract" regarding to an Individual Contract shall mean the quantity decided between the Parties, according to article 2 of this contract, expressed in MWh

12. "Damages" shall have the meaning specified on point 13. (Limitation of the Financial Responsibility)

13. "Party not complying the obligations" shall have the meaning specified on point 10 (Suspension of the Delivery);

14. "Subsidiary" regarding a Party, shall mean a Unit directly/indirectly Controlled by that Party, any Unit directly/ indirectly Controlling that Party or any Unit under the direct/indirect joint Control of the Party

15. "Delivery Point" regarding an Individual Contract shall mean the delivery point set by the Parties;

16. "Delivery Schedule" regarding an Individual Contract shall mean the delivery schedule set by the Parties for the day ahead according to the respective rules;

17. "Payment date" shall have the meaning specified on point 14.2 (Payment)

18. "Effective Date" shall mean set on the first page of this Contract;

19. "Schedule" shall have the meaning specified on article 6, point 3 and 7.2 (Definition of the Schedule) and "Scheduled" and "Scheduling" shall be interpreted accordingly;

20. "Fee" shall mean any current or future fee, quote, import fee, obligation, payment, accession or fee of any nature (including the interest, penalties and their additions) imposed by any government or any other tax authority (for its benefit or not) regarding any payment according to the Contract except of the seal, registration, documentation or any other similar tax;

21. "Impossibility of production as a result of hydraulic conditions for compensation effect" is defined from the minimum level in Fierza Lake at the end of each month (appendix 3) under which the seller with the buyer's request is obliged to produce, not being subject to financial compensation according to point 1, article 9 of this contract.

22. Any other term used on this contract shall be read within the meaning given on the effective legislation other tax authority (for its benefit or not) regarding any payment according to the Contract except of the seal, registration, documentation or any other similar tax;

Article 5 - changes to (..nomination confirmed via the TSO Nomination Platform.).

Point five is added with content (5. The seller has the obligation to inform at the end of each month the purchaser in relation to the level in Fierza Lake, in order to evidence whether it is

located in conditions of impossibility of production due to hydric conditions for compensation effect according to provisions of this contract).

Article 6 - point 2 changes to (.. defined in Article 2 of the Contract).

Article 7 – point 3 changes to (..referred to the nomination on the TSO Nomination Platform).

Article 9 - point 3 changes to (..sent by the purchaser ...)

Point 4 changes to (..paid according to article 13).

Article 11 - changes to (1. The contract is valid from 1 January-31 December of 2020 and 2021).

Article 12 - Article 12 is entitled Limitation of financial responsibility corresponding to Article 13 of the standard contract and there are no amendments for this Article.

Article 14 - changes the title taxes and levies and the content - any issue related to taxes and levies are regulated in accordance with the respective legislation on taxes and levies in the Republic of Albania.

Article 15 - changes and the Transfer is made.

➤In article 15 of the amended contract with the topic "Transfer" in point 2 of its title The transfer and subsidiaries the standard contract is added at the end- provided that each document supporting the loan issued or placed on behalf of the transferring party to be reissued or originally amended for to support the obligations of the subsidiary in favor of the other party.

3. The opening of the procedure to review ERE Board Decision no. 73/2020, does not suspend the legal force of this decision.

4. The Legal Directory shall inform the parties about ERE Board Decision

This decision enters immediately into force.

This decision may be reviewed within 7 calendar days and may be complained on Tirana Administrative Court, within 30 calendar days from the publication in the Official Gazette.

This decision is published at the Official Gazette.

ERE CHAIRMAN

Petrit AHMETI