



REPUBLIC OF ALBANIA
ENERGY REGULATORY AUTHORITY

Board

DECISION

No. 47, Dated 19.03.2019

ON

APPROVING THE REQUEST OF TSO COMPANY FOR AN AMENDMENT ON ERE BOARD DECISION NO. 43 DATED 15.03.2017 ON THE FINAL APPROVAL FOR THE CERTIFICATION OF “TRANSMISSION SYSTEM OPERATOR” FOR ELECTRICITY TSO COMPANY IN CONFORMITY WITH ARTICLE 54, POINT 6, OF LAW NO. 43/2015, “ON POWER SECTOR” AND ARTICLE 9, POINT 6, OF DIRECTIVE 72/2009 EC AFTER RECEIVING THE OPINION OF ENERGY COMMUNITY SECRETARIAT

In conformity with article 3, point 8 and articles 16; 54 and 58, of Law no. 43/2015, “*On Power Sector*”, as amended, article 53 of Law no. 44/2015, “*Administrative Procedures Code*”; articles 3; 6; 8 and 10 of the “*Regulation on the certification of the transmission system operator for electricity*”, approved with ERE board decision no. 154 dated 11.12.2015, article 8 of the “*Regulation for ERE organization, operation and procedures*”, approved with ERE Board Decision no. 96, dated 17.06.2016, ERE Board, on meeting dated 19.03.2019 meeting, after reviewing the report prepared by the Licensing Directory, on the request of TSO company to postpone the term of point 2 of ERE board Decision no. 43, dated 15.03.2017, “*On final approval for the certification of transmission system operator for electricity TSO company in conformity with article 54, point 6, of Law no. 43/2015, “On Power Sector” and article 9, point 6, of Directive 72/2009 EC after receiving the opinion of Energy Community Secretariat*”,

Observed that:

- ERE Board with decision no. 59, dated 15.03.2019, decided: To approve the request of TSO company to postpone the term of implementing point 2 of ERE Decision no. 43 dated 15.03.2017, “On the final approval for the certification of the Transmission System Operator for electricity TSO company in conformity with article 54, point 6, of Law no.43/2015, “On Power Sector” and article 9, point 6, of Directive 72/2009 EC after receiving the opinion of Energy Community Secretariat”, until on 15.03.2019.
- This postpone is approved because of the failure of TSO company to fulfill all the conditions within the term defined on ERE Board Decision no. 43, dated 15.03.2017.

- TSO company with the official letter protocol no. 1134/1, dated 13.03.2019, is addressed to ERE responding to the request for information Protocol no. 136, dated 06.02.2019, regarding to the **fulfillment of the conditions** set by ERE on the certification decision, as explained for each of them as follows:
 - **The Independence of the financial audit**, about which it is explained that independent auditors appointed from the Ministry of Finance and Economy as the owner of TSO company have carried out the audit of the financial statements of TSO company for 2017 and are continuing their work even for 2018. The Ministry of Finance and Economy appointed experts that do not exercise the audit on state companies of electricity generation and supply.
 - **Non-transfer of staff**, TSO company informed ERE that it has performed amendments on the Collective work Contract, where it is defined that the employees holding “Director” status and report directly to the Administrator of the company and the “Chief Sector” status regarding the TSO company daily activity, shall not be employed to entities performing the electricity production or supply activities. TSO company informed ERE even before for meeting this obligation with the official letter Protocol no. 2143, dated 16.03.2018
 - **Unbundling of the Market Operator**. In order to achieve this objective, the TSO company shall take preliminary measures and cooperate within its powers to realize the legal obligations defined in the law, to ensure the fulfillment of the obligation for financial and legal unbundling of the Market Operator, as provided on article 57/2 of Law no.43/2015, “On Power Sector” in conformity with the market rules approved by ERE and the Council of Minister Decision for the unbundling of the Market Operator.
 - **Compliance Program and the Compliance Officer**, TSO company informs ERE that regarding this obligation are taken ERE Board Decisions no. 147 dated 28.09.2017 “On approving the Compliance Officer Contract” and with decision no. 103 dated 30.04.2018 the Decision on approving the Compliance Program
- While regarding the not complied condition regarding the **Inter-institutional cooperation for conducting the legislative amendments and transfer of the competences to the Ministry of Economy**, TSO company informs ERE, that regarding this obligation it maintained continuous correspondence with all the respective institutions to comply it successfully. TSO company submitted to the Ministry of Infrastructure and Energy the proposal for amendments on Law no. 43/2015 “On Power Sector”, as amended, proposals that shall lead to the compliance of the decided condition.
- On this correspondence TSO company, underlines that there are undertaken all the necessary measures for full compliance of all the certification conditions, but in the case of *Inter-institutional cooperation for conducting the legislative amendments and the transfer of the competences to the Ministry of Economy*, TSO company is not able to act directly to terminate these initiatives. TSO company believes on the cooperation with the

Ministry of Infrastructure and Energy to realize as soon as possible and successfully these initiatives, about which it is needed a longer time than the one decided on ERE Board Decision no. 59 dated 15.03.2018, which postponed with one year the term provided in point 2 of ERE Board Decision no.43, dated 15.03.2017.

- Following the abovementioned reporting, because of the circumstances that do not depend to TSO company will to implement the provisions of ERE decision no. 43, dated 15.03.2017, "*On final approval for the certification of transmission system operator for electricity TSO company in conformity with article 54, point 6, of Law no. 43/2015, "On Power Sector" and article 9, point 6, of Directive 72/2009 EC after receiving the opinion of Energy Community Secretariat*", TSO company submitted to ERE the request to postpone with one year the term to comply the conditions provided on point 2 of ERE Board Decision mentioned above.
- TSO company request is submitted at ERE with the official letter Protocol no. 1134/1, dated 13.03.2019 and taking into consideration that the term decided on ERE Board Decision no. 59 dated 15.03.2018 (decision that has amended the term decided on point 2 of ERE Board Decision no. 43, dated 15.03.2017), is fulfilled on 15.03.2019, the review of this request before the termination of the term, fulfills the abovementioned conditions implementing even article 53 of the Administrative Procedures Code citing "*the defined term from the public body may be extended with a justified request of the stakeholder, submitted before the termination of the term*".
- From the analysis of the circumstances explained by TSO company, we ascertain right the TSO company conclusion, that from this company are carried out all the efforts to comply the conditions defined on ERE Board Decision no. 43, dated 15.03.2017, "*On final approval for the certification of transmission system operator for electricity TSO company in conformity with article 54, point 6, of Law no. 43/2015, "On Power Sector" and article 9, point 6, of Directive 72/2009 EC after receiving the opinion of Energy Community Secretariat*" and that the Law amendment process requires a longer time because of the procedures that shall be followed until the review and approval from the Albanian Assembly of the proposed amendments.

For all of the above mentioned, ERE Board,

Decided:

1. To approve TSO company request regarding the postpone of the term implementing point 2 of ERE Board Decision no. 43, dated 15.03.2017, "*On final approval for the certification of transmission system operator for electricity TSO company in conformity with article 54, point 6, of Law no. 43/2015, "On Power Sector" and article 9, point 6, of Directive 72/2009 EC after receiving the opinion of Energy Community Secretariat*",
2. This decision enters into force from 15.03.2019 and runs out its legal power on 15.12.2019.

3. Submit this decision to TSO company, to the Ministry of Finance and Economy, the Ministry of Infrastructure and Energy, the Competition Authority and to Energy Community Secretariat.

This decision enters immediately into force.

This decision is published on the Official Gazette.

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