



REPUBLIC OF ALBANIA
ENERGY REGULATORY AUTHORITY

**BOARD
DECISION**

No. 63, Dated 23.04.2019

ON

**AN AMENDMENT ON ERE BOARD DECISION NO. 179, DATED 08.11.2017,
“ON THE CERTIFICATION OF THE “COMBINED OPERATOR OF NATURAL
GAS ALBGAZ COMPANY” AS AMENDED**

Based on article 16 of Law no. 43/2015 “*On Power Sector*” as amended, article 37, article 50, article 59, article 68, and article 80 of Law no. 102/2015, “*On Natural Gas Sector*” as amended, article 113, point 3, of Law no. 44/2015, “*Administrative Procedures Code*”, article 6, article 7, article 8, article 9, article 10 and article 11 of the “*Regulation on the certification of the Transmission System Operator for Natural Gas*”, approved with ERE Board Decision no. 100, dated 05.08.2015 and amended with Decision no. 129, dated 31.10.2015, as well as article 15 of the “*Regulation on ERE organization, operation and procedures*”, approved with ERE Board Decision no. 96, dated 17.06.2016, on their meeting dated 23.04.2019, after reviewing the report drafted by the License and Market Monitoring Directory regarding an amendment on ERE Board Decision no. 179, dated 08.11.2017, “*On the certification of the “Natural Gas Combined Operator ALBGAZ company” as amended,*

Observed that:

- ERE Board with Decision no. 236, dated 02.11.2018, decided:
 1. *The terms defined on points 2; 3; 5; 5.2 and 7 of ERE Board Decision no. 179, dated 08.11.2017, “On the certification of the “Combined Operator for Natural Gas” ALBGAZ company, shall be postponed until on 10.04.2019.*
 2. *The term defined on point 4, “.....as well as shall draft and submit to ERE, the Report defined according to the regulatory Compliance Program not later than 12 months from the approval of ALBGAZ company Certification Decision, in conformity with the definitions of article 21 Directive no.73/2009 of the European Commission “On the rules of natural gas market” and article 47 of Law no. 102/2015 “On Natural Gas Sector”, is postponed until on 10.04.2019. “On an amendment on ERE Board Decision, no. 179, dated 08.11.2017, “On the certification of the Combined Operator for Natural Gas ALBGAZ company.”*

- The postpone of this term approved with ERE Board Decision no. 236, dated 02.11.2018, was done after there was evidenced from “ALBGAZ” company the failure to comply all the conditions within the term defined on ERE Board Decision no. 179, dated 08.11.2017, “On the certification of the “Combined Operator for Natural Gas” ALBGAZ company.
- “ALBGAZ” company has not fully completed the requirements of ERE Board Decision no. 179, dated 08.11.2017, “On the certification of the Natural Gas Combined Operator” ALBGAZ company amended as follows:
- Regarding the fulfillment of the conditions provided on ERE Board Decision no. 179, dated 08.11.2017, “On the certification of the Natural Gas Combined Operator ALBGAZ company” we observe as provided and realized as follows:
 - **Provision point 2 of Decision no.179, dated 08.11.2017.**
 - **Within 1 month from the entry into force of this Decision ALBGAZ company shall replace MIE representatives at the company’s Supervisory Board with members that are not employed at MIE or electricity production and/or supply companies controlled by it.**
 - After ERE Board Decision no.179, dated 08.11.2017, “*On the certification of the “Combined Operator for Natural Gas”*”, to complete point 2 of the decision, *the financial auditor of ALBGAZ company shall be independent, within the meaning that the financial auditor shall not be the same entity performing its duties or perform the audit of the entities/entrepreneurs that perform any of the natural gas production or supply activities. Regarding this issue, ALBGAZ company shall require to the General Assembly (the Ministry of Finance and Economy) the assurance to avoid the appointment of the same financial audits*, results that ALBGAZ company carried out the amendment of the Supervisory Board Members implementing Order no.130 dated 14.11.2017 and Order no. 234 dated 06.03.2018, as amended.
- **Provision point 3 of ERE Board Decision no.179, dated 08.11.2017.**
ALBGAZ company shall report every month at ERE, about the procedure of transmission asset registration and terminate this procedure within six months after the approval of the Final Decision.

Regarding the fulfillment of this condition from the correspondences of ALBGAZ company at ERE and the last correspondence Protocol no. 266, dated 01.04.2018, ALBGAZ company informed that it is equipped with the ownership certificate for:

1. Sheq i Madh (Date of issue of the Ownership Certificate 09.08.2017)
2. Fier Drizë terrain property no. 93, (date of issue of the ownership certificate 09.11.2017)
3. Fier Gjonçe terrain property no. 267/10 (date of issue of the ownership certificate 09.11.2017)
4. Lavdan, Mallakastër property no. 549 (date of issue of the ownership certificate 18.12.2017)

Responding to ERE official letter Protocol no. 266/1, of date 05.04.2019, submitted the document practice regarding the Application for 2018, at the Local Real Estate Registration Office (Z.R.V.P.P) to be equipped with ownership document for three ownerships and is waiting the response from the respective Real Estate Registration Office (Z.V.R.P)

- Cërrik Elbasan ownership no. 12/289;
- Drenovë, Mallakastër ownership no. 1/6;
- Balldren, Elbasan ownership no. A, located on the cadastral area no. 10/85.

Provision Point 4 of ERE Board Decision no.179, dated 08.11.2017.

Within 3 months from the approval of the Certification Decision, ALBGAZ company shall appoint the Compliance Officer subject of ERE approval, as well as shall draft and submit at ERE the Report defined according to the regulatory Compliance Program not later than 12 months from the approval of ALBGAZ company Certification Decision, in conformity with the definitions of article 21 Directive no. 73/2009 of the European Commission, “On the rules for the natural gas market” and article no.47 of Law no. 102/2015, “On natural gas sector”.

Regarding this condition results that ERE with Board decision no. 77, dated 26.05.2017, approved the Compliance Program of the Transmission System Operator for natural gas, **on letter “C”, point 73** of which it is approved that: *“Each year, no later than by [31 March], the Compliance Officer shall prepare and submit to ERE a report on the TSO’s compliance with this Program, which shall be published on the TSO’s and ERE’s websites.”.*

On Session VII, point 76, of the compliance program, it is cited that: *This program shall be approved with the decision of [competent corporate body] of TSO company and within 5 (five) days after the adoption of such decision, shall be submitted at ERE for approval. This Program shall come into effect the next day after its approval by ERE.*

Regarding this condition ***ALBGAZ company does not have any obstacle in submitting for approval at ERE the Compliance Program adopted according to the one approved by ERE with ERE Board Decision no. 77, dated 26.05.2017. “On approving the Compliance Program of the Transmission System Operator for Natural Gas”.***

Provision Point 5 of Decision no. 179, dated 08.11.2017.

Within 12 months from the entry into force of this decision because of interpreting the recommendations of Energy Community Secretariat Opinion, ALBGAZ company shall submit at ERE evidences showing the guarantee regarding:

5.1 The Independence of the Financial Audits, The financial Audit of Albgaz company shall be independent, within the meaning that the financial audit shall not be the same subject performing tasks or performs the audit of the entities/undertakings that perform any of natural gas generation or supply activities. Regarding this issue, Albgaz company shall require the General Assembly to ensure the avoidance of appointing the same Financial Audits.

Regarding the condition set on **point 5.1 of ERE Board Decision no. 179, dated 08.11.2017**, regarding the independence of the financial audits, results that ALBGAZ company has submitted at ERE two declarations for the audit employees of ALBGAZ company in the function of activities unbundling at the energy entities regarding the production and/or supply of natural gas. These structures perform the internal audit of the company activity. From the official website of the National Business Center results that “ALBGAS” company submitted the Financial Statements for 2017 signed from three accounting experts which are different from the ones appointed to perform this activity for Albpetrol company. The above mentioned meets the condition of separating the obligation of the company financial audit, independently from Albpetrol company.

Meeting the above mentioned conditions, does not discharge ALBGAZ company from the obligation to report at ERE every year for the legal audits performing the legal audit of the annual financial statements, implementing decision no. 179, dated 08.11.2017 and Law no. 47/2016 “*On some amendments and additions on Law no. 10091, dated 05.03.2009, “On the legal audit, organization and the profession of the registered Accounting Expert and approved Accountant”* as amended.

- **5.2 provision of ERE Board Decision no. 179, dated 08.11.2017**
- **Cross-institutional cooperation for realizing the amendments in the legal framework, article 11 and 46 (10) of Natural Gas Sector Law and transferring the competences to the Ministry of Economy. To fulfill this obligation, ALBGAZ company shall submit at ERE that the occurred documentary evidences of the necessary legal and by –legal acts regarding the transferring of the competences to the Ministry of Infrastructure and Energy to ALBGAZ shareholder, the Ministry of Finance and Economy are effective.**

Regarding this condition set on **point 5.2 Decision no. 179, dated 08.11.2017**, on cross-institutional cooperation for realizing the amendments in the legal framework, Article 11 and 46 (10) of Natural Gas Sector Law and transferring the competences to the Ministry of Finance and Economy, Albgaz company submitted at the Ministry of Infrastructure and Energy (MIE) the request Protocol no. 125, dated 05.11.2018, where above all required the solution to meet this condition, but there is no response yet.

Above from the above, even ERE recently with the official letter Protocol no. 233/2, of date 20.04,2018, required MIE support to implement the provisions of ALBGAZ certification decision.

Following the above mentioned reporting and observations, due to the circumstances which as explained do not depend on ALBGAZ company will, to implement the provisions of ERE Board Decision no.179, dated 08.11.2017, this last one mentioned submitted at ERE the request to postpone the term of sending the required documentation according to Decision no. 179, dated 08.11.2017, **until on 20.12.2019** and informs that it is taking all the necessary measures to complete the points required on this decision.

Regarding this request, Administrative Procedures Code, article 53 provides that: *the term defined by the public body may be extended on a reasoned request of the interested party before the termination of the term.*

We ascertain that we are on these conditions, because the request of ALBGAZ company is submitted at ERE with the official letter Protocol no. 266, of date 01.04.2019 and taking into consideration that the term set on ERE Board Decision no. 179, dated 08.11.2017, as amended, is completed on date 10.04.2019, the review of this request before the termination of the term, fulfills the abovementioned conditions.

For all of the above mentioned ERE Board,

Decided:

- 1. Point 2 of ERE Board Decision no. 179, dated 08.11.2017 provision, is abrogated.**
2. Point 3 of ERE Board Decision no. 179, of date 08.11.2017, is amended and becomes:
***“3. ALBGAZ company shall conclude within three months the application procedures to the respective institutions to equip with ownership certificates all the assets that it possess.*”**
3. Point 4 of ERE Board Decision no. 179 dated 08.11.2017, is amended and becomes:
***“ALBGAZ company shall submit at ERE for approval until on 31 Maj 2019, the Compliance Program adopted according to the one approved by ERE with ERE Board Decision no. 77, dated 26.05.2017 “On approving the Compliance Program of the Transmission System Operator for Natural Gas”.*”**
4. Point 5.1 of ERE Board Decision no. 179, dated 08.11.2017, is amended and becomes: ***“ALBGAZ company shall submit at ERE the financial audit declarations and the financial statements of the company for each exercising year.”***
5. The term defined on point 5.2 of ERE Board Decision no. 179, dated 08.11.2017 shall be postponed until on 20.12.2019.
6. License and Market Monitoring Directory shall submit this decision to “ALBGAZ” company, to the Ministry of Infrastructure and Energy, to the Ministry of Finance and Economy and to Energy Community Secretariat.

This decision enters immediately into force.

This decision is published in the Official Gazette.

This decision may be complained on Tirana Administrative Court, within 45 calendar days from the publication in the Official Gazette

CHAIRMAN

Petrit AHMETI