

# **REGULATION ON DEFINING THE ASSESSMENT AND SELECTION CRITERIA OF CHOOSING THE SUPPLIER OF LAST RESORT**

**Approved with ERE Board Decision no. 141, dated 15.06.2021**

## **ARTICLE 1**

### **PURPOSE**

1.1 This regulation defines the basic criteria of assessment as well as the process for the selection of the supplier of last resort that is required to perform the supply service in conformity with article 86 of Law no. 43/2015 “On Power Sector”, as amended as well as Council of Minister Decision no. 449, dated 15.6.2016, “On approving the conditions and procedures to define the electricity supplier of last resort”.

1.2 This regulation defines:

- a. The selection process of the supplier of last resort;
- b. The obligations regarding the conditions that qualify a licensee to apply and to be appointed as the Supplier of Last Resort;
- c. The criteria for assessment that shall be used for the selection of the supplier of last resort after the competition process;
- d. The rights, obligations and responsibilities of the applicant as the supplier of last resort.

## **ARTICLE 2**

### **DEFINITIONS**

The expressions used on this regulation shall have the meaning as follows:

2.1 “Energy Regulatory Entity” “ERE” shall mean the regulatory institution of power sector, which operates according to Law no. 43/2015 “On Power Sector” as amended and the Law on “Natural Gas Sector”, as amended.

2.2 Supply of Last Resort – the temporary supply of end use customers, on the conditions provided on Power Sector Law, to whom it is ensured the temporary supply within the limits defined on this law.

2.3 “Supplier of last resort” shall mean a supplier designated in conformity with the provisions of law no. 43/2015 “On Power Sector” as amended, which provides, for a limited time, the supply

service in regulated conditions to the customers, which were not able to contract a supplier by themselves or have lost their supplier.

2.4 Universal service of supply – shall mean the public service for the supply of the end use customers, which ensures their right to be supplied with the electricity of a specific quality, within the Albanian Territory, within the entire territory of Albania with regulated prices, easily and clearly comparable, transparent, and non-discriminatory.

2.5 Competition – shall mean the entire procedures following the invitation publicly announced for the application of the Supplier of last resort, organized according to the procedures defined on the procedure of choosing the supplier of last resort.

2.6 Any other definition or term used on this regulation, shall have the same meaning with the one used on Law no. 43/2015 “On Power Sector”, as amended as well as Council of Minister Decision no. 449, dated 15.6.2016 “On approving the conditions and procedures to define the supplier of last resort of electricity.”

2.7 Day – within the meaning of this regulation, at any case shall mean the calendar days.

### **ARTICLE 3**

#### **SUPPLIER OF LAST RESORT**

3.1 The supplier of last resort, as defined on paragraph 1, point 8 of the Conditions and procedures of defining this supplier on Council of Minister Decision, no. 449/2016 is considered as the person defined to ensure the supply of last resort with electricity for household customers and small non-household customers, according to the definitions of point 1, article 86 of Law no. 43/2015, “ On Power Sector”, as amended on the territory of Albania for a 3 year period from the selection moment.

3.2 On paragraph 1, article 86 of Law no. 43/2015 "On power sector", as amended as well as on Council of Minister Decision no. 449 dated 15.06.2016, the Supplier of last resort is charged with the obligation to supply all the customers which are without a supplier, for a limited period of 60 (sixty) days, or the customers that are for the first time in the liberalized market for a 2 year period, on the cases as follows:

- a. the previous supplier, in conformity with the legislation in force, fails to pay or is on bankruptcy process, or;
- b. the supply license of the previous supplier has been removed or is suspended
- c. the customer failed to find a supplier in the market.

3.3 There shall be one supplier of last resort for all the Albanian territory.

3.4 The supplier of last resort shall purchase and sale electricity with defined prices according to the “Methodology of defining the electricity sale price from the supplier of last resort”, approved by ERE.

## **ARTICLE 4**

### **INITIATION OF THE COMPETITION**

4.1 The competition is announced and organized, by a Commission composed from the Chairman of the Commission and 4 members assigned with ERE Chairman order.

4.2 The supplier of last resort proposed by the Commission is approved with Board Decision.

4.3 The members of the Commission shall act in a transparent, impartial, and non-discriminatory manner. When one member of the Commission has private or professional relations with a known or possible applicant, he or she shall ensure to ERE chairman a written explanation and shall be withdrawn from the Commission activities.

4.4 ERE, based on the conditions defined according to point 1, of article 87 of Law no. 43/2015 “On power sector”, as amended shall define the supplier of last resort.

4.5 The supplier of last resort is appointed to perform the operations of the supplier of last resort for a three (3) year period in conformity with Council of Minister Decision no. 449, dated 15.6.2016 “On approving the conditions and procedures to define the supplier of last resort for electricity”.

4.6 If by the end of the term to exercise the operations of the supplier of last resort, from the licensee appointed as such, it is not selected the supplier for the next period, ERE shall define a supplier that shall exercise the temporary operation of the Supplier of Last Resort, for a period not longer than (6) months, within which shall be developed the new selection process. In case the competition fails because there are no competing candidates or the competition does not issue results, ERE shall take into consideration the safety, economic, technical elements as well as the experience on the supply activity, shall designate a temporary Supplier of Last Resort with a specific decision, defining all the terms and conditions to set the obligations of the public service. The rights and obligations between the temporary supplier appointed as a Supplier of Last Resort from ERE and the effective Supplier of Last Resort, regarding the not liquidated obligations from the customers that benefit this service, are those provided on the Regulation for switching the electricity supplier.

4.7 Not later than 4 months before the termination of the term to perform the operations as the Supplier of Last Resort, the licensees designated as Supplier of Last Resort, ERE shall held a new competition procedure.

4.8 The competition procedure provided on this article, shall be as an invitation for competition addressed to all the licensees that perform the Supply activity.

4.9 The invitation for competition shall be prepared by the Commission and shall contain the information, requests for documentation as follows:

- a. Date and time when shall be developed the competition procedure as well as the process for submitting the applications, as well as the other important hours and dates for the competition process;
- b. The services required to be performed by a candidate for the Supplier of Last Resort (FMF), include the initiation of the service and its conditions;
- c. The qualification criteria fulfilled by the entities that have the right to be a Supplier of Last Resort (FMF);
- d. The criteria that ERE shall implement for the assessment of the better bid shall be published on ERE website.

4.10 The commission shall inform the applicants for its decision to refuse the selection application as Supplier of Last Resort (FMF), within fifteen (15) calendar days from the date of submitting the applications. Not later than 10 calendar days from the selection of the bidders qualified to follow the process, the Commission shall proceed with the ranking of the candidates according to the scoring from the highest, to the lowest and shall propose to the Board the selection of the candidate assessed with more points.

4.11 ERE Board, within 5 days from the submission of the proposal from the Commission shall be expressed regarding this proposal to define the supplier of last resort.

4.12 The decision for selecting the Supplier of Last Resort shall contain a general information on the assessment criteria of the selected Supplier of Last Resort, as well as the service conditions of the supplier of last resort.

4.13 If an applicant is not satisfied with ERE decision, for the selection of the Supplier of Last Resort (FMF) and/or its disqualification, shall have the right to review and complaint according to the effective legislation.

## **ARTICLE 5**

### **COMPETITION STAGE**

5.1 The competition announced by the Commission held with ERE Chairman order shall include the stages as follows:

- a. the announcement of the invitation for the competition of selecting the Supplier of Last Resort (FMF);
- b. delivery of the competition documents;
- c. an assessment of the competition documents from the Commission,
- d. announcement of the qualified and not-qualified bidders

5.2 The conditions and terms for each Competition stage, are those provided on this regulation.

## **ARTICLE 6**

### **ANNOUNCEMENT OF THE COMPETITION**

6.1 The competition procedure shall initiate with the announcement of the invitation for participation from the Commission held for this purpose.

6.2 At any time the invitation for Competition shall be prepared from the Commission according to the attached Annex and shall be published on ERE website as well as at the national media.

6.3 The invitation for Competition shall contain as follows:

- a. the legal basis and the Competition conditions;
- b. the legal steps for the qualification, selection and appointment procedure, from the Competition commission;
- c. the terms of submitting the Competition documents;
- d. the stages and terms of the Competition procedure according to article 5.1;
- e. the documentation shall be delivered from the applicant according to point 1, letter of article 8
- f. the criteria of assessment and selection criteria according to the definitions of this regulation.
- g. address for submitting the documents to the Competition and;
- h. contact details and the working hour of the person charged with the obligation to issue the information regarding the competition.

6.4 The reference documents prepared by the Commission attached to the invitation for Competition shall submit the detailed information for Competition and the activity that shall guarantee the supplier of last resort.

## **ARTICLE 7**

### **SUBMISSION OF THE COMPETITION DOCUMENTS**

7.1 All the Competition documents shall be submitted on behalf of the licensee and shall be signed by its authorized representative.

7.2 If it is impossible to be ensured the original required Competition documents, the applicant shall ensure notarized copies.

7.3 All of the Competition documents shall be submitted on the Albanian language. The documents issued from other countries shall be verified with apostille stamp and shall be submitted together with their translation on the Albanian language.

7.4 The term for submitting the Competition documents (day and hour) shall be defined from the Competition Commission and shall be specified on the invitation for the competition, calculating a term of 15 calendar days after the date of announcing the Invitation for Competition.

7.5 At any time before the latest term to deliver the Competition documents, any possible applicant may require in the written form to the person defined in the competition invitation for additional information on the competition. The person defined to issue the additional invitation shall ensure the issue of the information not later than the last term defined on point 4 of this article. The information before being send, shall be confirmed by the Commission. The request for information and the issued information on response shall be published at ERE official website.

7.6 The way to deliver the Competition Documents shall be on the form announced on the invitation for competition within the term defined on the call for competition. The delayed delivery of the Competition documents shall be a condition for the applicant's disqualification.

## **ARTICLE 8**

### **APPLICATION DOCUMENTATION**

8.1 The applicant to be defined as the Supplier of Last Resort, in conformity with Council of Minister Decision no. 449/2016 shall deliver the documentation as follows:

- a. Commercial register extract, from the National Registration Center, issued not later than the 3 latest months;
- b. A copy of the electricity supply license to perform the activity in Albania, valid for at least the following 3 years;
- c. Description of the technical, organizational, professional and financial capacities of the company shall include the financial statements audited during the latest 2 years;
- d. Necessary evidence (contracts or transactions evidence) that the company sells or supplies electricity by the respective transactions of the latest three years;
- e. The documents that verify that the legal person has fulfilled the fiscal obligations and those of social insurances, issued from the tax administration not earlier than the 3 months from the submission moment;
- f. The document that verifies that the legal person, has not been convinced with final decision, regarding the activity of the company, issued from the respective institutions;
- g. The document that verifies that the Managers of the company or the legal representative of the legal person is not under criminal prosecution, issued from the prosecution;
- h. Detailed information regarding its activity, based on the general requirements, specified on this Regulation and especially:

- his previous experience on the supply activity and the category of the supplied customers;
- the date when it is ready to initiate the operation as the supplier of last resort.

i. Evidence of ensuring the bid.

8.2 The applicant shall submit at ERE a copy for ensuring the bid. The evidence for ensuring the bid shall be equal on 1.500.000 ALL, ensured in one of the financial institutions that may provide this service, with a validity term not less than the duration of the procedure to announce the selected winner according to these rules.

## **ARTICLE 9**

### **CRITERIA FOR SELECTING THE SUPPLIER OF LAST RESORT**

9.1 The competition for appointing the Supplier of Last Resort shall be considered valid if not less than 2 (two) competitions have fulfilled the acceptance criteria.

9.2 The licensee shall be a Supplier of Last Resort, shall be able to ensure evidences for as follows:

a. Administrative resources, information technologies, the invoicing systems and the human resources with the ability to transfer a big number of the responsible customers data, on accuracy and appropriate time, as well as the previous experiences on the supply area

b. The operational and financial indicators, capable to identify to which customers they serve according to the Supply of Last Resort Conditions, and which customers on the conditions of an electricity supplier;

c. The financial capacity to supply with sufficient additional electricity, to comply the requests of the customers that are supplied on the conditions of the supplier of last resort with whom have signed a supply contract.

9.3 The licensee wishing to become a supplier of last resort shall guarantee and document that: He may serve to the customers on the supply conditions of the supplier of last resort guaranteeing a continuous Service for a sixty -day period (60) or of 2 years for the customers that are issued for the first time in the liberalized market. For this purpose, shall deposit at the application the contracts connected during the 3 latest years of ensuring the supply service.

9.4 The licensee who applies for the Supply of Last Resort shall document the experience on the electricity supply area by depositing minimally 5 signed and successfully realized supply contracts for at least in a year.

9.5 All the suppliers shall submit the application accepted on time or before the time provided on the invitation for competition and shall evidence the fulfillment of the requirements provided on article 4 of this regulation and are in conformity with the specifications provided on article 5 of

this regulation and shall be considered in conformity with the competition requirements and shall have the right to provide the Supplier of Last Resort service if evaluated and announced winner from the Commission. ERE shall inform the qualified applicants as well as shall publish on its official website, the list of the applicants qualified for competition.

9.6 The submitted application shall not be considered in conformity with paragraph 1 or shall be accepted latter from the Commission, shall be refused /dis-qualified, and the applicant shall be considered not suitable to be the Supplier of Last Resort and shall have the right to be informed about that from ERE, giving the reasons for the refusal of the application.

9.7 Not later than 5 days from being informed for the disqualification, the not-qualified licensee shall have the right to complaint about ERE decision.

9.8 At any case to the assessment Commission is submitted a request to review the dis-qualification, the Commission shall inform the Chairman even for the review of this request with Chairman order shall be held a working group composed of three different members from those of the assessment Commission, which shall review the complaint within 5 working days, and the information shall be submitted to the board for review.

## **ARTICLE 10**

### **ASSESSMENT OF QUALIFIED BIDDERS**

10.1 The Assessment Commission held from ERE, shall access the Suppliers that are qualified from the Commission at any case based on:

- a. The capacities of the supplier regarding the compliance of the Supplier's obligation as the supplier of last resort taking into consideration the experience of the supplier in the market and the respective references, the supply contracts successfully realized, as well as the platform to manage the information, the issue of the invoices and their collection, as well as the information to settle the disputes with the customer;
- b. proposal of the applicant regarding the alternatives for the payment conditions;
- c. administrative costs with which the provider shall ensure the Supplier of Last Resort service.

10.2 Each of the above-mentioned criteria shall correspond to a number of points as follows:

- a. the ability of the supplier according to letter A) maximum 50 points,
- b. the alternatives for the payment conditions proposed from the supplier according to letter B) maximum 20 points and;
- c. alternative costs according to letter C) maximum 30 points for the bid with the lowest costs.



10.3 The commission shall select between the suppliers that are qualified for competition, the supplier that has the better bid by providing the lowest profit margin compared with the other applicants.

10.4 On the conditions of the bids with equal points shall be followed with the selection of the winner according to the lottery organized by the Commission according to the rules, attached to this Regulation.

## **ARTICLE 11**

### **DESIGNATION OF THE SUPPLIER OF LAST RESORT**

11.1 ERE Board, after the submission of the report for legal, economic technical justification from the Commission, shall take the decision for the designation of the supplier of last resort.

11.2 If there are observed any infringements of the requirements related to the process and criteria of selection, the Board may reject the request of the Commission to approve the selected supplier of last resort. The Commission shall select and reproduce for Board approval, the designation of the supplier of last resort, of an applicant that fulfills the selection criterial provided on this regulation.

11.3 Based on the decision approved by ERE, the supplier selected for the supplier of last resort shall be designated to ensure the supply with electricity of last resort on the Albanian territory.

11.4 The decision to design the supplier of last resort shall be published on the Official Gazette and ERE website and the selected supplier. The decision shall be sent to Energy Community Secretariat.

11.5 The supplier designed for the last resort shall publish the necessary information for the supply with electricity of the last resort on its website and shall inform the operators of the transmission and distribution system. ERE shall specify the content of the publication of the notification.

11.6 ERE shall monitor and supervise the activity of the supplier of last resort in conformity with the effective legislation. Regarding the above, shall include but not being limited, even to the submission of any document that is subject to the renewal, shall submit for the application purposes of the selection as a Supplier of Last Resort.

## **ARTICLE 12**

### **THE RIGHTS AND OBLIGATIONS OF THE SUPPLIER OF LAST RESORT AND THE CUSTOMERS THAT ARE SUPPLIED FROM THE SUPPLIER OF LAST RESORT**

12.1 The supplier of last resort shall inform ERE without delay for any concern on its operation, the inability or inability possibility to perform the supply of last resort.

12.2 The rights and obligations of the licensee selected as the supplier of last resort and the customers that benefit from this service they are provided on the “Rules for the conditions of the supply service from the supplier of last resort, and the contractual conditions of electricity supply” approved by ERE.

## **ARTICLE 13**

### **FINAL PROVISIONS**

13.1 ERE shall have the right to switch or modify any provision of this Regulation.

13.2 The procedures for amending or modifying this Regulation shall be the same with those of the approval ones.

## **ARTICLE 14**

### **ENTRY INTO FORCE**

This Regulation shall enter into force after publication in the Official Gazette.

## Annex 1

### INVITATION FOR PARTICIPATION ON THE COMPETITION FOR THE SELECTION OF THE SUPPLIER OF LAST RESORT FOR A 3 YEARS PERIOD

1. This competition shall be held in conformity with article 86 of Law no. 43/2015 “On Power Sector”, as amended and Council of Minister Decision no. 449, dated 15.6.2016, “On the approval of the conditions and procedures to define the supplier of last resort for electricity”, as well as the Regulation on defining the criteria for the assessment and the selection of the supplier of last resort, approved with ERE Board decision no. 141, dated 15.06.2021.
2. The competition shall be announced and organized form the Commission composed of
3. The documents that shall be completed by any applicant:
  - j. The extract of the commercial register, from the National Registration Center issued not later that the 3 latest months;
  - k. Copy of the electricity supply license to perform the electricity supply activity in Albania valid for at least the 3 following years;
  - l. Description of the technical, organizational, and financial capacities of the company including the financial audited statements for the 3 latest years;
  - m. Necessary evidences (contracts or transactions evidences) that the company sales, purchases and supplies electricity through the respective transactions for at least the latest years;
  - n. Documents that verify that the legal person shall fulfill the fiscal and social security obligations and those of social securities, issued from the tax administration not later than 3 months from the delivery moment;
  - o. The document that verify that the legal person is not convinced with a final decision regarding the activity of the company, issued from the respective institutions;
  - p. The document that verify that the Managers of the company or the legal representative of the legal person is not is not under criminal prosecution, issued from the prosecution;
  - q. Detailed information for its activity, based on the general requirements, specified on this regulation and especially:
    - the previous experience on the supply activity and the category of the supplied customers;
    - the date when he/she is ready to initiate the operations of the supplier of last resort.
  - r. Evidence to ensure the bid according to the effective legislation.

4. The conditions that shall be completed by the applicant in the competition:

1. The applicant shall be able to ensure the evidences for as follows:

d. Administrative resources, information technologies, invoicing systems and the human resources with the ability to transfer a big number of customer's data with responsibility, accuracy and at the appropriate time;

e. The operational and financial indicators, capable to identify which customers to serve under the conditions of the Supplier of Last Resort, and which customers on conditions of an electricity supplier;

f. Financial capacity to supply with sufficient additional electricity, to comply the requirements of the customers that are supplied on the conditions of last resort without violating to service to other customers with which it has signed the supply contract.

2. Shall guarantee and document that may serve to customers on the conditions of supply of last resort, guaranteeing a continuous service period of sixty (60) days or of 2 years for the customers that are issued for the first time in the liberalized market. For this purpose, shall deposit on the application the contracts connected during the last year of ensuring the supply service.

5. The Assessment Commission, shall assess the Suppliers that are qualified from the Commission according to the highest average point for the following criteria:

other ability of the supplier regarding the compliance of the obligation of Supply as a supplier of last resort taking into consideration the experience of the supplier in the market and the respective references, supply contract that is successfully realized, as well as the platform to manage the Information, the issue of the invoices and their collection, as well as the information and settle the disputes with the customer

– maximum 50 points;

other proposal of the applicant regarding the alternatives for the payment conditions

- maximum 20 points;

-administrative costs with which the bidders shall ensure the Supply of Last Resort Service - maximum 30 points for the bid with the lowest costs.

6. The recent term to submit the bid is date \_

7. The recent term to announce the winner is date

8. The applications shall be sent to ERE post address

within 16.30 of any working day but not later than date.

If the Bid is delivered by post, shall be considered that it is regularly delivered within the term for Submitting the Bids if the date marked at the postal seal of the envelopes, confirmed by the postal service notification, is not later than the Term of Submitting the Bids

9. Not later than 5 days from being informed of the dis-qualification, the not-qualified licensee shall have the right to complaint this decision to the Commission.

10. For questions regarding the application you shall send them to the email address

## ANNEX 2

### PROCEDURE OF ORGANIZING THE DRAW, TO ANNOUNCE THE WINNER BETWEEN THE CANDIDATES THAT HAVE THE SAME POINTS

#### Article 1

This guideline aims to define the rules that shall be implemented to organize the draw, to announce the winner candidates with equal points at the competition to announce the Supplier of Last Resort.

#### Article 2

ERE Board shall take the decision for organizing the draw for the selection of the winning candidate, if two or more candidates have the same points. The decision shall contain the location, date and hour of holding the draw.

#### Article 3

The meeting for the draw shall be organized in public session, not earlier than 5 days and not later than 7 days after taking the decision for the draw.

#### Article 4

The Secretary General shall inform for the development of the draw which shall be announced on ERE website and at two written media is also notified to candidates with equal points.

## Article 5

1. At the defined date and time to organize the draw, the ERE Secretary General shall be preliminary ensured with the acceptance of the respective candidates and invites them to occupy the designated places.
2. The non-submission of the candidates or one of them does not postpone the draw procedures with the exemption of the case when one of them shall submit justified reasons for the non-submission. At any case the postponement shall be only once and not later than 48 hours.
3. In a transparent container put all the balls as the number of candidates, participating in the draw.
4. At the each of the draws is inserted a strip of paper where in one of them is written the word "WINNER".
5. The order of balls withdrawal according to point 3, is done according to the alphabetical order of naming the legal entity that the candidate represents.
6. The Secretary general of ERE shall invite the candidates to withdraw the draw.

## Article 6

1. The candidate that opens the ball deliver it to the Secretary General of ERE, who reads it aloud and shows it to all the candidates participating in the draw.
2. After it is withdrawn the ball where it is written "WINNER", the Secretary General shall open the remaining balls in the container, if any, shall read aloud the contain of the papers and shows them to the participants in the meeting.

## Article 7

By the end of the draw procedure, ERE Board with a decision shall announce the draw result by declaring the winning candidate.