



REPUBLIKA E SHQIPËRISË

ENERGY REGULATORY AUTHORITY

BOARD

DECISION

No. 273, Dated 27.10.2022

ON

**REVIEWING THE CONTRACT BETWEEN KESH COMPANY AND FREE
MARKET SUPPLIER COMPANY FOR 01/01/2022 TO 12/31/2022 PERIOD**

Based on article 16,20, letter “h”, 47,56 letter “f” as well as 90 of Law no. 43/2015 “On Power Sector” as amended, Part 1, article 4, point 7 of Council of Ministers Decision no.456, dated 29.06.2022 “On the approval of conditions for the imposition of the public service obligation, which will be applied to licensees in the electricity sector, who exercise the activity of production, transmission, distribution and supply of electrical energy”; Council of Ministers Decision no.650, dated 10.10.2022 “On some amendments in Council of Ministers Decision no. 584, dated 08.10.2021 “On announcing the Emergency Situation for Electricity Supply” Chapter V of the “Albanian Electricity Market Rules” approved with ERE Board decision no.139, dated 15.08.2016, as amended; “Transmission Code” approved with ERE Board decision no. 63, dated 11.04.2022 as well as the Regulation for ERE Organization, Operation and Procedures, approved with ERE Board decision no.96, dated 17.06.2016; ERE Board on their meeting dated 27.10.2022, after reviewing the report Protocol no. 1829/3 dated 21.10.2022, prepared by the Technical Directorates on “approving the Standard contract for electricity sale – purchase between the electricity production company charged with public service obligation, whose shares are fully/partially controlled by the state, KESH company and the Universal Service Supplier (FSHU) company for the supply of the customers supplied by FSHU company for 01/01/2022 until 31/12/2022 period”

Observed that:

- With the joint official letter Protocol no. 4844/1 dated 30.09.2022 KESH company and Free Market Supplier submitted at ERE the request for the approval of the contract presented with official letter Protocol no. 2473 dated 30.09.2022 (Free Market Supplier company) and official letter Protocol no. 4844 dated 30.09.2022 (KESH company) approved and signed between both parties.
- The legal basis referred to in the contract is:

- Law no.43/2015 “On Power Sector” as amended;
 - Council of Ministers Decision no.456, dated 29.06.2022 “On the approval of conditions for the imposition of the public service obligation, which will be applied to licensees in the electricity sector, who exercise the activity of production,transmission, distribution and supply of electrical energy”
 - Council of Ministers Decision no. 584, dated 08.10.2021 “On announcing the Emergency Situation for Electricity Supply” as amended;
 - Temporary Rules of the Albanian Electricity Market, approved with ERE Board decision no. 139/2016, as amended;
 - ERE Board of Comissioners decision no.23. dated 25.03.2009 “On renewing the licenses in the electricity production and trading activity of KESH company”, as amended;
 - ERE Board of Comissioners decision no.198, dated 03.09.2018 “On licensing Free Market Supplier company in electricity trading activity”
 - ERE Board decision no. 253, dated 21.12.2021 *“On the annual purchase price of electricity that shall be paid to the existing priority producers for 2022”*
- The parties respectively KESH company and Free Market Supplier company have referred as the legal basis in the contract, Council of Ministers Decision no. 456, dated 29.06.2022. This legal reference is correct but incomplete as this Council of Ministers decision extends its effects from 29.06.2022 onwards, while the contract referred to at ERE extends its effects for **01/01/2022 - 12/31/2022 period.**
 - In point 2 of Council of Ministers Decision no. 456, dated 29.06.2022, results that Council of Ministers Decision no. 244/2016 and Council of Ministers Decision no. 620/2021 as amended, are repealed. For the period January 1, 2022 until the entry into force of Council of Ministers Decision no. 456, dated 29.06.2022, the relations between the parties are regulated based on Council of Ministers Decision no. 620, dated 22.10.2021, "On the approval of the conditions for establishing the obligation of public service to the licensees in the electricity sector, during the state of emergency in the supply of electricity and for coping with its prevention, amended by Council of Ministers Decision no . 757, dated 9.12.2021. In this context, the Parties should review the contract signed between them, taking into consideration the above-mentioned Council of Ministers Decisions and the periods for which they have legal effects. Since for 01.01.2022 - 31.12.2022 period, the Council of Ministers decisions have legal power for different parts of the year.
 - Article 12, point 4 of Council of Ministers decision no. 456, dated 29.06.2022 “On the approval of conditions for the imposition of the public service obligation, which will be applied to licensees in the electricity sector, who exercise the activity of production,transmission, distribution and supply of electrical energy” provides for the treatment of surplus electricity generated by the production of renewable energy sources, which are deposited with the public production company, to be used for supply needs and are exchanged during the year to cover the losses of DSO company until in their full coverage.
 - In article 5, point 7 of Council of Ministers decision no. 456, dated 29.06.2022 provides for the treatment of electricity surplus production by the public company, in order to cover losses

in the distribution network of DSO company. Under these conditions, the parties have entered into and signed this contract for sale and purchase /storage/exchange of electricity in order to meet the demand with the amount of electricity to cover losses in the distribution network, according to the following cases:

- KESH company in the role of "Seller" and Free Market Supplier company in the role of "Purchaser": For that amount of electricity that is evidenced as surplus electricity after the closing of the balance that was intended to meet the demand for covering losses in the distribution network for the time period 01.01.2022- 31.12.2022.
- Free Market Supplier company in the role of "Storage Granter" and KESH company in the role of "Storage User", for that amount of electricity recorded as surplus electricity from the production of renewable energy sources . This amount of electricity deposited shall be returned - exchanged to Free Market Supplier company for meeting the demand for losses in the distribution network within the calendar year.
- Free Market Supplier in the role of "Seller" and KESH company in the role of "Purchaser", for that amount of electricity which is recorded at the end of the calendar year as uncompensated electricity to cover losses , and where Free Market Supplier company sells to KESH company at the price of purchasing electricity from producers with hydro priority.
- Amount of electricity sold/purchased/stored/exchanged, in accordance with the provisions of point 2 of article 15 of Council of Ministers decision no. 456, dated 29.06.2022, are reconciled between the parties based on factual data. In the reconciliation process, the amount of electricity stored shall be the amount of electricity produced by renewable energy sources beyond the amount allocated to cover losses in the distribution network.
- The rights and obligations of the parties are defined in Article 2 of the contract, where:
 - Free Market Supplier company before opening the procedure of purchasing electricity in the market to cover losses in the distribution network, shall confirm with KESH company the current amounts of electricity deposited, as well as inform KESH company for the amount planned to purchase in order to cover losses in the network, by requesting KESH company information on the possibility that the latter has to supply it with amounts of electricity from the production of the cascade.
 - KESH company in function of the generating capacity (in case of cascade flows) before opening the procedures for electricity purchase informs Free Market Supplier company on the possibility of electricity production to cover losses in the distribution network, while the latter must confirm within the deadline defined in KESH's request the acceptance or not of the amount of electricity offered by KESH company to cover losses.
 - This contract also defines the rights and obligations of the seller, where it is clearly defined in article 5 that the Seller based on annual/monthly/weekly/daily programs in day-ahead and intra - day shall ensure the fulfillment of the Purchaser's request.

- Many other important elements for the good functioning of a contractual relationship between the parties have been addressed in the contract. As such, in the contract, the modalities related to: invoicing and payment conditions are defined, aspects of non-performance due to force majeure or insufficient fulfillment of the demand for universal customers, the persons of the representative parties in this contract are also addressed. as well as dispute resolution.
- Annex 1 of this contract presents the reconciliation act for the electricity stored and exchanged between the parties in this contract, for January - August 2022 period.

For all of the above mentioned, ERE Board

Decided:

1. KESH company and Free Market Supplier company shall review the contract submitted at ERE, the legal basis and Article 8 of the contract between the KESH company and Free Market Supplier company for the time period 01/01/2022 - 12/31/2022.
2. The Legal Directory shall inform KESH company and Free Market Supplier company about ERE Board decision.

This decision enters immediately into force.

Each party involved in this procedure can request ERE, within 7 calendar days from the date of the decision, to review the board's decision in case it has provided new evidence that could lead the board to make a decision different from the previous one or for detected material errors. This decision can be appealed to the Tirana Administrative Court, within 30 calendar days from the day of publication in the Official Gazette.

This decision shall be published in the Official Gazette.

ERE CHAIRMAN
Petrit AHMETI