

Promulgated in the "Official Gazette of BiH", No. 48/06 of June 26, 2006

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Pursuant to Articles 1, 4 and 8 of the Law on Transmission of Electric Power, Regulator and System Operator in BiH ("Official Gazette of BiH", No. 7/02 and 13/03), at its session held on June 8, 2006, the State Electricity Regulatory Commission of Bosnia and Herzegovina rendered

DECISION

ON SCOPE, CONDITIONS AND TIME SCHEDULE OF ELECTRICITY MARKET OPENING IN BOSNIA AND HERZEGOVINA

Article 1

General Provision

This decision shall define the scope, conditions and time schedule of the electricity market opening in Bosnia and Herzegovina in the activities of generation and supply of electricity.

The scope, conditions, and time schedule of market opening referred to in the previous paragraph shall serve as the basis for determining conditions and criteria for acquiring the eligible customer status.

Article 2

Electricity Market Participants

The electricity market opening shall proceed gradually, and the aim of the opening is the creation, maintenance and development of competitive conditions among participants in the electricity market.

The consumption share of all customers that may acquire the eligible customer status in total electricity consumption in BiH on an annual basis shall represent the indicator of the market openness.

Participants in the electricity market shall be: eligible customers, generators, traders and suppliers.

The eligible customer shall be the customer that fulfills the conditions and criteria prescribed by special acts of the competent electricity regulatory commission and that is free to purchase electricity at the market from at its own choice.

The generator for eligible customers shall be the generator that shall not be obligated to deliver total generation or its part through public service obligation.

The trader of electricity shall be the trader that owns the license for electricity trade and supply.

The supplier of eligible customers shall be the supplier that owns the license for performance of the activity of supplying eligible customers.

Article 3

Conditions for Electricity Market Opening

The conditions for the electricity market opening of market shall be:

- Establishment of the transmission network operator, distribution network operator and functional unbundling of the power activities,

- Creation of the rules ensuring free and equal access of third parties to the transmission and distribution network (grid rules) and the rules ensuring balanced system operation under the conditions of deregulated sector (market rules),
- Establishment of network tariffs (tariff for transmission services and tariff for distribution services) and tariffs pertaining to operation of the system.

Article 4

Time Schedule of Electricity Market Opening

Electricity market opening in BIH shall be implemented in accordance with the time schedule according to which the eligible customer status may be acquired by:

- all customers with annual consumption of electricity higher than 10 GWh as of January 1, 2007,
- all customers with annual consumption higher than 1 GWh as of January 1, 2008,
- all customers except households as of January 1, 2009,
- all electricity customers as of January 1, 2015.

In accordance with the economic policy of the country, SERC may prescribe a different time schedule of the electricity market opening in BIH and implementation of appropriate market mechanisms, depending on the circumstances and development of the electricity market in BIH, the energy market of countries of South-East Europe and its inclusion in the single European energy market.

Article 5

Eligible Customer Status

The eligible customer status shall be acquired by the customer that fulfills, in addition to the conditions from Article 4, other conditions and criteria prescribed by the Electricity Regulatory Commission in the Federation of Bosnia and Herzegovina, the Electricity Regulatory Commission of the Republic of Srpska and the competent authority of Brčko District of Bosnia and Herzegovina.

The customer that fulfills conditions and criteria for acquiring the eligible customer status may keep the status of tariff customer if it deems that it is in its interest.

The customer that wishes to change its status must file an application for change of the status with the competent authority from paragraph 1 of this Article, before the issuance of the electricity balance in BIH for the forthcoming year, and no later than September 30. The eligible customer, whose supplier ceases its operation for any reason, shall have the right to be supplied by the supplier performing the public supply service within the region where the customer is located.

The conditions, criteria and more precise deadlines for the change of eligible customer status, the manners and conditions for supply of the eligible customers whose supplier ceases its operation for any reason as well as other conditions relating to this field shall be prescribed by the competent authorities from paragraph 1 of this Article.

Article 6
Final Provision

The decision shall come into force on the day of issuance and it shall be published in the “Official Gazette of BiH”, official gazettes of the entities and Brčko District of Bosnia and Herzegovina.

Statement of Rationale

Pursuant to Article 4.1 and Article 8 of the Law on Transmission, Regulator and System Operator of Bosnia and Herzegovina (“Official Gazette of BIH”, No. 7/02 and 13/04) *the electricity market in Bosnia and Herzegovina is a single economic space* and it is founded on a free and equal access to the electricity transmission network, the principles of regulated approach and the relevant EU directives.

According to Article 8 of the same Law, the electricity market shall be opened in accordance with laws and regulations defining the scope, conditions and time schedule of the market opening. The State Electricity Regulatory Commission (SERC) interpreted these legal provisions with due attention and caution in order to limit its actions to the powers within its jurisdictions. Thus, SERC also considered the provisions of the Law on Electricity in the Federation of BIH and the Law on Electricity in the Republic of Srpska.

The Law on Electricity in the Federation of BIH (“Official Gazette of the Federation of BIH”, No. 41/02, 24/05 and 38/05) anticipates gradual introduction of the electricity market based explicitly on decisions of the State Electricity Regulatory Commission. It is primarily done by the provision from paragraph 1 of Article 8 of the Law, and subsequently by paragraph 2 of the same Article which reads that “gradual introduction and development of the electricity market up to its full liberalization shall be implemented pursuant to the energy policy and the reform of the energy sector, as well as the implementation of regulations, including the regulations on organization of the electricity market”. Article 15 continues along the same lines by obligating the Regulatory Commission in the Federation of BIH to “regulate the electricity market in such a manner as to ensure transparent and fair relations among all the participants, *on the basis established by the State Commission*”. According to the provision of Article 48, “the eligible customer status shall be granted in accordance with laws and regulations that shall, pursuant to the Law on Transmission, Regulator and System Operator of Bosnia and Herzegovina, *define the scope, conditions and the time schedule of the market opening*”.

The Law on Electricity in the Republic of Srpska (“Official Gazette of the Republic of Srpska”, No. 66/02, 29/03, 86/03 and 111/04) specifies the process of internal electricity market opening through the definition of the eligible customer status, i.e. through establishment of the electricity consumption level for eligible customers as of the date of commencement of application of the Law (Article 49). According to the same Article, the consumption level for eligible customers determines the level of liberalization of the electricity market. Consequently, the Republic of Srpska Regulator may prescribe the lowering of the consumption level determined by this Law and other criteria for acquiring the eligible customer status *in accordance with the time schedule of market opening*. SERC believes that such legal determination should mean – application of provisions from Article 8 of the Law on Transmission, Regulator and System Operator of Bosnia and Herzegovina which define the scope, conditions and time schedule of the market opening.

Starting from the fact that the scope of the SERC’s jurisdictions, as defined in Article 4.2 of the Law on Transmission, Regulator and System Operator of Bosnia and Herzegovina, also includes the authority of the SERC quoted under Point k) “*creation and maintenance of competitive markets when practicable*, and prevention and punishment of any predatory and anti-competitive conduct”, the SERC estimates that creation and maintenance of a competitive market along with fulfillment of the relevant conditions, is practicable, and by this decision it defines the scope, conditions and time schedule of the market opening.

The Law on Transmission, Regulator and System Operator of BIH („Official Gazette of BIH“, no. 7/02 and 13/04) emphasizes its intention to “facilitate and expedite *creation of the electricity market in Bosnia and Herzegovina* and regional electricity market” (Article 1). The purpose of the decision proposal is to contribute to realization of the aforementioned intention.

The introduction of competition to the electricity market and its liberalization require implementation of large structural and regulatory reforms as well as development of adequate regulations. The Decision on Scope, Conditions and Time Schedule of Electricity Market Opening in BIH is part of these regulations, marking the beginning of realization of the overall obligations of Bosnia and Herzegovina, after the signing of the Treaty Establishing the Energy Community in South-East Europe (ECSEE Treaty) in Athens on October 25, 2005.

SERC determined the Draft Decision on Scope, Conditions and Time Schedule of Electricity Market Opening in BIH at its session held on November 8, 2005.

The Draft Decision was given to the public for consideration with a view to collect objections, comments and opinions of interested parties.

On December 7, 2005 SERC held a public hearing in order achieve as qualitative final solutions as possible which anticipate further development and openness of the electricity market.

Having conducted the public hearing and having considered the comments received, on April 26, 2006 SERC determined the text of the Decision. In order to collect additional suggestions and opinions, SERC sent the determined text of the Decision to the addresses of the relevant subject in the power sector: the Competition Council of Bosnia and Herzegovina, the Commission for Foreign and Trade Policy of the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina, the Federal Ministry of Energy, Mining and Industry and the Ministry of Economy, Energy Sector and Development of the Republic of Srpska, that all gave a positive opinion and supported issuance of this Decision.

By issuance of this Decision and coming into force of the initial consumption level for eligible customers, the percentage of electricity market openness in Bosnia and Herzegovina shall be 31,9%.

Pursuant to Article 9. 2 of *the Law on Transmission, Regulator and System Operator of Bosnia and Herzegovina*, proceedings may be initiated before the Court of Bosnia and Herzegovina against this Decision by filing charges no later than 60 days after the publishing of this Decision.

Number: 04-02-252-19/05
June 8, 2006
Tuzla

Chairman of the Commission
Željko Topić