

In accordance with Article 4.7 of the Law on Transmission, Regulator and Electricity System Operator in BiH ("Official Gazette of BiH", no. 7/02 and 13/03) and Article 13 of SERC's Statute ("Official gazette of BiH", no. 41/03), at the SERC's session held on 10 Nov.2004 the following was adopted

## **ARBITRATION RULES**

### **Article 1**

#### ***General provisions***

These rules determine the basic framework for the arbitration proceedings in events defined by these rules, the number of arbitrators, the manner in which the arbitrator shall be appointed, challenged and replaced, initiation of arbitration, the basic procedure for managing arbitration proceedings, suspension of proceedings, form and the impact of the arbitrators' decisions and other issues relevant for the arbitration process.

### **Article 2**

#### ***Scope of Application***

These rules are applied in all arbitration proceedings for resolution of non-unanimous decisions by the State Energy Regulatory Commission (hereinafter SERC/Commission) concerning issues from the SERC's scope of work as set forth in Article 4.3 of the Law on Transmission, Regulator and Electricity System Operator in Bosnia and Herzegovina.

The rules of the arbitration proceedings shall be applicable in the event the members of the Commission cannot agree to postpone an issue for 14 days on which they have not unanimously agreed or are unable to reach a unanimous decision within the 14 day postponement period, according to Article 33 of the SERC's Procedural Rules.

### **Article 3**

#### ***Notification***

For the purpose of these rules, any notification, including notice, statement or proposal shall be considered submitted if it is delivered personally or sent to the SERC's headquarters. The notification shall be considered submitted on the day of the receipt.

### **Article 4**

#### ***Commencement of Arbitration Proceedings***

The arbitration process shall commence by the Chairman declaring to the other members of the Commission in writing that the Commission is unable to reach unanimous agreement on an issue within the SERC's competencies.

The Chairman shall on the day of his declaration make a notification on arbitration in writing and order its registration in the general docket of SERC. The notification on arbitration contains the statement that the members of the Commission have not reached a unanimous decision on a certain issue, indicating the nature of the decision which is sent for arbitration as well as estimation on the timeframe during which the arbitration proceedings are to be completed.

The SERC shall issue a short statement to the public summarizing the need to solve the disputable issue through the arbitration proceedings and cite the expected timeframe for reaching the arbitration decision.

## **Article 5**

### ***Number of Arbitrators and their Appointment***

Only one international arbitrator shall be automatically appointed in order from the list containing the names of three to five persons with relevant experience and professional expertise in the energy and market sectors, with experience in dispute solution, and who can be entrusted with passing fair and unbiased arbitration decisions.

The list of arbitrators shall be created by the Commission members and it shall be determined prior to sending an issue for arbitration. If the Commission members cannot agree on the list of arbitrators, the President of the Commission shall request the Council of Ministers of BiH to complete the list of arbitrators.

Arbitrators shall be appointed in accordance with the strictly revolving order, completing the list prior to re-appointment of an arbitrator, except in cases when the Commission members unanimously agree that a particular arbitrator ought to be selected.

The list of arbitrators shall be updated every three years.

## **Article 6**

### ***Challenge of Arbitrator***

The appointed arbitrator can be challenged if there are circumstances and clear evidence bringing under suspicion his/her impartiality or independence.

The Commission member intending to request challenge, shall give written notice to the other two members of the Commission as well as the arbitrator whose appointment is challenged about about the intention to file a challenge within five days upon the appointment of the arbitrator. The notification shall be in writing and it shall comprise justification for the challenge.

The Commission members shall try to resolve the challenge as well as to determine reasons which are the grounds for the request for dismissal. If they cannot do so, the members of the Commission shall decide by majority vote on accepting or rejecting the challenge within five days upon the receipt of the written challenge.

If the Commission members accept the challenge of the arbitrator, the issue shall be directed to the next arbitrator from the previously determined list within five days upon the receipt of the written challenge by other members of the Commission.

## **Article 7**

### ***Replacement of Arbitrator***

If it is determined before commencement of arbitration procedure or during the arbitration procedure that an arbitrator is not unbiased or independent as stipulated by Article 6 of the Rules, another arbitrator who shall replace him/her shall be appointed.

In case of death or resignation from the position of arbitrator during arbitration proceedings, a replacement arbitrator shall be appointed or he/she shall be selected in accordance with the proceedings stipulated by these Rules.

If the arbitrator does not perform his/her duty, the procedure under Articles 6 and 7 of these Rules shall be applied stipulating replacement of arbitrator.

**Article 8**

***Repetition of hearing in case of replacement of arbitrator***

If an arbitrator is replaced, the new arbitrator shall at his/her discretion decide if it is necessary to repeat previously held hearings.

**Article 9**

***Conducting Arbitration Procedure***

In accordance with these rules, the arbitrator may lead the arbitration proceedings in a manner which s/he shall find suitable, with the condition that positions of the members of the Commission are equally and fairly treated.

The arbitration proceedings shall be conducted exclusively based on the documents and other materials which are part of the file developed at the SERC.

**Article 10**

***Place of Arbitration Proceedings***

Place of arbitration proceedings shall be at the Headquarters of the SERC or any other place as determined by the members of the Commission.

**Article 11**

***Position Statement***

Within the timeframe determined by the arbitrator, each member of the Commission shall submit his/her own Position Statement to the arbitrator.

Position Statement shall be comprised of: (a) name of the member of the Commission; (b) facts used as a basis for the position and (c) disputable issues.

**Article 12**

***Replies***

Within the deadline as determined by the arbitrator, each member of the Commission may send his/her reply on the Position Statement to the other members of the Commission and to the arbitrator.

Reply on Position Statement shall specially include the reply to the details from points (b) and (c) of the Position Statement.

The arbitrator may decide whether s/he shall, beside the Position Statement and the Reply on the Position Statement, requires additional statements from the members of the Commission, and shall determine the deadlines for such statements to be submitted.

**Article 13**

***Assistance***

Members of the Commission may obtain assistance while participating in any arbitration proceedings which shall be conducted in accordance with these Rules.

The Chairman of the Commission, along with agreement by other two members of Commission, shall appoint one or more employees of the SERC to assist all of the members of the Commission and the arbitrator. Each employee shall assist all members of the Commission and the arbitrator in order to maintain better cooperation between the members of the Commission and employees of the SERC while achieving as quality solution for the

unresolved case as possible. No member of the Commission shall accept the assistance from any person except from the employee(s) which who was previously appointed.

**Article 14**

***Deadlines***

Deadlines determined by the arbitrator to submit the statements, including the Position Statement and the Reply to the Position Statement, should not be longer than ten days. However, the arbitrator may extend the deadline, if s/he decides that such action is justified.

**Article 15**

***Oversights in execution of action***

If, within the deadline determined by the arbitrator, any member of the Commission fails to submit his/her Position Statement and the Reply to the statement with no clear rationale for such oversight, the arbitrator may decide based on the available evidence.

**Article 16**

***Form and the Effect of the Decision***

The Decision made by the arbitrator shall be supported with findings of fact, conclusions in accordance with the law, and the decision based on the data obtained from the SERC file. The arbitrator shall not call to any evidence or material which shall not be part of the documentation submitted for the purpose of the arbitration proceedings.

Decision of the arbitration proceedings shall be in writing, signed by the arbitrator and shall be final and, as such, binding for the SERC.

The arbitrator shall list the reasons based on which the decision has been made.

Decision of the arbitration proceedings shall be filed in the General Docket of the SERC.

Decision of the arbitration proceedings shall be published in the “Official Gazette of Bosnia and Herzegovina” and the official gazettes of the Entities.

**Article 17**

***Agreement or termination of the arbitration proceedings***

Arbitration proceedings shall be terminated if members of the Commission unanimously agree on solution of the issue of the arbitration proceedings before the arbitrator makes his/her decision.

The arbitrator shall either issue a decision on termination of the arbitration proceedings or, if requested by the members of the Commission and accepted by the arbitrator, the termination of the proceeding shall be registered as decision on arbitration proceedings based on harmonized issues. The arbitrator shall be obliged to offer reasons based on which the decision has been made.

**Article 18**

***Costs***

Costs which shall be incurred while conducting the arbitration proceedings shall be recovered from the Budget of the SERC.

**Article 19**  
***Effectiveness***

These Rules shall come into effect on the eighth day from the day of publishing in the “Official Gazette of BiH”.

Number: 110/04  
November 10, 2005  
Tuzla

Chairman of the Commission  
Mirsad Salkić