

Pursuant to Article 89 of the Treaty Establishing the Energy Community (Official Gazette of BiH – International Treaties, 9/06) and Articles 1 and 4 of the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina (Official Gazette of BiH, 7/02, 13/03, 76/09 and 1/11), at its session held on \*\* April 2020, the State Electricity Regulatory Commission adopted

## **RULES**

### **ON WHOLESALE ELECTRICITY MARKET INTEGRITY AND TRANSPARENCY**

#### **Article 1** *(Subject Matter)*

- (1) Regulation (EU) No. 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency adapted to the Energy Community framework by the Energy Community Ministerial Council Decision No. D/2018/10/MC – EnC of 29 November 2018 is transposed by these Rules in the field of electricity.
- (2) These Rules set out rules prohibiting abusive practices affecting the wholesale electricity market and provide for the monitoring of wholesale electricity market carried out by the State Electricity Regulatory Commission (SERC).

#### **Article 2** *(Definitions)*

For the purpose of these Rules the following definitions and abbreviations shall apply:

**“Contracting Parties”** are the parties which have joined the Treaty Establishing the Energy Community (Official Gazette of BiH – International Treaties, 9/06).

**“Inside information”** means information of a precise nature which has not been made public, which relates, directly or indirectly, to the wholesale electricity price and which, if it were made public, would be likely to significantly affect the wholesale electricity price. Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the wholesale electricity price.

**“Information”** means:

- a) information relating to the capacity and use of facilities for production, storage, consumption or transmission of electricity including planned or unplanned unavailability of these facilities;
- b) information which is required to be disclosed in accordance with legal regulations of Bosnia and Herzegovina, including Market Rules and network codes, and contracts or good regulatory practice on the wholesale electricity market, in so far as this information is likely to have a significant effect on the wholesale electricity price, and
- c) other information that a market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to wholesale of electricity, or to issue an order to trade in electricity.

**“Market manipulation”** means:

- a) entering into any transaction or issuing any order to trade in wholesale energy products which:
  - 1) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;
  - 2) secures or attempts to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale electricity market; or
  - 3) employs or attempts to employ a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

- b) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, including the dissemination of rumours and false or misleading news, where the disseminating person knew, or ought to have known, that the information was false or misleading.

When information is disseminated for the purposes of journalism or artistic expression, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

- 1) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or
- 2) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

**“Attempt to manipulate the market”** means:

- a) entering into any transaction, issuing any order to trade or taking any other action relating to a wholesale energy product with the intention of:
  - 1) giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products;
  - 2) securing the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market; or
  - 3) employing a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

- b) disseminating information through the media, including the internet, or by any other means with the intention of giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products.

**“Wholesale energy products”** means the following contracts and derivatives, irrespective of where and how they are traded:

- a) contracts for the supply of electricity where delivery is in the Contracting Parties;
- b) contracts relating to the transmission of electricity in the Energy Community Contracting Parties;
- c) Contracts for the supply and distribution of electricity for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity to final customers with a consumption capacity greater than 600 GWh shall be treated as wholesale energy products.

**“Consumption capacity”** means the consumption of a final customer of electricity at full use of that customer’s production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices. For the purposes of this definition, consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale electricity market prices due to their being located in different relevant geographical markets.

**“Wholesale electricity market”** means any market within the Contracting Parties on which wholesale electricity products are traded.

**“Market participant”** means any person, including transmission and distribution system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale electricity markets.

**“Person”** means any natural or legal person.

**“Parent undertaking”** is an undertaking or a company registered in Bosnia and Herzegovina, with two or more related companies.

**“Related undertaking”** means an undertaking or a company related to another one by participation in equity or shares; by contracts or both by equity and contract.

**“Distribution of electricity”** means the transport of electricity on distribution systems with a view to its delivery to customers, but does not include supply.

**“Sensitive critical infrastructure protection related information”** means facts about a critical infrastructure, which if disclosed could be used to plan and act with a view to causing disruption or destruction of critical infrastructure installations.

**“Critical infrastructure”** means an asset, system or part thereof located in Bosnia and Herzegovina which is essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, and the disruption or destruction of which would have a significant impact in Bosnia and Herzegovina as a result of the failure to maintain those functions.

**“ECRB”** means the Energy Community Regulatory Board.

**“Secretariat”** means the Energy Community Secretariat.

“TSO” means the transmission system operator, that is, the Independent System Operator in Bosnia and Herzegovina and “Elektroprenos Bosne i Hercegovine” (Company for the transmission of electricity in Bosnia and Herzegovina), in accordance with their respective competences.

**Article 3**  
***(Prohibition of Insider Trading)***

- (1) Persons who possess inside information in relation to a wholesale energy product shall be prohibited from:
  - a) using that information by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, wholesale energy products to which that information relates;
  - b) disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties;
  - c) recommending or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which that information relates.
- (2) Where the person who possesses inside information in relation to a wholesale energy product is a legal person, the prohibitions laid down in paragraph 1 shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

**Article 4**  
***(Scope of Prohibition)***

The prohibition set out in Article 3 applies to the following persons who possess inside information in relation to a wholesale energy product:

- a) members of the administrative, management or supervisory bodies of an undertaking;
- b) persons with holdings in the capital of an undertaking;
- c) persons with access to the information through the exercise of their employment, profession or duties;
- d) persons who have acquired such information through criminal activity;
- e) persons who know, or ought to know, that it is inside information.

**Article 5**  
***(An Exemption for TSO)***

The provisions of Article 3 paragraph 1 points (a) and (c) of these Rules shall not apply to the TSO when purchasing electricity in order to ensure the safe and secure operation of the system in accordance with their obligations to ensure the availability of the ancillary and system services.

**Article 6**  
***(Other Exemptions)***

The provisions of Article 3 shall not apply to:

- a) transactions conducted in the discharge of an obligation that has become due to acquire or dispose of wholesale energy products where that obligation results

from an agreement concluded, or an order to trade placed, before the person concerned came into possession of inside information;

- b) transactions entered into by electricity producers, the sole purpose of which is to cover the immediate physical loss resulting from unplanned outages, where not to do so would result in the market participant not being able to meet existing contractual obligations or where such action is undertaken in agreement with the TSO concerned in order to ensure safe and secure operation of the system. In such a situation, the relevant information relating to the transactions shall be reported to SERC. This obligation is without prejudice to the obligations set out in Article 8 of these Rules;
- c) market participants acting under national emergency rules, where national authorities have intervened in order to secure the supply of electricity and market mechanisms have been suspended in a Contracting Party or parts thereof. In this case the authority competent for emergency planning shall ensure publication in accordance with Article 8.

#### **Article 7**

##### ***(Dissemination of Information for the Purposes of Journalism or Artistic Expression)***

When information is disseminated for the purposes of journalism or artistic expression such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

- a) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or
- b) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

#### **Article 8**

##### ***(Obligation to Publish Inside Information)***

- (1) Market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part.
- (2) The disclosure of information referred to in paragraph 1 of this Article shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity, including planned or unplanned unavailability of these facilities.
- (3) A market participant may under its own responsibility exceptionally delay the public disclosure of inside information so as not to prejudice its legitimate interests provided that such omission is not likely to mislead the public and provided that the market participant is able to ensure the confidentiality of that information and does not make decisions relating to trading in wholesale energy products based upon that information.
- (4) If a market participant delays the public disclosure of inside information pursuant to paragraph 3 of this Article, he shall without delay provide that information, together with a justification for the delay of the public disclosure, to the relevant national regulatory authority.

- (5) Whenever a market participant or a person employed by, or acting on behalf of, a market participant discloses inside information in relation to a wholesale energy product in the normal exercise of his employment, profession or duties as referred to in Article 3 paragraph 1 point (b), that market participant or person shall ensure simultaneous, complete and effective public disclosure of that information.
- (6) In the event of a non-intentional disclosure the market participant shall ensure complete and effective public disclosure of the information as soon as possible following the non-intentional disclosure unless the person receiving the information has a duty of confidentiality, regardless of whether such duty derives from law, regulation, articles of association or a contract.
- (7) The publication of inside information, including in aggregated form, has to be simultaneous, complete and effective.
- (8) Where an exemption from the obligation to publish certain data has been granted to the TSO, it is thereby also exempted from the obligation set out in paragraph 1 of this Article in respect of that data.
- (9) Paragraphs 1 and 2 of this Article are without prejudice to the obligations of market participants under other regulations of Bosnia and Herzegovina, in particular regarding the timing and method of publication of information.
- (10) Market participants may delay the disclosure of sensitive information relating to the protection of critical infrastructure and the assessment of the need to improve their protection, if it is classified in their country according to national legislation.
- (11) Paragraphs 1 and 2 are without prejudice to the right of market participants to delay the disclosure of sensitive information relating to the protection of critical infrastructure and the assessment of the need to improve their protection, if it is classified in their country according to national legislation.

#### **Article 9**

##### ***(Prohibition of Market Manipulation)***

Any engagement in, or attempt to engage in, market manipulation on the wholesale electricity market shall be prohibited.

#### **Article 10**

##### ***(Market Monitoring)***

- (1) SERC shall monitor trading activities in the wholesale electricity market in BIH in order to detect trading based on inside information and market manipulation and inform the relevant authorities with a view to preventing it.
- (2) SERC shall cooperate via the Energy Community Regulatory Board in carrying out the monitoring of the wholesale energy market referred to in paragraph 1.

#### **Article 11**

##### ***(Registration of Market Participants)***

- (1) Market participants entering into transactions in the wholesale electricity market in Bosnia and Herzegovina or expressing interest to enter into such transactions through orders to trade shall register with SERC.
- (2) For the purpose of registration, the registration format developed by the Agency for the Cooperation of Energy Regulators shall be applied.

- (3) The registration of market participants is without prejudice to obligations to comply with applicable trading and balancing rules.
- (4) Not later than 29 May 2020, SERC shall establish a register of market participants in the wholesale market in Bosnia and Herzegovina and keep it up to date.
- (5) The register shall give each market participant a unique identifier which shall contain sufficient information to identify the market participant, including the details defined by the format referred to in paragraph 2 of this Article.
- (6) SERC shall transmit the information in their national registers to the ECRB for the purpose of establishing a central register of market participants.
- (7) Market participants referred to in paragraph 1 of this Article shall submit the filled in registration form to SERC prior to entering into a transaction with wholesale energy products.
- (8) Market participants referred to in paragraph 1 shall communicate promptly to SERC any change which has taken place as regards the information provided in the registration form.

**Article 12**  
***(Data Protection)***

These Rules shall be without prejudice to the obligations of SERC to preserve the confidentiality of commercially sensitive information laid down in the applicable legislation of Bosnia and Herzegovina.

**Article 13**  
***(Operational Reliability)***

- (1) SERC shall ensure the confidentiality, integrity and protection of the information received pursuant to Article 8 paragraph 4 of these Rules.
- (2) SERC shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in its systems.
- (3) Pursuant to Article 17 of these Rules, SERC may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred.
- (4) Information shall be published or made available in the interest of improving transparency of the wholesale electricity markets and provided it is not likely to create any distortion in competition on the market.

**Article 14**  
***(Implementation of Prohibitions against Market Abuse)***

- (1) For the purpose of the creation and maintenance of competitive markets and the prevention of anticompetitive behaviour, while carrying out the monitoring of the wholesale market SERC may require market participants to provide necessary data and information.
- (2) SERC shall initiate the implementation of prohibitions referred to in Articles 3 and 9 by notification of the competent authorities.

### **Article 15**

#### ***(Obligations of Persons Professionally Arranging Transactions)***

- (1) Any person operating an organized market or a trade-matching system as well as any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach Article 3 or 9 shall notify SERC without further delay.
- (2) The persons referred to in paragraph 1 of this Article shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or 9.
- (3) SERC shall monitor the efficiency and implementation of the established mechanisms referred to in paragraph 2 of this Article.

### **Article 16**

#### ***(Cooperation in Bosnia and Herzegovina and at Energy Community level)***

- (1) SERC shall carry out its functions defined by these Rules taking into account recommendations by the ECRB and cooperate with other regulatory authorities in the Contracting Parties either directly or via the ECRB.
- (2) SERC shall cooperate with the Competition Council of Bosnia and Herzegovina for the purpose of effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of these Rules and relevant financial and competition law.
- (3) SERC shall without delay inform the ECRB and the Secretariat if they have reasonable grounds to suspect that acts affecting the proper functioning of the wholesale electricity market are being, or have been, carried out either in Bosnia and Herzegovina or in another Contracting Party.
- (4) If SERC suspects that acts which affect the wholesale electricity market or the price of wholesale energy products in BIH are being carried out in another Contracting Party, SERC may request the ECRB and the Secretariat to ensure the proper functioning of the wholesale electricity market in such Contracting Party.
- (5) SERC shall inform the Competition Council of Bosnia and Herzegovina, the Secretariat and the ECRB if they have reasonable grounds to suspect that acts are being, or have been, carried out on the wholesale electricity market which are likely to constitute a breach of competition law.
- (6) At the request of the ECRB, SERC shall take the necessary measures in order to provide any required information or commence an investigation of a suspected breach, and take any action under its competence in order to rectify a possible breach. If SERC is not able to supply the required information immediately, it shall without further delay notify the ECRB of the reasons.
- (7) SERC may refuse to act on a request by the ECRB where:
  - a) compliance might adversely affect the sovereignty or security of Bosnia and Herzegovina;
  - b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the competent court in Bosnia and Herzegovina; or
  - c) a final judgment has already been delivered in relation to such persons for the same actions in BIH.

- (8) In a case of refusing the request referred to in paragraph 7 of this Article, SERC shall notify the ECRB accordingly, providing as detailed information as possible on those proceedings or the judgment.
- (9) SERC shall participate in an investigatory group which may be convened by the ECRB to investigate possible breaches which have a cross-border impact.
- (10) SERC shall submit a report on its activities under the scope of these Rules to the Secretariat at least on an annual basis, and make it publically available.

**Article 17**  
**(Professional Secrecy)**

- (1) Any confidential information received, exchanged or transmitted pursuant to these Rules shall be subject to the conditions of professional secrecy.
- (2) Confidential information may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant or market place cannot be identified, without prejudice to cases covered by criminal law or other relevant BIH legislation.
- (3) Without prejudice to the cases referred to in paragraph 2 of this Article, SERC may use confidential information only for the performance of its duties. Other authorities, bodies or persons may use that information for the purpose for which it was provided to them or in the context of administrative or judicial proceedings specifically related to the performance of those duties. The authority receiving the information may use it for other purposes, provided that persons communicating information consent thereto.
- (4) SERC may exchange or transmit confidential information in accordance with BIH legislation provided that it has not been received from an authority of another Contracting Party, the ECRB or the Secretariat.

**Article 18**  
**(Entry into Force)**

These Rules shall enter into force on the eighth day upon the publication in the *Official Gazette of Bosnia and Herzegovina* and they shall also be published in the official gazettes of the Entities and the Brčko District BIH.

Number: xxxxxxxx/20

xx April 2020

Tuzla

Chairman of the Commission

Suad Zeljković