

Pursuant to Article 4.2, 4.7 and 7 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), Article 36 of the Rule of Practice and Procedure of the SERC (Official Gazette of BiH, 2/05) and Article 16 and 51 paragraph 6 of the Licensing Rule – Consolidated Version (Official Gazette of BiH, 63/16), the State Electricity Regulatory Commission, at the session held on 11 March 2020 adopted a

DECISION

ON REJECTION OF APPLICATION FOR ISSUANCE OF LICENCE FOR PERFORMANCE OF INTERNATIONAL ELECTRICITY TRADING ACTIVITY

1. The application for issuance of a licence for performance of the international electricity trading activity filed by the Company "Inozemni centar trgovine" d.o.o. Široki Brijeg on 9 December 2019 shall be rejected.
2. This Decision shall come into force on the day of adoption and it shall be published in the Official Gazette of BiH and official gazettes of the Entities.

Statement of Rationale

The Company "Inozemni centar trgovine" d.o.o. Široki Brijeg (hereinafter: the applicant) filed with the State Electricity Regulatory Commission (hereinafter: SERC) the application for issuance of a license for performance of the international electricity trading activity received under reference number 05-28-12-420-1/19 of 9 December 2019.

The application was filed in the prescribed application forms with a proof of previously paid application fee and the relevant documents which enabled SERC to understand, consider and decide upon the application filed.

Pursuant to the Licensing Rule – Consolidated Version (Official Gazette of BiH, 63/16), prior to taking a decision on the substance of an application filed, all formal elements of the application are reviewed and checked, consequently, pursuant to Article 8 of the aforementioned Rule, by its Conclusion number 05-28-12-420-2/19 of 27 December 2019 SERC determined that the application filed was completed and submitted pursuant to the SERC rules and regulations. The applicant was informed of this fact accordingly by the SERC act number 05-28-12-420-3/15 of 27 December 2019.

Subsequently, on 30 December 2019 SERC published a short public notice in three daily newspapers available on the whole territory of Bosnia and Herzegovina and on its web site, summarising the application and determining the deadline until 15 January 2020 for submission of public comments on the license application filed.

Following this notice of SERC no person showed interest in scrutinising the application filed and supporting documentation, providing comments or participating in the procedure in the capacity of intervener.

Following the expiry of the deadline within which the public had the opportunity to provide comments and request to participate in this procedure, a review and assessment of data, documents and information enclosed to the licence application was initiated.

In this phase of the procedure, by an analysis and assessment of the submitted documents it was determined that the applicant had already been a holder of the licence for performance of the international electricity trading activity. Namely, by scrutinising the documentation enclosed to the application, in more precise terms the Current Extract from the Court Register issued on 11 October 2019 by the Municipal Court in Široki Brijeg, it was determined that the applicant conducted its business operations until 13 September 2018 under the name "Proenergy" d.o.o.

Mostar with the seat in Mostar, Bišće Polje bb. Thus, beyond any doubt this is the same legal person, now with its name and seat changed.

The Company “Proenergy” d.o.o. Mostar had the licence for performance of the international electricity trading activity issued by SERC on 25 February 2015 under registry number 05-28-12-305-17/14, for the period from 28 March 2015 to 27 March 2020. At the request of this Company, the mentioned licence was revoked by the SERC Decision number 05-28-12-36-3/18 of 7 February 2018.

The given facts are legally relevant for the issuance of a decision upon the submitted application. Namely, pursuant to the Licensing Rule – Consolidated Version, the licensees are free to cease performing the licensed activity in accordance with their business interest for a specific period of time or permanently. However, pursuant to the provision of Article 51 paragraph 6 of the Licensing Rule – Consolidated Version, the exercise of the right to the revocation of a licence has as a consequence the impossibility to file an application for any type of licence in the following five-year period. In such a case this limitation pertains only to the fact of licence revocation where the manner or reasons for the revocation have no relevance.

As the licensing rules specify pre-assessment of formal elements of an application, while supporting documents are analysed only after the completeness of the application is confirmed, and the fact that this is the same legal person was not obvious by itself but it was established during the review and assessment of the supporting documentation, SERC had already started reviewing the application by confirming the completeness thereof. Notwithstanding that in this concrete case the application for issuance of a new licence should not be filed pursuant to the Rule, SERC did not reject the application due to the given facts as well as the intention to provide the applicant with the possibility to clarify all the facts and circumstances as the requirements for the application had not been met.

Consequently, SERC prepared a Draft decision on rejection of the application for performance of the international electricity trading activity. As of 30 January 2020 this document was made available to the applicant as well as to any other interested member of the public, with the notice to give their comments no later than 6 February 2020, and they were also given an opportunity to give their comments at a general hearing held on 5 February 2020 at the SERC seat in Tuzla, preceded by the issuance of the relevant notice in daily newspapers and publication of the document on the SERC web site.

Within the given deadline neither any comment was sent nor did the public show interest in scrutinising the Draft Decision. At the scheduled public hearing neither representatives of the applicant nor the public showed up.

These facts were also noted in the new draft decision which was delivered to the applicant on 19 February 2020 together with the SERC act number 05-28-12-420-15/19 of 17 February 2020, leaving the possibility of sending comments to SERC within eight days. Even in this last opportunity the applicant did not show any interest to contest the SERC position and statements which were presented to the applicant through the procedure.

Taking into consideration the aforementioned, and the imperative character of the provision of Article 51 paragraph 6 of the Licensing Rule – Consolidated Version, which leaves no space to SERC for any discretionary decision and unrestricted assessment of the impact of the fact of the revocation and the reasons which lead to the revocation of the previous licence on the decision on the new application for issuance of the licence and the suitability of its issuance, it was decided as provided in the disposition.

Pursuant to Article 9.2 of the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina, proceedings may be initiated before the Court of Bosnia and Herzegovina against this Decision by filing a lawsuit within sixty (60) days of receipt thereof.

Number: 05-28-12-420-16/19
11 March 2020
Tuzla

Chairman of the Commission
Suad Zeljković