

PROCEDURAL ACT No 01.1/2015

OF THE ENERGY COMMUNITY REGULATORY BOARD

on the procedures for issuing an opinion of the Energy Community Regulatory Board on the decision of a national regulatory authority for certification of a gas or electricity transmission operator

THE ENERGY COMMUNITY REGULATORY BOARD,

Having regard to the Treaty Establishing the Energy Community ("Treaty") and in particular Articles 5 and 11 thereof,

Having regard to Article 9, 10 and 11 of Directive 2009/72/EC in connection with Article 3 of Regulation (EC) 714/2009 as well as to 9, 10 and 11 of Directive 2009/73/EC in connection with Article 3 of Regulation (EC) 715/2009¹ requiring the Energy Community Regulatory Board to be consulted by the Energy Community Secretariat in the course of the Secretariat's examination of draft decisions of national regulatory authorities related to certification of gas or electricity system operators in the Contracting Parties,

Having regard to Article 60 of the Energy Community Treaty, a procedure needs to be established that regulates the related decision making process of the Board;

Acting in accordance with the procedures laid down in Articles 82, 83, 86 and 87 of the Treaty;

Upon proposal by the Secretariat,

HAS DECIDED AS FOLLOWS

Article 1 - Purpose

This Procedural Act lays down the procedures based on which the Energy Community Regulatory Board ("Board" or "ECRB") shall develop an Opinion when consulted by the Energy Community Secretariat ("Secretariat") based on Article 10(1) and (6) or 11(6) of Directive 2009/72/EC in connection with Article 3(1) of Regulation (EC) 714/2009 [*electricity*] or Article 10(1) and (6) or 11(6) of Directive 2009/73/EC in connection with Article 3(1) of Regulation (EC) 715/2009 [*gas*] on a draft decision made by a Contracting Party's national regulatory authority in relation to certification of a gas or electricity transmission system operator (hereinafter "Draft Decision").

¹ As transposed in the Energy Community.

Article 2 – Procedure

1. The Board shall provide its Opinion on the Draft Decision notified to the Secretariat not later than eight (8) calendar weeks after receipt of the Secretariat's consultation request by the ECRB President ("President").
2. Upon receipt, the President shall without delay forward the Draft Decision to the ECRB.
3. ECRB members shall submit their comments on the Draft Decision no later than three (3) calendar weeks after receipt. Each authority shall provide a single set of comments.
4. The ECRB Section at the Secretariat shall compile all comments received during the consultation referred to in paragraph 3 in a draft ECRB Opinion. Subject to agreement by the President, the ECRB Section shall circulate the draft Opinion to the Board for review and approval within a period not exceeding two (2) calendar weeks.
5. In case the Board has not scheduled a regular meeting within the maximum deadline referred to in paragraph 1, the Board shall take its decision via written procedure. The Board shall, in this case or where otherwise deemed necessary, make use of electronic and telecommunication tools (e.g. web-, video- or telephone conferences) for finalizing its Opinion.

Article 3 – Decision Making Rules

1. Each Board member shall have one vote.
2. The ECRB shall decide by majority of the votes cast, including a positive vote of the European Union. Abstentions to voting shall not count as votes cast.
3. A Board decision requires presence of at least two third of its Members. In case of non-physical meetings, physical presence is replaced by participation in any web-, video- or telephone based conferences (or similar).
4. When deciding on an Opinion in the scope of this Procedural Act, the Board shall act without taking into account the vote of the representative of the national regulatory authority in charge of the Draft Decision.
5. The members of the ECRB shall preserve the confidentiality of commercially sensitive information.

Article 4

1. The ECRB Opinion shall be public unless otherwise decided by the ECRB.
2. Before publishing the ECRB Opinion the ECRB President shall consult the national regulatory authority in charge of the Draft Decision with regard to confidentiality of commercially sensitive information that shall not be displayed on the public version of the ECRB Opinion. The national regulatory authority in charge of the Draft Decision shall provide related information within 5 working days.

Article 5

Following the procedures laid down in Article 4, the ECRB President shall submit the ECRB Opinion to the Secretariat within not more than two working days.

Article 6

Upon submission of the Draft Decision to the Secretariat, national regulatory authorities shall provide an English translation.

Article 7

This Procedural Act is addressed to the members of the Board.

For the Board

A handwritten signature in black ink, appearing to read 'Branislav Prelević', is positioned below the text 'For the Board'. The signature is written in a cursive style.

Branislav Prelević

President

Done in Athens on 1 December 2015