

Pursuant to Article 32 paragraph (1) point 3) of the Energy Law* ("Official Gazette of the Republic of Macedonia" no. 96/18 and "Official Gazette of the Republic of North Macedonia" no. 96/19, 236/22) and Article 41 paragraph (11) of the Rulebook on the manner and procedure for monitoring the functioning of energy markets* ("Official Gazette of the Republic of North Macedonia" no. 98/23), the Energy and Water Services Regulatory Commission of the Republic of North Macedonia in the session held on May 25, 2023, adopted the following

Guidance on application of the obligation to publicly disclose inside information

I. Introduction

For the purpose of correct application and fulfillment of the obligation to publicly disclose inside information and indication of the best practices for implementation of obligations set in law to the entities performing energy activities, the Energy and Water Services Regulatory Commission of the Republic of North Macedonia (hereinafter: ERC) prepared this Guidance based on the provisions and definitions in the Energy Law*¹, the Rulebook on the manner and procedure for monitoring the functioning of energy markets*² (hereinafter: the Rulebook) and guided by the Guidance of the Agency for the Cooperation of Energy Regulators (ACER) on the application of Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT), 6th edition³.

II. Application of the definition of "inside information"

Qualifying a specific fact⁴ as "inside information" requires a two-step approach.

The first step is to determine whether the information contains at least one of the criteria specified in Article 3 paragraph (1) item 88) of the Energy Law*, where "inside information" is defined as:

- information which is required to be made public in accordance with the Energy Law* and with regulations and other acts adopted or approved pursuant to this law, especially information which is required to be made public in accordance with

¹ Official Gazette of the Republic of Macedonia" no. 96/18 and "Official Gazette of the Republic of North Macedonia" no. 96/19, 236/22)

² ("Official Gazette of the Republic of North Macedonia" no. 98/23)

³ ACER Guidance on the application of Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT), 6th edition

⁴ Facts can be circumstances, events, incidents, data, elements, or any other type of information.

Regulations (EU) No. 2019/943⁵ and (EC) no. 715/2009⁶, including guidelines and network codes adopted pursuant to those Regulations;

- information relating to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas, including planned or unplanned unavailability of these facilities. For example, any fact relating to all planned or unplanned changes in capacity or output of any size at a facility for production, storage, consumption and transmission of electricity or natural gas;
- information which is required to be disclosed in accordance with the obligations established in the Energy Law* and with regulations and other acts adopted or approved pursuant to this law, contracts, or customs on the relevant wholesale energy market, insofar as this information is likely to have a significant effect on the prices of wholesale energy products. Regulations and other acts adopted or approved pursuant to the Energy Law*, in particular means market rules, the Rulebook on the form, contents and dynamics for submission and publication of data, adopted by the TSO⁷ on 21.11.2019 and aligned with Regulation (EC) 543/2013⁸ and
- other information that market participant would be likely to use as part of the basis of their decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.

The second step is to determine whether the information meets the four cumulative conditions established in Article 3 paragraph (1) item 88) of the Energy Law*, that is, whether the information:

- is of a precise nature,
- has not been made public,
- relates, directly or indirectly, to one or more wholesale energy products and
- if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

III. Concept of a reasonable market participant

In cases when determining whether a certain fact qualifies as "inside information" according to Article 3 paragraph (1) point 88 of the Energy Law*, but only when such fact is not covered by the first three lines of point 88, the "test for reasonable market participant" is used.

The concept of "market participant" may encompass different profiles of market participants (e.g., beginner, average, informed, professional market participant) with different trading

⁵ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), repealing Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003

⁶ Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005

⁷ Transmission network operator of the Republic of North Macedonia Joint Stock Company for electricity transmission and management with the electro-energy system in state ownership Skopje (JSC MEPSO Skopje)

⁸ Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council

strategies (e.g. portfolio optimization, arbitrage, speculative) covering short-term and/or long-term energy products.

The concept of "reasonability" is rather related to the use of cognitive elements by the market participant in its trading decisions. By contrast, a market participant that makes trading decisions based on non-cognitive elements, such as instinct or mood, should not be considered reasonable.

To qualify a fact as "inside information", it is enough that at least one of these profiles of market participants is likely to use the fact as part of the basis of their decision to enter into a transaction relating to a wholesale energy product, or their decision to issue an order to trade in a wholesale energy product.

When using the "reasonable market participant test", ERC will take into consideration the following indicators:

- the concept "would be likely to use" should be distinguished from the concept "would like to use" - the test is not about whether there is a wish on the part of the reasonable market participant to use some type of information. Rather, the test is used to assess whether it is reasonable for a market participant to have a legitimate expectation that such information is available.
- therefore, the concept "would be likely to use" should be interpreted on the basis on what can reasonably expected to be published (for example, the fact that a market participant would like to use its competitors' trading plans for its own trading strategy does not mean that these plans are "inside information" because they are not information that "can reasonably be expected to be published" and that would likely be used by a reasonable market participant).
- the fact that a market participant used comparable facts (for example, at a different moment in time) as the basis for its trading decisions, could be considered a proxy to further assess with an *ad hoc analysis* if the fact is information that would be likely to be used by a "reasonable market participant".

IV. Four cumulative conditions for "inside information"

As indicated above, the second step to determine whether the information qualifies as "inside information" is to determine whether it meets the four cumulative conditions from Article 3 paragraph (1) point 88) of the Energy Law*, i.e., that "inside information" means:

- information of a precise nature,
- which has not been made public,
- which relates, directly or indirectly, to one or more wholesale energy products and
- which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

Market participants are responsible to ascertain whether the information they hold:

- potentially constitute "inside information" according to the above-mentioned four cumulative conditions and

- if they represent “inside information”, to be made public according to Article 41 paragraph (1) of the Rulebook.

In order to have an appropriate framework for ascertaining information, it is recommended that market participants have clear internal compliance rules that are tailored to their activities and the specifics of the information they use and have access to.

According to best practices, internal compliance rules may include:

- a framework for assessment whether the facts at hand can be qualified as inside information. This may include, for example, measures on how to identify inside information, appropriately tested thresholds⁹, etc.;
- an adequate workflow of information compliant with the presence of inside information. This may include, for example, a mapping of the flow of information, measures on how to handle inside information, etc. and
- lists of insiders and/or mechanisms for identifying insiders¹⁰.

The internal compliance rules should be consistent with a market participant’s organizational structure and trading strategy.

4.1 Information of a precise nature

The information shall be deemed to be of precise information if it indicates a set of circumstances or events which exist/has occurred or may be reasonably expected to come into existence/to occur, and if it is specific enough to enable a conclusion to be drawn as to possible effect of that set of circumstances or event on the prices of wholesale energy products, in accordance with Article 3 paragraph (1) item 89) of the Energy Law*. At the same time, "the expectation that they will occur or happen" should be "reasonable" that is, "may be reasonably expected to come into existence or occur".

The precise nature of the information is to be assessed by the information holder on a case-by-case basis and depends on what the information is, as well as on the surrounding context. In that assessment, the holder of the information may, among other things, take into consideration:

- i. that there is a realistic prospect that a fact will occur;
- ii. that the estimation of the potential price effect of information disclosure is irrelevant for the assessment of the precise nature; and
- iii. that intermediate steps in a lengthy process may be precise information.

⁹ For example, qualitative and quantitative (econometrical) analysis to test the likelihood of a significant price effect.

¹⁰ “Insider” means a person who has access to inside information relating, directly or indirectly, to the market participant, whether on a regular or occasional basis.

(i) It is enough that there is a realistic prospect that the fact will occur to make the information related to that event precise

Information is precise as long as there is a realistic prospect that the circumstances or events it refers to will come into existence/occur, considering all the factors existing at the time of the assessment.

(ii) The estimation of the potential price effect of information disclosure is irrelevant for the assessment of the precise nature

The calculation of the potential effect of the information on the prices of wholesale energy products is not an element to be taken into consideration in the assessment of the precise nature of the information. However, the likelihood of a significant price effect should be assessed to determine if the information is inside information.

More specifically, in order for the information to have a precise nature, it is not necessary to be able to infer from that information, with a sufficient degree of probability, that, once it is made public, its potential effect on the prices of the relevant wholesale energy products in a particular direction.

(iii) Intermediate steps in a lengthy process may be precise information

Intermediate steps in a lengthy process that are connected to bringing about future circumstances or events may be regarded as precise information. The knowledge of such steps could constitute an advantage that could undermine the spirit and objective protected by the Energy Law* and the Rulebook, which is to place market participants on an equal footing and enhance market integrity in terms of information symmetry.

Intermediate steps connected to bringing about future circumstances or events shall be specific enough to enable conclusions to be drawn as to the likely effect of that set of circumstances or events on the prices of wholesale energy products.

4.2 Information that has not been made public

Inside information is information that has not been shared with the public and, as a consequence, creates information asymmetries between market participants. Effective disclosure to the public of market participants is the criterion that transforms non-public information into public information. Once the information becomes public, it enhances the integrity and transparency of the market.

In general, information is deemed to be public knowledge if such information has been made, by any party, available to the public, i.e., to an unspecified number of market participants. In this regard, it is irrelevant who made the information public. No distinction is made as to whether the information was made public by a market participant or by any other party.

It is sufficient, but also required, that information is made available to the entire public of market participants simultaneously, ensuring equal access to the information, since any

interested market participant may appraise the information. This can be the case, for example, if a generally accessible electronic system for the dissemination of information, that qualifies as an Inside Information Platform, is used. Hence, publishing information only to selected market participants, for example via an e-mail channel or news board, does not satisfy the requirement of informing the public.

4.3 Information that relates to wholesale energy product(s)

The definition of "inside information" requires the relevant information to relate, directly or indirectly, to one or more wholesale energy products.

"Wholesale energy product" is defined in Article 3 paragraph (1) item 90) of the Energy Law* as a contract or derivative, irrespective of where and how they are traded, for the supply or transportation of electricity or natural gas where delivery or transportation is in the territory of the Republic of North Macedonia or in the territory of a contracting party or participant in the Energy Community Agreement, whereby contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products, except for contracts for the supply of final customers with a consumption capacity equal to or greater than the consumption defined in the Energy Law *.

Information that has a possible effect on the demand, supply and/or prices of a wholesale energy product, or on the expectations of the demand, supply and/or prices of a wholesale energy product, shall be considered as directly or indirectly related to the wholesale energy product.

In this context, if the information is likely to have a significant effect on the prices of wholesale energy products, it is necessarily related to these products. Therefore, in order to determine whether the information relates to wholesale energy products, the ERC assesses the likelihood of a significant effect on the prices to establish whether the information relates to wholesale energy products.

4.4 Likelihood of having a significant price effect on wholesale energy products

Information is deemed to constitute inside information only if, were it made public, it would be likely to have a significant effect on the prices of related wholesale energy product.

It is important, however, to note that the mere 'likelihood' of a significant price effect is enough to meet this condition and that no actual price effect is required.

The assessment of the likelihood of price effect has to be performed by a market participant on a case-by-case basis. The market participant should take into consideration the anticipated effect of the information in light of the nature of the information, as well as the specificities of the market and the market situation at the time of the assessment.

A non-exhaustive list of factors that are typically relevant for this assessment are provided below:

- market characteristics (size, time frame, market design, liquidity, type of participants, etc.);

- size of the event;
- already disclosed information about the supply or demand situation;
- availability and unavailability of transmission facilities, storage or network constrains;
- time of day (e.g., weekday/weekend, office hours/out of office hours);
- existence of announcements on non-regular events (for example, commissioning of a new power plant, re-commissioning of a power plant, etc.);
- TSO/NGTSO announcements related to the system (imbalances, security of supply, technical constrains etc.); and
- any other market variables likely to affect the price of the related wholesale energy product in the given circumstances (e.g. weather conditions, CO2, fuel prices, news on political and geopolitical developments etc.).

Market participants are advised to have a systematic framework for the assessment of whether particular information is likely to have a significant price effect, i.e. clear internal compliance rules that reflect this non-exhaustive list of factors and are adapted both to their activities and to the specificities of the information they handle.

As the assessment of the likelihood of the price effect has to be performed by the market participant ex-ante, i.e. before the information is published and used by the market participant, the ERC can use ex-post information to check the presumption but should take no action against persons who drew reasonable conclusions from ex ante information available to them.

In order to evaluate whether a market participant's assessment on the likelihood of some information having a significant price effect is consistent with what would be expected from a reasonable market participant, the ERC could verify whether:

- the type of information is the same as information which has, in the past, had a significant effect on prices;
- pre-existing analysts research reports, price reporter publications and opinions indicate that the type of information in question has effects on prices;
- the market participant itself has already treated similar events as inside information;
- another reasonable market participant has already treated similar events as inside information; or
- a reasonable market participant would be likely to use it as part of its trading decisions.

4.5 Information on trading plans and strategies

ERC in its assessments will not consider as inside information, information regarding a market participant's own trading plans and strategies.

ERC considers "trading plans" as plans including a systematic method for evaluating the supply, demand, or price of wholesale energy products, determining the amount of risk that is or should be taken, and/or formulating short- and/or long-term investment targets that may guide the daily trading activity. The consequences of these short- and/or long-term investment targets, in terms of energy needs and resulting orders to trade, should be

considered as being part of the trading plans of the market participant and therefore not constituting information under the Energy Law* and the Rulebook.

ERC considers “trading strategies” as a set of objective rules designating the conditions that must be met for one or more trade entries and exits to occur. A trading strategy includes specifications for one or more order entries, that can include one or more filters and/or triggers, as well as rules for trade exits, order types, etc.

Anyway, even if the details of the trading strategy (e.g., specific order submitted by a market participant) does not qualify as inside information under the Energy Law* and the Rulebook, the facts used to determine or change it can be inside information.

V. Application of the obligation to disclose inside information

According to Article 41 paragraph (1) of the Rulebook:

"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 related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Such disclosure shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas, including planned or unplanned unavailability of these facilities."

The obligation to disclose inside information lies with the market participant. The disclosure obligation relates not only to inside information in respect of the market participant’s own business or facilities, but also to inside information of the market participant’s related undertakings (market participant’s parent undertaking or related undertaking). In addition, the disclosure obligation is not only related to inside information in respect of business or facilities which the market participant or the respective undertakings own(s) or control(s), but also in respect of business or facilities for whose operational matters the market participant or respective undertaking is responsible, either in whole or in part. The obligation to disclose inside information does not apply to a person or a market participant who possesses inside information in respect of this inside information is not a parent or related undertaking. Notwithstanding this, persons holding information in such circumstances will need to consider their compliance with Article 25-a paragraph (1) of the Energy Law* and Article 40 of the Rulebook, and in particular whether they hold such information as one of the persons listed in Article 40 paragraph (1) of the Rulebook. In relation to this, ERC encourages persons holding such information to promptly inform the relevant market participant(s) in order to promote effective and timely compliance with Article 41 paragraph (1) of the Rulebook.

Article 41 paragraphs (4) and (5) of the Rulebook extends the disclosure obligation of Article 41 paragraph (1) of the Rulebook to a person employed by, or acting on behalf of, a market participant when that person discloses inside information to any other person in the normal course of the exercise of their employment, profession or duties as referred to in Article 25-a paragraph (1) point 2) of the Energy Law*. In such a case, that market participant or person

shall ensure simultaneous, complete and effective disclosure of that information. However, the disclosure obligation of Article 41 paragraphs (4) and (5) of the Rulebook does not apply if the person receiving the information has a duty of confidentiality, regardless of whether such duty derives from law, regulation, articles of association, contracts or other legally binding act.

5.1 Disclosure of inside information in an effective manner

5.1.1 Disclosure mechanisms

The transparency of the wholesale energy markets requires the disclosure of inside information in a manner that enables the dissemination of information to as wide a public as possible, granting easy and equal access to all users of this information. According to Article 41 paragraph (6) of the Rulebook, in order to achieve effective disclosure, the information shall be disclosed using a platform for the disclosure of inside information (Inside Information Platform or IIP), which allows multiple market participants to share information with the wide public.

Using Inside Information Platforms as the default disclosure mechanism is supported by the fact that:

- a) This disclosure mechanism derives from Article 4(1) and Article 4(4) of REMIT, according to which the disclosure of inside information, including in aggregate form, in accordance with Regulation (EU) 2019/943 or (EC) no. 715/2009, or guidelines and network rules adopted pursuant to those Regulations, constitutes simultaneous, complete and effective public disclosure. The transparency rules under these regulations stipulate the publication of transparency information on central information transparency platforms. Therefore, the disclosure by inside information platform would encourage a consistent understanding of effective disclosure according to Article 4(1) of REMIT and Article 4(4) of REMIT, i.e., Article 41 paragraphs (1) and (6) of the Rulebook.
- b) The reduction in the number of publication mechanisms leads to a significant reduction in complexity and effort for market participants to access and use the information that is published according to Article 41 of the Rulebook.

In order to facilitate the compliance with the disclosure obligation, a list of inside information platforms available in Europe for the disclosure of inside information on wholesale energy markets is published on the ACER's REMIT portal¹¹. Wholesale market participants in the Republic of North Macedonia are obliged to use some of these platforms for disclosing inside information.

Regarding the publication of inside information, including in aggregated form, it will be considered a simultaneous, complete and effective public disclosure according to Article 41 paragraph (7) of the Rulebook, provided that the published information concerns the same event(s) and has same content and format and conforms to the minimum quality

¹¹ <http://www.acer-remit.eu/portal/list-inside-platforms>

requirements as information required to be disclosed according to the Energy Law*, the Rules for the form, contents and dynamics for submitting and publishing data adopted by TSO, including guidelines and network rules adopted in accordance with the law.

A simultaneous publication on the market participant's website or through social media may be used as an additional source for publication. However, it cannot replace the disclosure on Inside Information Platforms. In case additional means for publication are used, e.g. a market participant's website, the market participant must ensure that the disclosed information is identical to the one disclosed on the Inside Information Platform.

The publication of inside information on platforms facilitates access to information for all market participants and promotes the overall transparency of the market. Moreover, this solution decreases overall the technical and organizational burden for market participants. In this regard, in the registration process according to Article 6 of the Rulebook, market participants possessing inside information are required to promptly provide and regularly update information on the place of publication of inside information. ERC will publish this data as part of the Register of participants in the wholesale energy market.

5.1.2 Minimum quality requirements for effective disclosure of inside information

While market participants are responsible for the disclosing of inside information, they do not have influence on the operation of platforms. Therefore, ERC believes that market participants are not responsible for temporary technical problems of such platforms fulfilling the minimum quality requirements established by ACER. If the information was delivered to the platform in time and there were temporary technical problems, the market participant should therefore not be considered for having breached the obligation to disclose inside information. In such circumstances, market participants could also consider an alternative solution, provided it complies with the same relevant minimum quality requirements as for platforms. In this case, the market participants should provide information on the backup solution in the process of registration according to Article 6 of the Rulebook. If technical problems persist, however, market participants should consider using other platforms to comply with the disclosure obligation. Where disclosure is delayed in such circumstances, the market participant will need to consider its compliance with the prohibition on Article 25-a paragraph (1) of the Energy Law* and Article 40 of the Rulebook prior to the information actually being disclosed to the market.

The publication of inside information should be as concise and as specific as reasonably possible as well as precise and complete enough to allow a correct understanding of the underlying event that might potentially affect the prices of the wholesale energy products. Further to that, inside information should be disclosed in a format that enhances the overall transparency and ensures level playing field for the market participants.

Each publication should not include statements by company executives, any form of advertisement or any other irrelevant information. For the same reason, use of disclaimers is discouraged. If disclaimers are used, they should be clearly separated from the main body.

If the publication requires a prognosis (e.g., regarding the duration of an outage), it is clear that such a prognosis contains an element of uncertainty. Therefore, ERC believes that

market participants fulfil their publication requirements if the prognosis is based on all available data and has been prepared with reasonable effort. If a prognosis changes over time, the publication should be updated accordingly as soon as the new information is available.

The obligation to disclose inside information is without prejudice to the application of competition law.

The disclosure of inside information in an incomplete or incorrect manner would be considered as a non-effective disclosure and this be in breach of Article 41 of the Rulebook.

5.2 Disclosure of inside information in a timely manner

Regarding the notion of timely disclosure of inside information, ERC considers that:

- if the inside information has to be published in accordance with the Energy Law* and with the regulations and other acts adopted or approved pursuant to this law, especially those for which there is an obligation to be disclosed in accordance with Regulation (EU) 2019/943 and (EC) No. 715/2009, including guidelines and network codes adopted pursuant to these Regulations, as well as Commission Regulation (EU) No. 543/2013, transposed in the Rules on the form, contents and dynamics for submission and disclosure of data adopted by the TSO, the disclosure according to the above-mentioned rules and regulations, including in aggregated form, constitutes simultaneous, complete and effective public disclosure (Article 41 paragraph (7) of the Rulebook). However, it should be emphasized that even if Article 41 paragraph (7) of the Rulebook states that the disclosure of inside information, including in aggregated form, in accordance with the above-mentioned rules and regulations, constitutes a simultaneous, complete and effective public disclosure, it does not necessarily constitutes disclosure in a timely manner, i.e. the inside information has to be published, in any case, **before trading in wholesale energy products to which that information relates** or recommending another person to trade in wholesale energy markets to which that information relates.

- if the inside information does not have to be made public in accordance with the Energy Law* and with the regulations and other acts adopted or approved pursuant to this law, especially those for which there is an obligation to be disclosed in accordance with Regulations (EU) 2019/943 and (EC) No. 715/2009, including guidelines and network codes adopted pursuant to these Regulations, as well as Commission Regulation (EU) no. 543/2013, transposed in the Rules on the form, contents and dynamics for submission and disclosure of data adopted by the TSO, ERC considers that there is no reason for applying a different reasonable timeframe for disclosure of information than stated in the above-mentioned regulations. Such information should therefore normally be published as soon as possible, but at least within one hour if not otherwise specified in applicable rules and regulations. **But in any case, the inside information has to be published before trading in wholesale energy products to which that information relates or recommending another person to trade in wholesale energy markets to which that information relates.**

ERC considers that market participants should develop a clear compliance plan towards real time or close to real time disclosure of inside information, beyond compliance with existing Third Package transparency obligations.

5.3 Delayed disclosure of inside information

According to Article 41 paragraphs (2) and (3) of the Rulebook, a market participant may exceptionally delay the public disclosure of inside information, that is:

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:

- 1) such omission is unlikely to mislead the public,
- 2) the market participant is able to ensure the confidentiality of such information until publication, and
- 3) the market participant does not make decisions relating to trading in wholesale energy products based upon such information.

In the above-mentioned case, the market participant is obliged to immediately submit the information with a justification of the reasons for the delayed publication to the ERC in the form set in Annex 5 of the Rulebook.

The decision to exceptionally delay the public disclosure of inside information in accordance with Article 41 paragraphs (2) and (3) of the Rulebook is for the market participants to make. ERC has no obligation to pre-approve the application of Article 41 paragraphs (2) and (3) to a specific set of circumstances. In any instance where a market participant chooses to delay disclosure, it must ensure that such a delay is not likely to mislead the public, that it does not make trading decisions on that information and that the information remains confidential. As Article 41 paragraphs (2) and (3) require that the market participant does not make trading decisions based on that inside information, ERC underlines that the application of Article 41 paragraphs (2) and (3) cannot coincide with the application of Article 40 paragraph (3) point 2) of the Rulebook, that is, either the conditions for the application of Article 41 paragraphs (2) and (3) will be met or the conditions for the application of Article 40 paragraph (3) point 2) of the Rulebook will be met. Whether a market participant rightly or falsely applied Article 41 paragraphs (2) and (3) of the Rulebook can only be determined ex-post. As soon as the legitimate interests cease to exist, the market participant must disclose the inside information in accordance with Article 41 paragraph (1) of the Rulebook.

Market participants who decide to delay public disclosure of inside information are obliged to notify ERC by submitting the form set in Annex 5 of the Rulebook. It is available on the ERC website.

5.4 Exemption in Article 41 paragraph (9) of the Rulebook

According to Article 41 paragraph (9) of the Rulebook, the obligations from paragraphs (1) and (2) are without prejudice to the right of market participants to delay the disclosure of

sensitive critical infrastructure protection related information, classified as such in accordance with law.

Hence, Article 41 paragraph (9) is relevant and applies only to "critical infrastructure".

According to Article 2 paragraph (1) point 23) of the Rulebook, critical infrastructure is an asset, system or part thereof located in the Republic of North Macedonia 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 the Republic of North Macedonia, as a result of the failure to maintain those functions.

According to Article 2 paragraph (1) point 22) of the Rulebook, sensitive information related to critical infrastructure is facts (information) about critical infrastructure, which if disclosed could be used to plan and act with a view to causing disruption or destruction of critical infrastructure installations.

If a market participant holds inside information about such a piece of critical infrastructure, that it or its related company owns or controls or for whose operational matters that market participant or undertaking is responsible and that information also constitutes sensitive critical infrastructure protection related information, then the market participant can delay the publication of inside information.

However, it should be emphasized that market participants are not allowed to use this exemption for all inside information relating to critical infrastructure. If a market participant possesses inside information that does not constitute "sensitive critical infrastructure protection related information", the obligation to publish this information remains.

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Skopje

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EXPLANATORY NOTE

According to Article 32 paragraph (1) item 3) of the Energy Law* ("Official Gazette of the Republic of Macedonia" no. 96/18 and "Official Gazette of the Republic of North Macedonia" No. 96/19, 236/22) (further: Energy Law*), the Energy and Water Services Regulatory Commission of the Republic of North Macedonia (further: Energy Regulatory Commission), for the purpose of carrying out the tasks falling under its competence, adopts guidelines which indicate to the entities performing energy activities the best practices for carrying out their legally established obligations, especially in relation to the provision of public service, security of supply, protection of consumers and users of public service, as well as increasing efficiency in their operations.

According to Article 41 paragraph (11) of the Rulebook on the method and procedure for monitoring the functioning of the energy markets* ("Official Gazette of the Republic of North Macedonia" No. 98/23) (hereinafter: Rulebook), which entered into force on the day of publication in the Official Gazette of the Republic of North Macedonia, i.e. on May 10, 2023, the Energy Regulatory Commission adopts and publishes on its website a guidance for the implementation of the obligation for public disclosure of e inside information (hereinafter: Guidance).

According to Article 48 paragraph (4) of the Rulebook, the Energy Regulatory Commission adopts and publishes the Guidance no later than 15 days from the day the Rulebook entered into force.

In order for those entities performing energy activities in the Republic of North Macedonia to correctly understand, apply and fulfill the obligation to publicly disclose inside information and at the same time to take into account the best practices for meeting their legally established obligations, the Energy Regulatory Commission prepared this Guidelines based on the provisions and the definitions in the Energy Law*, the Rulebook and taking into account the best practices from the implementation of Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT), set into the Guidance of the Agency for the Cooperation of Energy Regulators (ACER) on the application of REMIT, 6th edition.