

# **Supervisory Order Subsidizing the Cost of Electricity Supply to Brcko District From July 1, 2010 Until December 31, 2010**

*In accordance with the powers vested in me by Paragraphs 8, 10, 11, 13, 36 and 37 of the Final Award, dated March 5, 1999, of the Arbitral Tribunal for Dispute over Inter-Entity Boundary in Brcko Area ("the Brcko Tribunal");*

**In accordance also with** Paragraph 67 of the Final Award dated March 5, 1999 which provides in relevant parts that the Brcko Tribunal "will retain jurisdiction over (...) dispute until such time as the Supervisor, with the approval of the High Representative, has notified the Tribunal (...) that such institutions are functioning effectively and apparently permanently";

**Recalling** the decisions of the High Representative dated September 18, 2009 enacting the Laws on Amendments to the Laws on Electricity of the Republika Srpska and the Federation of Bosnia and Herzegovina, as well as the Law on Amendments to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina, aimed at including Brcko District of Bosnia and Herzegovina within the frame of the electric power regulatory system by establishing a legal public service obligation for the Entities to supply electricity to residents of Brcko District, without any discrimination;

**Recalling further** that the institutions of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina have immediately published the above-mentioned Laws on Amendments to the Laws in their respective official gazettes (Official Gazette of Bosnia and Herzegovina, No. 76/09, and Official Gazette of the Federation of Bosnia and Herzegovina, No.

*61109), while the authorities of the Republika Srpska have still not yet done so, despite such publication being required by the Republika Srpska Law on Gazetteing of Laws and Other Regulations of the Republika Srpska (Official Gazette of the Republika Srpska, No. 67/05 and 110108);*

Condemning the actions of State Electricity Regulatory Commission member Vladimir Dokic, who has since September 2009 willfully, intentionally and illegally blocked the implementation of the enacted Law on Amendments to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina by preventing the State Electricity Regulatory Commission from carrying out its legal obligations to regulate tariffs in Brcko for the Brcko District's distribution costs required for the final delivered price of electricity to District households and other customers and to provide a license to Brcko District Public Utility Company to operate and distribute electricity;

Regretting that Republika Srpska 's continued, willful and serious non-compliance with the Awards of the Tribunal and the High Representative's Decisions, as well as Mr. Dokic's continued, illegal blockage of the State Electricity Regulatory Commission, prevented Elektroprivreda of Republika Srpska and Elektroprivreda of Bosnia and Herzegovina to reach an agreement within the legally set deadlines on a different supply arrangement that could have been to the benefit of all, primarily Brcko District residents;

Noting that, in the absence of a different supply arrangement, resulting from the aforementioned serious non-compliance by the Republika Srpska, Brcko District Public Utility Company concluded contracts for electricity supply for calendar year 2010 with Elektroprivreda of Republika Srpska and Elektroprivreda of Bosnia and Herzegovina for six months each, thereby acting in accordance with the legislation in force and with an aim to remove any uncertainty about the availability and reliability of the supply of electricity to District residents;

Noting further that the Republika Srpska continues its willful and serious non-compliance with the Final Award and the High Representative's decisions, thereby still preventing full incorporation of Brcko District into the single regulated electricity market of Bosnia and Herzegovina;

Regretting that this continuing, serious non-compliance has significantly and unnecessarily delayed the closure of international Supervision over Brcko District of Bosnia and Herzegovina, notwithstanding the many insincere and tendentious statements of Republika Srpska officials claiming to want an end to Supervision;

Notwithstanding my numerous meetings with the Republika Srpska authorities in order to assist them in finding a way to come into compliance with their established legal obligations towards Brcko District in a manner consistent with the General Framework Agreement for Peace, the Awards of the Tribunal, numerous resolutions of the United Nations Security Council issued under Chapter VII of the UN Charter, as well as repeated calls by the international community including the Communiqués of the Peace Implementation Council Steering Board of November 19, 2009 and of February 25, 2010, and of June 30, 2010, urging the Republika Srpska authorities to fulfill the remaining legal obligation regarding electricity in order to allow the Brcko Supervisor to notify the Arbitral Tribunal of the completion of the Final Award;

**Whereas** Elektroprivreda of Republika Srpska has charged more for electricity since January 1, 2010 than it did in the previous year, and whereas the regulated price for electricity charged by Elektroprivreda of Bosnia and Herzegovina will represent a further increase in price for Brcko District residents from July 1, 2010 until December 31, 2010, and that the Public Utility Company of Brcko District is not in a financial position to absorb two major price increases in the same year;

**Noting** that the blockage of the State Electricity Regulatory Commission prevented the setting of distribution tariffs for Brcko District in a manner that would have buffered the price fluctuations by averaging it out for the whole year;

**Noting further** that the residents of Brcko District of Bosnia and Herzegovina should not have to bear the consequences of Republika Srpska's aforementioned serious non-compliance;

**Commending** the willingness of the Public Utility Company of Brcko District of Bosnia and Herzegovina to support a part of costs incurred

due to the increase of electricity price with the aim to minimize the burden falling on the customers of the Public Utility Company of Brcko District of Bosnia and Herzegovina;

**Determined** by way of a subsidy to reduce to the maximum possible extent the immediate consequences of the irresponsibility of the public authorities toward the institutions and the residents of Brcko District of Bosnia and Herzegovina;

**Reserving** the right and authority as Supervisor, under Paragraph 43 of the Final Award and Paragraph 9 of the Annex to the Final Award, to direct the Entities to make up any short-fall in the finances of the District so that the District may be made financially whole rather than be penalized as a result of serious non-compliance by the Republika Srpska;

**Reserving** the right also to revisit this Supervisory Order at any time, either to adjust the amounts provided in the operative part of this order or to otherwise amend or annul it;

Having therefore decided to subsidize by way of Supervisory Order the increased cost of electricity for the period July 1 to December 31, 2010 by directing the provision of funds controlled by Brcko District of Bosnia and Herzegovina;

I hereby order that:

1. The amount of 2,500,000.00 BAM from the funds reallocated to Brcko District on the basis of the Law on the Distribution, Purpose and Use of Financial Assets Obtained under Annex "C" to the Agreement on Succession Issues (Official Gazette of Bosnia and Herzegovina, No. 76/09) shall be provided as a subsidy. This amount shall be transferred to the Public Utility Company of Brcko District for the procurement of electricity for the period from July 1, 2010 until December 31, 2010, within 30 days from the date of this Order.

2. The Public Utility Company of Brcko District shall provide 600,000.00 BAM as its share in subsidizing the electricity

price increase for the period from July 1,2010 until December 31, 2010.

3. Customers of the Public Utility Company of Brcko District shall bear the remaining price increase.

4. Pending the approval of distribution costs of the Public Utility Company of Brcko District by the State Electricity Regulatory Commission pursuant to the Law on Transmission of Electric Power, Regulator and System Operator of Bosnia and Herzegovina, those costs shall be calculated by Brcko District Public Utility Company on the basis of objective criteria and approved by the Governing Board of Brcko District Public Utility Company.

5. This Supervisory Order has immediate effect and shall be published without delay in the Official Gazette of the Brcko District of Bosnia and Herzegovina.

6. All public officials, civil servants and employees in the Brcko District shall take all necessary measures to ensure that this Order be executed in full.

7. For the avoidance of doubt, the provisions of this Order shall override all inconsistent legislation and legal acts to the extent necessary to give this Order full effect. This Supervisory Order is published in both English and in the official languages of Bosnia and Herzegovina. In the event of any inconsistency, the English language version is authoritative for all purposes.

Dr. Raffi Gregorian

Supervisor of Brcko District

Principal Deputy High Representative