

REGULATION
ON THE PROCEDURES OF IMPOSING AND REDUCING THE FINES

First Part

General Provisions

Article 1

Authority

This regulation is drafted pursuant to Law no.43/2015 article 106/2 and article 107 “On Power Sector”, Law No.8485, of May.12.1999 of “Administrative Procedures Code for the Republic of Albania” and in conformity with the “Regulation for ERE organization, operation and procedures”.

Article 2

Purpose

The purpose of this regulation is to ensure an equal and transparent treatment for all the licensees in the Power Sector for which ERE shall begin the procedure of imposing the fines for the infringements under the provisions of Law no.43/2015 “On Power Sector”

ERE applies the same procedures for the licensees in the Power Sector when imposing the fines.

Article 3

Object

This regulation defines the procedures of applying the fines, their verification and defining methodology as well as facilitating measures that are applied for the fines imposed, for the licensees in the power sector, in case of infringements penalized with a fine by ERE.

Article 4

Definition

The following words and phrases used in this Regulation, will have the following meanings:

1. “Law” shall mean law no.43/2015 “On Power Sector”.

2. “ERE Board” shall mean ERE decision making body composed of five members appointed according to the procedures provided in the law.
3. “ERE” shall mean Energy Regulator Authority.
4. “License” shall mean an authorization issued by ERE to a person for performing an activity on power and natural gas sector in conformity with the provisions required by Law 43/2015 “On Power Sector” and Law no.102/2015 “On Natural Gas Sector” as well as ERE licensing procedures.
5. “Licensee” shall mean the person that holds a license issued by ERE to operate in the power and natural gas sectors.
6. “Procedure” shall mean a set of ERE or licensee activities performed pursuant to the legislation in force.
7. “Administrator” shall mean according to the case ERE Chairman or ERE Board
8. “Interested company” shall mean any licensee or other person receiving the service or performs the activities on power sector.
9. “Annual income”- shall mean the total of incomes generated from the sale of the goods ensured from Power Sector activity or from the services performed during a financial year by a trading company.
10. “Average daily turnover” shall mean the average incomes ensured in a day from the sales during a financial year.
11. “The initial value of the fine” shall mean the value defined by ERE Board for calculating the final value of the fine which is calculated according to Annex no.1 attached to this Regulation

SECOND PART SPECIAL PROVISIONS

Article 5

The fines

1. Any trade company licensed by ERE may be subject of ERE penalisation for one or more infringements performed by the licensee as follows:

- a. Non-compliance with ERE decisions;
 - b. Refusal to submit the periodic data and reports, delayed submission or submission of incomplete and inaccurate data from the licensee. Submission of false data intentionally, constitutes a criminal offence, and is penalized in conformity with the provisions of the Penal Code;
 - c. Non-compliance with the obligations regarding with the calculations and application of the costs and tariffs;
 - d. Non-compliance with the public service obligations provided on Law no.43/2015 article 47 “On Power Sector”;
 - e. Non-compliance with the obligation for the unbundling of the licensed activities.
 - f. Non-compliance with the obligation of keeping unbundled accounts according to Law no.43/2015 articles 35, 54 and 72 “On Power Sector”;
 - g. Non-compliance with the obligations relating the third party access in the network as required by the provisions of Law no.43/2015 “On Power Sector” and other secondary legislation.
 - h. Non-compliance with obligations defined in the regulated contracts;
 - i. Failure to publish the information regarding the tariffs and general conditions for access and use of network services;
 - j. Non-submission of the investment programs and/or non-carrying out of the planned investments, according to the requirements of Law no.43/2015 articles 20, letter “f”, 60 and 75, “On Power Sector”, and the respective ERE regulation;
 - k. Infringement of the conditions and requirements of supply quality, approved by ERE;
 - l. Non-compliance with ERE decisions on settling the disputes between the licensees.
 - m. Failure of regulatory fee by the licensee within the specified period;
 - n. Refusal of the market participants to sign regulated contracts within 15 calendar days;
 - o. Infringement of the conditions defined in the license, or the infringement of ERE rules and regulations, that are not defined in the above letters.
2. ERE may impose progressive fine for each day of delay to correct the violation, this deadline begins from the day defined by ERE for correcting it or from the legislation in force.
- a. When the licensee does not fulfill ERE decisions for correcting the violation, within the time specified by ERE, the licensee shall be fined by 0.1% of the average daily turnover for the previous financial year, for every day of delay from the deadline defined in ERE respective decision.
 - b. When the licensee does not comply the obligation to pay the regulatory fee to ERE, he is fined by 0.2% of the average daily turnover for the previous financial year, for every day of delay from the due payment day.

3. The measures of the fine will be defined by ERE in conformity with Annex 1 of this Regulation, within the following limits:
 - a. Not more than 3% of the annual incomes for the previous financial year of the licensee.
 - b. Not less than 0,01% of the annual incomes for the previous year of the licensee.
4. The progressive fine for every day of delay, may not exceed the initial value of the fine or the 3 % measure if the incomes for the previous year.
5. Total value of the fine shall be determined as a reduction as the initial value of the fine with the value of the facilitating conditions if this last one mentioned may be applied.

Article 6

Beginning the investigation

1. ERE may begin an investigation for imposing a fine, in cases when:
 - a. Is mostly informed for an infringement;
 - b. Is informed by another licensee or by an interested company for an infringement.
 - c. Has a reasonable doubt that the license conditions are infringed
2. In any case the beginning of the investigation is set with the Administrator order or ERE Board decision.

Article 7

Initial review

1. ERE may not decide to begin a procedure of imposing a fine, if the claimed/observed offence after the investigation results that has more than 5 years that it has happened.
2. In any case the technical staff who has done the investigation, observes that one of the offences provided in article 5, shall prepare a detailed information/report on the infringement/infringements observed and the proposal to begin the procedure for imposing a fine to the licensee.
3. ERE Board Decision for beginning the procedure of imposing a fine to the licensee, shall be send to them by ERE, within 5 working days from ERE Board decision.
4. The information for imposing the fine shall contain:
 - The observed infringement

- The proposed measure of the fine
 - The licensee identity
 - The evidence documentation where it is supported the impose of the fine
 - The right of the licensee to respond within 10 calendar days, from receiving the notification as well as the submission of the arguments and any supporting documentation in the function of their response or for the purpose of applying facilitating circumstances. The licensee has the right that within this period to require the development of a hearing session to make the necessary explanations.
5. In any stage of the procedure for imposing a fine, ERE may held hearing sessions with the licensee and the company that has required to perform the investigation, or ERE may require other documentation necessary for the initiated procedure.

Article 8

Defining the initial value of the fine

1. ERE shall define the initial value of the fine within the minimal and maximal limit set in the Law. The importance of the infringement shall be defined according to the following criterias:
- a. the circumstances of performing the offence;
 - b. if the offender results to be administratively penalized previously;
 - c. the importance of the offence;
 - d. the consequences from the action or the action;
 - e. if the offender is previously penalized for the same offence.

Article 9

Circumstances for performing the offence

1. For calculating the initial value of the fine the circumstances to perform the infringement shall be considered low, medium and high.
2. For defining the levels of the circumstances shall be considered the following criterias:
- a. The hierarchical position in the company of the person that has done the infringement;
 - b. The lack of organizational models and of correct management rules aiming to prevent the infringement;
 - c. The efforts to hide the infringement;

Article 10

The company with administrative penalty precedence

If the licensee is penalized before for Power Sector Law infringement, is penalized before for the same administrative infringement, the final fine provided for the offence type, shall be increased with 10% of the fine minimal value for the respective criteria provided on annex 1.

Article 11

Importance of the performed infringement

1. For calculating the importance of the infringement, they shall be considered of low, medium and high importance.
2. To define the level of the performed infringement importance shall be considered:
 - a. The financial benefit realized from the licensee that will be calculated on the basis of the incomes report obtained from the annual incomes of the previous year for the licensee.
 - b. The damage caused from the third parties.

Article 12

The consequences coming from the action or inaction

1. For calculating the initial value of the fine, the consequences resulting from the action or inaction of the licensee shall be considered of low, medium and high level.
2. On defining the consequences levels there will be considered the following criterias:
 - a. The damage caused or the increase of the costs caused by the customers or market participants;
 - b. Number of involved customers;
 - c. Increase of the market dominance of the licensee;
 - d. Preventing the Regulator's work in performing its legal functions on monitoring and controlling the licensee.

Article 13

Facilitation from the fine

1. ERE shall consider that the licensee fulfills the conditions for facilitating the value of the fine, when during the investigation there exist one or more circumstances as follows:
 - a. reduction in 50%, when the infringement, for the provided fine, is declared from the licensee himself.
 - b. reduction in 1/3 of the fine, when the licensee cooperates actively in ERE administrative investigation process for the questioning infringement.
 - c. reduction in 40% of the fine, when the licensee verifies that he has performed concrete actions to improve or eliminate the consequences caused by the infringement, before or during the infringement by ERE
 - d. shall be considered actions that lead to market improve such actions that despite the infringement have influence in improving the service, competition and market efficiency standards etc.

Article 14

Final proposal

1. After taking the written response from the licensee within the defined deadline, the charged persons that follow this procedure at ERE shall review this response within the deadline defined by ERE Board and shall prepare a report for the Board on the arguments submitted for the licensee response, the facilitating circumstances and all the supporting documentation if any, and shall propose to ERE Board to end the procedure initiated for imposing the fine, the initial value of the fine and if there exist the conditions for reducing the proposed fine value or not imposing a fine to the licensee for not observing the infringement.
2. ERE Board shall decide not to fine the licensee according to the proposal of the technical staff if they observe that the submitted facts does not prove the infringement.

Article 15

Board decision

1. On taking the detailed information with the data according to the above provisions of this regulation and after being informed with the licensee response, ERE Board shall decide to penalize or not the licensee and the respective value of the fine.
2. By the end of the procedure for imposing the fine to the licensed company, ERE shall inform the licensee for the end of the procedure initiated by him and shall send a copy of the Board Decision, within 7 calendar days from taking the decision.
3. The fine imposed by ERE Board constitutes an executive title and shall be executed in conformity with the Civil Procedure Code.

Article 16

Appealing the decision

Against ERE Board of Commissioners Decision for imposing the fine, the licensee may make a complaint pursuant to Law no.43/2015 “On Power Sector”

THIRD PART

Final provisions

Article 17

Amendments of the regulation

These rules are object of review and amendment with ERE Board decision in conformity with the “Regulation for ERE organization, operation and procedures”.

Article 18

Entry into force

This Regulation and their component parts, enter into force after their publication in the Official Gazette of the Republic of Albania.

Annex 1

Table for calculating the final value of the fine

Irst Phase; Fixing the initial value of the fine, depending on the infringement importance			
Criteria for the infringement importance			
1. Duration of the infringement and its territorial extension	25 %	Short	2 %
		Medium	6%
		Long	12 %
		Local	2 %
		Regional	4 %
		National	13 %
2. The infringement impact in the electricity market operation	25 %	Low	2 %
		Medium	6 %
		High	13 %
3. Economic benefit realized from the licensee as consequence of the infringement	25 %	Low	4 %
		Medium	8 %
		High	12 %
4. Type of the licensee fault	25 %	Intentionally	17 %
		Carelessness	8 %
<p>IInd Phase: Calculating the final fine according to the form:</p> <p>$G_j = VFG_j - KL$</p> <p>Where G_j = is the Fine</p> <p>VFG_j = The initial value</p> <p>KL = Facilitating Conditions</p>			
Facilitating Conditions	1. The infringement for which it is provided the fine declared by the licensee		50%

	2. The licensee cooperates in an efficient way in the process of investigating the regulator for the infringement in question	33%
	3. The licensee shows that he has performed actions that can lead to the improvement of the regulated market	40%