



Republika e Kosovës
Republika Kosova - Republic of Kosovo

ZYRA E RREGULLATORIT PËR ENERGJI
REGULATORNI URED ZA ENERGIJU
ENERGY REGULATORY OFFICE



ERO/Rule no. 06/2017

**RULE ON ADMINISTRATIVE MEASURES
AND FINES**

Pristina, 31 March 2017

The Board of Energy Regulatory Office, pursuant to authority given under Article 9 paragraph 1, subparagraph 1.7, Article 26, Article 57 and Article 58 paragraph 2 of Law on Energy Regulator (Law No. 05/L-084), in its session held on 31 March 2017 adopted the:

RULE ON ADMINISTRATIVE MEASURES AND FINES

CHAPTER I GENERAL PROVISIONS

Article 1

Scope and Purpose

The aim of this Rule is the supervision of activities in energy sector as well as rendering of administrative measures and fines, in case of violation of the same.

Article 2

Definitions

1. The terms used in this Rule have the following meaning:
 - 1.1 **“Confidential Information”** - any data, documents or other information, of commercial or technical nature, that are related to the design, rehabilitation, security, operation, maintenance and funding of energy activities or activities which no longer fall under public domain, whose disclosure may jeopardize commercial interests of applicants or licenses;
 - 1.2 **“Person”** - natural or legal person;
 - 1.3 **“Energy Regulatory Office”** – (hereinafter: the Regulator) is an independent agency in the energy sector; established by Law on Energy Regulator.
2. The terms used in this Rule have the same meaning as the ones used in Law on Energy Regulator, Law on Energy, Law on Electricity, Law on Thermal Energy, Law on Natural Gas, Rule on Licensing of Energy Activities in Kosovo and other applicable legislation.

CHAPTER II SUPERVISION

Article 3

Supervision by the Regulator

1. According to Law on Energy Regulator, the Regulator shall exercise supervision of activities in energy sector.
2. The Energy Regulatory Office carries out the supervision of:
 - 2.1 compliance with license conditions;
 - 2.2 implementation of regulated tariffs and tariff methodologies;

- 2.3 implementation of rules, special acts, including other decisions issued by the Regulator, and
- 2.4 implementation of Law on Energy Regulator, Law on Electricity, Law on Thermal Energy and Law on Natural Gas.
3. While performing its activities, the Regulator:
- 3.1 approves decisions;
- 3.2 carries out inspections through authorized people;
- 3.3 informs public authorities or independent bodies on the measures that should be undertaken within the scope of their competences;
- 3.4 imposes obligatory administrative measures and fines, foreseen by Law on Energy Regulator and other laws that regulate energy sector; and
- 3.5 suspends, modifies or withdraws a license;
4. Regulator's authorized people shall supervise the activities in accordance with paragraph 1 of this Article, pursuant to Law on Energy Regulator, rules issued by the Regulator and other applicable legislation.
5. The authorized people, as in paragraph 4 of this Article, shall prepare a report on the findings of the supervision, which shall be presented to the Regulator's Board.
6. While performing their activities, the authorized people shall cooperate with all authorities in Kosovo, if required.
7. Based on Article 54 of Law on Energy Regulator, in the course of exercising its supervisory powers, the Regulator, through people it has authorized, may perform inspections of facilities in premises of the licensee (periodical announced and unannounced visits); notify other institutions, public authorities or independent bodies of measures that should be carried out within the scope of their competencies;

Article 4 **Obligations of the Licensee**

1. The Licensee shall respond to the Regulator during the supervisory process and shall provide any requested data and information within the period set forth in the license, Reporting Manual or in any Directive, Instruction or any other document issued to the Licensee by the Regulator.
2. The Licensee shall inform the Regulator as soon as possible regarding any legal, technical, or administrative obstacle, prior to any control or inspection carried out by the responsible, namely authorized person.

3. The licensee shall respect any deadlines and instructions provided by the Regulator.

CHAPTER III ADMINISTRATIVE MEASURES AND FINES

Article 5

Principles for Imposing Administrative Measures and Fines

1. If the licensee performs any activity punishable by Article 57 of Law on Energy Regulator, the Regulator shall evaluate and decide to impose fines, in accordance with provisions of this Rule.
2. The form and level of penalty shall be based on the nature and severity of violation.

Article 6

Mitigating Factors

1. The following factors are regarded as mitigating during the impose of administrative measures and fines:
 - 1.1. the licensee has tried to prevent or diminish the damage caused by the violation;
 - 1.2. degree of social harm of the action;
 - 1.3. prior behaviour of the person;
 - 1.4. financial standing of the licensee etc.

Article 7

Initial Report on Supervision

1. Responsible people or people authorized by the Regulator, following the completion of the supervision should prepare the Initial Report with findings on the violations, which shall be submitted to the Board of the Regulator for review.
2. Following the review of the Initial Report on supervision, the Board shall deliver it to the licensee in order to enable him/her to provide a written response on the findings of the report within fifteen (15) calendar days .

Article 8

Administrative Measures

1. Following the receipt and evaluation of responses and eventual comments by the licensee, ERO Board may impose Administrative Measures and Fines, as follows:
 - 1.1 oblige the licensee to stop carrying out the activities constituting the violation of the license criteria and obligations;

1.2 declare any act or decision constituting a violation to be null, void or unenforceable;

1.3 oblige the licensee to take any reasonable actions considered necessary to ensure that the negative effects of such violation are eliminated or reversed and such violation is not repeated.

1.4 set temporary measures with respect to the violations by the licensee;

Article 9

Fines

1. Notwithstanding administrative measures set in Article 8 of this Rule, ERO may impose fines for the following violations, in accordance with Article 57 of Law on Energy Regulator:

- 1.1. employs people without proper qualifications required by Law on Energy Regulator;
- 1.2. fails to fulfill his/her duties in accordance with Law on Energy Regulator;
- 1.3. fails to provide information required pursuant to Article 12 of Law on Energy Regulator;
- 1.4. discloses confidential information contrary to relevant legislation;
- 1.5. does not provide required assistance, according to Article 13 of Law on Energy Regulator;
- 1.6. does not act in compliance with measures imposed according to Article 16 of Law on Energy Regulator to prevent the abuse of dominating position;
- 1.7. engages in energy activities for which a license is required without obtaining a license;
- 1.8. does not fulfill terms and conditions of the license;
- 1.9. constructs plants, according to Chapter VIII of Law on Energy Regulator, without obtaining an authorization from the Regulator;
- 1.10. imposes tariffs that are subject to arrangements without approval of the Regulator;
- 1.11. maintains its accounts in a manner that is inconsistent with requirements of relevant legislation;
- 1.12. refuses to conclude contracts for energy supply, to provide connection to the system, without a justified reason;

- 1.13. connects to the network without obeying relevant conditions;
- 1.14. performs actions against Law on Energy Regulator, Law on Electricity, Law on Energy, rules determined in accordance with these laws, relevant technical codes or standards.
2. A fine from five thousand (5,000) Euros to 10% of revenues that the enterprise accumulated in the previous fiscal year shall be imposed to the licensee who performs activities in violation with paragraph 1 of this article.
3. In cases when the fine mentioned in paragraph 1 of this Article is imposed to a person, it shall not exceed 300% of the monthly salary of the person in question.
4. The level of imposed fine under paragraphs 2 and 3 of this Article shall depend from the following factors:
 - 4.1 material value of caused damage;
 - 4.2 number of affected customers;
 - 4.3 value of earnings from unlawful charges to the customers and unlawfully carried activities; and
 - 4.4 value of distortion of the energy market;
5. In case of repeated violations, the imposed fine may be three (3) times bigger than the amount authorized in paragraphs 2 and 3 of this Article.
6. When imposing a fine pursuant to this Article, the Regulator shall notify the responsible people for the conducted violations and enable them the opportunity to provide a written response within fourteen (14) days following the Notice.
7. In case the fine imposed by the Regulator is not paid, the Regulator may file a lawsuit for initiating a legal procedure at the competent court.
8. The decision of the Regulator to apply fines, according to this Rule, does not limit in any way the right of the Regulator to terminate/withdraw the license.
9. Decision issued by the Regulator on administrative measures or fines may be appealed at the competent court.
10. Appealing the decision of the Regulator on fines or administrative measures shall not postpone the execution of such decision.
11. The fine imposed to the licensee does not eliminate its penal responsibility according to applicable legislation.
12. If the fine imposed by the Regulator to the Licensee is not paid within the deadline set by the Regulator, the latter shall initiate the court procedure for payment of fine as civil debt.

13. All fines collected according to this Article shall be paid to the Budget of the Republic of Kosovo.

CHAPTER IV
TERMINATION OR WITHDRAWAL OF LICENSE

Article 10

Termination or Withdrawal of the License

1. The Regulator shall endeavour to undertake all necessary steps, including the imposition of fines, if the latter or other actions may eliminate the reasons for termination or withdrawal of the license. Terminating or withdrawal are to be used as a last resort when other measures set forth in this Rule have failed to produce the desired effect.
2. The Regulator may terminate or withdraw a license in accordance with Rule on Licensing of Energy Activities in Kosovo.
3. The License termination or withdrawal shall take effect upon the issuance of written Decision by the Regulator's Board.
4. In case the Regulator has issued a decision referring to paragraph 5 of this Article, it shall appoint another licensee to ensure the security of supply and put into function the assets belonging to the licensee subject to withdrawal.
5. Decision on termination or withdrawal issued by the Regulator may be appealed at the competent court.

CHAPTER V TRANSITIONAL AND FINAL PROVISIONS

Article 11

Amendment

1. The Regulator has the right to change or modify any provision of this Rule.
2. Procedures for change or modification of this Rule shall be the same as for its adoption.

Article 12

Interpretation

In case of any uncertainty concerning the provisions of this Rule, the Board shall issue explanatory information.

Article 16

Abrogation

This Rule abrogates the Rule on Administrative Measures and Fines, issued pursuant to Law No. 03/ L-185, on Energy Regulator adopted by the Board of Energy Regulatory Office on 17.06.2011.

Article 17

Entry into Force

The Rule comes into effect on the date of adoption by the Board of the Regulator and shall be published on Regulator's website.

The Board of Energy Regulatory Office

Krenar Bujupi, Acting Chairman

Arsim Janova, Member

Besim Sejfijaj, Member