



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

# **RULE ON ADMINISTRATIVE MEASURES AND FINES**

**Pristine, 17 June 2011**



Pursuant to the authority given under Article 8 paragraph 1, sub paragraph 1.6, Article 14 paragraph 2, sub paragraph 2.18, Article 25 and Article 52 of the Law Nr. 03/L-185, on Energy Regulator, the Board of the Energy Regulatory Office, on a session held on 17.06. 2011 adopted the:

## **RULE ON ADMINISTRATIVE MEASURES AND FINES**

### **CHAPTER I GENERAL PROVISIONS**

#### **Article 1**

##### **Purpose**

This Rule sets forth supervision of licensed activities in the energy sector as well as rendering of administrative measures and fines, in case of violation of the same.

#### Article 2

##### **Scope**

1. Energy Regulatory Office (“ERO”) exercises supervisory activities such as:
  - 1.1. Compliance with licenses terms and conditions;
  - 1.2. Implementation of the approved prices and tariffs; and
  - 1.3. Implementation of acts, decisions, and instruction issued by ERO.
2. In performing its activities ERO may:
  - 2.1. Carry out inspections through persons authorized by it;
  - 2.2. Notify other institutions, public authorities or independent bodies of measures that should be carried out within the scope of their competencies;
  - 2.3. Terminate, modify, or withdraw licenses, and,
  - 2.4. Impose compulsory administrative measures and fine.

#### Article 3

##### **Definitions**

1. The terminology used in this Rule has the following meaning:
  - 1.1 “**ERO**” – Energy Regulator Office;



1.2 **“Confidential Information”** means any data, documents or other information, of commercial or technical nature, that are related to the design, rehabilitation, security, operation, maintenance and funding of operations or activities, which no longer fall under public domain, whose disclosure may jeopardize of commercial and /or licensed applicants;

1.3 **“Person”** Natural or legal person.

2. The Terminology used in this code has the same meaning as the one used in the Law on Energy Regulator, Law on Energy, Law on Electric Energy, Law on Central Heating, Law on Natural Gas and Rule on Licensing of Energy Activities in Kosovo.

## **CHAPTER II SUPERVISION**

### Article 4

#### **Supervision by ERO**

1. Pursuant to Article 49 of the Law on Energy Regulator and Rule on Licensing of Energy Activities in Kosovo, ERO shall exercise supervision of compliance with the terms and conditions of the licenses.
2. The person authorized by ERO Board shall be responsible for monitoring and supervision in accordance to the Law on Energy Regulator, rules issued by ERO and any other related legislation.
3. The authorized person shall prepare report on monitoring activities of the licensee which will presented to the Board of ERO.
4. While performing his activities the authorized person, when necessary, shall cooperate with all authorities in Kosovo.
5. Based on Article 50 of the Law on Energy Regulator, in the course of exercising its supervisory powers, ERO may perform inspections of the facilities on the premises of the licensee (periodically announced and unannounced visits) or notify other institutions, public authorities or independent bodies of measures that should be carried out within the scope of their competencies.

### Article 5

#### **Obligations of the Licensee**

1. The Licensee shall make all reasonable efforts to assist ERO in its supervisory activities and shall provide any requested data and information within a period of time set forth in its license, in Reporting Manual or in any Direction or Instruction to the Licensee issued by ERO.



2. The Licensee shall inform ERO as soon as possible about any legal, technical, or administrative obstacle that may prevent it from complying with the terms and conditions of its license before any control or inspection carried out by the authorized person.
3. The Licensee shall observe any deadlines and instructions provided by ERO in complying with the terms and conditions of the license.

### **CHAPTER III ADMINISTRATIVE MEASURES AND FINES**

#### Article 6

#### **Principles for Imposing of administrative measures and fines**

1. If the Licensee performs any activity punishable by the Article 52 of the Law on Energy Regulator, ERO will evaluate and decide to impose fine in prompt and fairly manner in accordance with the dispositions of this Rule.
2. A Licensee who commits several acts of violation may be penalized for each of its violations.
3. The form and level of penalty must be based on the nature and severity of the violation.

#### Article 7

#### **Mitigating Factors**

1. The following factors are regarded as mitigating:
  - 1.1. The licensee has tried to prevent or diminish the damages caused by the violation, or has paid compensation for caused damages;
  - 1.2. The degree of social harm of the action;
  - 1.3. The prior behavior of the person;
  - 1.4. Financial standing of the licensee; and
  - 1.5. A violation was accidental.
2. If a violation involves one of the mitigating factors as stipulated in paragraph 1 of this Article, the fine shall be reduced by 50% of the fine prescribed in Article 11 of this Rule. In case there are two or more mitigating factors involved, a two thirds (2/3) reduction will be applied to the fine or may be even excused entirely. ERO shall provide proper justification for any regulatory decision that it issued.



## Article 8

### **Notice of Failure to Comply**

1. If the person authorized by ERO determines that a licensee has failed to comply with the applicable laws, and the conditions of its licenses or any other decision or act issued by ERO, he shall provide such licensee with a written Notice of failure to comply.
2. The Notice of failure to comply shall:
  - 2.1. Specify the nature of the failure;
  - 2.2. Provide the licensee with a reasonable period of time to perform certain action or interrupt actions which caused reason for issuing notice. Such period of time shall not be shorter than thirty (30) days unless if the failure may create or threaten to create seriously dangerous situations;
  - 2.3. Identify those measures that the licensee may take to correct such failure, which may include the payment by the licensee of reasonable compensation to the affected party, or other measures that can be undertaken and do not require major efforts within a shorter period of time; and
  - 2.4. Contain instructions on the right of the licensee to respond in writing.
3. The licensee shall respond to Notice of failure within fourteen (14) calendar days from the date of notification to the licensee.

## Article 9

### **Administrative Measures**

1. If the licensee's failure continues after the period of time specified under Article 8, paragraph 2, sub paragraph 2.2, of this Rule, ERO may impose any or all administrative measures or fines set forth in this Rule, including the termination or withdraw of the license.
2. If ERO determines that the licensee has violated the terms and requirements of the license, it is entitled to:
  - 2.1. Require the licensee to temporarily stop carrying out the activities constituting the violation of the license;
  - 2.2. Declare any act or decision constituting a violation to be null, void or unenforceable; and
  - 2.3. Require 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.



## Article 10

### **Violations toward Third Parties**

1. If a Licensee violates the terms and conditions of the license and by such violation causes, or threatens to cause, material harm, including lost of profits, or other harm to a third parties, the affected party have the right to file a complaint with the ERO, as given by the Rule on Dispute Settlement Procedures in Energy Sector.
2. The right of affected parties does not eliminate the civil or penal liabilities of the perpetrator in accordance to the legislation applicable in Kosovo.

## Article 11

### **Fines**

1. Based on Article 52 of Law on Energy Regulator, a fine shall be imposed if the Licensee:
  - 1.1. Fails to provide information required pursuant to Article 12 of Law on Energy Regulator;
  - 1.2. Discloses confidential information contrary to relevant legislation;
  - 1.3. Fails to provide assistance required by Article 13 of Law on Energy Regulator;
  - 1.4. Maintains its accounts in a manner that is inconsistent with the requirements of Article 46 of the Law on Energy Regulator and the license;
  - 1.5. Connects to a system without obeying the relevant conditions;
  - 1.6. Refuses to allow ERO access to accounts of the licensee;
  - 1.7. Employs persons without qualifications required by the Law on Energy Regulator;
  - 1.8. Imposes tariffs that are subject of arrangements without approval of ERO.
  - 1.9. Conducts activities which fail to comply with any measure imposed by Article 15 of the Law on Energy Regulator to prevent the abuse of a dominant position;
  - 1.10. Carries out operations in violation of the relevant technical or commercial rules, standards or technical codes;
  - 1.11. Engages in energy activities subject to licensing without obtaining a license,
  - 1.12. Performs actions against the procedures provided in the Rule on Licensing of Energy Activities in Kosovo or terms and conditions of his license;
  - 1.13. Refuses to enter in a contract for energy supply or provide access to the networks without a justified reason;



- 1.14. Constructs facilities in violation with Article 38 and 39 of the Law on Energy Regulator.
2. A fine of minimum two thousand (2,000) Euros, and maximum ten thousand (10,000) Euros is imposed to licensee who perform activities in violation with paragraph 1, sub paragraph 1.1 to 1.7 of this article.
3. A fine of minimum five thousand (5,000) Euros, and maximum fifty thousand (50,000) Euros is imposed to licensee who perform activities in violation with paragraph 1, sub paragraph 1.8 to 1.14 of this Article.
4. A fine of minimum one third (1/3) of last monthly salary and maximum three times (x 3) of the individual's last monthly salary shall be imposed to an individual designate by the licensee as its representative, who by purpose or willfully performs activities in violation with paragraph 1 of this Article.
5. The level of imposed fine under paragraphs 2, 3 and 4 of this Article will depend from the following factors:
  - 5.1. Value of damages caused;
  - 5.2. Number of affected customers;
  - 5.3. Value of earnings from unlawful charges and unlawfully carried activities; and
  - 5.4. Value of distortion of the energy market;
6. In case of repeated violations the fine imposed may be three (3) times bigger than the amount authorized in paragraph 2, 3, and 4 of this Article.
7. The ERO decision to apply fines to the licensee or the payment of any fine applied according to the present Rule, does not limit in any way the right of ERO to terminate/withdraw the license.
8. Decision on fine or administrative measure issued by ERO may be appealed before the competent court.
9. Appealing the ERO decision on fines or administrative measures will not postpone the execution of such decision.
10. If the fine imposed by ERO to the Licensee is not paid within the deadline set by ERO, the latter shall initiate the court procedure for payment of fine as civil debt.
11. The fine imposed to the licensee does not eliminate its penal responsibility according to the Penal Code of Kosova.
12. The fines shall be paid to the Kosova Budget.



## **KREU IV LICENSE TERMINATION AND WITHDRAWAL**

### Article 12

#### **License Termination or withdrawal**

1. ERO shall endeavor 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 and prevent those administration measures to be undertaken. Terminating or withdrawal is to be used as a last resort where other measures set forth in this Rule have failed to produce the desired effect.
2. With respect to Notice of incompliance as set forth in Article 8, this Rule sets forth the minimum requirements, ERO may, at its discretion, provide additional notice to extend the period of time set in Article 8.2 (b) of this Rule, for the licensee to comply with terms of license.
3. If the failure of Licensee endures for more than 30 days after the issuance of the Notice of incompliance or additional notice as per paragraph 2 of this Article, and after the proposal from authorized person, ERO will issue information regarding termination or withdrawal of the license to the licensee. Such information shall contain the date of intended termination or withdrawal.
4. ERO may terminate or withdraw a license in accordance to the Rule on Licensing of Energy Activities in Kosovo.
5. The License termination or withdrawal shall take effect upon the issuance of the written Decision on termination or withdrawal by the ERO Board.
6. In case that ERO 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 license subject to withdrawal.
7. Decision on termination or withdrawal issued by ERO may be appealed before the competent Court.

## **CHAPTER V FINAL AND TRANSITIONAL PROVISIONS**

### Article 13

#### **Official Language**

This Rule is issued in Albanian, and will be translated in Serbian and English language. In the event of a dispute between the versions, the Albanian version shall prevail.



Article 14  
**Modification**

1. ERO withholds 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 those for its adoption.

Article 15  
**Interpretation**

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

Article 16  
**Abrogation**

This Rule abrogates the Rule on administrative measures and fines, issued pursuant to the Law No.2004/9, on Energy Regulatory adopted by the Board of the Energy and Regulatory Office on 04.11.2008.

Article 17  
**Entry into Force**

The Rule comes into effect on the date of adoption by the Board of ERO and shall be published on ERO web site.

ERO Board

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Dr. Ali Hamiti, Chairman

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Përparim Kabashi, Member

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Blerim Koci, Member