

Draft 11 May 2007

Pursuant to the authority given under Article 15.1 and Article 55 of the Law on Energy Regulator, the Board of the Energy Regulatory Office on a session held on _____ adopted the:

RULE ON ADMINISTRATIVE MEASURES AND FINES

CHAPTER 1 GENERAL PROVISIONS

Article 1

Purpose and Scope

- 1.1. This Rule sets forth the general principles applicable to the Energy Regulatory Office (“ERO”) while exercising its supervisory activities in the energy sector (electricity, natural gas and district heating), such as:
 - a) the compliance with the terms and conditions of licenses;
 - b) implementation of the approved prices and tariffs;
 - c) implementation of acts, decisions, and instruction issued by ERO .
- 1.2. In performing its activities ERO may:
 - a) carry out inspections through persons authorized by it;
 - b) notify other institutions, public authorities or independent bodies of measures that should be carried out within the scope of their competencies;
 - c) terminate, modify, or withdraw licenses;
 - d) impose compulsory administrative measures and fines set out in Article 57 of the Law on Energy Regulator or another law regulating the energy sector in Kosovo
 - e) inform public about the measures that are imposed; and
 - f) perform other relevant activities as set forth in this Rule.

Article 2

Terms and Interpretation

The terms used in this Rule correspond with the terms used in the Law on Energy Regulator, Rule on Licensing of Energy Activities in Kosovo and the licenses issued by ERO.

CHAPTER 2 SUPERVISION

Article 3

Supervision of ERO

- 3.1. Pursuant to Article 54 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.
- 3.2. The Monitoring expert and/ or the person authorized by the Board of ERO (“Authorized person”) shall be responsible for monitoring and supervision in accordance to the Law on Energy Regulator, rules issued by ERO and any other related legislation.
- 3.3. The Authorized person shall monitor the activities of the licensee, and shall prepare regular quarterly and yearly reports to be presented to the Legal and Licensing Department of ERO, and to the Board of ERO.
- 3.4. While performing his activities the Authorized person shall co-operate with all authorities in Kosovo.
- 3.5. Based on Article 55 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.
- 3.6. In reference to the Article 3.5, and Article 501 of the Law on Energy Regulator, ERO may perform the physical inspections of the books, records and all documents in relation with performing of licensed activities.

Article 4
Obligations of the Licensee

- 4.1. The Licensee shall make all reasonable efforts to facilitate the supervision 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 regarding the dispositions of the licenses.
- 4.2. 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.
- 4.3. The Licensee has to keep itself informed about any legislative amendments and changes related to the energy sector and its activities.
- 4.4. The Licensee shall observe any deadlines and instructions provided by ERO in complying with the terms and conditions of the license.

CHAPTER 3
ADMINISTRATIVE MEASURES AND FINES

Article 5
Principles for Imposing Fines and Penalties

- 5.1. If the Licensee performs any activity subject to the Article 57 of the Law on Energy Regulator, ERO will investigate and decide to impose fine in prompt and fairly manner in accordance with the dispositions of this Rule.
- 5.2. A Licensee who commits several acts of violation may be penalized for each of its violations.
- 5.3. The form and level of penalty must be based on the nature and severity of the violation.

Article 6 Mitigating Factors

- 6.1. The following factors are regarded as mitigating:
 - a) the licensee has tried to prevent or diminish the damages caused by the violation, or has paid compensation for caused damages,
 - b) the degree of social harm of the action;
 - c) the prior behavior of the person;
 - d) financial standing of the licensee;
 - e) a violation was accidental or not deliberate.
- 6.2. If a violation involves one of the mitigating factors as stipulated in Article 6.1, the fine shall be reduced by 50% of the fine prescribed in Article 10. In case there are 2 or more mitigating factors involved, a two thirds 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 7 Notice of Failure to Comply

- 7.1. If the Authorized Person 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, the Authorized Person shall provide such licensee with a written Notice of failure to comply.
- 7.2. The Notice of failure to comply shall:
 - a) specify the nature of the failure;
 - b) provide the licensee with a reasonable period of time to perform certain action or interrupt action witch 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 a seriously dangerous situation;
 - c) 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 does not require the major efforts within a shorter period of time
 - d) inform the licensee of his right to respond in writing

- 7.3. The licensee shall respond to notice of failure within fourteen (14) calendar days from the date of notification to the licensee or publication of the notification on ERO's web site whichever occurs latest.

Article 8
Administrative Measures

- 8.1. If the licensee's failure continues after the period of time specified under Article 7.2 b), ERO may impose any or all of administrative measures or fines as foreseen in this Rule, including the termination or withdraw of the license.
- 8.2. If ERO determines that the licensee has violated the terms and requirements of the license, it is entitled to:
- a) require the licensee to temporarily stop carrying out the activities constituting the violation of the license;
 - b) declare any act or decision constituting a violation to be null, void or unenforceable;
 - c) 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 9
Third Party Violation

- 9.1. 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 in accordance to the Rule on Dispute Settlement Procedures adopted by ERO.
- 9.2. The right of affected parties does not eliminate the civil or penal liabilities in accordance to the legislation applicable in Kosovo.

Article 10
Fines

- 10.1. In accordance with Article 57 of Law on Energy Regulator, a fine shall be imposed if the Licensee :
- a) fails to provide information required pursuant to Article 13 of Law on Energy Regulator
 - b) improperly discloses confidential information
 - c) fails to provide assistance required by Article 14 of Law on Energy Regulator
 - d) maintains its accounts in a manner that is inconsistent with the requirements of Article 49 of the Law on Energy Regulator and the license
 - e) connects to a system without obeying the relevant conditions
 - f) refuses to allow ERO access to its accounts in accordance with article 50 of the Law on Energy Regulator;

- g) employs persons without qualifications on the managerial positions as required by the Article 21/a of Rule on Licensing of Energy Activities in Kosova;
 - h) charges prices or implements a tariff, in the manner non compliant with Tariffs Methodology and rules adopted by ERO or any decision related to tariffs issued by ERO;
 - i) removes, damages or hinders the effectiveness of a metering device;
 - j) fails to comply with any measure imposed pursuant to Article 16 of the Law on Energy Regulator to prevent the abuse of a dominant position;
 - k) carries out operations in violation of the relevant technical or commercial rules, standards or technical codes
 - l) the energy enterprise engages in energy activities subject to licensing without obtaining a license;
 - m) failure of the Licensee to comply with the procedures provided in the Rule on Licensing of Energy Activities in Kosovo or terms and conditions of his license;
 - n) refuses to enter in a contract for supply of energy or to provide access to the networks without a justified reason;
 - nj) constructs facilities regulated by Chapter 8 of the Law on Energy Regulator without obtaining a permit.
- 10.2. A fine of minimum two thousand (2,000) Euro, and maximum ten thousand (10,000) Euro is imposed to licensee who perform activities under paragraph 10.1 a) to 10.1 i)
- 10.3. A fine of minimum five thousand (5,000) Euro, and maximum fifty thousand (50,000) Euro is imposed to licensee who perform activities under paragraph 10.1 j) to 10.1 nj)
- 10.4. 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 under paragraph 10.1.
- 10.5. The level of imposed fine under paragraphs 10.2, 10.3 and 10.4 will depend from the following factors:
- a) value of damages caused;
 - b) number of effected customers;
 - c) value of earnings from the unlawfully charges and unlawfully carried activities;
 - d) value of distortion of the energy market.
- 10.6. In case of repeat violations the fine imposed may be three times greater than the amount authorized in paragraph 10.2, 10.3 and 10.4.
- 10.7. The decision of ERO 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.
- 10.8. Licensee or Individual may appeal in fourteen (14) calendar days from the date of delivery of decision to the Licensee or publication of the decision on ERO's web-site (whichever occurs last) a decision on fines, including administrative measures imposed by ERO to the competent court, in accordance with Article 26.3 of the Law on Energy Regulator.

- 10.9. Appealing of decision on fines or administrative measures of ERO will not postpone the execution of such decision.
- 10.10. Any fine imposed to the Licensee shall be without prejudice to prosecution for criminal liability under the applicable Criminal Code of Kosovo.
- 10.11 The fines shall be paid to Kosovo Consolidated Budget (KCB) budget

CHAPTER 4 TERMINATION AND WITHDRAWAL

Article 11 Termination or withdrawal of license

- 11.1. Termination or withdrawals are options allowed to ERO, it is not a requirement placed to ERO. ERO may choose to impose less restrictive measures upon the licensee.
- 11.2. ERO shall endeavor to undertake all necessary steps, including the imposition of fines where such fines or other action may eliminate the reasons for termination or withdrawal of the license and prevent it. 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.
- 11.3. With respect to notice of failure as set forth in Article 7, this Rule sets forth the minimum requirements, ERO may, at its discretion, provide additional notice to extend the period of time set in Article 7.2 (b) for the licensee to comply.
- 11.4. If the failure continues for more than 30 days after the issuance of the “Notice of Failure to Comply” or additional notice as per Article 11.3 and after the proposal from authorized person, the Board of ERO will issue information for the licensee regarding termination or withdrawal of the license. Such information shall contain the date of intended termination or withdrawal and elements of Article 7.2.
- 11.5 ERO may terminate or withdraw a license in accordance to the Article 39 and 44.5 of the Rule on Licensing of Energy Activities in Kosovo.
- 11.6. The termination or withdraw of the license shall take effect upon the issuance by ERO of the written Decision on termination or withdrawal.
- 11.7. In case that ERO has issued Decision in reference to Article 11.6 it shall appoint another licensee to ensure the security of supply and operate the assets belonging to the license subject to withdrawal.
- 11.8. The Licensee may appeal to the competent court Decision of ERO within fourteen (14) calendar days from the date of its delivery to the licensee or publication of such decision on ERO’s web-site, in accordance with Article 26.3 of the Law on Energy Regulator.

CHAPTER 5 Final and Transitional Provisions

Article 12
Modification of the Rule

- 12.1. Any proposal for modification of this Rule shall be sent to ERO in writing or may be initiated by ERO itself.
- 12.2. The modification shall be made by the Board of ERO only if it is necessary to further the objectives of ERO and the general interest and shall be published on ERO web site.

Article 13
Official Language of the Rule

This Rule is issued in Albanian, Serbian and English language. In the event of a dispute regarding the meaning of terms, and where such dispute results from the different translations of this Rule, the English version shall prevail.

Article 14
Implementation

- 14.1. ERO is the responsible authority for the implementation of the present Rule.
- 14.2. No latter than thirty (30) days after the enforcement of the present Rule, ERO shall establish the form of bill and procedures of paying fines.

Article 15
Entry into Force

- 15.1. This Rule shall enter into force thirty (30) days of its adoption by the Board of ERO and its publication on ERO website.

Chairman of the Board of ERO

Members of the Board of ERO
