



ENERGY REGULATOR AUTHORITY

Approved with ERE Board Decision No. 95, of date 04.07.2017

REGULATION

**ON THE CONDITIONS AND PROCEDURES OF IMPOSING THE FINES
AND THE CONCRETE MEASURE FOR ANY VIOLATION**

**First Part
General Provisions**

**Article 1
Authority**

This regulation is drafted implementing article 106/2 of Law no.102/2015 “On Natural Gas Sector” Law no.45/2015 “Administrative Procedures Code in the Republic of Albania” Law No. 10 279, of date 20.05.2010 "On administrative offences" 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 Natural Gas Sector, for which ERE shall begin the procedure to impose the fines for the observed violations according to the provisions of Law no.102/2015 “On Natural Gas”. ERE applies the same procedures for the licensee on natural gas sector in case of imposing the fines.

**Article 3
Object**

This regulation defines the procedures for the application of the fines, the verification methodology to define them and the facilitating measures applied for the administrative measures set for the licensee in natural gas sector, in case of the violations penalized with fine by ERE.

**Article 4
Definitions**

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

- 1. Law** – shall mean Law no.102/2015 “On Natural Gas 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 a right issued by ERE, to a person for performing an activity in natural gas sector in conformity with the provisions required by Law no. 102/2015 “On Natural Gas Sector” and ERE licensing procedures.
5. **Licensee**- shall mean a person equipped with a license issued by ERE to operate in Natural Gas sector.
6. **Procedure** – shall mean a set of ERE activities to take the administrative measures of imposing and reducing the fines for the licensee in Natural Gas Sector.
7. **Interested company**- shall mean any licensee or any other person receiving the service or performing an activity in natural gas sector.
8. **Annual incomes**- shall mean total of incomes generated from the sale of the goods ensured from the activity in natural gas sector or other services performed during a financial year from a trading company.
9. **Average daily turnover** – shall mean the average incomes ensured in a day, from the sales and/or the provisions of services in natural gas sector.
10. **Initial value of the fine**- shall mean the value defined from ERE Board for calculating the final value of the fine that is calculated according to Annex no.1 attached to this Regulation.
11. The terms and definitions used in this regulation shall have the meaning provided on Law 102/2015 “On Natural Gas Sector”

SECOND PART SPECIAL PROVISIONS

Article 5 The Fines

1. Any licensee may be subject of ERE penalization for one or more violations performed from him, as follows:
 - a) are penalized by ERE with a fine from 0,1% to 0,5% of the annual incomes for the previous year of the licensee, the violations performed by the licensed companies:
 - i. performing an activity in natural gas sector without the respective license, issued by ERE, as provided on point 1 article 22 of the Law.
 - ii. the activities performed from the companies subject to the implementation of Law no.102/2015 “On Natural Gas“, realized contrary to the conditions provided in the license, according to the provisions of articles 50, point 4; 75; 85 point 4, as well as the actions contrary with letters “b”, “c”, “ç”, “d”, “dh”, “e”, “ë”, “f”, “g” and “gj”, of point 1, article 41, of Law no. 102/2015 “On Natural Gas”;
 - iii. refusal to submit the data, information, periodic reports or late send of them, or sending inaccurate data from the licensee, contrary with articles 17, point 1/a, 37, point 6, 39, point 2, 40, point 2, 53, points 5 and 6, 63, point 6, 66, 73, 87, point 4, 92, point 3, 95, point 5, and 97, points 1, 2, 5, 7 and 9, of the Law;
 - iv. failure to implement the obligations, regarding the calculation and application of the costs and tariffs, as required on articles 17, point 1, letter “dh”; 33, points

- 1-7, 90, points 10, 11, and 56, point 4, of the Law;
- v. failure to implement public service obligations, set according to the requirements of articles 92, point 11, and 93, points 2 and 4, of the Law;
 - vi. failure to implement the obligations to keep allocated accounts, according to articles 30, 75, 80, point 6, and 85, point 6, of the Law;
 - vii. failure to implement the obligations regarding third party access in the grid, as defined on articles 42, points 1-3, 54, 64 and 71, of the Law;
 - viii. failure to implement the obligations defined in the regulated contracts and imposing additional conditions in the supply contract or failure to inform, contrary to articles 76, point 5, and 90, point 4, of the Law;
 - ix. failure to publish the information for the tariffs and the general conditions for grid access, as well as using the grid services, as defined on article 33, point 8, of Law;
 - x. failure to submit the investment programs and/or failure to perform the planned investments, according to the requirements of articles 46 and 56, of the Law and ERE respective regulation.
 - xi. violating the conditions and requirements of the quality of supply, approved by ERE, provided in article 89, point 4, of the Law;
 - xii. failure to implement ERE decisions;
 - xiii. failure to respect the requirements of articles 39, points 4 and 6, and article 60, letter “ç”, of the Law;
 - xiv. failure to take the measures for drafting the compliance program and appointing the compliance officer, according to the requirements of articles 47, point 1, 51, point 5, and 80, point 7, of the Law;
 - xv. failure to respect the responsibilities charged for the storage and LNG system operators, according to the provisions of articles 61 and 69, of the Law;
 - xvi. applying the additional conditions in the contracts that are being concluded, contrary with article 76, point 5, of the Law;
 - xvii. failure to inform the customers from the supplier of last resort, according to the requirements of article 90, point 4, of the Law;
 - xviii. failure to respect the requirements of article 77, of the Law, regarding the storage of the data;
 - xix. failure to respect the obligation to sign a contract, according to article 96, point 8, of the Law, for the customers fulfilling the conditions, according to point 1, of this article;

b) ERE acting according to Articles 39(7) and 106(2) of the Law shall impose administrative measures up to 10% of the Transmission System Operator annual incomes to the Transmission System Operator, or over 10% of annual incomes of the vertically integrated companies, over the vertically integrated companies for the failure to comply with their respective obligations regarding the unbundling and/or independence of the Transmission System Operator in conformity with Article 36 of the Law.

- c) ERE applies the progressive fine per each day of violation to the companies of the Law, for the following cases:
- i) when the licensee does not fulfill ERE decision to correct a violation, within the deadlines defined by ERE. In this case, the licensee is penalized with the fine of 0,1% measure of the average daily turnover for the previous financial year for each day of delay from the day of the deadline defined in the respective ERE decision;
 - ii) when the licensee does not meet the obligation of paying the regulatory tax to ERE, he is penalized with fine of 0,2 % measure of the average daily turnover for the previous financial year, for each day of delay from the day defined for the payment.
2. The measures shall be defined by ERE in conformity with Annex 1, of this Regulation, within the limits as follows:
 - a. Not more than 0.5% of the annual incomes for the previous financial year of the licensee.
 - b. Not less than 0,1% of the annual incomes for the previous financial year of the licensee.
 - c. Not more than 10% of the annual incomes from the previous year of the transmission system operator or vertically integrated companies.
 3. The progressive fine for each day of delay, shall not exceed the value of the initial fine or the maximum value defined according to paragraph 2 of this article.
 4. The final value of the fine shall be defined as a deduction of the initial value of the fine with the value of the facilitating conditions if this last one may be applied.

Article 6

Beginning the investigation

1. Procedures for imposing and executing the fines shall be in conformity with Law no.10279, of date 20.05.2010, "On administrative offences". ERE may begin an investigation for imposing a fine, when:
 - a. It has mainly been informed for a violation;
 - b. Is informed by another licensee or interested company for a violation;
 - c. There is a reasonable suspect that the conditions of the license are violated;
2. In any case the beginning of the investigation is set with the administrator order or with ERE Board decision.

Article 7

Initial review

1. ERE may not decide to begin a procedure of imposing the fine, if the claimed/observed violation after the investigation results that has more than 6 months that it has happened.
2. In any case the technical staff who has performed the investigation, observes that one of the offences provided in article 5, shall prepare an information/report on the violation/violations observed and the proposal to begin the procedure for imposing a fine to

3. ERE Board Decision for beginning the procedure of imposing a fine to the licensee, shall be send to the licensee by ERE, within 5 working days from ERE Board decision.

4. The information for imposing the administrative measure shall contain:

- The observed violation.
- The proposed Fine Measure.
- Identity of the licensee.
- 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 official 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 a processing for imposing the 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. The review of the administrative offence is performed within 30 days from the date it is observed, but not later than 6 months after the perform of this offence.

Article 8

Defining the initial value of the fine

ERE shall define the initial value of the fine within the minimal and maximal limit set on article no.106, point 1 of the Law. The importance of the violation shall be defined according to the following criterias:

- a. circumstances of performing the offence;
- b. if the offender results to be administratively punished previously;
- c. the offence importance;
- d. the consequences coming from the action or inaction.
- e. if the offender is condemned before for the same offence

Article 9

Circumstances of performing the offence

1. For calculating the initial value of the fine the circumstances to perform the offence will be considered low, medium and high.
2. For defining the levels of the circumstances shall be considered the following Criterias;

violation;

- b. The lack of organizational models and of correct management rules aiming to prevent the violation;
- c. The efforts to hide the offence.

Article 10

The licensee with administrative condemnation

If the licensee is condemned before for violating the Power Sector legislation, is condemned before for the same administrative offence, the final administrative measure provided for the type of offence, shall be increased with 10 % of the minimum fine value for the respective criteria provided in Annex 1.

Article 11

Importance of the performed violation

1. For calculating the importance of the performed offence, they shall be considered of low, medium and high importance.
2. To define the importance of the performed offence level shall be considered:
 - a. the financial benefit realized by the licensee which shall 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 resulting from the action/inaction

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

Article 13

Facilitation from the Fine

Tirane, ERE shall consider that the licensee fulfills the conditions for facilitating the value of the fine.
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fine, when during the investigation there exist one or more circumstances as follows:

- a. in 50% measure, in cases when the violation for which is provided the fine, is notified by the licensee himself.
- b. in 1/3 measure, when the licensee actively co-operates in ERE administrative investigation process for observing the questioning violation.
- c. in 40% measure, when the licensee evidences that he has taken concrete actions to improve or eliminate the consequences caused by the violation, before or during observing the violation by ERE.
- d. shall be considered as actions which improve the market, the ones that despite the offence have influenced in the improve of service, competition and efficiency standards in the market etc.

Article 14 **Final Proposal**

1. After taking the written response from the licensee in conformity with article 7 paragraph 4 point 5 and/or according to the hearing session in conformity with article 7, paragraph 5 of this Regulation, the charged persons from ERE staff shall review the response of the licensee and any documentation, information collected during the procedure, but not later than 5 working days after receiving the response of the license, or according to the case, the last hearing session.
2. ERE Board may decide not to fine the licensee according to the technical staff proposal if evidences that the submitted facts do not prove the violation.

Article 15 **Board Decision**

1. On taking the detailed information with the data according to the above provisions of this Rule and after being informed with the licensee response, ERE Board shall decide for the penalisation or not of the licensee and the respective value of the fine.
2. By the end of the procedure for imposing the fine to the licensee, ERE shall inform the licensee for the termination of the procedure initiated to 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 Civil Code Procedure.

Neni 16 **Apelimi i vendimit**

Kundër Vendimit të Bordit të Komisionerëve për vendosje të gjobes, i licensuari mund të bëjë ankim në përputhje me Ligjin. Ankimi ndaj vendimit të ERE-s, për heqjen e licencës apo miratimit, për shkak të kryerjes së një kundërvajtjeje administrative, bëhet sipas Ligjit nr. 10279, datë 20.5.2010, “Për Kundërvajtjet Administrative”.

Dispozita të Fundit

Neni 17

Amendamente të rregullores

Këto rregulla janë objekt rishikimi dhe ndryshimi me vendim të Bordit të ERE-s në përputhje me “Rregulloren për organizimin, funksionimin dhe procedurat e ERE-s”.

Article 18

Entry into Force

This regulation and its 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 Stage; Fixing the initial value of the fine depending on the importance of the violation			
Criteria for the importance of the violation			
1. The duration of the violation and its territorial extent	25 %	Short	2 %
		Medium	6%
		Long	12 %
		Local	2 %
		Regional	4 %
		National	13 %
2. The violation influence in the function of the electricity market	25 %	Low	4 %
		Medium	12 %
		High	25 %
3. The economic benefit realized from the licensee as consequence of the violation	25 %	Low	4 %
		Medium	12 %
		High	25 %

4. Type of the licensee fault		Intentionally	25 %
	25 %	Carelessness	8 %
<p>Ind stage: Calculation of the final fine shall be according to the formula:</p> <p>$G_j = VFG_j - KL$ Where G_j = is the fine VFG_j = is the initial value</p>			
Facilitating Conditions	1. The violation for which it is defined a fine is declared by the licensee itself		50%
	2. The licensee cooperates efficiently in the investigation progress of the regulator for the offence in question		33%
	3. The licensee demonstrates that he has taken concrete actions for the improvement or elimination of the consequences that has caused the violation.		40%