

**REGULATION ON THE PROCEDURES OF ASSET TRANSFER FROM THE
LICENSEES**

FIRST PART

GENERAL PROVISIONS

Article 1

Authority

This regulation is drafted pursuant to Law no. 43/2015 article 44, “On Power Sector” Law no. 102/2015 article 29 “On Natural Gas Sector” and implementing ERE Board decisions on approving the licenses on the power, and natural gas sector and in conformity with the Regulation for ERE organization, operation and procedures, approved with decision no 96 of date 17.06.2016.

Article 2

Scope

The scope of this regulation is to define the procedure and the necessary documentation on approving the licensee requests, which submit at ERE the request for:

- a. sale, rent, transfer, mortgage, pledge or any other availability of the equipment or fix assets of the licensee, used for performing electricity generation, transmission and distribution activity.
- b. sale, rent, transfer, mortgage, pledge or any other availability of the equipment or fix assets of the licensee, used for performing the transmission, distribution and GNL (liquid natural gas) operation or natural gas deposits.

Article 3

Object

This regulation sets out the procedures applied by ERE as well as the principles for reviewing any sale, rent, transfer, mortgage, pledge or any other disposal of equipment or fix assets of the licensee according to Law No.43/2015 “On Power Sector” and according to Law no.102/2015, “On Natural Gas Sector”.

Article 4

Application

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WITH ERE BOARD DECISION NO. 119 OF DATE 21.07.2016**

- a) This regulation shall be applied for all the licensees on power and natural gas sector that request to transfer generation, transmission or distribution assets according to the definitions of respective laws
- b) On transferring the licensee assets with installed capacity under 1 MW, there is no need for ERE approval. For all the other licensees there will be required ERE approval for asset transferring when the asset amount required for transferring is larger than 1.50.000.000 ALL (one hundred fifty million).
- c) On transferring the licensee assets that operate a direct line on natural gas sector, there is no need for ERE approval.
- d) On transferring the assets with total amount less than 1.50.000.000 ALL (one hundred fifty million) or the assets that are not closely connected with the licensed activity, it is not needed ERE approval.
- e) On transferring the assets that are realized in the framework of privatization process in the public sector, this regulation will not be applied.
- f) The request for business transfer from the licensees shall be regulated according to the respective legislation in force.
- g) For the HPP-s with installed capacity under 5 MW, it is required ERE approval if the asset value that will be transferred shall be higher than 50.000.000 (fifty million)

Article 5

Definitions

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

- a) “**Power Law**” shall mean Law no. 43/2015 “On Power Sector”.
- b) “**Natural Gas Law**” shall mean Law no. 102/2015, “On Natural Gas Sector”.
- c) “**ERE Board**” shall mean ERE decision-making body, composed of five members appointed according to the procedures provided on Law no 43/2015 “On Power Sector”
- d) “**ERE**” shall mean the Regulator authority of the Power and Natural Gas Sector, that operates in conformity with Law 43/2015 “On Power Sector” and Law no. 102/2015, “On Natural Gas Sector”.
- e) “**License**” shall mean an authorisation issued to a person for performing an activity on power and natural gas sector in conformity with the provisions of electricity and natural gas law.
- f) “**Licensee**” shall mean a person that is authorized and is granted the license to perform an activity on power or natural gas sector in conformity with the provisions of Law no.43/2015 “On Power Sector” and Law no.102/2015, “On Natural Gas Sector”

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- g) “**Procedure**” shall mean the set of actions, performed to implement the legislation in force.
- h) “**Asset**” shall mean the long-term asset a material handled by the licensee and serves for realizing one of the activities licensed by ERE on power and natural gas sector.
- i) “**Day**” shall mean calendar day
- j) “**Asset transfer**” shall mean any action by which it is established a sale, rent, transfer, mortgage, pledge or any other availability of the equipment and fix asset activity of the licensee that serve to the licensed activity.
- k) “**Business**” shall mean an activity licensed by ERE for:
 - a. performing electricity generation, transfer, distribution activity
 - b. performing transmission, distribution and GNL (liquid natural gas) operation or natural gas deposits.

SECOND PART

PROCEDURES OF SUBMITTING AN ASSET TRANSFER REQUEST

Article 6

Proposal for beginning an asset transfer procedure

A procedure for asset transfer shall begin with the submission by the license holder person of a request for sale, rent, transfer or any other availability of the equipment, or fix assets of the licensee that serve to the licensed activity.

Article 7

Content of the transferring request

1. Any licensee submitting at ERE the request for asset transfer shall include in the request, on the way and form required by this regulation, the information as follows:
 1. a description of the licensee containing information on:
 - a) a summary of the licensee trading company, issued not later than 3 months from the application date
 - b) licensed activity;
 - c) the financial state of the company in the time of request submission and the expected effect on approving the asset transfer;
 - d) a description of the proposed candidate for asset transfer, that include the general information on the activity of the company involved in the transaction during the last three years and during the last year, when the company has less than three years from its establishment, the financial state;
 - e) reasons of the request for the transfer;
 - f) expected effects on transferring the licensee activity;

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g) the effect on regular and reliable supply of the licensee clients and the tariffs of the licensed activity;

h) preliminary agreement signed by the parties in one of the forms provided by law, for asset transfer.

i) written statement of the person to whom it is proposed the transfer, where shall be expressed his willingness to guarantee himself or from other parties the licensed activity after the transfer;

j-) If there has been one, the list of previously performed transfers from the same company

2. With the transfer of the assets to the person that receives them, in terms of not complying the agreement obligations, the license of the company that has transferred the assets, becomes invalid for the part of the assets that will be transferred.

3. Concessionary licensed companies that apply for approving the assets transfer shall express in a written form the assets transfer agreement, the obligations with which are charged because of the concession agreement and the parts transferred to the provider.

4. the request, information and the documentation attached to the request, shall be signed by the authorized person/persons from the company that has the power to represent the person that holds the license or of the proposed candidate.

5. If ERE Board judges necessary, may request additional information from the licensee, which shall send the required information within 8 days after receiving the notification.

6. Parts of the documentation that the licensee requires not to be disclosed for publication, shall be specified on the request for transferring, together with the reasons for doing so.

**Article 8
Request Review**

1. After reviewing the request submitted by the licensed company regarding the assets transfer, ERE Board makes the decision for beginning or not the procedures, according to ERE Practice and Procedure Rule and this regulation.

**Article 9
Verification of the documentation and additional information**

1. ERE Board may authorize one or more persons for verifying the authenticity of the data submitted by the licensee, by the site inspection.
2. ERE may require from the licensee any information or additional information that may serve Board decision making for accepting or not the request for asset transfer.

**Article 10
Deadline of request review**

1. The review of the request for asset transferring, if the licensee has fully submitted the required information and documentation, shall be completed within

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45 working days from the decision to begin the review procedures.

2. If the documentation is not sent in conformity with article 7, but it is taken the decision for beginning the review procedures, the defined deadline in point 1 of this article will begin from the day of submitting the complete required documentation required by ERE. If after taking the decision the information is not sent within 2 months, than the decision for beginning the procedures becomes void and the licensee shall submit a new request at ERE.
3. In case of asset transferring from the electricity generation company with a capacity larger than 10 Mw, or from the plants in natural gas sector with an amount bigger than 2.000.000.000 ALL the deadline defined in point 1 of this article is 60 days.

Article 11

The Principles on approving the transferr request

1. After the expiry of the deadline defined in article 7 of this regulation, ERE Board shall decide to approve or refuse the request for transfer, based on its decision and the criterias as follows:
 - a) public interest damage from the transferring;
 - b) commitment of the person to whom it is proposed to be made the transfer for continuing the licensed activity after the transfer;
 - c) if the transfer affects the financial state of the licensee as well as the person proposed for the transfer, (maintains the same level, improves or deteriorates the financial state);
 - d) if the transfer affects in improving the quality of service of the licensed activity;
 - e) if the transfer affects the service tariffs for the customers and provides benefits for them;
 - f) if the transfer affects the community economy, in the case of public companies;
 - g) if the financial and technical ability of the proposed person for the transfer, to continue with the asset operation and performing their repairs, if necessary;
 - h) the opportunity of the proposed person for the transfer to cover the financial effect on the tariff increase that may be caused by the assets transferring.

Article 12

Notice for the decision

1. By the end of the asset transfer procedure, within 5 working days, ERE shall inform the licensee on ERE Board decision and shall send him a copy of the decision
2. ERE Board decision for the asset transfer request shall be published in the Official Gazette.

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**Article 13
Court appeal**

The licensee may appeal to the court for ERE Board decision for asset transfer within 30 days from the publication of the decision in the Official Gazette.

**PART THREE
FINAL PROVISIONS**

**Article 14
Regulation amendments**

This regulation is subject of review and amendment with ERE Board decision according to ERE Practice and Procedure Rules.

**Article 15
Entry into force**

This regulation shall immediately enter into force and is published in the Official Gazette.