

# **BHUTAN ELECTRICITY AUTHORITY**



## **RULES FOR FINES AND PENALTIES**

**(2020)**

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## **PREAMBLE**

In exercise of the power conferred by section 11.1(vi) of the Electricity Act of Bhutan 2001, the Bhutan Electricity Authority hereby frames and adopts Rules for Fines and Penalties 2020 to impose fines, sanctions or penalties for breach of provisions of the Electricity Act and, regulations, standards, codes, licenses or contracts executed thereunder.

## **TITLE AND COMMENCEMENT**

1. This Rule shall:
  - (1) Be cited as Rules for Fines and Penalties 2020; and
  - (2) Come into force from 1<sup>st</sup> July 2020

## **SCOPE**

2. This Rule shall be applied for the determination of fines and penalties to a person who breaches a provision of the Electricity Act and rules, regulations, standards, codes, licenses or contracts executed thereunder. However, based on the particularities of the given case, the Authority may depart from this methodology as deemed appropriate.

## **PURPOSE**

3. The purpose of this Rule is to streamline a procedure to ensure transparency, fairness and reasonableness while imposing fines on a person who breaches provisions of the Electricity Act and rules, regulations, standards, codes, licenses or contracts executed thereunder.

## **REPEAL**

4. This Rule shall repeal the Guidelines for Fines 2011 (Punitive and Correctional) of Bhutan Electricity Authority.

## **AMENDMENT**

5. This Rule may be amended as and when deemed necessary by the Authority.

## **INVESTIGATION**

6. The Secretariat shall carry out investigations where necessary on the breaches of provision of the Electricity Act and rules, regulations, standards, codes, licenses or contracts executed thereunder, and seek an explanation and additional information if required. All information provided to the Secretariat in this regard shall be in writing.
  - (1) An investigation of the Secretariat may include but is not limited to the following:
    - (a) site visits;
    - (b) gathering of information;
    - (c) talking to Witnesses;
    - (d) internal research and findings; and
    - (e) final report compilation.
  - (2) The Secretariat shall, within a week, after the completion of the investigation report, send notice to the person at his/her registered address containing the following:
    - (a) relevant provisions of the Act, regulations, standards, codes, licenses or contracts approved by the Authority to which the breach is related;
    - (b) actions, omissions or other facts which, in the opinion of Authority constitute a breach of provisions of the Act, regulations, codes, standards, license conditions and contracts approved by Authority under this Act; and
    - (c) specified period not less than twenty days from the date of receiving this notice, within which the person shall provide any representation, objection or clarifications to the Secretariat.
  - (3) All representations, objections or clarifications received shall be considered by the Authority before providing a final decision on the breach.
  - (4) The decision on the type and extent of fines to be imposed shall be determined as soon as possible and all fines, imposed in accordance with these Rules shall be paid to Bhutan Electricity Authority within thirty (30) days from the date of issuance of compliance order unless otherwise stated.

## **METHODOLOGY FOR DETERMINATION OF FINES**

7. The Secretariat shall follow the methodology for determination of fines, as outlined

below, for the breach of any provisions of the Act, regulations, standards, codes, licenses or contracts approved by the Bhutan Electricity Authority.

**(1) Benefit Component**

The Secretariat shall first calculate the Benefit Component of the fines. The Benefit Component of fines shall be equal to the benefit accrued to the person due to a breach of provisions of the Act, regulations, standards, codes, license conditions, contracts approved by the Authority.

**(2) Gravity Component**

After calculating the benefit component, the Secretariat shall calculate the ‘Gravity Component’. The elimination of the economic benefit resulting from the breach places the person in the same position as if the person would have not committed the breach. However, both the principle of deterrence and fundamental fairness requires the penalty to include an additional amount to ensure that the person is economically worse off than if the person had complied with the laws. This additional amount shall be calculated based on the following factors:

**a) Promotion of Interest**

If the breach was committed by the person to promote interests such as to make a larger profit, it will be considered an aggravating factor while deciding on the appropriate size of fines. For instance, a person may have an economic benefit by misinforming the authorities or deciding to neglect maintenance. The 20% on Benefit Component shall be imposed if it is determined that the person is promoting their interest.

**b) Number of Violations**

The Secretariat shall assess the seriousness of the breach committed by the violators. The higher the number of provisions violated, the greater the fines shall be, as explained in **Annexure I**.

**c) Internal Control System**

A good Internal Control System shall include strict supervision, a well-established standard of operations, adequate equipment and competent staff. The fine for breach attributed to lack of Internal Control System shall be determined as outlined in **Annexure-II**.

**d) Degree of Damage**

The degree of damage caused to the person and the property, as the case may be due to the breach shall also influence the fine amount. The fines shall be determined based on the degree or type of damages caused as outlined in **Annexure III**.

**e) Repeated Offence**

If the breach is a repeated offense such as by violating the same provisions of the Act, rules and regulations, standards and codes, the gravity component may in most cases be aggravated compared to cases previously decided on. The fines for the repeated case shall be determined as outlined in **Annexure IV**

**f) Failure to Cooperate**

If the person fails to cooperate with the Secretariat during the investigation such as by obstructing the authorized person to investigate, or refusing to submit evidence and other necessary information related to the matter, the fine shall be determined as outlined in **Annexure V**.

**g) Financial Capacity**

The Secretariat shall consider the financial capability of the person in question to impose higher fine amounts to licensees and to individual persons with an objective to bring about deterrence impact as provided below:

- (1) To Licensees - As outlined in the **Annexure VI**
- (2) Individual - the Authority may impose up to a maximum of thirty times the daily National Minimum Wage.

## **APPROVAL OF FINES**

8. The Secretariat shall submit the fines as worked out in accordance with clause 7 for approval of the Authority.

## **ORDER OF COMPLIANCE AND FINES**

9. The Secretariat shall impose the fines approved by the Authority on the person through a compliance order in writing, which shall include but not limited to the following:
  - (1) a summary of the situation, including statement/comments from the person and/or other affected person involved;
  - (2) description of the specific breach of the provisions of the Act, regulations, standards, codes, license, contracts entered, etc.;
  - (3) the written decision of the Authority;
  - (4) the total fine amount along with the deadline by which imposed fines has to be paid; and
  - (5) compliance and rectifications, if any, that have to be carried out within a specified duration.

## **CONTINUATION OF BREACH**

10. Despite the issuance of the compliance order, if the person fails to comply with the compliance order issued by the Secretariat, it shall be considered a serious offense, and the Authority shall impose 10-50% of the total imposed fine amount daily till the date of full compliance.

## **APPEAL**

11. Any person not satisfied with the decision of the Authority may appeal to the Royal Court of Justice within 10 days from the date of the decision.

## **DEFINITIONS**

12. In this Rule, unless the context otherwise requires:

- (1) **“Act”** means the Electricity Act of Bhutan, 2001.
- (2) **“Bhutan Electricity Authority”** or **“Authority”** means the authority of that name established pursuant to Part 2 of the Electricity Act of Bhutan, 2001.
- (3) **“Benefit Component”** means the benefit and profit accrued through the breach with the provisions of the Act, regulations, standards, codes, license, contracts approved by the Authority and concession agreement entered between licensees and Government.
- (4) **“Breach”** means an act of violating a legal condition or obligation such as provisions of the Act, regulations, standards, codes, license, contracts approved by Bhutan Electricity Authority and concession agreement entered between the licensee and the Government.
- (5) **“Disability”** means the inability to perform a range of tasks to a reasonable standard that is considered normal for a particular job or work activity due to some physical, mental or sensory impairment.
- (6) **“Government”** means the Royal Government of Bhutan.
- (7) **“Gravity Component”** includes various loading factors on the basic fine element (that is, on the Benefit Component) to escalate the fine amount greater than the benefit accrued due to breach to deter the person from the further breach.
- (8) **“Fines”** means monetary penalties imposed by the Authority for contravening provisions of the Act, regulations, standards, codes, license, contracts approved and concession agreement entered.
- (9) **“License”** means a license issued pursuant to the Electricity Act of Bhutan, 2001.
- (10) **“Licensee”** means the holder of a license issued by the Bhutan Electricity Authority under the provisions of the Electricity Act of Bhutan, 2001.
- (11) **“Immovable Property”** means property that cannot be moved and an object so firmly attached to the land that it is regarded as part of the land.
- (12) **“Moveable Property”** means documents of title, goods, instruments, tangibles, money and securities and includes fixtures and additions but does not include building materials that have been affixed to immovable property.
- (13) **“Person”** means any individual, firm, company, association or partnership or body



of a person, whether incorporated or not.

- (14) **“Property”** includes movable and immovable property
- (15) **“Secretariat”** means the Secretariat of the Bhutan Electricity Authority established pursuant to Section 9 of the Electricity Act of Bhutan, 2001.

**ANNEXURE**

**Annexure I**

SI. No	Number of provisions violated	Percentage (%) of Benefit Component
1	Very high (above 3)	80
2	High (3)	60
3	Medium (2)	40
4	Low (1)	20

**Annexure II**

SI. No	Nature of internal control system	Percentage (%) of Benefit Component
1	Average (Partially followed)	20
2	Weak/Poor (No internal control system)	50

**Annexure III**

SI. No	Degree of damages/loss	Percentage (%) of Benefit Component
1	Death (Human)	100
2	Disability (Human)	50
3	Property/Economic values	50

**Annexure IV**

SI. No	Number of Repetitions	Percentage (%) of Benefit Component
1	First repetition	50
2	Second repetition	100
3	Third repetition	150
4	Fourth repetition	200
5	Fifth repetition	250
6	Six and above	300

**Annexure V**

SI. No	Nature of Cooperation	Percentage (%) of Benefit Component
1	Complete failure to cooperate	100
2	Partial Cooperation	50

**Annexure VI**

SI. No	Nature of damage	Amount (Nu)
1	Fatal (for every loss of human life)	500,000 per person
2	Non-fatal	200,000 per person
3	Property	100,000 per incidence