



MINISTRY OF ENERGY AND NATURAL RESOURCES

ELECTRICITY REGULATORY AUTHORITY

PENALTY RULES AND REGULATIONS

2024

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PREAMBLE

In exercise of the power conferred by Section 11.1 (vi) of the Electricity Act of Bhutan 2001, the Electricity Regulatory Authority hereby frames and adopts the Penalty Rules and Regulations 2024 to impose fines, sanctions or penalties for the breach of provisions of the Electricity Act, Regulations, Standards, Codes, Licenses or Contracts executed thereunder.

TITLE AND COMMENCEMENT

1. These Rules and Regulations shall:
 - 1) be called as Penalty Rules and Regulations 2024; and
 - 2) come into force from January 1, 2024.

SCOPE

2. These Rules and Regulations shall be applicable to all person holding license under the Electricity Act of Bhutan 2001, with the exception to exempted license holder who shall be governed by any order issued by the Authority.

PURPOSE

3. The purposes of these Rules and Regulations are to:
 - 1) deter violations by the licensees;
 - 2) ensure safe, reliable and efficient provision of electricity services; and
 - 3) ensure transparent, fair and reasonable enforcement actions by the Authority.

REPEAL AND SAVING

4. Upon adoption of these Rules and Regulations by the Authority:
 - 1) the Rules for Fines and Penalty 2020 shall stand revoked;
 - 2) it shall supersede any Rules, Regulations and Notifications issued by Authority in respect to any enforcement action; and
 - 3) notwithstanding Section 4 (2) of this Rules and Regulations, the actions taken by the Authority under the Rules for Fines and Penalty 2020 shall stand until appropriate remedies or rectifications are carried out if any by the defaulters.

AMENDMENT

5. The Authority may amend these Rules and Regulations as and when thinks fit.

GENERAL PROCEDURES

6. Acts of Violation

Any of the following shall constitute an act of Violation:

- 1) Violation of provisions of the Electricity Act of Bhutan 2001, Regulations, Rules, Standards, Codes or Procedures issued by the Authority;
- 2) Violation of any license terms and conditions issued by the Authority; or
- 3) any directives, orders, notifications and circulars issued by the Authority

7. Violation Reporting

The Secretariat shall consider violation for assessment, through any of the following mode but not limited to:

- 1) complaint filed by affected person;
- 2) voluntary self-reporting by licensees;
- 3) findings from regular monitoring and audits by the Authority;
- 4) information provided by third party;
- 5) print and social media reports; or
- 6) reporting obligations under any provisions of the Act and legal instruments issued thereof by Authority.

8. Assessment of Violation

- 1) The Secretariat shall complete assessment of the violation within one month from the date of information being received by the Secretariat by way of any mode under Section 7.
- 2) The assessment of violation shall be carried out by the Division concerned in-consultation with other relevant divisions or officials of ERA.
- 3) The Division concerned shall prepare findings based on the assessment.

9. Notification of Violation

The Secretariat shall send the findings obtained from assessment to the person at his registered address containing following:

- 1) relevant provisions of the Act, Regulations, Standards, Codes, Licenses or contracts approved by the Authority to which the breach is related;

- 2) actions, omissions or other facts which, in the opinion of the Authority constitute a breach of provisions of the Act, Regulations, Codes, Standards, License conditions and contracts approved by Authority; and
 - 3) specified period not less than twenty days from the date of receiving the notice, within which the person shall provide any representation, objection or clarifications to the Secretariat.
10. The Secretariat shall grade the violation level in line with the violation categorization under Section 13 of this Rules and Regulation after considering the objections and clarification received.
 11. The Secretariat shall determine appropriate sanctions as per Section 14 of this Rules and Regulations upon grading the violations.
 12. The Secretariat shall determine appropriate sanctions and submit to the Authority for approval.

CATEGORIZATION OF VIOLATION

13. For the purpose of accurateness and reasonableness, the violations shall be categorized as below based on the potential impact and the degree or extent of violation:
 - 1) Minor;
 - 2) Minor-Moderate;
 - 3) Minor-Major;
 - 4) Moderate;
 - 5) Moderate-Major; and
 - 6) Major.

PENALTIES

14. The Penalties imposed by Authority shall be of two types as below:
 - 1) Monetary Penalty
The penalties characterized by a financial value and it shall be determined based on the methodology outlined in Section 15 of this Rules and Regulations.
 - 2) Non-Monetary Penalty
Penalties that do not involve monetary values and shall be imposed by the Authority either in conjunction with monetary penalties or independently, contingent upon the nature of the violation committed.

DETERMINATION OF MONETARY PENALTY

15. Secretariat shall determine the Monetary Penalty in four steps as follows:

1) Step I: Assessment of Violation

The violation in question shall be assessed based on two main factors as below:

- (i) nature of impact/harm; and
- (ii) extent/degree of non-compliance or deviation from compliance.

The categorization of violation shall be based on the extent of harm caused and the substantial deviation from compliance. In cases where one factor is categorized as Major while another factor is classified as Minor, the overall violation category shall be intermediary, such as Major-Moderate or Major-Minor. The assessment of such violations shall be conducted in accordance with *Schedule 1* of these Rules and Regulations.

2) Step II: Base Penalty Amount

Upon identification of the violation category, the predetermined base amount outlined in *Schedule 2* of these Rules and Regulations shall be selected and regarded as the base penalty amount for the respective violation.

3) Step III: Financial Capacity

To discourage future violation, an extra penal amount, in addition to the base penalty amount, shall be levied on the violator, as outlined in *Schedule 3* of these Rules and Regulations. The additional penal amount shall be determined based on the violator's financial capacity, ensuring a proportionate deterrent effect (higher penalty for higher capacity, and vice versa) considering the annual net profit, asset size or project cost, whichever is applicable.

4) Step IV: Final Penalty Amount

The total penalty amount shall be the base penalty amount determined from Step II and the financial capacity assessed from Step III for the Violation category of Minor-Moderate and above.

16. Notwithstanding the Section 15(3) of these Rules and Regulations, the financial capacity shall not be considered for Minor Violation category.

17. The Monetary Penalty imposed by the Authority shall be paid within 30 days from the date of order.

18. The Licensee shall not recover the Monetary Penalties imposed by the Authority from the customers.

NON-MONETARY PENALTIES

19. The Non-Monetary Penalty consist of following:

1) Revocation or Suspension of License

The revocation or suspension of license may be considered upon fulfillment of the following conditions:

- (i) inflicts significant damage on public or private interest;
- (ii) lasts for a considerable period of time;
- (iii) takes place repeatedly of more than 3 times; or
- (iv) causes the Authority to have strong reasons to believe that the licensee may not be able to fulfill its obligation under the license issued under this Act.

2) Correctional Order

The Authority shall issue a correctional order to the violator to rectify or correct the violation committed within specified period.

3) Advisory Warning

The Authority may issue Advisory Warning to the Licensee to prevent adverse impact by the licensee's activities.

ORDER OF COMPLIANCE AND FINES

20. The Secretariat shall impose the sanctions approved by the Authority to 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/other affected person involved;
- 2) description of the specific breach of the provisions of the Act, Regulations, Standards, Codes, license, contracts entered into, etc.;
- 3) written decision of the Authority;
- 4) total fine amount along with the deadline by which imposed fines has to be paid if any; and
- 5) compliance and rectifications, if any, that have to be carried out within a specified duration.

CONTINUATION OF BREACH

21. Despite the issuance of the compliance order, failure to adhere to the directives issued by the Authority shall be deemed as Serious Offense and daily charge equivalent to fifty percent (50%) of the total imposed fine shall be applied until the date of complete compliance for those subjected to monetary penalties. In cases of non-monetary penalties, it shall lead to imposition of appropriate monetary penalty.

APPEAL

22. 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.

DISCRETION

23. In exceptional circumstances where the application of penalties as specified in these Rules and Regulations proves inadequate to achieve the intended purposes, the Authority reserves the right to deviate from these Rules and Regulations in order to determine suitable penalties.

PENALTY ASSESSMENT GUIDE

24. For better assessment and determination of appropriate sanctions, the Guide to Penalty Assessment and Determination under *Schedule 4* of these Rules and Regulations may be referred.

DEFINITIONS

25. In these Rules and Regulations, unless the context otherwise requires:

- 1) **“Act”** means the Electricity Act of Bhutan, 2001.
- 2) **“Animal”** means both domestic and wild animals.
- 3) **“Breach”** means an act of violating a legal condition or obligation such as provisions of the Act, regulations, standards, codes, license, contracts approved by Electricity Regulatory Authority and concession agreement entered between the licensee and the Government.
- 4) **“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.
- 5) **“Electricity Regulatory Authority”** or **“Authority”** means the authority of that name established pursuant to Part 2 of the Electricity Act of Bhutan, 2001.
- 6) **“Electricity Regulatory Authority Secretariat”** or **“ERAS”** means the office established under Authority in accordance with the Section 9 of the Part 2 of the Electricity Act of Bhutan 2001.
- 7) **“Enforcement”** means any actions undertaken by the Authority which includes investigation, audits and information gathering upon breach or violations committed by any person.
- 8) **“Large Licensee”** means those licenses issued by Authority to Transmit, Distribute and Supply Electrical Energy, and Construct and Generate Electrical Energy having installed capacity of more than 500 MW.
- 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 Electricity Regulatory Authority under the provisions of the Electricity Act of Bhutan, 2001.
- 11) **“MW”** means Megawatt.
- 12) **“Medium Licensee”** means those licenses issued by Authority to Construct, Generate and Operate with the installed capacity of more than 100 MW to 500 MW.
- 13) **“Official”** means Officials of Authority deputed particularly for the enforcement actions.
- 14) **“Penalty”** means any negative sanctions imposed by the Authority to a person upon contravening the provisions of Rules, Regulations, Standards, codes and license conditions issued thereof.
- 15) **“Person”** means any individual, firm, company, association or partnership or body of a person, whether incorporated or not.

- 16) **“Property”** includes movable and immovable property.
- 17) **“Sanction”** includes both monetary and non-monetary penalty.
- 18) **“Secretariat”** means the Secretariat of the Electricity Regulatory Authority established pursuant to Section 9 of the Electricity Act of Bhutan, 2001.
- 19) **“Small License”** means those licenses issued by Authority to Construct, Generate and Operate with the installed capacity of more than 500 kW to 500 MW and the System Operator.
- 20) **“Violation”** means breaching of provisions of Act, Rules, Regulations and Standards and Codes issued thereof by the Authority.

SCHEDULES

Schedule 1: Penalty Assessment

Impact or Potential Impact from Violation	Major	Moderate	Minor
	<p>The violation either presents, or has the potential to present, significant harm to human, animal, or property. Alternatively, the actions of the violator exert a considerable economic impact on consumers or any affected individuals. <i>Example: Fatality to number of human beings, irreparable damages to properties.</i></p>	<p>The violation presents, or has the potential to present, harm to humans, animals, and properties. This harm may manifest in the form of permanent disability to humans and substantial damages to properties, including animals. <i>Example: Damages little lighter than under Major category.</i></p>	<p>The violation poses, or has the potential to pose, relatively low harm to human health and incurs sustained minor damages or loss to any person's property. For instance, it may involve causing minor injuries to human life or animals and resulting in insignificant loss or damages to the property or any individual.</p>
Extend/Degree of Violation	Major	Moderate	Minor
	<p>The violator exhibits a significant departure from the stipulated regulations to an extent where a majority, or the crucial aspects, of the requirements are not met, leading to substantial non-compliance. Repeated instances of the violation would exacerbate the degree of non-compliance. For example, intentional violations or knowingly failing to comply. Repeating the same violation more than two times would further aggravate the situation.</p>	<p>The violator deviates from the regulatory requirements, although some aspects of the requirements are implemented as intended. Additionally, instances of the same violation occurring less than twice, with similar repetitions, shall be classified as a moderate deviation. For example, the violator attempted to comply with the requirements but encountered challenges, resulting in partial non-compliance.</p>	<p>The violator exhibits a partial deviation from the regulatory requirements; however, a majority or all of the important aspects of the requirements are met. For instance, there is a demonstrated effort to comply, but certain parts of the clause are still violated.</p>

Schedule 2: Base Penalty in Nu.									
Harm/Impact of Violation	Degree/Extent of Violation								
	Major			Moderate					Minor
	<i>Large licensee</i>	<i>Medium Licensee</i>	<i>Small licensee</i>	<i>Large Licensee</i>	<i>Medium Licensee</i>	<i>Small Licensee</i>	<i>Large Licensee</i>	<i>Medium Licensee</i>	<i>Small Licensee</i>
Major	1,000,000	700,000	300,000	700,000	450,000	200,000	300,000	150,000	100,000
Moderate	700,000	450,000	150,000	500,000	200,000	100,000	150,000	100,000	50,000
Minor	300,000	150,000	50,000	200,000	100,000	50,000	50,000-100,000	25,000-50,000	15, 000-30,000 ¹

¹ These base penalty amounts shall be imposed for the minor-minor penalty category. This penalty has been in range as it will not consider taking financial capacity in addition to the base penalty amount unlike other categories of violations.

Schedule 3: Financial Capacity

SI. No	Category of License	Violation Category				
		Minor-Moderate	Minor-Major	Moderate-Moderate	Moderate-Major	Major-Major
1	Large	0.05% of annual net revenue or 0.005% of asset size or project cost whichever is applicable.	0.1% of annual net revenue or 0.01% of asset size or project cost whichever is applicable.	0.2% of annual net revenue or 0.02% of asset size or project cost whichever is applicable.	0.3% of annual net revenue or 0.03% of asset size or project cost whichever is applicable.	0.4% of annual net revenue or 0.04% of asset size or project cost whichever is applicable.
2	Medium					
3	Small					

Schedule 4: Guide to Penalty Assessment and Determination

1. Violation identification

The violation shall be basically classified into three categories such as:

- (1) Major;
- (2) Moderate; and
- (3) Minor.

The violation identification table shall be referred to while categorizing the violation level for the violation in question in addition to the Penalty Assessment table above.

Table: Violation Identification

VIOLATION IDENTIFICATION
<p>1. MINOR</p> <p>The determination of minor penalties shall take into account the following conditions:</p> <ul style="list-style-type: none">1) The violation(s) resulted in relatively minor impact, causing little injury to humans, animals, and property, with no major consequences;2) The licensee did not directly or indirectly gain significant profit or avoid substantial loss as a result of the violation(s), or such gains were minimal;3) Adequate measures have been promptly taken to rectify the violation(s) and prevent recurrence;4) The violation(s) occurred within a short timeframe and is being promptly rectified by the licensees;5) The violation is unintended;6) The licensee promptly reported the violation to the Authority;7) There is no evidence indicating that the violation(s) is/are indicative of a widespread problem or weakness in the licensee's conduct of business;8) The violation has been identified as the first repetition; and9) there has been little or no disruption to customer services due to the violation.

2. MODERATE

The determination of Moderate Penalty shall take into account the following conditions:

- 1) The violation(s) do not result in major injury or damages to human and animal life;
- 2) The violation(s) occurs recurrently over more than one instance;
- 3) The act or omission of the licensee resulting in the violation(s) deviates from statutory requirements to a moderate extent;
- 4) The licensee has failed to implement appropriate remedial actions promptly and has not taken sufficient steps to rectify the violation(s) and prevent recurrence;
- 5) The loss or risk of loss caused to consumer is not significant;
- 6) The licensee could not have been unaware that its conduct would potentially result in a violation(s) of its prudential requirements;
- 7) The licensee failed to provide full information regarding the violation in question or did not cooperate fully with the Authority; and
- 8) The violation(s) were committed due to deficiencies in its internal controls.

3. MAJOR

The determination of a very serious violation shall take into account the following conditions:

- 1) The violation(s) has/have occurred over an extended period;
- 2) The licensee failed to acknowledge the occurrence of the violation(s) and implement appropriate remedial action;
- 3) The violation(s) has/have resulted in a significant loss or risk of loss to human life, animals, and properties, including substantial harm or damage;
- 4) The violation(s) has/have revealed serious or systemic weaknesses in the licensee's procedures or internal control systems;
- 5) The violation has occurred as a result of a gross misinterpretation of a legal requirement;
- 6) The violation has been committed with the intention to make a larger profit or avoid costs;
- 7) The violation(s) has/have resulted in a significant risk of disruption to customer services;
- 8) The violation has been identified as a repetitive violation more than two times;
- 9) The licensee knew that its conduct would certainly or almost inevitably result in a violation of its prudential requirements; and
- 10) The licensee prevented or hindered the ERA from obtaining information on the violation in

question.

2. VIOLATION ASSESSMENT

The violation shall be assessed considering primary factors such as:

- (1) Impact or harm caused by violation; and
- (2) The severity or extent of violation.

The evaluation of the violation in question will be conducted by considering both the impact or harm inflicted by the violation and the degree of deviation from compliance with the provisions of Acts, subordinate legislations issued by the Authority.

In the initial step, the Authority will appraise the nature of the impact or harm caused by the violation. If the harm is major, such as causing death to human beings, destruction of mass properties, and resulting in significant losses, then the impact caused by this violation will be categorized as "Major."

In the subsequent step, the Authority will assess the extent of deviation by the violator in compliance with the provisions of Acts, rules, regulations, etc.

Upon assessing the degree or extent of deviation from compliance by the violator, if the deviation or non-compliance involves sheer negligence, demonstrates an intention to violate, and the violator has not taken any steps to prevent the violation despite being aware of it, then the intention to violate has been established. In such a case, the violation shall be categorized in the "Major" category for the extent of deviation. In both factors, the category of violation has been graded under the Major Category, and it shall be considered a Major violation. The base penalty amount prescribed under the Major category for both factors (Harm & extent of deviation) shall be taken into consideration.

In case the impact has been huge such as causing death to human and causing significant damages to properties but the extent of violation has been insignificant (*the violation happened due to natural calamities where it is beyond the control of licensee or the licensee has undertaken appropriate measures to correct the default*) then the extent of deviation from compliance falls under minor category though under the impact or harm category of factor, it is graded under the Major category. Accordingly, the base penalty amount falling under the two categories (major-minor as given in Schedule 2) shall apply.

In order to assess the violation accurately and fairly, the violation shall be further classified into various levels as below:

- (1) Major-Major;
- (2) Major-Moderate;
- (3) Major-Minor;
- (4) Moderate-Moderate;
- (5) Moderate-Minor; and

(6) Minor-Minor.

Considering the violation identification conditions, the exact violation category shall be determined based on the violation combination table below:

Table: Violation Combination			
Harm/Impact of Violation →	Degree/Extent of Violation ↓		
	Major	Moderate	Minor
<i>Major</i>	Major-Major	Major-Moderate	Major-Minor
<i>Moderate</i>	Moderate-Major	Moderate-Moderate	Moderate-Minor
<i>Minor</i>	Minor-Major	Minor-Moderate	Minor-Minor