

BHUTAN ELECTRICITY AUTHORITY

GUIDELINES FOR FINES

(PUNITIVE AND CORRECTIONAL)

PURSUANT TO ELECTRICITY ACT OF BHUTAN

2001

1. Background

One of the functions of the Bhutan Electricity Authority is to impose fines, sanctions or penalties for any breach of provisions of the Act, regulations, standards, codes, licences or contracts to be approved by the Bhutan Electricity Authority and concession agreements entered into between Licensees and the Government as per the Section 11.1 vi), Part 2, of the Electricity Act of Bhutan, 2001.

Therefore, the Bhutan Electricity Authority hereby establishes the Guidelines for the imposition of fines to the Licensees for violations of provisions of the Act, regulations, standards, codes, licences, licence condition, contracts approved or directives issued by the Bhutan Electricity Authority, and concession agreements entered into between Licensees and the Government.

Rights and obligations of Licensees are defined in the provisions set forth in the Electricity Act of Bhutan, 2001 and appropriate regulations in force, and may not be deduced from or imposed through procedures and routines set forth in the Guidelines.

2. Definitions

“**Act**” means the Electricity Act of Bhutan, 2001.

“**Bhutan Electricity Authority**” or “**Authority**” means the authority of that name established pursuant to Part 2 of the Electricity Act of Bhutan, 2001.

“**Correctional fines**” means fines imposed together with an order of correction or rectification. The purpose of such fines is to create a legal situation and the fines will cease to exist when the violation has been stopped, corrected or rectified.

“**Day**” means all days including, Saturdays, Sundays and public holidays.

“**Licence**” means licence issued pursuant to the Electricity Act of Bhutan, 2001.

“**Licensee**” means the holder of a licence issued by the Bhutan Electricity Authority under the provisions of the Electricity Act of Bhutan, 2001.

“**Ngultrum**” means currency of Bhutan.

“**Punitive fines**” means fines imposed for violations made in the past that do not take into account amendments or rectifications made by the Licensee.

“**Sanction**” means negative reaction, including fines and penalties issued by the Bhutan Electricity Authority, which is connected to committed violation(s) of provisions of the Act, regulations, codes, standards, licences, contracts approved or directives issues by the Bhutan Electricity Authority, concession agreements entered into between Licensees.

“**Secretariat**” means the Secretariat of the Bhutan Electricity Authority established pursuant to Section 9 of the Electricity Act of Bhutan, 2001.

“**Violation**” means violation(s) by the Licensees of the provisions of the Act, regulations, standards, codes, licences, licence condition, contracts approved or directives issued by the Bhutan Electricity Authority, and concession agreements entered into between Licensees and the Government.

3. Purpose

The purpose of the Guidelines is to assist the Bhutan Electricity Authority in handling cases related to imposition of sanctions - both punitive as well as correctional - for any non-compliance by the Licensees with the provisions of the Act, regulations, standards, codes, licences, licence condition, contracts approved or directives issued by the Bhutan Electricity Authority, and concession agreements entered into between Licensees and the Government. The Guidelines shall assist the Bhutan Electricity Authority to assess the extent and degree of seriousness of the violation at hand.

4. Scope

The Guidelines shall apply to all cases where the Bhutan Electricity Authority handles cases involving licences granted under the Electricity Act of Bhutan 2001.

5. Commencement

The Guidelines shall apply from the day it has been approved by the Authority.

6 General

6.1 The Secretariat shall carry out investigations where necessary on the violation in such a manner that the Licensee is able to present an explanation and supply additional information, if required. All information provided shall be in writing, unless given directly to designated staff within the Secretariat. An investigation of the Secretariat may include but not limited to the following:

6.1.1 Site visits; and

6.1.2 Gathering of information from:

6.1.2.1 Witnesses;

6.1.2.2 Licensee; or

6.1.2.3 Other affected parties.

6.2 The Secretariat shall within a reasonable period of time after the investigation, send notice to the Licensee at his registered address containing the following:

6.2.1 Relevant licence condition or requirement under this Act, regulations, codes, standards or directives issued under this Act to which the breach of the Licensee is related;

6.2.2 Actions, omissions or other facts which, in the opinion of the Bhutan Electricity Authority, constitute a contravention of the licence condition or requirement under this Act, or regulations, codes, or standards made under this Act; and

6.2.3 The period, not less than twenty days from the date of receiving this notice, within which the Licensee has to provide any representation, objection or clarifications to the Secretariat.

6.3 All representation, objections or clarifications received shall be considered before providing a final decision on the violation.

- 6.4 The Secretariat may decide the punitive fine for cases limited to Ngultrum 1,00,000.00, without the prior approval of the Bhutan Electricity Authority.
- 6.5 In cases where the proposed punitive fine is above Ngultrum 1,00,000.00 the Secretariat, shall submit its findings and propose a fine to be decided by the Authority.
- 6.6 The decision on the type and extent of sanction to be imposed should be made as soon as possible.
- 6.7 When handling cases the Bhutan Electricity Authority shall at all times ensure its functions are performed in a manner that coincides with Section 12 of the Act.
- 6.8 The Bhutan Electricity Authority shall impose fines which are similar in similar cases and ensure that the fines imposed are proportionate.
- 6.9 The Secretariat shall ensure that the sanctions imposed including stopping of activities deemed to be illegal, carrying out of corrective measures, and payment of fines are carried out by the Licensee.
- 6.10 Additional separate sanction(s) may be levied upon the Licensee's failure to initiate corrective action, or take other measures, as ordered by the Authority.
- 6.11 All fines, imposed in accordance to the Guideline for violations of the Act, regulations, standards, codes, licences, licence condition, contracts approved or directives issued by the Bhutan Electricity Authority, and concession agreements entered into between Licensees and the Government shall be payable to the Bhutan Electricity Authority within thirty (30) days from the date of issuance of order of the Bhutan Electricity Authority unless otherwise stated.

7. Determination of Punitive Fines

- 7.1 Punitive fines may be imposed to a Licensee violating the provisions of the Act, regulations, standards, codes, licences, licence condition, contracts approved or directives

issued by the Bhutan Electricity Authority, and concession agreements entered into between Licensees and the Government.

- 7.2 When determining punitive fines, the Bhutan Electricity Authority shall try to the extent possible map the licensee's accrued benefit from the violation in question. Special attention shall be provided to the fact that it shall not be beneficial to violate the provisions of the Act, regulations, standards, codes, licences, licence condition, contracts approved or directives issued by the Bhutan Electricity Authority, and concession agreements entered into between Licensees and the Government.
- 7.3 When the violation is adequately assessed with reference to the Licensee's accrued benefit, the fine shall be set to amount which is greater than the profit to serve the punitive motive. The fine to be imposed will comprise of a base amount with the addition of the punitive element. The base fine shall be equal to the licensee's benefit, while the punitive element of the fine will be determined based on the factors/principles mentioned in the Section 7.4 of the Guidelines.
- 7.4 The following factors may be considered by the Bhutan Electricity Authority to determine the appropriate level of punitive element.
- 7.4.1 Promotion of Interest of Licensee: If the violation was committed by the Licensee to promote the licensee's interests such as to make a larger profit, it will be considered an aggravating factor while deciding on the appropriate size of fine. For instance, a Licensee may have an economic benefit by misinforming the authorities or decide to neglect maintenance.
- 7.4.2 Seriousness of the violation: The violation made by the Licensee which conflicts with moral ethics will have to be regarded as serious violation. Immoral actions of the Licensee should contribute to a larger punitive element. However, if the Licensee has tried to minimize the potential damage with best effort to avoid violation, this will serve as an aspect to reduce the imposed fine.

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- 7.4.3 Internal Control System: If the Licensee has a good internal control system, for example, regular monitoring exercises or appropriate training of staff etc, despite which the violation has occurred, then the punitive element would be expected to be reduced. On the other hand, weak or no efforts from the Licensee to prevent such violation will be considered an aggravating factor.
- 7.4.4 Negligence of Licensee: The degree of negligence of the Licensee on the committed violation will also determine the level of the punitive fines. Lower levels of negligence may result in a smaller punitive element than negligence closer to intent.
- 7.4.5 Degree of Damage: The potential degree of damage caused to (i) Licensee's personnel and property, and (ii) to the third party (life or property) if any, due to the violation shall also influence the size of the fine amount. If the damages are larger than it was possible for the licensee to predict, the size of the fine to be imposed may be reduced. Situations beyond the control of the Licensee shall be taken into consideration and recognize this as a factor that may reduce the punitive element.
- 7.4.6 Repeated Offence: If the violation is a repeated offence, the punitive element may in most cases be aggravated compared to cases previously sanctioned or decided on. It may also be relevant to consider other violations incurred by the Licensee in question, and a case may be treated as a repeated violation even though it is not a violation of the same Licence Condition or provision(s).
- 7.4.7 Financial Capacity of the Licensee: The financial capacity of the Licensee in violation shall also be taken into consideration while deciding the appropriate size of fine. The matter of proportionality, that is, larger fine for Licensee with larger financial capacity and vice-versa, has to be considered in order to create deterrent impact to the Licensee. If the licensee is a subsidiary company, the financial capacity/situation of the whole company shall be considered.
- 7.5 The Bhutan Electricity Authority may waive or reduce any punitive fine for which successful corrective activities were initiated and implemented by the Licensee before the

violation became known to the Bhutan Electricity Authority. Such activities of Licensee may include remedial procedures put in place to assure that the violation does not occur again.

- 7.6 A decision in writing to impose a punitive fine shall include the followings, but not limited to:
- 7.6.1 A summary of the situation, including comments from the Licensee or other interests involved;
 - 7.6.2 Description on the specific violation(s) of provisions of the Act, regulations, standards, codes, licences, licence condition, contracts approved or directives issued by the Bhutan Electricity Authority, and concession agreements entered into between Licensees and the Government;
 - 7.6.3 Written decision of the Bhutan Electricity Authority including its considerations and evaluations; and
 - 7.6.4 Statement on the time limit for payment of imposed fine.

8. Determination of Correctional Fines

- 8.1 When the Bhutan Electricity Authority is considering the size of a correctional fine, it shall take into consideration the following:
- 8.1.1 The fine shall be set at a level which is not beneficial for the Licensee to ignore the correctional orders issued by the Bhutan Electricity Authority;
 - 8.1.2 It should be unprofitable for the Licensee to remain passive in respect to the said violation and orders issued by the Bhutan Electricity Authority.
- 8.2 The correctional fines shall be imposed on a daily basis from a given date and are valid until the correction/rectification of the violation(s). The correctional fine may in most cases not be imposed before the Licensee has had adequate time to follow the orders issued by the Bhutan Electricity Authority.
- 8.3 The correctional fines shall be fair and proportionate and may be worked out as follows:

- 8.3.1 If the Bhutan Electricity Authority finds, through its investigations, that cost of rectification or benefit accrued due to violation is Nu.100,000.00 and that the Bhutan Electricity Authority anticipates Licensee to complete the rectification work within 20 days, the correctional fine could be set at Nu. 5000 per day (that is, 100000/20).

9. Order of Compliance

The order of compliance shall mention a reasonable time limit for rectification of the violation including but not limited to the following:

- 9.1 Statement of the specific violation of provisions of the Act, regulations, standards, codes, licences, licence condition, contracts approved or directives issued by the Bhutan Electricity Authority, and concession agreements entered into between Licensees and the Government;
- 9.2 Commencement of the violation;
- 9.3 Statement on the summary of the situation, including comments from the Licensee or other interests involved;
- 9.4 Written decision of the Bhutan Electricity Authority, including its considerations and evaluations; and
- 9.5 Statement on the time limit for payment of imposed fine, if any.

Approved in the 25th Commission Meeting of the Bhutan Electricity Authority held on April 7, 2011.

(Dasho Sonam Tshering)
Hon'ble Chairman

(Karma Tshering)
Member Secretary