

## DISPUTE RESOLUTION

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## General overview

### EU legal framework

Treaty establishing Energy Community (2006)  
Directive 2003/55/EC on internal market in natural gas

### Serbian legal framework

Energy Law (2004)  
General Conditions for Natural Gas Delivery (2006)  
AERS' Methodology for determination of criteria and determination of costs for connection on system for transportation/distribution of natural gas (2006)  
Law on General Administrative Procedure (1997)  
Law on Administrative Litigation

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## EU legislation

**Art. 25** "...Any party having a complaint against TSO or DSO, LNG, with respect **connection and access to networks**, may refer the **complaint to the regulatory authority** which, acting as a **dispute settlement authority**, shall **issue a decision** within two months after receipt of complaint... Such decision shall have binding effect unless and until overruled on appeal".

**Art. 21** "...Member States shall ensure the implementation of the TPA to transmission/distribution system based on published tariffs..."

...MS shall apply objectives of fair and open access, in accordance with the relevant legal instruments, with the goal of achieving competitive market.

...TSO/DSO may refuse access where it lacks the necessary capacity or lack of connection, where duly substantiated reasons for refusal shall be given for such a refusal."

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## Serbian Energy Law - Main features of Dispute Resolution

AERS - dispute settlement body  
shall decide within 60 days upon complaints received against TSO/DSO if requests for connection and access to network have been denied

! Energy Law does not contain special procedural provisions for dispute resolution on such appeals

- AERS' dispute settlement is generally limited on monitoring the **legality of acts and activities**

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## General Conditions on Natural Gas delivery

- Prescribes:
- necessary requirements for granting connection to t/d system
- minimal content of TSO/DSO decision
- Request for Connection to T/D system is granted to:
  - new infrastructure,
  - increase of capacity engaged on existing connections
  - separation from/fusion with the existing connection
  - reconnections after final disconnection

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Law on General Administrative procedure (LGAP)

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## Law on General Administrative Procedure-LGAP

- Process both the energy entity (first instance) and AERS (second instance).
- Due process (lodging of the dispute, establishment of facts, form of decision).
- Timeframe for decisions - 60 days from the submission of the appeal.

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## Connection Dispute Resolution (First Instance Procedure) - LGAP

The host of PROCEDURAL ACTIVITIES set by LGAP are performed in

First instance by TSO/DSO

procedural activities:

- inquires
- public hearing
- technical reports
- etc.

LGAP guiding principles:

- principle of truth
- hearing of app. party
- principle of legality, etc.

FACTS are to be determined as "decisive facts" on the basis of all procedural activities performed

Finally, application of 'MATERIAL LAW'  
Energy law, General Codes, Methodologies

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## Connection Dispute Resolution (First Instance Procedure) - LGAP

In case that:

- procedural activities are not preformed at all or preformed incorrectly or
- facts are not sufficiently determined
- material law is not adequately applied

AERS shall **annul TSO/DSO' decision** and order **repetition of procedure**

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## Connection Dispute Resolution (Second Instance Procedure)

On ES' decision - appeal within **15 days**

AERS, acting as an appellate authority, shall, generally:

- 1) **change** the first instance decision
- 2) **annul** decision
- 3) **reject appeal**

If the party omits the deadline of 15 days for appeal submission, AERS, acting *ex officio*, may use extraordinary remedies, (e.g. AERS may declare the first instance decision as null and void, when the decision is delivered on the basis of wrong application of the material law)

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## Connection Dispute Resolution (Litigation)

### Supreme Court

*Process conducted in accordance with Law on Administrative Litigation (App. Party/State Attorney vs. AERS)*

-Petition to the Supreme Court of Serbia - within the 30 days

Public hearings are not compulsory, and rarely conducted by the SCS

If the Court accept the petition, the AERS decision is annulled and the Court usually orders the repetition of the administrative procedure

- In most exceptional cases, the Court may accept petition and change AERS decision, which rarely happens

In case the Court rejects the petition, AERS decision becomes final

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## Types of disputes

-Disputes against distributors/transporters alleging failures of service, wrong metering or billing, etc

- Advise on solution

-Informal decision

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## Types of disputes

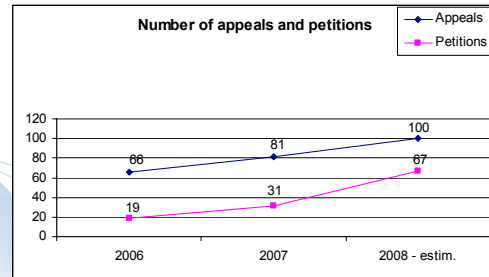
The connection dispute incidents AERS is dealing with are increased.

AERS made decisions

- In 2006. upon 66 appeals and 19 petitions (95% electricity and 5% gas)
- In 2007. upon 81 appeals and 31 petitions (84% electricity and 16%)
- Since the beginning of 2008 there were more than 60 appeals and 40 petitions

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## Types of disputes - graph



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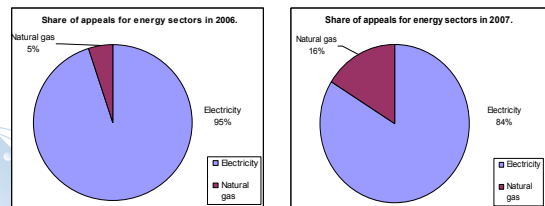
## Types of disputes

- Refusal of third party access.
- Energy Law and LGAP
- TSO/DSO obliged to allow fair and open access, in accordance with the goal of achieving a competitive market
- TSO/DSO may refuse access from technical reasons

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## Types of disputes

Share of appeals when compared to total number of submissions in 2006. and 2007.



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ENERGY AGENCY OF THE REPUBLIC OF SERBIA

***Thank you for your attention!***

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