



# **STATE ENERGY REGULATORY COMMISSION**

## **REQUIREMENTS BY LAW REGARDING ADMINISTRATIVE RULES TAKEN BY THE COMMISSION**

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**legal expert in the SERC**

March, 1-5

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## **LAWS WHICH GOVERN THE DECISION MAKING PROCESS OF THE REGULATOR**

**The statutes basically applied in regulatory activities are:**

- Energy Act from 9.12.2003
- Administrative Procedure Act from 1979
- Administrative Offences and Penalties Act from 1969
- Supreme Administrative Court Act from 1997

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## **EXTENT OF THE REGULATOR'S JURISDICTION**

**There are two main types of administrative rules issued by the SERC:**

- general administrative acts affecting undefined number of parties, creating certain rights and obligations for each party ;
- individual administrative acts affecting only a certain party/ies, defined in the act.



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**Third type, which are not adopted but proposed by the SERC**

**Under the new Energy Act six by-laws on regulation are to be adopted by the Council of Ministers:**

- two ordinances on prices of heat and gas ( the ordinance on prices of electricity was adopted on 12.02.2004 )
- an ordinance on licenses
- a decree for the adoption of a tariff on license fees
- statutes governing the organization and the activity of the Commission containing mainly procedural rules

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## **GENERAL ADMINISTRATIVE ACTS**

**Currently under preparation are the following general administrative acts:**

- Power Market Rules
- Rules of Access to Electricity and Gas Transmission Networks
- Rules of Access to Electricity and Gas Distribution Networks
- Technical Rules for the networks
- Supply of consumers with electricity, heat and natural gas (quality of service)
- Power Metering Rules
- Separate Account Rules

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## **INDIVIDUAL ADMINISTRATIVE ACTS**

### **Decisions of the SERC**

- on files formed by applications/complaints

### **Exceptions:**

- decisions on ordinance drafts adopted by the Council of ministers
- decisions setting the main policies and practices of the SERC
- other decisions connected with SERC's authority given by the law

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## **APPEALING AGAINST THE REGULATOR'S DECISIONS**

**All decisions of the SERC can be appealed against**

### **Eligible to appeal:**

All parties who have legal interest to appeal a particular decision, i.e. whose rights and obligations are affected by the administrative act

### **These are:**

- parties who took part in the decision-making process
- parties who have not interfered in the decision-making process or haven't had the right to, yet meet the upper requirement
- the Chief Prosecutor or his Deputy to The Supreme Administrative Court representing the state's interests

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## **BASIS FOR APPEALS ARE THE FOLLOWING FIVE REASONS**

- 1. Lack of competence**
- 2. Non-compliance with the established form (prescribed requisites)**
- 3. Abuse of administrative procedure rules**
- 4. Contradiction to the provisions of the material law**
- 5. Non-conformity with the objectives of the law**

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## COMPETENT COURT

- SERC decisions are appealed before the Supreme Administrative Court - Panel of three judges. The decisions of the latter are not final. Their decisions might be subject to cassation before a Panel of five judges of the Supreme Administrative Court
- SERC Penal Ordinances are appealed before the District Court. The decisions of the latter are subject to cassation before the County Court

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## **APPEALING PROCEDURE**

- The complaint or the protest is filed with SERC within 14 days after receipt by the party of the appealed act or after being aware of its issue if a receipt wasn't made
- Within three days from such filing SERC must send the whole file to the Supreme Administrative Court, applying its own statement and notify the person who has filed the complaint

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## MAJOR PRINCIPLE

- general administrative acts - a complaint or a protest does not suspend the implementation of the appealed administrative act, unless the court orders the opposite
- individual administrative acts - a complaint or a protest suspends the implementation of the appealed administrative act, unless the court orders the opposite



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## **POWERS OF THE COURT**

### **The Court may:**

- repeal completely or partially the administrative act and send the file to the SERC for reconsideration in compliance with the mandatory instructions of the Court, concerning only the interpreting and applying the law
- declare the administrative act null and void
- turn down the complaint when it is not justified

### **Exception:**

The Court may modify the appealed administrative act only when SERC Penal Ordinances are appealed. The modification affects the severeness of penalty imposed by the SERC



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## **PROBLEMS CONCERNING THE PUBLIC HEARING PROCEDURE INTRODUCED BY THE NEW ENERGY ACT**

### **Field of application**

- the issue of general administrative acts
- solving problems of public significance in the energy sector

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## **DIFFICULTIES TO APPEAR**

- wide range of parties eligible to participate in the procedure
- lack of requirements by law concerning the procedural rules of the hearing – they must be set by the SERC
- what should be the final statement of the regulator content – should it analyze all the filed statements considering the large number of participants

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**THANK YOU**

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