

## **PROCEDURES**

### **OF PRESENTATION OF FINANCIAL GUARANTEES, NECESSARY TO GET AN OPERATION LICENSE IN THE POWER SECTOR**

#### **General Provisions**

These Procedures shall regulate the order and procedure of presenting financial guarantees to the Energy Regulatory Commission (ERC) of the Republic of Armenia (RoA) by companies that are engaged in the construction of electric plants and in production constructions within the energy sector.

1. The Licensees shall be required to present to the ERC financial guarantees to carry out the Licensed Activity, in compliance with Article 36 of the RoA Energy Law and the License provisions provided by that Article.
2. As a financial guarantee, the ERC shall consider the certain sum, computed and formulated in compliance with these Procedures and presented to the ERC by the entity who has applied to the ERC for the acquisition of a Production Construction License in the energy sector, as a display of the readiness and ability to observe the License provisions.
3. The estimated/projected cost of the (production) construction, based on technical and economic justifications, will serve as a basis for the calculation of financial guarantees for the Licensees.
4. The amount of the financial guarantees (the Sum) shall be defined as 1% of the estimated/projected cost, not to exceed \$100,000 or the equivalent in Armenian drams or other freely convertible currency.
5. The Licensee shall then deposit the Sum (either in cash or otherwise) calculated consistently with these Procedures, in a special account in the Central Bank of Armenia or, in coordination with the ERC, another reputable bank. A Receipt from the bank shall be presented to the ERC, along with an original copy of a Depository Contract.
6. It is obligatory that the Depository Contract include, at the minimum, the following items:

- a) The specification of the responsibilities of the bank and the Licensee regarding the prohibition of withdrawal of funds from the Deposit Account without the ERC's corresponding resolution or authorization in writing)
  - b) Upon written notice from the ERC, the bank shall assume the obligation to transfer the Sum of the financial guarantee to the RoA State Budget as a form of financial penalty, if the Licensee fails to fulfill his License obligations in an appropriate manner and within the time period specified in the ERC resolution.
  - c) The bank shall be responsible and a guarantor for all further deposits and transfers into and out of the Depository Account.
  - d) The term of deposit should be consistent with the effective period of the License.
7. The Depository Contract and the Receipt shall be presented to the ERC no later than 10 working days of the Commission's resolution on the issuance of the License.
  8. Following the issuance of the resolution, but prior to the presentation of the Depository Contract and the Receipt, the Licensee shall be acting in the status of an Applicant, in accordance with the Licensing Procedures for Activities in the Power Sector approved by the ERC. Until then the corresponding License will not be registered with the Commission.
  9. If, in the course of construction, the actual cost of construction turns out to be significantly different from the estimated/projected one, the Licensee shall be required to notify the ERC about that. In the above instances the ERC shall be authorized to issue a corresponding resolution, including the adjustment of financial guarantees.
  10. The interest accrued on the Sum in the Depository Account may be freely controlled by the Licensee, and shall not be considered as a financial guarantee, as provided by the contract.
  11. If the Licensee completes its License obligations in a timely and orderly manner, upon written request of the Licensee the ERC shall issue a corresponding resolution to release the financial guarantee to the Licensee.
  12. In the instances when there is a possibility that the License provisions may not be carried out in a timely manner for objective reasons, and the amount of the financial guarantee will presumably be needed for the proper execution of the License provisions, the ERC may take an exclusive measure by authorizing the premature release of the financial guarantee to the Licensee, in accordance with the Licensee's petition, if at least 50% of the scheduled work volume has been accomplished.

13. No financial guarantees specified in these Procedures shall be required if, in order to acquire a License, the Licensee presents to the ERC a budgetary guarantee issued by the RoA Government.
14. In order to be issued an Operation License, in lieu of the establishment of a Depository Account, the Licensee can also present an Irrevocable Letter of Credit (ILOC) to serve as a financial guarantee from any reputable bank, investment fund, insurance or other financial organization, and formulated in accordance with international practices. With the ILOC the guarantor shall assume the obligation (upon a corresponding ERC resolution) to transfer the Sum, calculated consistently with these Procedures to the RoA State Budget as a financial penalty in instances when the Licensee partly or totally fails to fulfill its License obligations.

In the above instances the ERC shall closely consider the matter at one of the Commission meetings and issue a corresponding resolution on accepting or rejecting the ILOC as a financial guarantee.