



АГЕНЦИЈА за ЕНЕРГЕТИКУ
РЕПУБЛИКЕ СРБИЈЕ

GAS NETWORK CONNECTION

First and Second Instance

Decisions on

Connection Application

October 2009

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INTRODUCTION-

Legal framework and procedure

Legal framework (Energy law – Official Gazette of the Republic of Serbia, No. 84/04, APA - OG of RS, No. 33/97,31/01; Law on State Government, OG of RS, No.79/05,101/05, Decree-OG of RS No. 47/06, Connection Charging Methodology – OG of RS No. 18/07,48/08 and 54/08)

Decide an application - entrusted state administrative tasks (person with professional examination passed)

Decide a connection – administrative decision

Procedure for adoption - prescribed by APA*

Instruction on legal remedy - appeal

Decision on appeal – Agency

* Administrative Procedure Act

Decision on application for connection – first instance procedure

Competent authority-energy entity-Article 51 of the Law

Request – legal or physical person-Article 4 of the Decree

Connection approval-Article 52 of the Law, Article 6 of the Decree

Natural gas sale contract-Article 10 of the Decree, Article 57 of the Law

- Request for gas supply – Article 11 of the Decree

Decision on natural gas supply-Article 12 of the Decree

Decision on application for connection - second instance procedure

Competent authority-AERS –Article 51 of
the Law and Article 7 of the Decree

Appeal against decision within 15 days after
submission of decision

• Appeal because of a so called “silence of
administration”

Final decision

Administrative procedure

Reasons to appeal-Serious violation of procedure rules

Serious violations of procedure rules that can take place in practice :

- Violation of the hearing principle – Article 9 of APA
- Misapplication of provisions of Articles 139-148 of APA – oral arguments
- Misapplication of provisions of Articles 184-188-inspection
- Acting contrary to provision 64-68 of APA - protocol
- Acting contrary to provision 71-77-submission
- Acting contrary to provision of APA regulating the time frame for the decision-making authority to act

Reasons to appeal-serious violation of procedure rules

- Violation of the hearing principle – Article 9, in connection with Article 133 of the Administrative Procedure Act. Connection approval cannot be granted under expedited procedure (Article 131 of APA), but a separate inquiry procedure must be carried out (Article 132 of APA). As the nature of legal matters requires on-site inspection for applications for connection, a time shall also be set for oral arguments in accordance with Article 139 of APA;

Reasons to appeal-serious violation of procedure rules

Under connection procedure, it is always necessary to undertake inspection for finding of facts that are significant for resolving administrative matters; therefore, according to Article 139 of APA **oral arguments must be set**

Oral arguments are taking place not only to hear parties but also to hear witnesses and court experts

Reasons to appeal-serious violation of procedure rules

To clear up significant circumstances associated with the network state and meeting technical conditions for connection, **on-site inspection** in the context of Article 184 of APA must take place in the procedure of gathering proof

The applicant has the right to be present at the inspection and his attendance is assured by regular invitation request

Reasons to appeal-serious violation of procedure rules

- Acting contrary to provisions 64-68 of APA – contents and method of making written records of significant actions during the procedure – record on oral arguments, record on inspection (the record must be clear and legible, it must contain all the mandatory parts and facts significant for deciding an application);

Reasons to appeal-serious violation of procedure rules

- The case files must contain confirmations of receipt, administrative decision, and other submissions in the procedure (mandatory submission in person – Article 77 of APA);



Reasons to appeal-serious violation of procedure rules

The first instance authority must:

- Decide a connection within 30 days after the receipt of a full application –Article 208, paragraph 1 of APA,
- submit an appeal with case files to the second instance authority within 15 days after submission of appeal –Article 228, paragraph 1 of APA

Reasons to appeal-

Misrepresented factual circumstance by omission or inaccuracy

- Any facts and circumstances significant for issuing a legal and proper decision (decision-making facts) must be determined in a correct and complete manner during preliminaries to deciding the application— Article 8 of APA – the truth principle.

Reasons to appeal-

Misrepresented factual circumstance by omission or inaccuracy

- Considering the contents of the connection approval (Article 53 of the Energy Law and 6 of the Decree on Conditions of Natural Gas Delivery), the relevant facts are facts which form the prescribed content of the decision.

Reasons to appeal-

Misrepresented factual circumstance by omission or inaccuracy

With a view to fact-finding, it is necessary to :

- carry out on-site inspection and inspect the state of the distribution/transmission network nearest to the applicant's facility
- Provide for protection of applicants' rights and legal interests – familiarize them with fact-findings and enable them to participate in deriving evidence (Article 125 of APA).

Reasons to appeal-

Misrepresented factual circumstance by omission or inaccuracy

Negligence of authorities with regard to fact-finding forms the basis for revoking decisions within the meaning of Article 232 of APA.



Reasons to appeal-

Misapplication of substantive law

- Energy Law (“Official Gazette of the Republic of Serbia” No. 84/04)
- Decree on Conditions of Natural Gas Delivery (“Official Gazette of the Republic of Serbia” No. 47/2006)
- Law on Planning and Construction (“Official Gazette of the Republic of Serbia” No. 72/09 and 34/06)
- Natural Gas Transmission and Distribution Connection Charging Methodology Official Gazette of the Republic of Serbia, No. 18/07,48/08 and 54/08),
- Technical regulations (Codes)
- Other regulations on a case-by-case basis (mainly when assessing active legal capacity) – Law on Foundations of Property Legal Relations, Law on Residential Buildings Maintenance etc.
- VAT Law (“Official Gazette of the Republic of Serbia” No. 84/2004, 86/2004, 61/2005 and 61/2007) - not applicable during administrative procedure but rather when invoicing connection charges after deciding a connection.

Reasons to appeal- Misapplication of substantive law

Value added tax is calculated according to the VAT Law as a revenue in the budget of the Republic of Serbia, and is part of the invoice send out in accordance with Article 42 of the same law.

Determining VAT in the connection approval is against the VAT Law and provision of Article 53, and in connection with Article 55 of the Energy Law (VAT is not a cost of connection within the meaning of the Methodology)

Decision on connection

Decision components (Article 196, para. 3 of APA)

MANDATORY COMPONENTS:

- Introduction (Article 197 of APA)
- Dispositive / statement of decision (Article 198)
- Statement of reasons (Article 199)
- Instruction on legal remedy (Article 200)
- Name of the authority issuing decision, date and number of decision, signature of the person in charge and stamp, or facsimile only (Article 196, para. 3 of APA)

Where a mandatory component is missing from the decision, it is considered a serious violation of procedure rules forming the basis in the context of Article 232, para. 2 of APA to revoke the decision under appeal procedure, which the second instance authority shall deal with.

Decision on connection

1. Introduction (Article 197 of APA)

Introduction content:

- Name of the authority in charge of deciding
- Regulation on remit of the authority in charge
- Name of the applicant and the applicant's attorney or representative (if any)
- Case of procedure – short designation of the matter in question: administrative matter on issuing an approval for connection
- Indication of the act authorizing the person to conduct an administrative procedure and to issue a decision.

Decision on Connection

Introduction to decision on application for connection (1)

- Only articles of the law specifying the remit of the first instance authority to issue decision shall be indicated in the introduction of the Decision approving connection, e.g.:
 - Article **51-52** of the Energy Law (always)
 - and
 - adequate Article of the Administrative Procedure Act.

Decision on Connection

Introduction to decision on application for connection (2)

- The decision is issued on the basis of the following Articles of APA:
- Article **192 of APA**, where the first instance authority issues the decision on approving connection, also where it rejects the application for connection because, e.g. energy/technical conditions have not been met, or owing to other reasons preventing an application for connection from being accepted
- Articles **225-227** of APA, where the first instance authority assesses by examining the submitted appeal that the appeal statement is well-founded and reissues decision which replaces the decision invalidated by appeal.

Decision on Connection

2. Decision dispositive (Article 53 of the Energy Law, Article 6 of the Decree and Article 198 of APA)

The Decision dispositive states the subject of the procedure (the application is accepted or rejected). Where the application is accepted, the decision dispositive shall include:

- Data on the premises to be connected (address-location, type and purpose of premises), required working pressure and technical characteristics of premises)
- Data on the permitted capacity in m³/day at the connection point
- Data on the approved minimum and maximum hourly consumption and consumption schedule
- Data on the delivery spot and method of metering (significant to differentiate between responsibilities for natural gas delivered
- Method and technical conditions of connection
- Connection charge
- Validity period of connection approval and other components prescribed by Law and Decree
- **Important:** manner of and technical conditions for connection, and **location of connection**, i.e. the point of connection to the distribution system is to be indicated (data on the energy entity to which the premises of the physical or legal entity will be connected), in order to clearly see which premises make the “connection”, i.e. what the applicant must pay on account of costs incurred by approving a particular connection.

Decision on Connection

Connection charge as part of the Dispositive

Common mistakes stated in the Decision Dispositive

- The total connection charge determined in the decision includes VAT, which is contrary to the VAT Law (instead of indicating the VAT on the invoice)
- It has been decided that the level of connection charges shall be specified in the Contract No., dated....

Decision on Connection

Decision's statement of reasons (Article 199 APA)

- Lack of statement of reasons seriously violates the procedure rules and results in such decision to be cancelled because it prevents assessment of whether all legal requirements have been met, and with which the second instance authority must deal in accordance with its official duties.
- Clear and complete indication of references to facts determined in the course of the procedure, as well as to regulations and reasons which guided the first instance authority in issuing decisions as stated in the dispositive, will reduce the possibility that an applicant lodges appeal to the second instance authority because of unclear reasons and regulations based on which it had been decided as in the Decision dispositive.

Decision on Connection

Decision's statement of reasons (Article 199 of APA)

Among others, a decision may be deemed lawful only if, apart from the description of the application content, the statement of reasons of the Decision includes also the following components:

- Description of fact-finding and reasons significant for the assessment of evidence
- Statement of reasons why a particular application was not accepted
- Legal regulations and reasons which, considering the fact-finding, refer to the decision as stated in the dispositive
- Explanation of the connection charging method, whereas the following shall be separately explained:
 - (1) Individual connection charges by items as indicated in the Methodology
 - (2) **Adjustment of connection charges** of works, materials, equipment, and services associated with the construction of connection born by user and separately indicated by items in the connection bill,
 - (3) Adjustment of semi-deep connection charges where the applicant participated in financing the construction of a part of network.

Decision on Connection

Instruction on legal remedy (Article 200 of APA)

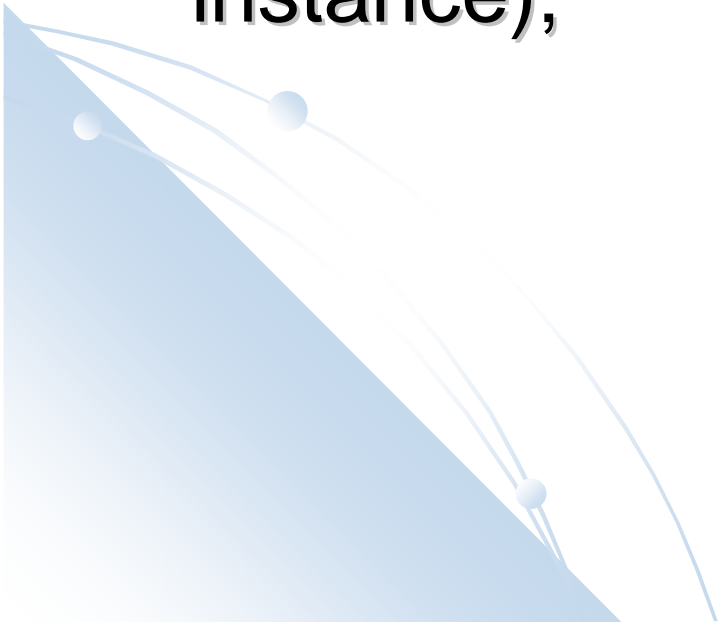
- Clear reference to the authority an appeal may be lodged to, the time frame for lodging an appeal after the date of submission, the number of copies, the fee amount, and to which authority to submit the appeal

SUBMISSION OF DECISION

- By submitting the Decision to the applicant, the Decision within the meaning of APA comes into effect
- First instance authorities very often do not have adequate proof when the Decision was received by applicants

Obligations of first instance authority under appeal procedure

- Acting contrary to provisions of Article 232, paragraph 2 of APA (first instance authority shall act entirely in accordance with the Decision brought at second instance);





АГЕНЦИЈА за ЕНЕРГЕТИКУ
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