

TS3A: Alert operators in case of non-compliance with tariff regulations and issue correcting instructions

REGULATORY FUNCTION: TARIFF SETTING		TS3A
OBJECTIVE TS3 Administrative infringement proceedings against uncompliant operators are in place	ACTION CARD TS3A <h2 style="margin: 0;">ALERT OPERATORS IN CASE OF NON-COMPLIANCE WITH TARIFF REGULATIONS AND ISSUE CORRECTING INSTRUCTIONS</h2>	
COST: Low FREQUENCY: One time TARGET GROUPS: Regulators, service operators, consumers		
DESCRIPTION Non-compliance with approved tariffs may result in licence removal, so should be only used as a last resort. Since removing an operator’s licence will result in further disruption of service provision, prior to this, regulators must first exhaust all other means to resolve outstanding issues. After warning operators, regulators initiate a legislatively established process, and operators may submit a response, and are allocated sufficient time for further assessments of their economic and financial performance. During that period, regulators collect more relevant information to be able to draw conclusions and instructions. Failure to comply with these instructions will result in more severe sanctions.		
EXPECTED OUTCOMES <ul style="list-style-type: none"> • Operators are enforced to act in accordance with agreed tariff regulations. • Operators are allowed sufficient time within an established transparent administrative procedure to comply with ongoing operations. • Regulators manage each case of non-compliance in a timely manner. • Consumers are informed, and reimbursed where applicable. 		
EXAMPLE 1: ZAMBIA In Zambia , operators whose performance is deteriorating beyond acceptable limits may be placed under special regulatory supervision (SRS). This might take the form of non-adherence to license conditions and service level guarantees (SLGs). Special regulatory supervision is an enforcement tool used to curb negative performance trends, applied following an agreement signed between the national regulator, the National Water Supply and Sanitation Council (NWASCO), and the operator. During the stipulated supervision period, NWASCO closely monitors all operations of the service provider, including decisions made by both management and the board. This means that NWASCO can attend board meetings to monitor internal decisions. Although intrusive, such regulation enables an operator to quickly undertake remedial measures. The operator draws up a plan on how to improve its performance over the SRS period and submits monthly reports indicating the progress being made in meeting the planned activities. This is a stop gap measure to avoid the worst-case scenario of suspension or cancellation of an operating license.		
EXAMPLE 2: KENYA In Kenya , a national regulator, the Water Service Regulatory Board (WASREB), will notify and caution water service boards or providers that are not complying with their obligations, and provide a time frame within which there should be rectification. WASREB can issue orders prohibiting particular actions with immediate effect, and follow through with prosecution if this is not complied with. WASREB can issue notices instructing water service boards to ensure non-compliance is resolved within a stated time frame. If the notices are not complied with WASREB can undertake the following: <ul style="list-style-type: none"> • Fine the licensee. • Use the performance guarantee to resolve the problem. • Issue an order which if not complied with, will be followed by prosecution. 		

- Issue orders on variations of areas of supply.
- Order a water services board to enforce regulations under section 73 of the Water Act 2002 in its area of supply.
- Use media in publicizing warnings against offenders of the Water Act 2002.

EXAMPLE 3: PARAGUAY

In Paraguay, the Infringements and Sanctions Regulation of General Law No. 1614/2000 on the Regulatory and Tariff Framework for Drinking Water and Sanitary Sewerage Provision stipulates that, in the event of a grounded assumption of infringement, prior to filing summary proceedings, the regulator can demand that the operator correct the potentially irregular conduct and immediately address the damaging consequences that may be underway. Only in the event that the provider obeys and complies with the exact terms of the demand within the established time frame, the regulator shall consider the matter resolved and abstain from filing summary proceedings.

EXAMPLE 4: CHILE

In Chile, the Rural Sanitary Services Law and its implementing regulation stipulates the possibility of sanctioning service operators that fail to comply with the service rules, including the tariff system. However, the system allows the sanctioned entity to request that sanctions be reduced or lifted by submitting to a consulting program aimed at effectively correcting the infringement or complying with the regulations in question. Audits that detect minor cases of non-compliance that do not require training and are not subject to sanctions may result in corrective action to be implemented pursuant to regulator instructions.

LINKS

Zambia: <http://www.nwasco.org.zm/index.php/regulatory-tools/regulatory-enhancements>

Kenya: <https://wasreb.go.ke/downloads/Enforcement%20And%20Compliance%20Strategy.pdf>

Paraguay: General Law No. 1614/2000. on the Regulatory and Tariff Framework for Public Drinking Water and Sanitary Sewerage Provision in the Republic of Paraguay

https://www.erssan.gov.py/application/files/7515/8741/1529/Marco_Regulatorio.pdf

Chile: Decree 50. IMPLEMENTING REGULATION OF LAW NO. 20.998, WHICH REGULATES RURAL SANITARY SERVICES

<https://www.bcn.cl/leychile/navegar?idNorma=1150724>

INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

To perform this action, regulators' staff must be trained on improved financial, administrative and management skills. Capacity building can be provided by sector actors or by development partners. Regulators may also involve other operators to support their procedures. Judiciary institutions may be indirectly involved to ensure further impartiality.