

ENERGY AND WATER UTILITIES REGULATORY AUTHORITY (EWURA)

Tariff Application Guidelines of 2009

Introduction

These Guidelines shall apply to all regulated suppliers seeking to change an existing tariff or seeking a new tariff, however, they are not applicable to small power producers and to all regulated supplier in the downstream petroleum sub-sector.

These Guidelines describe the procedures to be followed by an applicant and by the Authority when processing a tariff application. They are to be read in conjunction with EWURA (Rates and Charges Applications) Rules, 2009 and in the event of a conflict between the two, the Rules shall prevail.

1. GENERAL PRINCIPLES

- (1) In these guidelines, the term “tariff” means “rates” and “charges”.
- (2) In these Guidelines the terms “applicant” and “regulated supplier” are used interchangeably.
- (3) A regulated supplier providing a regulated service within mainland Tanzania and a regulated supplier who intends to do so shall apply to EWURA for approval of a tariff applicable to such regulated service.
- (4) EWURA shall approve tariffs, including a tariff setting formula or methodology, to the extent that EWURA finds those tariffs and methodology, and the rationale supporting them to be reasonable. The burden of proof is upon the applicant to demonstrate to EWURA’s satisfaction the reasonableness of any proposed tariff or methodology or adjustment to a tariff and methodology.
- (5) Tariffs approved by EWURA shall reflect prudently-incurred costs of providing the regulated service for which the tariff is imposed. These costs include depreciation, interest expense, applicable taxes, operating expenses and a reasonable return on invested capital for facilities that are used and useful in providing the regulated service. For purposes of this paragraph, “reasonable return” means the level of return that investors would seek for enterprises of similar risk.
- (6) An applicant who is already in the business of providing a regulated service is required to provide EWURA with independently verifiable

evidence of the actual costs recently incurred in providing the regulated service, the continued provision of which is to be covered by the proposed rate or charge.

- (7) In the evidence of a reasonable contract between an applicant and a third party, such third party may support the applicant's application for a tariff covered by such a contract. The evidence of a contract will not necessarily support a resale third party's application for a sales' tariff since it does not in itself provide evidence that the price paid to the applicant was reasonable. In all cases the price paid by the third party shall at least be equal to the applicant's marginal costs.
- (8) If an applicant proposes a tariff change that will not attain full cost recovery, either in total or for a particular class of its customers the applicant shall provide a plan for attaining full cost recovery taking into account the customers' willingness and ability to pay. For purposes of this paragraph, "full cost recovery" means a tariff that cover operation and maintenance expenses, depreciation expenses, and that provide a reasonable return on investment.
- (9) Any proposed tariff design or tariff structure shall encourage efficient consumption of the commodity. Additionally, rate designs or structures that contain reasonable cross-subsidies must be fully justified by the applicant.
- (10) A tariff approved by EWURA shall remain in force from the effective date provided in the Order. An applicant may apply for a new or adjusted tariff at any time after EWURA being satisfied of the applicant's compliance with the previous Order.
- (11) EWURA may modify the tariff pursuant to the provisions of paragraph 13.
- (12) All submissions by an applicant such as the initial application and information provided in response to subsequent requests by EWURA, shall:
 - (a) Provide the information required by and in the form prescribed by EWURA pursuant to section 2, 3 and 4 of these guidelines; and
 - (b) be complete, final, correct and submitted by a duly authorized officer of an applicant.
- (13) EWURA's approval or disapproval of an application shall be based upon its evaluation of the application, which shall be conducted in a fair and transparent manner. EWURA will seek the views of stakeholders and will consider those views before taking a final decision on any application.
- (14) All actions taken pursuant to these Guidelines shall be in accordance with the Laws of Tanzania, the Rules of EWURA, and the EWURA

Code of Conduct (available on EWURA’s website or at EWURA’s Offices).

(15) In the event that any deadline in these Guidelines falls on a Saturday, Sunday, or public holiday, that deadline will be the next working day.

2. TOP SHEET

(1) The Top Sheet of the application shall contain the following:

- (a) the legal name of the applicant;
- (b) the full address of the applicant to which communications in the matter will be sent;
- (c) the full name, title and contact information of the applicant’s chief executive officer or his representative;
- (d) a verifiable reference of an applicant’s license by EWURA (or a preceding Authority) to provide a regulated service;
- (e) A succinct statement of the regulatory action being requested (e.g. “XYZ, Ltd., requests that EWURA approve of the tariff for XYZ’s sale of electricity as specified in table 1 of this application. It is proposed that this tariff will apply to all sales made on ----- and thereafter.”); and
- (f) The signature of the chief executive officer specified in paragraph 2 (1) (c), above or a duly authorized officer.

(2) The Top Sheet and other electronically submitted information will be published in the Electronic Public Register on EWURA’s website.

3. SUMMARY OF THE APPLICATION

Following the Top Sheet, the application must contain:

- (a) the ownership structure of the applicant and the other entities in which the applicant has an ownership interest;
- (b) the requested regulatory action and the rationale for such action;
- (c) a summary table of current and proposed average customer bills by customer class as well as other charges;
- (d) the existing annual revenues of the applicant and the projected revenues if the rate or charge were adopted as proposed;

- (e) options other than a tariff change considered by the applicant and why each option was not selected;
- (f) implementation status of key performance indicators, covering technical, operational and financial indicators of the applicant for the previous year, the current year and for the subsequent three years, assuming the proposed rate or charge is adopted; and
- (g) information regarding the annual subsidies and grants received within the past three financial years prior to the date of the application as well as forecast of the same during the rate or charge period.

4. DOCUMENTS TO ACCOMPANY APPLICATIONS FOR TARIFFS

- (1) The application shall be supported by the following information (where applicable):
 - (a) Conditions imposed on an applicant listed in a previous Order and the status of each condition contained therein.
 - (b) A schedule including its current and proposed tariffs for all of its customer classes and service territories. This schedule shall be supported by a detailed explanatory statement with subordinate schedules that clearly indicate how each tariff (both current and proposed) was calculated, the data required to make those calculations and how that data was obtained.
 - (c) A schedule showing current average bills, tariffs, and other charges that would result if the application was approved as submitted. The average bills must be provided for each customer class.
 - (d) The date upon which the proposed adjustment is to take effect accompanied by a tariff history that includes all of the adjustments to the applicant's tariffs (both proposed and accepted) covering a three year period prior to the date that the proposed adjustment is to take effect.
 - (e) A statement explaining how the proposed adjustment of the current tariff will benefit the customers.
 - (f) Audited financial statements including the opinion of the auditor, covering the past three financial years and the most recent company interim financial statements prior to the date of the application. This information shall separately state the regulatory asset base, the operation and maintenance expenses, the depreciation expense, and taxes applicable to an applicant. For this paragraph "Financial Statements" means the Balance Sheet,

Income Statement, Statement of Cash Flow and Statement of Changes in Equity.

- (g) Projected financial statements for the current financial year. If the tariff change is requested to take effect prior to the end of the current financial year, the projected financial statements shall assume that the proposed tariff change will take effect at the date to be specified in the Order.
- (h) A schedule, based upon the analyses identified above, that projects the applicant's revenue requirements for the next full financial year assuming the requested tariff go into effect. Unless EWURA has approved a different methodology for computing the applicant's revenue requirement, the methodology (formula) for computing Revenue Requirement (RR), shall be as follows:

$$RR = O + D + T + (WACC * RAB)$$

Where:

RR	=	Revenue Requirement
O	=	Operation and Maintenance Expenses (including general and administrative expenses);
D	=	Depreciation expense for the year;
T	=	Taxes;
WACC	=	Weighted Average Cost of Capital; and
RAB	=	Regulatory Asset Base

- (i) The applicant's proposed rate of return on its own invested capital, if applicable, supported by a cost of capital analysis. The applicant shall propose and justify a capital structure which will include a discussion on cost of debt and equity for the applicant;
- (j) The financial implications to the applicant if the requested changes in tariffs are not approved;
- (k) An affirmation that states that all contractual agreements that may have impact on the proposed tariffs have been included in the application;
- (l) Comprehensive operating information covering the past three financial years prior to the date of the application including information on the Regulatory Asset Base of an applicant and its Key Performance Indicators;
- (m) The applicant's business plan for the next three years, which shall address, *inter alia*:

- (i) the programme that the applicant has in place to improve the quantity and quality of service over this period;
 - (ii) forecasts of consumption;
 - (iii) the key performance indicators; and
 - (iv) targets for such performance indicators for the same period.
- (n) For the applicants providing water supply and sewerage services, the Memorandum of Understanding (if any) between the applicants and the Ministry responsible for water; and
- (o) Any other information deemed appropriate.
- (2) An applicant shall ensure that the application is as succinct as possible by including materials that are specifically relevant to the regulatory action requested.

5. EXEMPTIONS AND REQUEST FOR ADDITIONAL INFORMATION

- (1) Exemption from any of the requirements specified in these guidelines may be requested in writing by the applicant. EWURA's evaluation of the application and decision about the requested regulatory action shall be deferred until the matter of the exemption is decided.
- (2) Requests for exemption shall include all of the information required in the Top Sheet and application summary.
- (3) EWURA may request any additional information it considers necessary to properly analyze the application. If an applicant considers information to be confidential, it shall bear the burden of proof. Confidential information is generally presumed to exist when:
- (a) disclosure of information could reasonably be expected to result in a material loss or gain to a party or could reasonably be expected to prejudice a party's competitive position; or
 - (b) the information is financial, commercial, scientific, or technical that:
 - (i) has been consistently treated as confidential information; and
 - (ii) EWURA considers that the party's interest in confidentiality outweighs any public interest that might be served by disclosure.

6. SUBMISSION OF APPLICATION AND COMMUNICATION WITH EWURA

- (1) An applicant is required to submit five (5) signed hard copies of the Application and, as practicable as possible, an electronic version thereof. It is recognized that certain materials prepared for purposes other than the application (e.g. financial reports) may not be available in an electronic format. In such case applicants must indicate the reason for the exclusion of any item from the electronic version that is submitted.
- (2) Notwithstanding the provisions of paragraph 6 (1), the Top Sheet must be submitted in an electronic form and with all other parts of the application submitted electronically shall be posted on EWURA's web-site for public review and comment.
- (3) All communications with EWURA, including applications and questions related thereto, shall be sent to the following address, or to such other address as may be required by the Authority:

Director General,
Energy and Water Utilities Regulatory Authority,
6th Floor, Harbour View Towers,
Samora Avenue/ Mission Street,
P.O. Box 72175,
Dar es Salaam, TANZANIA
E-mail: info@ewura.go.tz

7. ACCEPTANCE AND PROCESSING OF APPLICATIONS

- (1) EWURA shall within fourteen days from the date of receipt of the application identify any flaws or gaps and review any additional information that the Authority may require in evaluating such application.
- (2) EWURA shall establish a data response deadline, not to exceed fourteen days from the date of its determination under paragraph 7 (1) within which the applicant shall be requested to provide any supplemental information required.
- (3) Upon receipt of the information requested pursuant to paragraph 7 (2) of these guidelines, EWURA shall issue a letter to the applicant accepting the application for consideration. The date of the letter shall be considered the beginning date for processing the application pursuant to paragraph 12(3) of these Guidelines.
- (4) If the information required in paragraph 7 (2) is not timely submitted, no further action shall be taken on the application until such information is submitted.

8. INQUIRY

- (1) Following acceptance of an application, EWURA shall conduct an inquiry as part of its determination into the reasonableness of the application. In all cases this, inquiry will include public notice and the solicitation of stakeholders' views. This inquiry may include holding a public comment meeting.
- (2) EWURA shall issue a notice to the public that an applicant has filed an application which has been accepted. Publication of such information shall be made in newspapers of general distribution in the area affected by the application in English and Kiswahili, or by publication in a public location, and by publication of that same information on the EWURA website.
- (3) If EWURA determines to convene a public comment meeting as a part of the Inquiry process, EWURA shall invite the applicant to make a presentation at that meeting in support of its application. In addition, EWURA shall invite all other interested stakeholders to speak at that meeting and to submit written comments to EWURA. EWURA shall share all written comments with the applicant, EWURA's Consumer Consultative Council, the Governmental Consultative Council and all interveners. An applicant may respond to the comments and submit additional statements or documentation in response to the comments at any time during the period of the evaluation of the application.
- (4) The views of all stakeholders shall be heard during the public comments meeting that may be held in connection with the application.
- (5) Any interested persons may submit written comments to EWURA in connection with an application within thirty (30) days from the date of the notice or 14 days after the public meeting, if one is held.

9. ACCESS TO INFORMATION

- (1) The application and supporting materials will be available for viewing at EWURA's offices and the electronic form of it may be accessed at EWURA website which is www.ewura.go.tz.
- (2) The application and all supporting materials submitted to EWURA by the applicant will be circulated to Government Consultative Council and EWURA's Consumer Consultative Council.
- (3) A copy of the application may be obtained by interested persons, including interveners upon request to EWURA accompanied by the payment of a fee to be established by EWURA to cover the cost of copying and postage. EWURA's Consumer Consultative Council, Governmental Consultative Council and formal Interveners will receive all publicly filed documents.

10. INTERVENTION

- (1) Declaration of intent to intervene must be made in writing to EWURA within fourteen days from the date of the public meeting notice.
- (2) The intention to intervene must clearly state the name and address of the person seeking intervention and the reasons for that intervention.
- (3) The Authority shall, after reviewing an application to intervene, either grant or deny such application.
- (4) Any person granted the right to intervene in the proceedings shall be entitled to:
 - (a) obtain a copy of the application and all supporting materials submitted to EWURA by the Applicant;
 - (b) submit materials to EWURA in connection with the Application that will be circulated to the EWURA's Consumer Consultative Council, Governmental Consultative Council and all other interveners;
 - (c) have an opportunity to be placed on the agenda of the public meeting, if one is held, for the purpose of making a formal presentation of his position with respect to the application; and
 - (d) receive a copy of EWURA's Order concluding the matter.

11. EVALUATION OF THE APPLICATION

- (1) EWURA shall conduct an appropriate economic and technical evaluation of the application during the course of which it may ask the authorized representative(s) of the applicant to clarify certain aspects of the application and to supply supplementary information.
- (2) EWURA may also ask the applicant to provide access to facilities referred to in the application and to facilitate the inspection thereof.
- (3) The need for clarification and supplemental information may evolve during the course of the evaluation and the time required for the applicant to respond to EWURA's requests and to schedule site visits may necessitate extension of the time-line for the evaluation:
 - (a) if an applicant for a tariff or methodology does not respond to an EWURA data request within 30 days, the Application shall be considered closed; and
 - (b) if an applicant for a rate or charge formula or change to a rate or charge formula does not respond to an EWURA data request within a mutually agreeable period of time, the application shall be considered closed.

- (4) EWURA may also issue an invitation to all formal interveners to review EWURA's Draft Decision. For purposes of this paragraph, EWURA's Consumer Consultative Council and Governmental Consultative Council shall be considered to be formal interveners.

12. **DECISION OF THE BOARD**

- (1) The Board of EWURA, after due consideration of all material facts shall issue an Order in response to the application. The Order will also be made public.
- (2) Subject to sector legislation and in the absence of any contrary terms in an Order, the Order shall take effect not earlier than one month following the Authority's decision on the application.
- (3) The Board shall make a decision on an application within one hundred and eighty (180) days after its official acceptance and issue a written Order bearing the signatures of the EWURA Board Chairman and the Director General
- (4) The decision of the Board will be published in the *Government Gazette* as soon as is practicable.
- (5) Copies of the Orders and decisions made by EWURA shall be certified with the seal of EWURA shall be made available to any person on payment of the fee that EWURA may from time to time set. Copies of the Order will be availed to the applicant, EWURA's Consumer Consultative Council, Governmental Consultative Council and all interveners free of charge.
- (6) Copies of any Order and decision shall be available in the Electronic Public Register on the EWURA website and at the EWURA's Public register in Dar es Salaam for public review at no cost.
- (7) A decision of the Board may be appealed to the Fair Competition Tribunal under applicable law.

13. **TERM OF TARIFF**

- (1) The changed or new tariff shall become effective as indicated in paragraph 12 (2) of these Guidelines.
- (2) A tariff or tariff methodology shall remain in effect until it is superseded by a new Order.
- (3) Subject to sector legislation, the Authority shall not consider a new rate or charge application within twelve months after the effective date of an

initial or changed tariff or methodology. An Applicant may petition the Board for a waiver of this provision if an applicant can show that a material undue hardship would occur in the absence of such a revision.

- (4) EWURA may seek to change a tariff on its own motion.
- (5) In all cases when an application or a motion to change a tariff is filed, the burden of proof shall lie with the applicant of the motion.

14. **NOTIFICATION TO CUSTOMERS OF APPROVED TARIFF OR METHODOLOGY**

- (1) The applicant shall notify its customers, in a form and manner as prescribed by EWURA of the Board's decision.
- (2) The notification in paragraph 14 (1) shall be sent not later than two weeks after EWURA's decision and not less than ten working days prior to the effective date. Notification shall be posted in EWURA's website, local news papers both in Kiswahili and English widely in circulation, where appropriate, and to the applicant.
- (3) The applicant shall also publish a notice in newspapers of general circulation, in English and/or Kiswahili, showing therein the original tariff and the respective changes.

15. **PROCEDURES WHEN URGENT ACTION IS REQUIRED**

- (1) In the event that urgent action is required, and upon the written request of the appropriate Minister, EWURA will expedite its procedures with the view of issuing a Provisional Order as provided for under these guidelines.
- (2) The application must include the Top Sheet in its entirety. The applicant will identify any items that cannot be provided at the time of the submission and give an explanation that is acceptable to EWURA for each deficiency from the normally-required procedure.
- (3) After due consideration of an application under certificate of urgency and after a due analysis of the matter EWURA Management will make an appropriate recommendation to the Board of Directors and request its decision on an extraordinary basis.
- (4) Subject to recommendations made by EWURA Management, the Board of Directors may issue a Provisional Order to the applicant, which shall take effect as soon as practicable and expire after one hundred and eighty (180) days from the date of issuance.
- (5) Notwithstanding the issuance of the Provisional Order, EWURA shall institute the normal evaluation procedure as outlined above, including the

inquiry. The results of the evaluation shall be used by EWURA to issue a Final Order in due course. When issued the Final Order shall supersede the Provisional Order and take effect retroactively upon the date of the Provisional Order's effect.

- (6) If the Final Order contravenes the Provisional Order, the conditions of the Final Order shall take precedence and, with respect to the actual tariff, any over-collections received by the Applicant through implementation of the Provisional Order will be refunded to its customers.