

THE ELECTRICITY ACT
(CAP 131)

THE ELECTRICITY (GENERATION SERVICES FOR OWN USE) RULES, 2011

(Made under section 45)

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THE ELECTRICITY ACT
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(Made under section 45)

PART I
PRELIMINARY PROVISIONS

- Citation **1.** These Rules may be cited as the Electricity (Generation Services For Own Use) Rules, 2011.
- Application **2.** These Rules shall govern the regulatory and licensing matters related to the provisions of electricity generation services for own use in Tanzania.
- Interpretation **3.** In these Rules, unless the context otherwise requires:
- Cap. 131 “Act” means the Electricity Act;
- “affiliate” means any legal entity holding shares in the licensee or any other legal entity in which the licensee is a shareholder;
- “applicable law” means any principal law, treaty, proclamation, regulation, rule, order or by-law that is customarily treated in Tanzania as having legally binding force and which is relevant to matters pertaining to regulation of the electricity generation services;
- Cap 414 “Authority” means the Energy and Water Utilities Regulatory Authority established under the provisions of the EWURA Act;
- Cap. 414 “EWURA Act” means the Energy and Water Utilities Regulatory Authority Act;
- “generation facility” means premises, electric energy producing equipment including its auxiliary equipment, transformers, fuel handling equipment, switch-yard and interconnection facilities that are necessary for performing the services as shall be specified in a licence;
- “generation services” means electricity generation services for own use and the term generation activity shall be construed accordingly;
- “licence” means electricity generation licence issued by the Authority;

“licensee” means the holder of a licence;

“Minister” means the minister responsible for electricity matters;

“Prudent Utility Practices” means those good and prudent practices, methods, and procedures which are attained by exercising that degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced international generator of electricity engaged in the same or a similar type of undertaking or activity in Tanzania and under the same or similar circumstances and conditions to those pertaining in Tanzania and satisfying the health, safety and environmental standards of reputable international electric generating companies;

“serious offence” means any of the offences listed in the Schedule; and

“site” means the location where the generation facility is located and which details shall be provided in a licence.

PART II LICENSING PROCEDURES

Obligation to
Apply for a
Licence

4. - (1) No person shall conduct any generation activity without a licence unless exempted pursuant to rules 13 and 16.

(2) A person who conducts any generation activity without a licence shall, not later than three months after coming into force of these rules, apply to the Authority for a licence.

(3) Notwithstanding the provisions of sub-rules (1) and (2) any person who has been conducting generation activity with a licence issued by an institution other than the Authority shall within six months from coming into force of these rules, apply for a licence and the Authority shall proceed issuing a licence which shall contain terms and conditions not less favourable than those contained in the licence issued by an institution other than the Authority.

(4) Any person who contravenes the provisions of sub-rules (1), (2) and (3) shall be liable to a fine of five million shillings.

(5) Notwithstanding the penalty prescribed in sub-rule (4) any person who contravenes the provisions of sub-rule (3) may have its licence revoked in addition to the penalty in sub-rule (4).

Power to enter
and Close a
Facility

5. Notwithstanding the penalty prescribed under rule 4 (4) and 4 (5), the Authority shall, in the event it determines that any person has contravened the provisions of rules 4 (2) or 4 (3) enter upon any licensed facility and close it down.

Licence

6. – (1) An applicant for a licence shall subject to the provisions of rule 6

Application Procedure

apply to the Authority for a licence by filling in the appropriate form prescribed by the Authority, and shall lodge such application to the Authority, together with any other documents or records as may be required by the Act, the EWURA Act and other applicable law.

(2) Notwithstanding the provision of sub-rule (1), an application for a licence shall be accompanied by:

- (a) certified copies of its registration documents if the applicant is a body corporate or unincorporated body;
- (b) a business plan;
- (c) proof of water rights for applicants intending to generate power from hydro;
- (d) proof of ownership of the site;
- (e) proof of authorization of development of the site, including building permit, if any;
- (f) proof of the financial capability for the generation activity;
- (g) description of the generation plant and site details; and
- (h) a certified copy of the environmental clearance as required in the Environmental Management Act.

Cap. 191

(3) An application for a licence shall be accompanied by an application fee prescribed by the Authority from time to time.

Publication of a Licence Application

7. – (1) A licence application received by the Authority shall be evaluated to verify its completeness and legality of information contained therein and thereafter a notice of the application shall be published in at least two newspapers of wide circulation in Tanzania one in English and another in Kiswahili with a view to soliciting comments and representations on the application.

(2) The public shall be invited to submit comments and representations within twenty one days from the date of publication of the notice and the comments and representations shall be considered by the Authority in arriving at the decision on the application.

Grant of a Licence

8. – (1) The Authority shall after the expiration of the twenty one days deadline to submit comments in rule 6 (2) evaluate application for a licence and decide to:

- (a) grant the application and issue a licence;
- (b) refer back the application;
- (c) deny the application;
- (d) grant an exemption pursuant to rule 13; or
- (e) grant a provisional licence subject to fulfillment of the general conditions set out in these rules and such other conditions as the Authority may determine.

(2) The Authority shall while making a decision to grant or deny a licence or grant an exemption take into consideration:

- (a) the protection of the environment;
- (b) the applicant's record of compliance with the Act, these rules and other applicable laws;
- (c) economic efficiency and benefit to the applicant and the public in general;
- (d) comments and representations received from the public, if any;
- (e) financial capability of the applicant;
- (f) the compliance of a generation facility on matters including:
 - (i) safety;
 - (ii) health;
 - (iii) security;
 - (iv) handling of hazardous substances;
 - (v) environment;
 - (vi) land ownership and land use laws; and
- (g) any other matter relevant to the orderly provision of generation services in Tanzania.

Application for a
Provisional
Licence

9. – (1) Any person seeking to conduct electricity generation services may, prior to applying for a licence, apply to the Authority for a provisional electricity generation licence with a view to conducting some preparatory activities like conducting assessments, studies, financial arrangements and other activities necessary for applying for a licence.

(2) The applicant shall lodge to the Authority an application form for the provisional licence which shall be in a prescribed format together with the following:

- (a) a business plan;
- (b) prescribed fee;
- (c) proof of financial capability;
- (d) site layout; and
- (e) any other documentation or information the Authority may require.

Publication of a
Provisional
Licence
Application

10. - (1) A provisional licence application received by the Authority shall be evaluated to verify its completeness and legality of information contained therein and thereafter a notice of the application be published in at least two newspapers of wide circulation in Tanzania one in English and another in Kiswahili with a view to soliciting comments and representations on the application.

(2) The public shall be invited to submit their comments and representations within fourteen days from the date of publication of the notice and the comments and representations shall be considered by the Authority in arriving at the decision on the application.

Grant of a
Provisional
Licence

11. The Authority shall, after the expiration of the fourteen days deadline to submit comments in rule 9 (2) evaluate such application and thereafter make a decision basing on:

- (a) the applicant's record of compliance with the Act, these rules and other applicable laws;
- (b) economic efficiency and benefit to the applicant and the public in general; and
- (c) comments or representations received from the public, if any.

Application for
Exemption

12. – (1) Any operator may apply to the Authority to be exempted from complying with the requirements of section 8 of the Act.

(2) The application for exemption in sub-rule (1) shall be made in writing to the Authority stating the following:

- (a) description of the project including its shareholders, description of the generation plant and site details; and
- (b) reasons for the exemption.

Publication of an
Application for
Exemption

13. - (1) Upon receipt of the application in rule 11, the Authority shall publish a notice of the application in at least two newspapers of wide circulation in Tanzania one in English and another in Kiswahili with a view to soliciting comments and representations on the application.

(2) The public shall be invited to submit their comments and representations within twenty-one days from the date of publication of the notice and the comments and representations shall be considered by the Authority in arriving at the decision on the application.

Grant of
Exemption

14. - (1) At the conclusion of an inquiry process in rule 12 the Authority shall proceed evaluating the application and make a decision either granting or denying the application subject to such terms and conditions it may deem fit.

(2) The Authority shall while making a decision whether to grant an exemption or not, take into consideration the following:

- (a) gravity of the reasons submitted in support of the exemption;
- (b) public interests to be protected; and
- (c) Comments or representations received from the public, if any.

(5) The term, obligations and rights to be provided by an exemption shall be specified in the Order to be published by the Authority in the *Government Gazette*.

The Authority to
Give Reasons
for its Decisions

15. The Authority shall, in the event that it denies or refers back an application for a licence or a provisional licence inform the applicant of such decision in writing, including the reasons thereof.

Appeal
Procedure
Cap. 285

16. Any person who is aggrieved by the decision of the Authority in rules 7 10 or 13 may appeal to the Fair Competition Tribunal pursuant to the provisions of the Fair Competition Act.

Validity and
Duration of a
Licence

17. - (1) The term of a licence shall be for a period of five years.

(2) A licence shall remain valid for the period stated in sub-rule (1), provided, however, that the Authority may, on the written application of a licensee, extend the period for such further period as the Authority may determine.

(3) Notwithstanding the provisions of sub-rule (1) and (2) a licence shall cease to have effect if the respective licensee fails to conduct a licensed activity within six months after issuance of the licence.

Application for
Transfer of a
Licence

18. - (1) No licence shall be assigned or transferred to another person without a written approval of the Authority.

(2) Any transferee of a licence shall apply to the Authority by filling in the appropriate form prescribed by the Authority, and lodge it with the Authority, together with other documents or records as may be required by the Authority or applicable law.

(3) Notwithstanding the provisions of sub-rule (1) no application for a transfer of a licence shall be entertained by the Authority unless it is endorsed by the transferor.

(4) A licence transfer application received by the Authority shall be evaluated to verify its completeness and legality of information contained therein and thereafter a notice of the application shall be published in at least two newspapers of wide circulation in Tanzania, one in English and another in Kiswahili with a view to soliciting comments and representations on the application.

(5) The public shall be invited to submit comments and representations within fourteen days from the date of publication of the notice and the comments and representations shall be considered by the Authority in arriving at the decision on the application.

(6) The Authority shall after the expiration of the notice in sub-rule (3) evaluate the application together with comments received (if any) and make a decision whether to grant or deny the application for transfer.

Change of Name
or Shareholding
Structure

19. - (1) Any change in name or shareholding structure of a licensee shall require written approval of the Authority.

(2) A licensee may change its name or shareholding structure upon submitting

a letter to the Authority requesting for an approval for such change.

(3) Notwithstanding the provisions of sub-rule (2) an application letter shall be accompanied by other relevant documents including certificate for change of name or certificate for change of shareholding structure issued by the Registrar of companies.

(4) The Authority may before approving the application for change in shareholding structure in sub-rule (1) consult the Fair Competition Commission and the Tanzania Revenue Authority.

Application for
Renewal of a
Licence

20. – (1) A licensee may not less than six months before expiration of a licence term apply to the Authority for a renewal of a licence.

(2) Application for a renewal of a licence as provided in sub-rule (1) shall be in writing by filling in an application form to be prescribed by the Authority.

(3) The Authority shall, while making a decision whether to grant or deny an application for a renewal of a licence, consider the applicant's compliance to the licence condition which is due to expire.

(4) The Authority shall, in the event that it denies an application for renewal of a licence, inform the applicant of such decision in writing, including the reasons thereof.

Licence
Suspension and
Revocation

21. – (1) The Authority may revoke the licence where it determines that a licensee is unable to discharge its obligations under the Act, the EWURA Act or any other applicable law or where the licensee is convicted of any serious offence.

(2) Notwithstanding the provisions of sub-rule (1) the Authority may suspend a licence for a period of twelve months where a licensee has been found to be in serious violation of the provisions of the Act, the EWURA Act or these rules on matters relating to the protection of occupational health, public safety and environment.

Exempted
Generation
Services

22. - (1) An operator of a generation facility with the capacity up to one MW shall be exempted from the Authority's licensing requirements.

(2) Notwithstanding the provisions of sub-rule (1), an operator who is exempted from licensing requirements shall, pursuant to guidelines and directions issued by the Authority:

- (a) register with the Authority; and
- (b) provide the ministry responsible for electricity and the Authority with accurate information related to its generation services.

Rules 4 to 16

23. - The provisions of rule 4 to 16 shall not apply to any operator who is

Not Apply to
Exempted
Generation
Services

exempted pursuant to rule 18, provided however the Authority may take any remedial measures against the operator including suspending its operations for such period as the Authority may determine in the event of any violation of these rules and applicable laws.

PART III GENERAL OBLIGATIONS OF A LICENSEE

General
Obligations of a
Licensee

24. - (1) A licensee shall conduct generation activity pursuant to the provisions of the Act, the EWURA Act, applicable law and Prudent Utility Practices.

(2) Without prejudice to the generality of sub-rule (1) a licensee shall be required to:

- (a) pay the relevant fees; and
- (b) carry out all works related to the provision of generation services, including engineering, construction, rehabilitation, operation and maintenance of a generation facility in accordance with Prudent Utility Practices.

(3) A licensee shall while providing the generation services observe the rules issued by the Authority in matters related to, among others,

- (a) transfer of control; and
- (b) payment of fees and levies.

Performance
Report

27. A licensee shall, on a quarterly and annual basis, provide to the Authority a performance report of the generation facility in the format and content prescribed by the Authority, which statement shall include:

- (a) capacity, energy output, availability and efficiency; and
- (b) compliance to health, safety and environmental requirements.

Compliance
Audit

28. - (1) A licensee shall, as directed by the Authority from time to time, conduct an audit of its compliance with:

- (a) these rules;
- (b) applicable law; and
- (c) any relevant codes.

(2) The compliance audit described in sub-rule (1) shall be conducted by an independent auditor or any other expert with required expertise hired by a licensee.

(3) The costs associated with the audit described in sub-rule (2) shall be paid by the Authority.

(4) A licensee shall within ninety days after completion of the audit described in sub-rule (2) deliver to the Authority the findings of such audit.

Compensation
for Loss
Suffered

30. – (1) A licensee shall be obliged to compensate any person who has suffered any loss of life or property as a result of a generation activity.

(2) Any person suffered loss of life or property as a result of a generation activity shall first lodge a complaint with a licensee with a view to reaching an amicable settlement.

(3) In the event no settlement is reached under sub-rule (2), the person who has suffered loss may refer the matter to the Authority for a decision and the Authority shall deal with such matter as if it is a complaint lodged pursuant to the provisions of the EWURA Act.

(4) For the purpose of this rule, a person includes an administrator, executor or executrix of the estate of a deceased person.

Maintenance of
Records,
Provision and
Disclosure of
Information

31. - (1) A licensee shall at all times:

- (a) keep complete and accurate records and data related to its licensed activity; and
- (b) in accordance with the Authority's requirements and pursuant to its directions, promptly provide to the Authority documents, records or information related to its licensed activity.

(2) Any person who refuses to furnish information or statement as required under sub-rule (1) (b) or furnishes false information or statement to the Authority shall be liable on conviction to a fine of five million shillings.

(3) Any person who refuses to furnish information or statement as required under sub-rule (1) (b) or furnishes false information or statement to the Authority for the second time shall be liable to pay a fine of ten million shillings and shall have its licence suspended for a period of twelve months.

Confidential
Information

32. - (1) Any information received by the Authority from a licensee pursuant to these rules and applicable law shall be presumed to be not confidential.

(2) A licensee shall not be entitled to withhold information from the Authority on the ground that it is confidential.

(3) A licensee may request the Authority not to circulate specific data or information that it has provided to the Authority, provided, that only the Authority shall determine that such information is confidential.

(4) The Authority shall limit or prohibit the publication of any information to

the public in the event it makes a determination that such information is confidential.

PART IV ENVIRONMENTAL PROTECTION

Compliance with
Environmental
Laws and
Standards

33. - (1) A licensee shall comply with the requirements of all applicable environmental laws and standards related to the licensed facility.

(2) Subject to applicable law a licensee shall:

- (a) carry out an **environmental impact assessment** when establishing a licensed facility, or making an improvement to an existing facility;
- (b) take all necessary preventive measures to avoid pollution resulting from operating its pumping stations, treatment plants, or networks;
- (c) observe strict environmental, health, and industrial safety standards as required by applicable law; and
- (d) perform an **environmental audit** related to licensed activity in accordance with applicable law.

Events of
Violations to be
Referred to
NEMC

34. In the event the Authority determines that a licensee has violated these rules or any applicable law on matters related to protection of the environment it shall notify NEMC for appropriate actions.

PART V TECHNICAL PROVISIONS

Codes and
Standards

35. A licensee shall in the conduct of the generation services comply with all applicable codes and performance standards approved by the Authority.

Interruptions and
Emergency
Repairs

37. – (1) A licensee shall immediately upon being made aware of any damage to plant and equipment that poses a danger or a risk of injury to the public or to property, remove such danger or risk of injury prior to carrying out any emergency repair or rehabilitation.

(2) A licensee shall promptly repair the damaged plant or equipment and other defects to the generation facility and shall immediately thereafter commission the plant or equipment in accordance with these rules and Prudent Utility Practices.

Metering

40. A licensee shall:

- (a) install meters to measure the electric energy and any resource needed for generating power, according to rules and measuring procedures and standards stated in applicable law;
- (b) verify the accuracy and calibration of the meters and ensure that all meters give accurate and detailed readings;
- (c) take necessary measures to prevent tampering with or damage

to the meters; and

- (d) test, maintain, and replace the meters according to the manufacturers' recommendations and applicable law.

Testing and
Commissioning

41. - (1) A licensee shall test:

- (a) the generation facility's dependable capacity and perform commissioning test as per the terms and conditions of these rules and Prudent Utility Practices; and
- (b) the generation facility in case of increased capacity or commissioning of a new facility or upgraded facility.

(2) A licensee shall within a month after conducting the tests in sub-rule (1) above submit to the Authority a report thereof.

(3) The Authority may and the licensee shall allow it to witness the testing in sub-rule (1) above.

Inspection

42. – (1) An inspector may inspect the generation facility and documents, and the licensee shall render necessary assistance in the course of inspection of its generation services.

(2) During inspection an inspector may:

- (a) make copies or take extracts from any such book, accounts or records kept by the licensee under the applicable law; and
- (b) inspect machinery, equipment, appliances, meters, fittings and apparatus.

(3) The Authority may, where it concludes that a licensee has not complied with any condition of these rules, terms and conditions of a licence, the Act, the EWURA Act or other applicable law, and without prejudice to the penalties prescribed out in these rules, the Act and the EWURA Act:

- (a) take appropriate actions as provided in the Act; or
- (b) take such other actions as it deems appropriate to protect the interests of a customer.

Prohibited Acts
to Inspectors

43. - A licensee shall not:

- (a) hinder or obstruct an inspector in the exercise of any of the powers conferred upon him by these rules, the EWURA Act, the Act and applicable law;
- (b) use abusive, threatening or insulting language to an inspector;
- (c) refuse or fail to comply with a lawful order, direction or notice of an inspector; and
- (d) when required by an inspector to answer a question, refuse or fail to answer such question to the best of the licensee's knowledge, information and belief.

Decommissioning Procedure

44. – (1) A licensed facility may, subject to the provisions of this rule, be decommissioned:

- (a) after receipt of a written application for a decommissioning from a licensee;
- (b) after the Authority is satisfied that such facility has been abandoned by its licensee for a period not less than three months; or
- (c) by an Order of the Authority that the same be decommissioned after the Authority is satisfied that the continued operation of such facility poses a danger to lives and property.

Generation Facility Decommissioning Plan

45. – (1) A licensee shall not less than six months prior to the expiry of the term of a licence and in the absence of any extension to its term or application for a renewal, submit to the Authority for its approval a generation facility decommissioning plan that includes:

- (a) a schedule of dismantling, re-exportation, if any, and disposal of balance of the generation facility; and
- (b) a method statement for restoration of the land and surroundings to their original state and to the satisfaction of all the responsible authorities.

(2) A licensee shall, after the expiry of the term of the licence and in the absence of any application for a renewal or extension thereof implement the generation facility decommissioning plan described in sub-rule (1).

(3) A licensee shall in the event that the generation facility is not removed as per the decommissioning plan as required in sub-rule (2), be liable for:

- (a) the payment of any charge or penalty that may be imposed by any relevant authority; and
- (b) payment of any cost incurred by any authority in removing the generation facility from the site.

(4) For the purpose of this rule the term generation facility excludes premises, buildings and warehouses adjoining the generation facility.

Decommissioning Process During Licence Revocation

46. - Notwithstanding the provisions of the foregoing provisions a licensee shall in the event of revocation of its licence and in the absence of any other licensee taking over the operation of the generation facility, decommission the generation facility in accordance with Prudent Utility Practices and applicable laws.

Site Restoration

47. – (1) The Authority shall, after confirming that the area where a licensed facility has been constructed has been restored to its original state, issue a certificate of compliance to a licensee.

- (2) For the purposes of sub-rule (1) “restore” means to:
- (a) return the area in which a licensed facility is located to its original and natural state as it was prior to the installation of such facility; or
 - (b) render the area in which a licensed facility is located, or part thereof, compatible with its intended after-use, including:
 - (i) removing buildings, structures, plant and debris;
 - (ii) establishing compatible contours and drainage;
 - (iii) replacing top soil, re-vegetation, slope stabilization; and
 - (iv) infilling excavations.
- (3) The Authority shall, before issuing a certificate of compliance under sub-rule (1), consult NEMC.

PART VI PENALTIES AND REMEDIAL MEASURES

Penalties and Remedial Measures

48. – The Authority may, without prejudice to the penalties prescribed in these rules and applicable law where it determines that a licensee is in violation of these rules or applicable law:

- (a) issue a warning;
- (b) issue a Compliance Order restraining a licensee from continuing violation of these rules, licence conditions, the Act or applicable law;
- (c) restrict the conduct of a licensed activity;
- (d) order a licensee to remedy any situation as a result of such violation;
- (e) issue a partial suspension of a licence for such period the Authority may determine;
- (f) suspend a licence for such period the Authority may determine; or
- (g) revoke a licence.

Appeal
Cap. 285

49. – Any person who is aggrieved by the decision of the Authority in rule 48 may lodge an appeal to the Fair Competition Tribunal pursuant to the provisions of the Fair Competition Act.

PART VII GENERAL PROVISIONS

Power to enter and Close a Facility

50. – (1) Notwithstanding any contrary provisions of these rules an inspector shall, with an Order in writing, have the right and obligation to enter upon any licensed facility and close it down where he determines that a licensed activity is being conducted in contravention of these rules.

- (2) An inspector may while discharging the obligation provided in sub-rule (1) seek the assistance of law enforcement institutions including the police

and such institution shall always ensure that it provides the requested assistance to the inspector.

Transitional Provision

51. - Any person who conducts a licensed facility whether licensed or not shall within twelve months after coming into force of these rules adjust its operations and upgrade its facilities in order to comply with the provisions of these rules.

General Penalty

52. Any person who breaches any provisions of these rules for which no specific penalty is prescribed shall be liable to a fine of ten million shillings.

Penalty for Continued Breach

53. Any person who is in continuous breach of these rules shall be liable to a fine of five million shillings for everyday on which the breach continues or recurs.

Authority to Supplement Procedures

54. - Where procedures are not provided for in these rules, the Authority may do whatever is necessary and permitted by the Act, the EWURA Act and applicable law to enable it to effectively and completely adjudicate on any matter before it.

SCHEDULE

List of Serious Offences

1. All offences listed under section 12 of the Anti-Money Laundering Act, Cap. 256;
2. All offences related to tax evasion which attracts a fine of ten million shillings or more or an imprisonment term of six months or more; and
3. Any other offences as shall be determined by Order of the Authority.

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Haruna Masebu
Director General