

THE ELECTRICITY ACT
(CAP 131)

THE ELECTRICITY (GENERATION SERVICES) 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) Rules, 2011.

Application **2.** - These Rules shall govern the regulatory and licensing matters related to the provisions of electricity generation services in Tanzania but **shall not be applicable to small power projects and operators generating electricity for own use.**

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;

“**business plan**” means a document prepared by a licensee pursuant to guidelines issued by the Authority that describes the scope of its generation services;

“**customer**” means a person that receives or purchases generation services from a licensee;

“**distribution network**” means facilities and equipment belonging to a distribution licensee, designed to distribute electrical power for voltage up to 33 kV, that includes overhead lines, ground cables, feeders, transformers,

control stations and metering equipment;

“**distribution licensee**” means an entity licensed by the Authority to operate, maintain, manage, plan, design and develop the distribution network and for avoidance of doubts it shall include any entity that is exempted pursuant to section 18 of the Act;

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“**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 and the term generation activity shall be construed accordingly;

“**inspector**” means an officer of the Authority or agent appointed by the Authority pursuant to section 31 (2) of the Act to act as an inspector;

“**interconnection point**” means a point where the generation facility output line or electric system feeds into the distribution network or transmission network;

“**operator**” means any entity that seeks, provides or is authorized to provide generation services;

“**licence**” means electricity generation licence issued by the Authority;

“**licensee**” means the holder of a licence;

“**Minister**” means the minister responsible for electricity matters;

“**power purchase agreement**” means a contract for buying and selling of electric power entered into between a licensee and any other party;

“**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;

“**site**” means the location where the generation facility is located and which

details shall be provided in a licence;

“small power project” means a power plant using a renewable energy source or waste heat, or cogeneration of heat and electricity, with an export capacity of up to ten MW;

“supply licensee” means any entity licensed by the Authority to sell electric energy to a customer;

“tariff” means any charge, fee, price or rate for the purchase of a generation services as shall be approved by the Authority;

“tariff methodology” means a methodology approved by the Authority that is used to compute a tariff;

“transmission licensee” means an entity licensed by the Authority to operate transmission network and for avoidance of doubts it shall include any entity exempted pursuant to section 18 of the Act; and

“transmission network” means a group of facilities and equipment belonging to a transmission licensee designed to transport electric energy and power at 50 Hz by means of high voltage lines, for voltage of 66 kV and above that includes overhead lines, ground cables, sub-marine cables, dispatchers, transformers, communication networks, control stations and metering equipment.

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).

5. – (1) An applicant for a licence shall subject to the provisions of rule 6 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) power purchase agreement, if any;
- (g) proof of the financial capability for the generation activity;
- (h) description of the generation plant and site details; and
- (i) a certified copy of the environmental clearance as required in the Environmental Management Act.

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

6. – (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.

7. – (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) hazardous substances;
 - (v) environment;
 - (vi) country and town planning requirements; and
- (g) any other matter relevant to the orderly provision of generation services in Tanzania.

Application for a
Provisional
Licence

8. – (1) Any person seeking to conduct electricity generation services shall, 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;
- (e) Power Purchase Agreement, memorandum of understanding or a letter of intent, if any; and
- (f) any other documentation or information the Authority may require.

Publication of a
Provisional
Licence
Application

9. - (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

10. - 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

11. – (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

12. - (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

13. - (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

14. - 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

15. – 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,
Duration and
Transfer of a
Licence

16. – (1) The term of a licence and that for a provisional licence shall be stated on the face of such licence or provisional licence, as the case may be.

(2) A provisional licence shall remain valid for the term issued, provided, however, that the Authority may, on the written application of a licensee, extend the initial period for such further period as the Authority may determine.

(3) A licence or a provisional licence shall not be assigned or transferred from the licensee to another person without a written approval of the Authority.

(4) Without prejudice to the provisions of sub-rule (3), a change of ownership of a licensee in relation to which a licence or a provisional licence has been issued shall require the approval of the Authority.

Licence
Suspension and
Revocation

17. – (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) 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; or
- (b) a licensee fails to pay a regulatory levy to the Authority and such levy remains unpaid thirty days after it has become due and the Authority has given the licensee notice in writing that such payment is overdue and the licensee has not paid.

(3) Notwithstanding the provisions of sub-rules (1) and (2), the Authority may in lieu of suspending or revoking a licence and subject to the regulations to be made by the Minister appoint an administrator to replace management of a licensee, and manage the affairs of the licensee for such period the Authority may determine.

Exempted

18. - (1) An operator of a generation facility with the capacity up to one MW

Generation Services

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 Not Apply to Exempted Generation Services

19. - The provisions of rule 4 to 16 shall not apply to any operator who is 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 OBLIGATIONS OF A LICENSEE

Provision of Generation Services

20. - (1) A licensee shall conduct generation activity pursuant to the provisions of the Act, the EWURA Act, any applicable law and a power purchase agreement, if any, provided that the provisions of the power purchase agreement are not at variance with the provisions of these rules, the Act, the EWURA Act and any other applicable law.

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

- (a) provide reliable generation services to customers;
- (b) operate and maintain the generation facility; and
- (c) carry out all works related to the provision of generation services, including engineering, construction, rehabilitation, operation and maintenance of the generation facility in accordance with Prudent Utility Practices and a power purchase agreement, if any.

(3) A licensee may use part of the power generated to meet its own demand at a generation facility.

General Obligations of a Licensee

21. - (1) A licensee shall while providing the generation services observe the rules and guidelines issued by the Authority in matters related to, among others,

- (a) tariffs;
- (b) tariff methodologies;
- (c) transfer of control; and
- (d) payment of fees and levies.

(2) Notwithstanding the generality of sub-rule (1) a licensee shall be obliged

to provide generation services to all customers without any discrimination and bias, pursuant to a power purchase agreements, if any, the Act, the EWURA Act and other applicable law and shall under no circumstances stop to provide generation service save as provided in these rules and applicable laws.

Execution of
Power Purchase
Agreements

22. - (1) No licensee shall enter into any power purchase agreement save as provided in these rules and the Act.

(2) The Authority shall be invited and participate in all negotiations related to execution of power purchase agreement as an observer.

(3) A licensee shall before executing any power purchase agreement with any person, submit to the Authority for review and approval, such power purchase agreement.

(4) Any power purchase agreement entered in contravention of these rules and the Act shall be void.

Termination and
Amendment of
the Power
Purchase
Agreement

23. – (1) A licensee shall promptly and in any event not later than seven days after receipt of any notice from the other party to the power purchase agreement intending to terminate the power purchase agreement, notify the Authority about the receipt of such notice.

(2) Without prejudice to the provisions of sub-rule (1) a licensee shall not terminate or amend a power purchase agreement unless a ninety days written notice has been served to the Authority.

(3) A licensee shall not cause or consent to any proposed amendment to the power purchase agreement that may have adverse effects to the provision of the generation services without seeking and receiving approval of the Authority.

Annual Reports

24. - A licensee shall submit to the Authority its annual report not later than thirty days after receipt of the audited accounts.

Performance
Report

25. - 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

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

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

(2) The compliance audit described in sub-rule (1) shall be conducted by:

- (a) an independent auditor; or
- (b) 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.

Performance
Improvement
Plan

27. - A licensee shall on annual basis, submit to the Authority a performance improvement plan comprising of key performance indicators in accordance with:

- (a) applicable laws;
- (b) a performance contract, if any;
- (c) international best practices; and
- (d) Prudent Utility Practices.

Compensation
for Loss
Suffered

28. – (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.

PART IV FINANCIAL PROVISIONS

Financial
Reporting

29. – (1) A licensee shall within 90 days after the start of its financial year submit to the Authority its approved budget for such financial year, which budget shall include:

- (a) operating revenue; and
- (b) capital and operating expenses.

(2) A licensee shall provide all financial information required by the Authority in a form prescribed by the Authority which information shall include:

- (a) a quarterly report on its commercial and financial performance not later than thirty days after the end of each quarter; and
- (b) auditor’s report on financial statements for each financial year together with the management letter not later than 180 days after the end of financial year.

(3) A licensee shall submit to the Authority its audited accounts not later than thirty days after receipt of the same.

Maintenance of Separate Accounts

30. - A licensee shall maintain a separate set of accounts for provision of activities not related to the generation activity.

Prohibition to Cross Subsidization

31. - A licensee shall ensure that there is no cross subsidization between the generation activity and any other activity, including activities of affiliates.

**PART V
TECHNICAL PROVISIONS**

Codes and Standards

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

Planned Outages and Preventive Maintenance

33. – (1) A licensee shall undertake the preventive maintenance activities as scheduled in accordance with the power purchase agreement, if any, to ensure continuation and reliability of generation services.

(2) A licensee shall provide details of proposed planned outages periods to the Authority in writing not less than ninety days before the occurrence of any planned outages.

Interruptions and Emergence Repairs

34. – (1) A licensee shall take all reasonable action to restore generation services in the event supply and delivery of electric energy to a customer at the interconnection point is reduced or interrupted for any reason other than unplanned outage.

(2) 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.

(3) 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 the power purchase agreement.

Notification of Service Interruptions

35. – (1) A licensee shall within seven days prior to a planned outage notify the Authority and customers in writing in case the generation service is interrupted for the purpose of conducting rehabilitation, preventive maintenance or any other plausible cause beyond the control of the licensee.

(2) A licensee shall notify a customer and report immediately to the Authority in writing in case generation service is interrupted for the purpose of conducting emergency repairs or for any other cause beyond the control of a licensee, where such interruption affects the delivery of generation services for more than 24 hours.

Reliability of
Supply

36. - A licensee shall ensure from the effective date of a licence and at all times thereafter until the expiration of the licence, that it receives a reliable supply of materials needed for generation services including spare parts, fuels and water of such quality and in quantity sufficient to meet electric power requirements.

Metering

37. - 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 an agreement entered into between the licensee and any other person;
- (b) ensure the energy meters are of the agreed inaccuracy limit but in any case not exceeding one half percent;
- (c) verify the accuracy and calibration of the meters and ensure that all meters give accurate and detailed readings;
- (d) take necessary measures to prevent tampering with or damage to the meters; and
- (e) test, maintain, and replace the meters according to the manufacturers' recommendations and applicable law.

Testing and
Commissioning

38. - (1) A licensee shall test:

- (a) the generation facility's dependable capacity and perform commissioning test as per the terms and conditions of the power purchase agreement; 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

39. - (1) An inspector shall 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) If upon investigation, the Authority concludes that the licensee has not complied with any condition of these rules, the power purchase agreements, the Act, the EWURA Act or other applicable law, the Authority may without prejudice to the penalties prescribed out in these rules, the Act and the EWURA Act:

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

Prohibited Acts
to Inspectors

40. - 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.

Generation
Facility
Decommissioning
Plan

41. – (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 in Event of Licence Revocation

42. - 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.

PART VI GENERAL PROVISIONS

General Penalty

43. - (1) 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.

(2) A licensee who employs an agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such persons in so far as the actions or omissions concern the generation activity.

Penalty for Continued Breach

44. - 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

45. - 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 the 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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....., 2011

Haruna Masebu
Director General