

THE ENERGY ACT (No. 1 of 2019)

ENERGY (CONSOLIDATED ENERGY FUND) REGULATIONS, 2023

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THE ENERGY ACT (No. 1 of 2019)		
IN EXERCISE of the powers conferred by Sections 208, 216 (1) and 216 (4) of the Energy Act, 2019, the Cabinet Secretary for Energy makes the following Regulations		
ENERGY (CONSOLIDATED ENERGY FUND) REGULATIONS, 2023		
PART I - PRELIMINARIES		
Citation	1.	These Regulations may be cited as the Energy (Consolidated Energy Fund) Regulations, 2023.
Application	2.	These Regulations shall apply to licensees as defined in the Energy Act 2019.
Interpretations	3.	In these Regulations, unless the context otherwise requires –
		<p>“<i>Act</i>” means the Energy Act, 2019;</p> <p>“<i>Administrator of the Fund</i>” means the Principal Secretary responsible for matters relating to Energy;</p> <p>“<i>Agency</i>” has the meaning assigned to it under the Act;</p> <p>“<i>Authority</i>” means the Energy and Petroleum Regulatory Authority established under section 9 of the Act;</p> <p>“<i>Cabinet Secretary</i>” means the Cabinet Secretary for the time being responsible for energy;</p> <p>“<i>Financial year</i>” means the period of twelve months ending on the 30th June in each year.</p> <p>“<i>financial year</i>” means the period of twelve months ending on the 30th June in each year;</p> <p>“<i>Fund</i>” means the Rural Electrification Programme Fund established under section 143 of the Act.</p> <p>“<i>Oversight Board</i>” means the Energy Oversight Board established under regulation 10</p>
Purpose of these Regulations.	4.	The object and purpose of these Regulations is to provide guidelines for the for management of the Consolidated Energy Fund.
PART II – ESTABLISHMENT OF FUND		
Establishment of the Fund	5.	There is established a Fund to be known as the Consolidated Energy Fund as provided under Section 216(1) of the Act.
Objectives of the Fund	6.	<p>The objectives of the Fund is pursuant to Section 216 (1) of the Act. They include –</p> <ul style="list-style-type: none"> a) energy sector disaster mitigation and response; b) hydro risk mitigation; c) operations of the Agency; d) promotion of renewable energy initiatives; e) construction of appropriate energy infrastructure;

		<p>f) decommissioning of energy infrastructure;</p> <p>g) energy efficiency and conservation; and</p> <p>h) applied research, technology development and innovation allied to energy sector including technology needs assessment, deployment and scaling up.</p>
Sources of the Fund.	7.	The sources of the Fund shall be pursuant to Section 216 (2) of the Act.
Capital of the Fund.	8.	<p>(1) The initial capital of the Fund shall be five hundred million shillings appropriated by Parliament in the financial year following the gazettment of these Regulations.</p> <p>(2) The Monies received pursuant to Section 216(2) of the Act shall be allocated on annual basis for the respective purposes set out in Regulation 4 in accordance with the following percentages;</p> <p>(3) Monies allocated for a particular purpose shall not be re-allocated or used for any other purpose unless proper justification is provided, and approved by the Oversight Committee.</p>
Expenditure of the Fund.	9.	<p>(1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.</p> <p>(2) The expenditure incurred on the Fund shall be on the basis of, and limited to, annual budget estimates prepared by the Administrator of the Fund and recommended by the Oversight Board to the Cabinet Secretary for approval and submission to the Cabinet Secretary responsible for matters relating to finance, at the beginning of the financial year to which they relate.</p> <p>(3) Any revision of the approved budget estimates, and any cost estimate, shall be referred to the Oversight Board and the Cabinet Secretary for approval.</p>
		PART III – MANAGEMENT OF THE FUND
Oversight Committee.	10.	<p>(1) There is established a board to be known as the Energy Oversight Committee which shall consist of —</p> <ol style="list-style-type: none"> the Cabinet Secretary responsible for matters relating to energy who shall be the Chairperson of the Oversight Board or his representative; the Principal Secretary responsible for matters relating to finance or his representative; the Attorney General or his representative; the Director General of the Energy and Petroleum Regulatory Authority or his representative; the Chief Executive Officer of the Rural Electrification and Renewable Energy Corporation or his representative; the Chief Executive Officer of the Nuclear Power and Energy Agency or his representative; the Managing Director of the Kenya Electricity Generation Company or his representative;

		<ul style="list-style-type: none"> h. the Managing Director of the Kenya Power and Lighting Company or his representative; i. the Managing Director of the Geothermal Development Company or his representative; j. the Managing Director of the Kenya Electricity Transmission Company or his representative; and k. two persons appointed by the Cabinet Secretary responsible for matters relating to energy in accordance with Article 27 of the Constitution. <p>(2) Where the members of the Oversight Committee in regulation 10 (1)(a) to 10(1)(j), nominate representatives, such nomination shall be in writing to the Cabinet Secretary.</p> <p>(3) A person shall not be appointed under regulation 10 (1)(k), unless such person —</p> <ul style="list-style-type: none"> (a) holds a university degree recognized in Kenya; (b) has not less than fifteen years' experience in the relevant field; and (c) meets the requirements of Chapter Six of the Constitution. <p>(4) A person appointed to the Committee, under regulation 10 (1)(k) shall serve for a period of three years and the period may be renewed for a further final term of three years.</p> <p>(5) The names of all members of the committee as first constituted and at every change in membership thereafter shall be published in the Kenya Gazette.</p>
Functions of the Oversight Committee	11.	<p>The oversight committee established under regulation 10 shall have the following functions:-</p> <ul style="list-style-type: none"> a) Advise the Cabinet Secretary on the funding requirements of the Fund; b) Review and adopt the estimates of annual revenue and expenditure of the Fund and make recommendations to the Cabinet Secretary for approval and submission to the Cabinet Secretary responsible for matters relating to finance; c) Determine the allocation of financial resources from the Fund required for the various uses; d) Ensure that any retained funds are included in subsequent annual estimates of revenue and expenditure for the Fund; e) Approve and review the investment of surplus funds from the Fund; f) Approve the financial statements prepared by the Administrator of the Fund before submission to the Auditor General; and g) Approve the non-financial reports of the Fund before submission to the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance.
Administrator of the Fund.	12.	<p>The Administrator of the Fund shall be the Principal Secretary responsible for matters relating to energy.</p>

Functions of the Administrator of the Fund.	13.	<p>(1) The Administrator of the Fund shall —</p> <ul style="list-style-type: none"> a) Supervise and control the administration of the Fund; b) recommend the allocation of financial resources from the Fund required by the implementing agencies; c) prepare estimates of annual revenue and expenditure of the Fund and submit to the Oversight Committee for approval; d) establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations; e) advise and consult the Oversight Committee on matters relating to the administration of the Fund; f) co-ordinate the monitoring and evaluation of projects financed from the Fund; g) advise and consult with the Cabinet Secretary on matters relating to the administration of the Fund; h) keep proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund and submit them to the Oversight Committee; i) keep custody of the assets, equipment and properties of the Fund; j) prepare financial and non-financial performance reports of the Fund and submit it to the Oversight Committee for approval, and upon approval transmit a copy to the National Treasury and Ministry for matters relating to Energy; k) prepare the annual financial statements and submit to the Oversight Committee for approval before submission to the Auditor General, and upon approval transmit a copy to the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance; l) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General; and m) undertake any other duty as the Oversight Committee may assign through resolutions. <p>(2) When discharging the functions under regulation 13(1), the Administrator shall —</p> <ul style="list-style-type: none"> (a) comply with the budget cycle in the preparation of estimates for the Fund; and (b) submit estimates of revenue and expenditure of the Fund to the Cabinet Secretary by the 31st January of the preceding financial year for approval. The estimates shall provide for – <ul style="list-style-type: none"> i. revenues projected to be received by the Fund from the sources of funds provided for under these Regulations ii. moneys allocated to implementing agencies under these Regulations iii. monies for the administration expenses of the Fund iv. the proper maintenance of the assets, equipment and properties under the Fund
Powers of the Administrator of the Fund.	14.	<p>The Administrator of the Fund shall have the power to —</p> <ul style="list-style-type: none"> (a) access any project related data he or she may need from an implementing agency in furtherance of his or her functions;

		<p>(b) call for any additional information with respect to requests for payments out of the Fund; and</p> <p>(c) with the approval of the Oversight Committee, cause a monitoring and evaluation exercise to be done to an implementing agency project funded from the Fund; and</p> <p>(d) withhold any payments in accordance with regulation 21.</p>
Secretariat.	15.	The Cabinet Secretary, in consultation with the Administrator, shall designate such number of staffs from the Ministry in charge of matters relating to energy to the secretariat necessary for the proper administration of the Fund
Accounts of the Fund.	16.	<p>(1) For purposes of effective management of the Fund, the administrator of the fund shall open and maintain a separate bank account(s) in a bank(s) within Kenya in line with section 28 of the Public Finance Management Act, 2012 and any Regulations made thereunder.</p> <p>(2) All monies due to the Fund shall be paid into the bank account(s) established in regulation 16(1).</p> <p>(3) The administrator of the fund shall ensure the bank account (s) of the Fund regulation 16(1) is not overdrawn.</p>
		PART IV – ADMINISTRATION OF THE FUND
Funding eligibility criteria	17.	<p>An implementing agency under the Ministry of Energy shall be eligible to apply for funding from the Fund if —</p> <p>a) In the case of a state corporation or a government agency —</p> <p>(i) has an annual work programme aligned to the strategic plan of the corporation or agency and the medium-term plan is approved by the governing body of the state corporation or agency;</p> <p>(ii) has, in relation to an infrastructure development project, undertaken project studies, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions; and</p> <p>(iii) meets any other criteria set out by the Oversight Board.</p> <p>(b) in the case of a Ministry or a State Department, that Ministry or State Department —</p> <p>(i) has an annual work programme aligned to the strategic plan of the Ministry or State Department and the medium term plan is approved by the Cabinet Secretary responsible for that Ministry or State Department;</p> <p>(ii) has, in relation to an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the Accounting Officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions; and</p> <p>(iii) meets any other criteria set out by the Oversight Board.</p>

		(c) in the case of funding for disaster mitigation and response, in accordance the criteria set by the Oversight Board.
Procedure for funding.	18.	<p>(1) The Administrator shall by the 30th August of each year issue a budget circular to the eligible persons indicating –</p> <ul style="list-style-type: none"> a) The amount of money likely to be available for allocation in the coming year; b) priorities to be funded in the subsequent financial year c) the criteria to be applied in making allocations; and d) any other information that the Oversight Board may consider necessary <p>(2) The Circular shall be aligned to the energy sector Medium Term Plan and the Integrated National Energy Plan;</p> <p>(3) A person who wishes to receive funding and meets the criteria set out under regulation 17 shall at least, six months before the commencement of a financial year, apply to the Administrator in such a manner as may be specified by the Oversight Board. This will not apply for funds meant for disaster response in the energy sector</p> <p>(4) The Administrator shall cumulate the allocations towards disaster response on an annual basis at 5% of the fund</p> <p>(5) An application for funding under regulation 18(2) shall be accompanied by -</p> <ul style="list-style-type: none"> (a) in case of a state corporation or government agency — <ul style="list-style-type: none"> (i) the board resolutions of the governing body of the state corporation or government agency containing the resolution to apply for funding from the Fund; (ii) an work plan aligned to the strategic plan of the state corporation or government agency approved by the governing body of that corporation or agency and the Medium-Term Plan approved by the Cabinet Secretary responsible for that state corporation or government agency; (iii) where the project is an infrastructure development project, the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable; (iv) declaration of programmes funded through other sources, if any; (v) the details and signatories of the bank account in the name of the state corporation or government agency where the funds shall be channelled; and (vi) any other additional information as may be required by the Oversight Committee. (b) in the case of a Ministry or State Department — <ul style="list-style-type: none"> (i) an annual work programme aligned to the strategic plan of that Ministry or State Department and the Medium Term Plan;

		<p>(ii) a written confirmation from the accounting officer responsible for that Ministry or State Department that there is no other funding for the same programme, project or activity;</p> <p>(iii) where it is an infrastructure development project, the project designs, plans and bills of quantities, approved by the Accounting Officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions, where applicable;</p> <p>(iv) an accounting officers' declaration of programmes funded through other sources, if any;</p> <p>(v) the details and signatories of the bank account in the name of that Ministry or State Department where the funds shall be channelled; and</p> <p>(vi) any other additional information as may be required by the Oversight Board.</p> <p>(6) Applications for funding for disaster mitigation and response shall follow procedures set by the Oversight Committee.</p> <p>(7) Projects approved for funding shall be procured in accordance with the Public Procurement and Asset Disposal Act 2015 and any other written laws</p>
Conditions for disbursements of funds.	19.	<p>(1) The funds shall only be disbursed if —</p> <p>(a) the disbursement shall be based on the minutes by the Secretariat;</p> <p>(b) the disbursement is to meet the expenses related to the objects and purpose of the Fund.</p> <p>(2) The Oversight Committee may set out other conditions and requirements for release of funds, to ensure efficient and effective management of resources.</p>
Obligations of the recipient of funds.	20.	<p>(1) A recipient of the funds shall —</p> <p>(a) submit quarterly and annual progress reports of the programmes, projects and initiatives funded by the Fund to the Oversight Committee; and</p> <p>(b) allow staff of the Secretariat to monitor and evaluate programmes, projects and initiatives funded by the Fund.</p> <p>(2) A recipient of the funds shall return any unutilized funds disbursed in accordance with these Regulations where —</p> <p>(a) the purpose for which the funds were disbursed was not undertaken;</p> <p>(b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilized; or</p> <p>(c) savings are realized during implementation.</p> <p>(3) Unutilized funds returned under sub regulation (2) shall be recorded as receipts of the Fund.</p>

		(4) A recipient of the funds who fails to comply with paragraph (1) and (2) shall not be eligible for any subsequent disbursement until that person has fully complied with the provisions of these Regulations.
Withholding of payments.	21.	<p>The Administrator of the Fund may withhold payments due and owing to an implementing agency where —</p> <ul style="list-style-type: none"> (a) that implementing agency fails to comply with the provisions of these regulations; or (b) an implementing agency provides information justifying the proposed withholding with approval of the agency governing body, and the Oversight Committee approves the withholding.
Imposition of sanctions.	22.	<p>The Oversight Committee , with the prior approval of the Cabinet Secretary and the Cabinet Secretary responsible for matters relating to finance, may —</p> <ul style="list-style-type: none"> (a) suspend funding allocations to an implementing agency, which fails to comply with these Regulations; or (b) take such remedial actions necessary to ensure proper utilization of any allocated funds under these Regulations.
Applications for payments out of the Fund.	23.	<p>(1) Applications for payments out of the Fund shall be made by an implementing agency in a format specified by the Oversight Committee at least twenty-one days before the due date.</p> <p>(2) Any application for payment made under sub regulation (1) shall include —</p> <ul style="list-style-type: none"> (a) the name and address of the implementing agency; (b) the bank account details of the implementing agency; (c) specific project being financed; and (d) any other additional information as may be deemed necessary by the Oversight Committee. <p>(3) Any application under these Regulations shall be made in writing by the accounting officer of an implementing agency .</p> <p>(4) Applications for funding for disaster mitigation and response shall follow the procedures set by the Oversight Board.</p>
Advances to the Oversight Committee	24.	<p>(1) The Oversight Committee shall ensure that in any financial year, expenditure and commitments from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.</p> <p>(2) If, in exceptional circumstances, the income from the Fund or other funds together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Oversight Committee and the Fund, the Cabinet Secretary responsible for matters relating to finance, may with the approval of Parliament, make advances to the Oversight Committee and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Cabinet Secretary responsible for matters relating to finance may determine:</p>

Investments of the Fund.	25.	The Oversight Committee may with the consent of the Cabinet Secretary responsible for matters relating to finance and the Cabinet Secretary, invest any surplus funds in Government securities.
Fund Expenses	26.	The expenses incurred for the purposes of administration of the Fund shall be paid from the Fund. The recurrent expenditure which shall not exceed 3% of the total collections in that year.
Performance reports.	27.	<p>(1) The Oversight Committee shall submit to the Cabinet Secretary, and the Cabinet Secretary in charge if matter relating to finance, the annual financial and non-financial performance reports before or on 30th September of the subsequent year.</p> <p>(2) The Administrator shall prepare quarterly financial and non-financial reports and submit it to the Oversight Committee for approval.</p> <p>(3) The Administrator shall prepare the performance reports in sub-regulation (1) and (2) in accordance with; the PFM Act 2012, the Public Sector Accounting Standards Board and applicable guidelines issued from time to time by the National Treasury.</p>
Retention of receipts and earnings.	28.	All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund.
		PART V - MISCELLANEOUS PROVISIONS
Review and performance of the Fund.	29.	<p>(1) The Cabinet Secretary shall cause a review to be conducted on the performance of the Fund after every three years to determine whether the Fund has met the objectives for which it was established.</p> <p>(2) The report on the review of the fund shall be submitted to the Cabinet and Parliament for approval.</p>
Accounts and audit.	30.	<p>(1) The Oversight Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.</p> <p>(2) Within a period of three months from the end of each financial year, the Oversight Committee shall submit to the Auditor-General with a copy to the National Treasury, the accounts of the Fund together with —</p> <p style="padding-left: 40px;">(a) a statement of the income and expenditure of the Fund during the financial year; and</p> <p style="padding-left: 40px;">(b) a statement of the assets and liabilities of the Fund on the last day of that financial year.</p> <p>(3) The financial statements prepared sub regulation (2) shall be in accordance with the prescribed format by the Public Sector Accounting Standards Board and the Act.</p> <p>(4) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act, 2015.</p> <p>(5) The Oversight Committee shall inform and keep the public informed of its activities and operations through regular publications and such activities and operations shall be accessible to the public.</p>

Offences and Penalties.	31.	A person who misappropriates any or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, shall be held liable in accordance with the PFM Act.
Annuity and winding up of the Fund.	32.	In the event of winding up of the Fund, the provisions of the Public Finance Management Act, 2012 and PFM Regulations shall apply.