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THE ENERGY ACT (No. 1 of 2019)

IN EXERCISE of the powers conferred by sections 131, 136(1)(c), 138, 140(d) and (e), 163, 167(j), (k), (l) & (n) and 208 of the Energy Act, 2019, the Cabinet Secretary for Energy makes the following Regulations

ENERGY (ELECTRICITY MARKET, BULK SUPPLY AND OPEN ACCESS) REGULATIONS, 2024

PART I—PRELIMINARIES

1. (1) These Regulations may be cited as the Energy (Electricity Market, Bulk Supply and Open Access) Regulations, 2024.
- (2) These Regulations shall come into force upon gazettment by the Cabinet Secretary.
2. These Regulations shall be applicable to generation, importation, exportation, transmission, distribution and retail supply of electrical energy.
3. (1) In these Regulations, unless the context otherwise requires: -
“Act” means the Energy Act, No. 1 of 2019;
 - (1) ‘Act’ means The Energy Act, 2019.
 - (2) Capital Cost’ means the capital cost as defined in the Tariff Review Guidelines.
 - (3) Admitted capital cost’ means the Regulated Asset Base or Costs Incurred that will be capitalized into a Regulated Asset Base
 - (4) Additional Capital expenditure’ means the capital expenditure incurred or projected to be incurred after the date of commercial operation of the project by the licensee, as the case may be, in accordance with the provisions of these regulations.
 - (5) ‘Additional capitalization’ means the additional capital expenditure admitted by the EPRA after prudence check, in accordance with these regulations.
 - (6) ‘Change in Law’ means occurrence of any of the following events:
 - (a) enactment, bringing into effect or promulgation of any Kenyan law; or

- (b) adoption, amendment, modification, repeal or re-enactment of any existing Kenyan law; or
 - (c) change in interpretation or application of any Kenyan law by a competent court, Tribunal or Kenyan Governmental Instrumentality which is the final authority under law for such interpretation or application; or
 - (d) change by any competent statutory authority in any condition or covenant of any consent or clearances or approval or license available or obtained for the project; or
 - (e) coming into force or change in any bilateral or multilateral agreement or treaty between the Government of Kenya and any other Sovereign Government having implication for the transmission system regulated under these regulations.
- (7) Commercial Operation Date’ or ‘COD’ Means the date certified by an Independent Engineer that the Commercial Operations of the Licensee’s facilities are ready for integration with the grid and to provide the regulated service of the Licensee, after the testing and commissioning
- (7.1) Target Commercial Operation Date or ‘TCOD’ shall mean target the date(s) when the commercial operation activities of the Licensees shall come into force.
- (8) ‘Force Majeure’ for the purpose of these regulations means the events or circumstances or combination of events or circumstances including those stated below which partly or fully prevents the transmission licensee to complete the project within the time specified in the Investment Approval, and only if such events or circumstances are not within the control of the transmission licensee and could not have been avoided, had the transmission licensee taken reasonable care or complied with prudent utility practices:
- (a) Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years; or

- (b) Any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or
- (c) Industry wide strikes and labour disturbances having a nationwide impact in Kenya; or
- (d) Delay in obtaining statutory approval for the project except where the delay is attributable to project developer;

“*Applicant*” means a licensee or eligible consumer who has applied seeking open access under these regulations;

“*Authority*” shall have the meaning assigned to it under the Act;

“*Bulk supply*” shall have the meaning assigned to it under the Act;

“*Cabinet Secretary*” means the cabinet secretary for the time being responsible for energy;

“*Consumer*” shall have the meaning assigned to it under the Act;

“*Day*” means a calendar day;

“*Electricity market*” shall have the meaning assigned to it under the Act;

“*Energy accounting*” means accounting for the different energy supplied to and drawn from the grid by various licensees

“*Eligible consumer*” shall have the meaning assigned to it under the Act;

“*Force majeure*” shall have the meaning assigned to it under the grid code;

“*Grid*” shall have the meaning assigned to it under the Act;

“*Grid code*” means the Kenya National Transmission Grid Code and the Kenya National Distribution Grid Code, which establishes the technical and other requirements for the connection to and use of the grid in a manner that ensures reliable, efficient and safe operations;

“*Licence*” shall have the meaning assigned to it under the Act;

“*Licensee*” shall have the meaning assigned to it under the Act;

“*Network*” means transmission system or distribution system;

“*Network services*” means transmission or distribution services associated with the conveyance of electricity through the grid;

“*Network service provider*” means transmission or distribution licensee;

“*Operation and Maintenance Expenses*” or “*O&M expenses*” means the expenditure incurred for operation and maintenance of the project, or part thereof, and includes the expenditure on manpower, maintenance, repairs and maintenance spares, consumables, insurance and overheads and fuel.

“*Open access*” shall have the meaning assigned to it under the Act;

“*Open access customer*” means a licensee or eligible consumer who has been granted open access under these regulations;

“*Person*” shall have the meaning assigned to it under the Act;

“*Tribunal*” shall have the meaning assigned to it under the Act;

“*Wheeling*” shall have the meaning assigned to it under the Act; and

“*Wheeler*” means the person using the transmission system, distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, for the conveyance of electricity.

4. (1) The objectives of these Regulations are to –
- (a) Provide the guidance on the review of the electricity market.
 - (b) Govern the operations and management of the electricity market, open access and bulk supply.
 - (c) Promote competition, efficiency and reliability and improve the quality of service within the electricity market.
 - (d) Provide for non-discriminatory open access to transmission or distribution system so as to enhance competition.
 - (e) Attract investment for generation, transmission, distribution and retail supply.
 - (f) Achieve greater accountability and transparency in the operations of the electricity market.
 - (g) Provide guidelines for an efficient electricity market operation for all actors including participants in the bilateral, spot markets and eligible customers among others.

PART II—ELECTRICITY MARKET

5. (1) The electricity market structure/design shall be informed by the first electricity market review undertaken by the Authority in consultation with the Cabinet Secretary within the first three years in accordance with the Act.
- (2) The Authority in consultation with the Cabinet Secretary shall undertake subsequent reviews of the electricity market at least once every five years.
 - (3) The Authority shall gazette the reports on the reviews of the electricity market within thirty days of conclusion of the reviews.
 - (4) The Authority in consultation with the Cabinet Secretary shall issue and gazette guidelines on the structure of the electricity market within six months after the gazette of the electricity market report.
 - (5) The guidelines issued by the Authority shall at a minimum contain the following:
 - (a) The electricity market design/structure during the market transition phase.
 - (b) Electricity market rules during the electricity market transition.
 - (c) The minimum performance targets for licensees during the electricity market transition phase.
 - (6) The Authority shall involve stakeholders while undertaking the electricity market reviews and developing the guidelines.
 - (7) There shall be a Capacity Market for existing Power Purchase Agreements but all new generation shall be in the Energy Market after the transition period.
6. (1) An Applicant shall submit a performance security prior to signing of the network service contract as may be guided by the Authority from time to time.
- (2) A retail supply licensee participating in the electricity market shall submit to the Authority a performance security equivalent to amounts to be determined by the Authority.

7. (1) A transmission or distribution licensee shall provide non-discriminatory open access to its transmission or distribution system as the case may be for use by any licensee or eligible consumer upon payment of wheeling or use of system charges as shall be prescribed under these regulations and such other fees and compliance with such minimum requirements of the transmission or distribution licensee.
- (2) A transmission or distribution licensee shall provide such information to the Authority as prescribed in the regulations on electricity regulatory accounts to enable approval of the wheeling charges or use of system charges and any other charges.
- (3) Subject to section 145(4) of the Act, a licensee may supply a consumer provided that the said consumer has no existing contract for supply of electrical energy with any other licensee.
- (4) Subject to section 145(4) of the Act, a consumer shall choose his retail supplier provided that the said consumer shall not have two supply contracts for the same premises.
- (5) Ancillary services shall be provided by licensees, save for retail supply licensees, connected to the grid system based on the integrated national energy plan and the tariff for such services shall be computed as per the methodology set out by the licensee and approved by the Authority.
- (6) Penalties and compensation arising due to poor quality or irregularity of supply shall be as determined in accordance with the regulations on reliability and quality of supply and service.
8. (1) The market role of a generation licensee shall at a minimum include:
- (a) To provide adequate supply of electrical energy required for the balance between the supply and demand.
- (b) To supply the electrical energy in accordance with the contract.
- (c) To participate in activities aimed at maintaining system stability and security.
- (2) The market role of a transmission licensee shall at a minimum include:
- (a) To provide the network to wheel the purchased bulk electrical energy in an efficient, reliable and safe manner in the wholesale market.
- (b) To participate in activities aimed at maintaining system stability and security.
- (3) The market role of a distribution licensee shall at a minimum include:
- (a) To provide the network to wheel the electrical energy in an efficient, reliable and safe manner.
- (b) To trade bulk purchase of electrical energy in the electricity market pool.
- (c) To supply to the retailers or consumers in accordance with the electricity supply contracts.
- (d) To participate in activities aimed at maintaining system stability and security.
- (4) The market role of a retail supply licensee shall at a minimum include:
- (a) To supply to the consumers in accordance with the electricity supply contract.
- (b) To supply to the eligible consumers in accordance with the electricity supply contract.
- (c) To bill for the power supplied and collect the revenues and to make payments to the respective licensees.
- (5) The market role of an eligible consumer and a consumer shall at a minimum include making of payments for the electrical energy consumed in accordance with the electricity supply contract.
- (6) The market role of the system operator shall at a minimum include:
- (a) To provide non-discriminatory market services to all the participants.
- (b) To carry out outage coordination, operational planning, real time dispatch, procuring ancillary services and supervising the operation of the systems within defined reliability and quality of service criteria.
- (c) To develop and implement the initial operational market procedures, including procedures for the management of shortages and to allocate curtailment proportionally among loads.
9. System operations on market balancing and dispatch shall be conducted in accordance with the regulations on system operations.
10. (1) The Authority shall prescribe the tariffs for the following:
- (a) Generation tariff (energy and/or capacity)
- (b) Retail tariff
- (c) Network service charges
- (d) Wheeling charges
- (e) Use of system charges
- (f) Ancillary services charges
- (2) The Tariff prescribed above shall be guided by the existing regulations and or guidelines as set by the Authority
- (3) The licensee shall apply to the Authority for approval of any applicable tariffs for any service to be charged as described in (10) (1) above.
- (4) The Authority shall process the Tariff Application within 60 days after the application is submitted.
- (5) The Tariff shall become effective at the Commercial Operation Date of the specific Commercial Agreement
- (6) The Tariff Structure shall be determined in the Commercial Agreement provided that the Tariff should recover all or part of the following costs;
- (a) Capital Costs, including Interest During Construction
- (b) O&M Costs
- (c) Depreciation
- (d) Return on Equity
- (e) Other Finance costs
- (f) Taxes
- (7) The Depreciation Charge shall be on a Straight line, on the basis of the Term of the Commercial Agreement or the Useful life of the Assets of the Licensee, whichever is the shorter period.
- (8) The Return on Equity shall be determined by the Authority, based on the Currency of the Tariff
- (9) Any Inflation Indexation on any part of the Tariff shall be tandem with the Currency of the Tariff.
11. (1) To facilitate effective day-to-day operation and encourage capital investments, the Authority in consultation with the Cabinet Secretary shall, six months after the gazettment of the electricity market report, issue guidelines on the market governance structure.
- (2) The electricity market shall consist of a wholesale market and a retail market. The wholesale market shall comprise of generation licensees and other licensees who will trade through the intermediary of an operator, who shall be designated by the Authority. The retail market shall

purchase from the wholesale market and supply to consumers.

- (3) The electricity market shall function with the following objectives:-
 - (a) Ensure competition, transparency, fair, neutral, efficient and robust price discovery.
 - (b) Provide extensive and quick price dissemination.
 - (c) Design standardized contracts.
- (4) The electricity market may involve the following:
 - (a) The National Treasury;
 - (b) The ministry in-charge of energy;
 - (c) The Authority;
 - (d) The system operator;
 - (e) The licensees;
 - (f) The eligible consumers; and
 - (g) Consumers.
12. Any complaints and/or disputes/appeals under these regulations shall be handled in accordance with the regulation on complaints and disputes resolution.
13. (1) The electricity market rules shall be in accordance with the rules of the Eastern-Africa Power Pool (EAPP) on cross border electricity trade.
- (2) The coordination in the system operation will be through the coordination center.
14. (1) The provision of system ancillary services shall be in accordance with the grid code and the regulations on electricity supply, the regulations on reliability and quality of supply and service and the regulations on system operations.
- (2) The system ancillary services providers shall at all times comply with the directions and instructions of the system operator.
- (3) The system ancillary services tariffs shall be as approved by the Authority.
- (4) The ancillary service contracts shall be in the format in the First Schedule to these regulations
15. Any licensee and customer engaging in net-metering undertakings shall conduct their operations in accordance with the regulations on net metering.
16. Any licensee operating a mini-grid shall undertake the operations in accordance with the regulations on mini grids.
17. For generation to the national grid from wind, solar, small-hydro, biogas, biomass, biofuel, cogeneration, municipal waste and tidal wave: -
 - (a) not exceeding ten thousand kilowatts shall be in accordance with the regulations on Feed-in-Tariffs.
 - (b) exceeding ten thousand kilowatts, through competitive bidding process which shall include energy auction bidding process.
18. (1) Variable renewable energy plants shall be operated in accordance with the grid code.
- (2) Grid stability challenges and energy security risks arising from intermittent generation sources shall be addressed by use of ancillary services installed by the respective licensees.
- (3) The integrated national energy plan shall establish the requirements for the power system.
- (4) For market stability the intermittent generation sources shall have a maximum variation of $\pm 5\%$ of the day-ahead or hour-ahead forecasted generation.

PART III—BULK SUPPLY

19. (1) Bulk supply shall be the supply of electrical energy by a licensee to another licensee for the purpose of enabling the supply of electrical energy to consumers. For avoidance of doubt, bulk supply shall not relate to the supply of electrical energy by a licensee to a consumer.
- (2) No consumer shall access bulk energy for resale. A consumer accessing bulk supply and who wishes to resell shall apply for a retail license.
20. (1) A licensee shall submit the bulk supply application to another licensee in the format provided in the Second Schedule.
- (2) The licensee offering bulk supply shall give a response, granting approval or rejecting the application within fourteen days of receipt of the application and where approval is granted shall forward the draft Bulk Supply Agreement to the licensee applying for bulk supply.
- (3) The licensee shall submit their acceptance to the bulk supplier within seven days of receipt of the draft Bulk Supply Agreement.
- (4) Once the parties have agreed on the terms of the draft Bulk Supply Agreement, the parties shall initial the same and submit to the Authority for approval within fourteen days of conclusion of the negotiations.
- (5) The Authority shall communicate the approval or refusal of grant of approval within thirty days of receipt of the draft Bulk Supply Agreement.
- (6) The parties aggrieved may lodge an appeal with the Tribunal within thirty days of receipt of the refusal to grant approval.
21. In making an application for bulk supply to the supplier of the electrical energy, the applicant at a minimum shall indicate the following requirements: -
 - (a) Capacity required
 - (b) Specify whether it's for own consumption or resale
 - (c) The entry and exit point of energy
 - (d) Availability of wheeling capacity
 - (e) Technical compliance
 - (f) Financial capability
 - (g) Legal compliance
22. (1) The amount of electrical energy supplied to the licensee or the number of hours during which the supply is given, or the maximum demand taken by the licensee, or any other quantity or time connected with the supply shall be ascertained by meters installed by a supplier and of a type approved by the Kenya Bureau of Standards, or determined in a manner agreed upon by the licensees.
- (2) The main meter shall be used for purposes of energy accounting and billing.
- (3) The meter security and access shall be through seals and security codes.
- (4) The licensees may opt to instal their own check meter as set out in the bulk supply agreement.
- (5) The metering position for the intake or withdrawal shall be as agreed between the licensees.
- (6) The meters shall be tested as prescribed in the bulk supply agreement.
23. (1) The Authority shall approve bulk supply tariffs in accordance with the regulation on electricity tariffs and the Act.
- (2) The Authority shall set, review, adjust and approve network services tariffs in accordance with the regulation on electricity tariffs and the Act.
24. The licensee applying for bulk supply of electrical energy shall disclose to the other licensee who is to make the supply the purpose for the supply of the electrical energy.

25. The quality of supply of the electrical energy shall be in accordance with the grid code and the regulations on reliability, quality of supply and service.
26. (1) A Licensee undertaking generation of bulk electrical energy shall:
- (a) Supply the electrical energy in accordance with the bulk supply agreement.
- (2) A Licensee undertaking transmission of bulk electrical energy shall:
- (a) Provide the network to wheel the electrical energy in an efficient, reliable and safe manner.
- (3) A Licensee undertaking distribution of bulk electrical energy shall:
- (a) Provide the network to wheel the electrical energy in an efficient, reliable and safe manner.
- (b) Supply to the consumer in accordance with the electricity supply contract.
- (4) A Licensee undertaking retail supply of bulk electrical energy shall:
- (a) Supply to the consumer in accordance with the electricity supply contract.
- (5) A consumer of bulk electrical energy shall:
- (a) make payments for the electrical energy consumed in accordance with the electricity supply contract.
27. The bulk supply contracts shall be in the format in the Third Schedule to these regulations.
28. The licensee requiring bulk supply of electrical energy may enter into bulk supply contracts with other licensees for purposes of enabling the supply of electrical energy to consumers.
29. The Licensee shall continually monitor and ensure they comply with environmental, health and safety requirements in accordance with the grid code and other applicable laws.
30. The distribution or retail licensee may engage community based organizations within informal settlements for purposes of supply of electrical energy and undertaking of retail activities.
- PART IV – OPEN ACCESS**
31. (1) The transmission and distribution licensees shall undertake their responsibilities as provided for under these regulations and the Act.
- (2) Network services providers shall maintain their network in accordance with the regulations on electricity supply and the regulations on reliability, quality of supply and service.
- (3) The network service providers shall charge wheeling charges or use of system charges, as the case may be, upon approval by the Authority.
- (4) The charges under sub-regulation (3) shall be in conformance with the methodology outlined under the regulations on electricity tariff.
- (5) The system operator or the network service provider shall at all times reasonably operate the system or network, as the case may be, in a non-discriminatory manner.
32. (1) The applicant shall submit the application for grant of open access in the format provided in the Fourth Schedule.
- (2) Subject to section 138(1) and (2) of the Act, the network service provider shall submit a copy of the application to the system operator for technical input (maintaining electric power system security) and the system operator shall submit the technical report to the network service provider within thirty days of receipt of the application.
- (3) The network service provider shall give a response, approving or rejecting grant of open access within thirty days of receipt of the application. Where approval has been granted, the network service provider shall forward the draft wheeling agreement in the format provided in the Fifth Schedule.
- (4) The processes undertaken by the system operator and the network service provider shall run concurrently.
- (5) The applicant shall submit their acceptance of the network service provider within fourteen days of receipt of the draft wheeling agreement.
- (6) Once the parties have agreed on the terms of the draft wheeling agreement, the parties shall initial the same and the network service provider shall submit to the Authority for approval within fourteen days of conclusion of the negotiations.
- (7) The Authority shall communicate the approval or refusal of grant of approval within thirty days of receipt of the draft wheeling agreement.
- (8) The network service provider shall submit a copy of the approved wheeling agreement with the system operator.
- (9) The parties aggrieved may lodge an appeal with the Tribunal within thirty days of receipt of the refusal to grant approval.
33. (1) Any licensee or eligible consumer shall be eligible for open access to a network on payment of the applicable open access charges.
- (2) The conditions for access to a network by a wheeler shall be as set out in the grid code and as stipulated by the network service provider.
- (3) For grant of open access, the load shall not be less than 1MVA in the distribution system or 10MVA in the transmission system.
- (4) Eligible consumers who are connected at 66 kV or below to the grid sub-station, or connected on a common feeder irrespective of their voltage of supply, shall be allowed open access subject to the condition that they shall agree to rostering restrictions including power cut imposed by the licensee on the feeders serving them.
34. The categorization of the open access into long term, medium term, short term, day-ahead and contingency shall be as prescribed by the Authority.
35. The terms and conditions for open access shall be in accordance with the Sixth Schedule and the same shall be reviewed from time to time by the Authority and approved by the Cabinet Secretary.
36. (1) Any network service provider shall operate and maintain all equipment or appliance that is part of their facilities in accordance with:
- (a) the requirements of the grid code; and
- (b) good electricity industry practice and applicable Kenya Standards or in their absence, any international standards approved by the Kenya Bureau of Standards.
- (2) The operations and maintenance contracts shall be in the format in the Seventh Schedule to these regulations
37. (1) The network service provider shall undertake the energy accounting in accordance with the wheeling service agreement.
- (2) The billing and energy accounting shall be done on a monthly basis or in the manner set out in the wheeling service agreement between the network service provider and the wheeler.
38. Imbalance and reactive energy charges shall be as determined and published by the Authority from time to time.
39. (1) The network service provider shall be subjected to allowable system losses as approved by the Authority from time to time. Allowable system losses shall be allocated as prescribed by the Authority.

- (2) The network service provider shall be responsible for the losses above the allowable system losses levels.
- 40. The licensee and eligible consumer undertaking network services shall comply with the provisions of the grid code.
- 41. (1) In the event of congestion in the network, the system operator shall determine the priority of dispatch of the electrical energy.
- (2) The system operator may curtail power on any network by cancelling or rescheduling any dispatch of electrical energy, if in its opinion cancellation or curtailment will relieve the congestion.

PART V – MISCELLANEOUS

- 42. (1) A person who willfully gives false or misleading information in relation to any application commits an offence and shall on conviction be liable to a fine not exceeding ten million Kenya shillings or imprisonment for a term not exceeding five years or to both.
- (2) A person who contravenes or fails to comply with any of these Regulations or who fails to comply with any prohibition or order of the Authority under any of these Regulations shall, where no specific penalty is prescribed under sub-regulation (1), commits an offence and shall on conviction be liable to a fine not less than one hundred thousand shillings or a term of imprisonment not exceeding six months or to both.
- 43. (1) Where any offence under these Regulations is committed by a corporate body and is proved to have been committed with the consent or connivance of, or to have been facilitated by any director, chairman, manager, secretary or other officer thereof, he, as well as the corporate body commits an offence and shall on conviction be liable to a fine not less than one hundred thousand shillings or a term of imprisonment not exceeding six months or to both.
- 44. (1) Any complaints or disputes between the system operator and a licensee or between two or more licensees or between a licensee and eligible consumer shall be referred to the Authority for resolution in accordance with the regulations on complaints and disputes resolution.
- 45. (1) A licensee, system operator or eligible consumer who is dissatisfied or aggrieved by a decision of the Authority shall lodge an appeal with the Tribunal.
- (2) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.

FIRST SCHEDULE (r.14(3))

FORMAT OF ANCILLARY SERVICES AGREEMENT

1. Duration
2. Tariffs
3. Capacity
4. The type of ancillary services
5. Obligation of the parties
6. Personnel
7. Access to the infrastructure
8. Invoicing and payment
9. Metering
10. Compliance with the directions of the Authority and System operator
11. Grid Code
12. Operating standards
13. Third party rights
14. Termination
15. Force majeure
16. Governing law
17. Dispute Resolution

SECOND SCHEDULE (r. 20(1))

BULK SUPPLY APPLICATION FORMAT

| | |
|--|--|
| 1. SUPPLY INFORMATION | |
| Expected Effective Date | |
| Duration of supply | |
| Physical Address of the supply | |
| Account Number | |
| Meter Number | |
| 2. APPLICANT'S INFORMATION | |
| Name of Applicant | |
| P.O. Box | |
| Phone Number | |
| Email Address | |
| Business Type | |
| Use of Supply | Re-sell or own use |
| Re-sell | Name of customer(s) Physical address of customer(s) Phone of customer(s) |
| Authorized representative of the applicant | Name: Phone Number |
| 3. TECHNICAL INFORMATION | |
| Type of supply application | New meter installation or Change of load |
| Total load required | |

DECLARATION

The applicant hereby declares as follows:

1. By applying for the bulk supply or by obtaining or using electricity from the licensee, I/We agree to be bound by the provisions of the Act and the regulations thereof and the grid code and the terms and conditions of the licensee.
2. This is to confirm that the undersigned is the applicant (or the applicant's authorized representative) and that the details provided in this form are true and accurate and that the applicant shall not hold the licensee responsible for any fraudulent act on the applicant's part.
3. I hereby agrees to keep the licensee indemnified at all times and undertakes to indemnify, defend and save the licensee harmless from any and all damages, losses, claims and actions relating to injury to or death of any person or damage to property, demands, suits, recovering costs and expenses, court costs, attorney fees, and all obligations by or to third parties, arising out of or resulting from the transactions under his approval.
4. I shall execute the bulk supply agreement within fourteen days of receipt failing which the licensee has right to cancel the approval without any further notice.

Signature of the Applicant:

Name:

Designation:

Place:

Date:

Encl: Copy of necessary documents.

COPY TO: System Operator

For Official use

Date & Time of Receipt of Application

(To be filled by the Licensee)

THIRD SCHEDULE (r.27)

FORMAT OF BULK SUPPLY AGREEMENT

1. Duration
2. Tariffs
3. Maximum Capacity
4. Obligation of the parties
5. Source of Supply
6. Area of supply
7. Connection point
8. Metering
9. Connection and use of system conditions
10. Compliance with the directions of the Authority and System operator
11. Grid Code
12. Power procurement procedures
13. Operating standards
14. Rights of third parties
15. Performance security
16. Termination
17. Insurance
18. Liability
19. Force majeure
20. Governing law
21. Dispute Resolution

FOURTH SCHEDULE (r.32(1))

OPEN ACCESS APPLICATION FORM

APPLICATION FORM FOR GRANT OF OPEN ACCESS

(To be submitted by Open Access Applicant)

Application No:..... Dated:.....

1.Name of the Applicant:

Postal Address & Physical Address

Phone Numbers

E-Mail

PIN

License number (in the case of a licensee)

Certificate of Registration

2.Address of the Licensee:

Postal Address & Physical Address

Phone Numbers

E-Mail

License number (in the case of a licensee)

Certificate of Registration

3.Applicant Type & power supply agreement details: (Licensee / Eligible consumer)

| Name of Licensee/ Eligible consumer | Reference No. | Date | Valid up to | Contracted capacity (MVA) |
|-------------------------------------|---------------|------|-------------|---------------------------|
| | | | | |

4.Applicant's contact person details:

| | | | |
|----------------|--------|-------------|--|
| Name: | | | |
| Designation: | | | |
| Phone Numbers: | Office | Residential | |
| | Mobile | | |
| | E-mail | | |

5.Type of Open Access:

ø Long Term

ø Medium Term

ø Short Term

ø Day Ahead

ø Contingency

6. Details of power transfer requirement

i. Quantum of power to be transmitted (MW)

ii. Peak load to be transferred (MW)

iii. Average load to be transferred (MW)

7. Expected date of commencement of open access:.....

8.Open access period required:

| Period | | Time | | Capacity (MVA) |
|-----------|---------|------------|----------|----------------|
| From Date | To Date | From Hours | To Hours | |
| | | | | |
| | | | | |

9.Details at entry point:

| | | |
|--|-----------------------|--|
| Name of Licensee | | |
| Type and generating capacity (MVA) | | |
| Voltage level | | |
| Point of injection (Name of sub-station – distribution licensee / transmission licensee) | | |
| Name of location | | |
| Metering arrangement | | |
| Meter details | | |
| a. | Class of accuracy | |
| b. | TD interval | |
| c. | Maximum demand | |
| d. | Power factor | |
| e. | Import / export units | |
| f. | Parameters: | |

10.Details at exit point (Licensee / eligible consumer details):

| | |
|---------------|--|
| Name of user | |
| Point of exit | |

| | | |
|---|---|--|
| Voltage level | | |
| Source of feeding for exit point (Name of sub-station – distribution licensee / transmission licensee) | | |
| Name of location | | |
| Metering arrangement | | |
| Meter details | | |
| a. | Class of accuracy | |
| b. | TD interval | |
| c. | Maximum demand | |
| d. | Power factor | |
| e. | Import / export units | |
| f. | Parameters: | |
| i. | (to obtain detail from large power experts) | |

11. Is the consumer at the exit point an existing consumer of distribution licensee:

(Yes or No)

(If Yes provide the consumer number and Contracted Maximum Demand (CMD), Category,

state whether the open access is for partial load or for full load)

12. Details of supply contracts

- iv. For power to be injected
- v. For power to be drawn
- vi. For balancing and mismatch power requirement
- vii. For transmission open access if involved
- viii. Agreement with traders (if any) in the above transaction

13. In case of generating licensee

- i. Name of licensee
- ii. Generation capacity
- iii. Location of the generation plant
- iv. No. of units & capacity of each unit
- v. Type of fuel
- vi. Base load station or peaking load station
- vii. If peaking load, then what is the estimated hours of running
- viii. If it is a hydro plant, then whether is a run of the river / reservoir / multi-purpose / pump storage
- ix. Maximum units generation in an year in case of hydro plant
- x. Specify the step-up generation Voltage 132kV or 220 kV or any other voltage

14. Details of application fee (non-refundable):

| | | |
|------|------------------|--|
| i. | Name of the bank | |
| ii. | Draft no. & date | |
| iii. | Amount (Ksh.) | |
| iv. | Payable at bank | |

15. Any other information:

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DECLARATION

The applicant hereby declares as follows:

- 2. I shall abide by the provisions of the Act and the regulations thereof and the grid code.
- 5. The information provided herein in this application are correct and accurate.
- 6. I have entered into commercial agreement for the proposed transaction. I shall make the payment of the open access charges.
- 7. I hereby agrees to keep the network service provider indemnified at all times and undertakes to indemnify, defend and save the network service provider harmless from any and all damages, losses, claims and actions relating to injury to or death of any person or damage to property, demands, suits, recovering costs and expenses, court costs, attorney fees, and all obligations by or to third parties, arising out of or resulting from the transactions under his approval.
- 8. I shall execute the open access agreement after receiving the approval from the network service provider within fourteen days failing which the network service provider has right to cancel the approval without any further notice.

Signature of the Applicant:

Name:

Designation:

Place:

Date:

Encl: Copy of agreement and necessary documents.

COPY TO: System Operator

For Official use

Date & Time of Receipt of Application

(To be filled by the Licensee)

FIFTH SCHEDULE (r.32(3))

FORMAT OF WHEELING SERVICES AGREEMENT

- 1. Duration
- 2. Tariffs (wheeling or use of system charges)
- 3. Authorization
- 4. Maximum Capacity
- 5. Obligation of the parties
- 6. Source of Supply
- 7. Area of supply
- 8. Connection point
- 9. Metering and energy accounting
- 10. Connection and use of system conditions
- 11. Compliance with the directions of the Authority and System operator
- 12. Grid Code
- 13. Operating standards
- 14. Rights of third parties
- 15. Termination
- 16. Insurance
- 17. Liability
- 18. Force majeure
- 19. Governing law
- 20. Dispute Resolution

SIXTH SCHEDULE (r. 35)

TERMS AND CONDITIONS FOR OPEN ACCESS

Terms and conditions for Open Access

- (1) The quantum of power to be wheeled by the wheeler shall not exceed their contracted capacity at any time.
- (2) The wheeler shall pay all the applicable wheeling or use of system charges as approved by the Authority.
- (3) In case the wheeler draws power from the grid, but the generator does not generate the power during that period or injects/supplies less than the committed power, the wheeler shall pay the grid availability charges as approved by the Authority.
- (4) The generator shall maintain higher injection at their end to compensate the transmission and distribution loss as shall be determined by the Authority. The wheeled power scheduled at the ex-periphery of the generator shall be subjected to deduction of transmission and distribution losses as shall be determined by the Authority.
- (5) The generation over and above the committed power by the generator shall not be accounted for. The generator shall not inject power into the grid without any written agreement and the necessary open access approval.
- (6) The wheeler shall not withdraw in excess of the contracted capacity. Where a wheeler draws electrical power in excess of the output energy at exit point (s) of the network service provider, the wheeler shall pay to the network service provider the excess in accordance to the tariff determined by the Authority and a surcharge to be paid to the network service provider.
- (7) The generator shall give necessary day ahead schedule of the generation and wheeling quantum to the system operator.
- (8) It is the responsibility of the generator to inform their wheeler and the system operator regarding their outage of plant or lesser supply of committed power by issuing revised declarations and accordingly the wheeler shall reduce their withdrawal.
- (9) The wheeler shall withdraw the purchased power only up to their contracted capacity.

- (10) There shall be no compensation from the network service provider where, due to any reason, the committed power is not drawn.
- (11) Where there is load shedding for purposes of grid security or where there is third party interference to the network or inevitable accident or force majeure, non-withdrawal shall not be compensated.
- (12) In case of violation of any terms and conditions by the wheeler, the network service provider shall issue the wheeler with a 48 hours' notice within which to make good the breach ices agreement and the unpaid amounts, if any, shall become a civil debt.
- (13) In case of violation, the network service provider shall be at liberty to terminate the wheeling services in accordance with the terms and conditions by the network service provider, the wheeler shall issue the network service provider with a 48 hours notice within which to make good the breach failure which the wheeler shall be at liberty to terminate the wheeling services agreement.

SEVENTH SCHEDULE (r.36(2))

FORMAT OF OPERATIONS AND MAINTENANCE AGREEMENT

1. Duration
2. Consideration and Payment
3. Management of Spares
4. Obligation of the parties
5. Compliance with the directions of the Authority and System operator
6. Grid Code
7. Default
8. Termination
9. Insurance
10. Liability
11. Force majeure
12. Governing law
13. Dispute Resolution