

THE ELECTRICITY ACT
(CAP 131)

THE ELECTRICITY (DEVELOPMENT OF SMALL POWER PROJECTS) RULES, 2010

(Made under section 45)

ARRANGEMENT OF RULES

PART I
PRELIMINARY PROVISIONS

1. Citation
2. Application
3. Interpretation

PART II
PRELIMINARIES TO THE DEVELOPMENT OF AN SPP

4. Elements of the Project
5. Land and Water Use Rights
6. Letter of Intent
7. Letter of Intent Application Procedure
8. Acknowledgement of Receipt
9. Notice of decision in respect of a Letter of Intent Request
10. Expiration of a Letter of Intent

PART III
DEVELOPMENT OF AN SPP

11. Point of Common Coupling
12. Reservation of Network Capacity
13. Estimate of Interconnection Cost
14. Upgrades to DNO System
15. Maximum Allowable Generation Capacity
16. Application for Interconnection and Sale of Electricity
17. Environmental and Social Clearances

PART IV
EXECUTION OF AN SPPA

18. Execution of SPPA
19. Obligation to Pay Interconnection Costs

20. Modification of Standardized Power Purchase Agreement

PART V
COMMISSIONING PROCEDURE

- 21. Commissioning Date
- 22. DNO to Issue Interconnection Certificate
- 23. Mini-Grid Connection with Main Grid

PART VI
LICENSING REQUIREMENTS

- 24. Licence Application Procedure
- 25. Publications of a Licence Application
- 26. Grant of a Licence
- 27. Application for Provisional Licence
- 28. Publications of a Provisional Licence Application
- 29. Grant of a Provisional Licence
- 30. The Authority to Give Reasons for its Decisions
- 31. Appeal Procedure
- 32. Application for an Exemption
- 33. Validity, Duration and Transfer of a Licence
- 34. Licence Suspension and Revocation
- 35. Exempted Developers to Register with the Authority

PART VII
REPORTING REQUIREMENTS

- 36. Reporting Requirements
- 37. Penalty

PART VIII
TARIFFS

- 38. Tariff Approval
- 39. Penalty

PART IX
WORKING GROUP ON SMALL POWER DEVELOPMENT

- 40. Composition and Responsibilities of the Working Group

PART X
DNO SPP UNIT

- 41. DNO SPP Unit

PART XI
GENERAL PROVISIONS

- 42. General Penalty
- 43. Penalty for Continued Defiance
- 44. Authority to Supplement Procedures

SCHEDULE

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(Made under section 45)

PART I
PRELIMINARY PROVISIONS

- Citation **1.** These Rules may be cited as the Electricity (Development of Small Power Projects) Rules, 2010.
- Application **2.** These Rules shall govern the regulatory and procedural matters related to the development of small power projects in Tanzania.
- Interpretation **3.** In these Rules, unless the context otherwise requires:
- Cap. 131 “Act” means the Electricity Act;
- “applicable law” means any principal law, treaty, proclamation, regulation, rule, order and by-law that is customarily treated in Tanzania as having legally binding force relevant to matters pertaining to the development of small power projects;
- Cap 414 “Authority” means the Energy and Water Utilities Regulatory Authority established under the EWURA Act;
- “buyer” means any entity or a distribution network operator that buys electricity through a distribution network from an Small Power Project developer under the Standardized Power Purchase Agreements;
- “DNO” means a distribution network operator responsible for the operation of a distribution network;
- “embedded generator” means a single generator or a group of generating plants of total export capacity between 100 kW and 10 MW connected to a distribution network at 33 kV or below;
- Cap. 414 “EWURA Act” means the Energy and Water Utilities Regulatory Authority Act;
- “interconnection costs” means those costs required by the Small Power Project developer to connect to the DNO’s distribution system, and includes those costs, if any, required to upgrade the DNO’s system to receive

electricity produced by an SPP;

“interconnection certificate” means a document issued by a DNO certifying that an SPP developer has passed the interconnection test conducted by the DNO pursuant to these rules;

“interconnection point” means a point where the seller's facility electric output line or electric system feeds into the electric distribution system to which it delivers power, whether owned by the buyer or another;

“letter of intent” means a clear and non-binding statement of intent by a buyer to purchase power produced by an SPP developer and shall be in the form prescribed in the SPP Guidelines;

“licence” means an authorization issued by the Authority to an SPP developer to generate and sell electricity to a buyer;

“Ministry” means the ministry responsible for electricity matters;

“Point of Common Coupling” means a point connecting an interconnection line and a distribution network;

“Point of Supply (“POS”)” means the location of the connection between a distribution network and an embedded generator at which a meter to measure electricity is installed;

“provisional licence” means a licence issued by the Authority to allow an operator to conducting preparatory activities like carrying out assessments, studies and other activities necessary for application of a licence;

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“REA” means the Rural Energy Agency established under the provisions of the Rural Energy Act;

“request for a letter of intent” means a request for a letter of intent which shall be as prescribed in the Small Power Project Guidelines;

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

“Small Power Project (“SPP”)” 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;

“SPP developer” means a person that promotes and constructs an SPP for the purpose of selling power to a DNO pursuant to an SPPA or to any other entity subject to terms and conditions they may agree;

“SPP Guidelines” means an instructional manual issued by the Authority on development of small power projects;

“site reference number” means the identification number assigned by a DNO in a letter of intent to a proposed SPP site;

“Standardized Small Power Purchase Agreement (“SPPA”)” shall have the meaning as provided in the Act;

“SPP Unit” means a group of employees within the DNO responsible for performing the activities described in rule 41;

“SPP Tariff Methodology” means a method and a formula developed by the Authority to compute an SPP Tariff;

“SPP Tariff” shall have the same meaning as that provided in the Act;

“tariff” means any charge, fee, price or rate for the purchase of electrical power as shall be approved by the Authority; and

“Working Group on Small Power Development” means a team of experts with the composition and responsibilities specified under Part IX of these rules.

PART II PRELIMINARIES TO THE DEVELOPMENT OF AN SPP

Elements of the
Project

4. - (1) The SPP project development shall comprise of the following elements:

- (a) obtaining the required consents as specified in sub-rule (2);
- (b) construction of a generation plant and upgrading of the existing network; and
- (c) testing and commissioning of a generation plant.

(2) An SPP developer shall obtain the following before starting to develop the SPP:

- (a) land title or right of use;
- (b) for an SPP using hydro generation, water rights;
- (c) a letter of intent;
- (d) a business license;
- (e) tax registration;
- (f) as required, a building permit;
- (g) an environmental and social clearance;
- (h) an SPPA;
- (i) a licence, where applicable; and
- (j) any other relevant consent as may be required under applicable law.

(3) The Authority may for a good cause shown, and upon receipt of a motion from an applicant, relieve any applicant from complying with the requirements identified in sub-rule (2).

SPP Developer to Submit Land and Water Use Rights

5. - (1) An SPP developer shall deliver to the Authority for inspection when required all the evidence of the items described in rule 4 (2) which shall include:

- (a) a title deed for the land upon which an SPP shall be located;
- (b) a lease agreement with respect to the land upon which an SPP shall be located; or
- (c) any other document evidencing ownership of land upon which an SPP shall be located.

(2) The provisions of this rule shall not apply to:

- (a) an SPP in which the right to use the fuel is wholly owned by the SPP developer; and
- (b) an SPP that uses only solar or wind power.

Letter of Intent

6. - (1) An SPP developer shall sell electricity to a DNO pursuant to an SPPA, provided that this provision shall not bar the SPP developer to sell electricity to any other entity subject to such terms and conditions they may agree upon.

(2) Prior to executing an SPPA, an SPP developer shall execute a letter of intent to sell electricity to a buyer pursuant to the SPP Guidelines and these rules.

(3) No person shall conclude a letter of intent:

- (a) in respect of an SPP on the same site identified in a previously concluded letter of intent; or
- (b) if the SPP proposal conflicts with another proposal in respect of which a letter of intent has previously been concluded.

(4) The provisions of this rule shall not apply to an SPP or an SPP's isolated mini-grid that is not supplying electricity to a DNO.

(5) Any person who contravenes the provisions of sub-rule (3) shall be liable to a fine of seven million shillings.

Letter of Intent Application Procedures

7. - (1) An SPP developer shall apply to a DNO for a letter of intent by delivering a request for the letter of intent pursuant to the SPP Guidelines.

(2) A letter of intent may be transferred to a project-specific company.

Acknowledgement of Receipt

8.-(1) Not later than seven days after receiving a request for a letter of intent, a DNO shall notify the applicant that its request has been received.

(2) The DNO shall, within fourteen days after receipt of a request for a letter of intent, in sub-rule (1), evaluate such request and thereafter require the

applicant to correct the request where it finds it to be incomplete.

(3) The applicant shall, not later than fourteen days after receipt of a notification under sub-rule (2), correct the request.

(4) A DNO shall not later than fourteen days:

- (a) after receipt of a corrected request for a letter of intent pursuant to sub-rule (2); or
- (b) after receipt of a complete request for a letter of intent;

issue a site reference number.

(5) After a site reference number has been assigned pursuant to sub-rule (4) such number shall be used to refer to the site in all subsequent documentation and correspondence between a DNO and an SPP developer regarding the site, including:

- (a) an SPPA or any other agreement;
- (b) the interconnection certificate; and
- (c) the interconnection test record.

Notice of
Decision in
Respect of
Letter of Intent
Request

9.(1) A DNO shall, not later than thirty days after receipt of a request for a letter of intent or after correction of the application pursuant to rule 8 (3), notify the applicant of its decision either to grant or to deny such request, provided, that no application shall be unreasonably denied.

(2) A DNO shall make its decision to grant or deny an application for a letter of intent on the basis of:

- (a) its determination of the ability of the local electrical network to accept power from a power plant of the proposed type, size and power export capacity at the proposed location; and
- (b) its determination as to whether the proposed project conflicts with other on-going private or DNO projects.

(3) A DNO shall in the event that it denies the application for a letter of intent give the reasons for such denial in writing.

(4) The issuance of a letter of intent by a DNO shall demonstrate that such DNO has no objection to interconnect a power plant of the type and size and at an agreed point of interconnection.

Expiration of a
Letter of Intent

10. - (1) In the absence of any contrary provision the term of a letter of intent shall be for a period of twelve months from the date of issue.

(2) Notwithstanding the provisions of sub-rule (1) a DNO may extend the

validity of a letter of intent for a period of six months at a time, provided that the maximum term including extension for the letter of intent shall not exceed two years.

PART III DEVELOPMENT OF AN SPP

Point of
Common
Coupling

11. - An SPP developer and a buyer shall identify a Point of Common Coupling pursuant to the SPP Guidelines.

Reservation of
Network
Capacity

12. - A letter of intent shall, in the case of sites operating on hydroelectric or wind power or any other primary source of energy which is site-specific by way of its availability, indicate the exclusivity of the interconnection to an SPP developer, during the term of a letter of intent.

Estimate of
Interconnection
Cost

13. - A DNO shall, not later than thirty days after issuing a letter of intent, deliver to an SPP developer:

- (a) an engineering assessment of whether the proposed interconnection point, in its existing condition, can accommodate the full amount of power proposed to be delivered to the DNO by the SPP developer; and
- (b) an estimate of the interconnection costs.

Upgrades to
DNO System

14. - (1) In the event that a DNO determines that the interconnection point, in its present condition, cannot accommodate the full amount of power proposed to be delivered to the DNO by an SPP developer, the DNO shall estimate the costs required to upgrade the distribution system to ensure sufficient capacity at the proposed interconnection point.

(2) A DNO may, after estimating the distribution system upgrade costs described in sub-rule (1) require an SPP developer to meet the costs of upgrading such network. Provided the DNO may carry out the upgrade itself subject to terms and conditions it may agree with the SPP developer.

(3) A requirement by a DNO that an SPP developer undertake distribution system upgrades as described in sub-rule (1) is subject to agreement by the SPP developer and such agreement shall be in writing and specify that the works shall be carried out in accordance with the DNO's standards.

(4) A letter of intent may be terminated in the event an SPP developer disagrees with the DNO's upgrade requirements as described in sub-rule (1).

(5) In the event an SPP developer upgrades the DNO's distribution system, upon commissioning and subject to any agreements concluded by the parties, ownership of all improvements beyond the interconnection point shall be transferred to the DNO.

Maximum Allowable Generation Capacity

15. - A DNO may, where the proposed generation capacity of an SPP developer exceeds 10 MW, set a maximum generation capacity that the DNO shall allow to flow into the distribution system at the proposed interconnection point.

Application for Interconnection and Sale of Electricity

16. - (1) An SPP developer shall, not later than twelve months after receipt of a letter of intent from a DNO, deliver to the DNO an application for interconnection and sale of electricity.

(2) In the event that an SPP developer fails to submit an application for Interconnection and Sale of electricity to a DNO within the period established in sub-rule (1) and subject to rule 10 (2), a letter of intent shall lapse and the DNO may issue a letter of intent to a different SPP developer for the same site.

Environmental and Social Clearances

17. - An SPP developer shall, in respect of an SPP obtain all necessary approvals on environmental and social clearance pursuant to applicable law.

Obligation to Pay Interconnection Costs

18. - Subject to sub-rule 14 (2) an SPP developer shall pay to a DNO all the interconnection costs.

PART IV EXECUTION OF AN SPPA

Execution of SPPA

19. - Subject to the SPP Guidelines and not later than ninety days after a DNO has delivered a detailed statement of Interconnection Costs to an SPP developer, the SPP developer and the DNO shall conclude an SPPA in respect of an SPP.

Modification of Standardized Power Purchase Agreement

20. - (1) The Authority may, subject to applicable law and from time to time, modify or amend an SPPA.

(2) In the event that an SPPA is modified or amended, such modification or amendment shall apply on a prospective basis only.

PART V COMMISSIONING PROCEDURE

Commissioning Date

21. - (1) The commissioning date shall be not later than two years after the parties have concluded an SPPA except where the SPPA provides for a date longer for the achievement of the commissioning date.

(2) An SPP developer shall submit quarterly progress reports to a DNO and the Authority indicating its progress towards the achievement of the commissioning date.

(3) Where an SPP developer fails to achieve commissioning date within time frame established in an SPPA, such SPPA shall be void unless both parties

agree to an extension and such extension is approved by the Authority.

DNO to Issue
Interconnection
Certificate

22. - (1) An SPP developer that has concluded an SPPA with a DNO may dispatch power into the grid only after the DNO has verified that the interconnection and the installed connection equipment comply with the standards specified in an SPPA.

(2) A DNO shall issue an interconnection certificate as evidence of an SPP developer's compliance with the standards described in sub-rule (1).

(3) A DNO shall complete all required testing not later than thirty days after the date an SPP developer completed the installation of all required equipment and has informed the DNO to conduct testing of the power system prior to dispatching power into the network.

(4) An SPP developer shall if required by applicable law to obtain a licence prior to the commencement of the sale of electricity to a buyer, demonstrate to such buyer that a licence has been obtained.

Mini-Grid
Connection with
Main Grid

23. - (1) In the event that a mini-grid is interconnected with a DNO main grid, an SPPA concluded by a DNO and an SPP developer shall terminate and the parties thereto shall conclude a new main-grid SPPA comprising a new tariff that will enter into force when the main grid is interconnected with the mini-grid.

(2) A DNO shall provide details to an SPP developer on the extension plans of interconnecting the main grid with DNO's network.

PART VI LICENSING REQUIREMENTS

Application for a
Licence

24. - (1) An SPP developer shall subject to the provisions of these rules apply to the Authority for a licence or a provisional licence before developing an SPP.

(2) The application in sub-rule (1) shall be made by filling in the appropriate form and shall be accompanied by information contained in sub-rule (3) together with a fee as shall be determined by the Authority from time to time.

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

- (c) if the applicant is a body corporate or unincorporated body certified copies of its registration documents;
- (d) a business plan;
- (e) proof of water rights for applicants intending to generate power from hydro;
- (f) proof of ownership of the site;

- (g) proof of authorization of development of the site, including building permit, if any;
- (h) SPPA, if any;
- (i) proof of the financial capability for the generation activity;
- (j) description of the generation plant and site details; and
- (k) a certified copy of the environmental clearance as required in the Environmental Management Act.

Cap. 191

Publications of
the Licence
Applications

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

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

Grant of a
Licence

26. – (1) The Authority shall after the expiration of the twenty one days deadline to submit comments in rule 25 (2) and within forty five days from the deadline date 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.

Application for
Provisional
Licence

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

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

- (a) a business plan;
- (b) prescribed fee;
- (c) proof of financial capability;
- (d) site layout;
- (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.

Publications of
Provisional
Licence
Applications

28. - (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

29. - The Authority shall, after the expiration of the fourteen days deadline to submit comments in rule 28 (2) and within thirty days from the deadline date 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.

The Authority to
Give Reasons
for its Decisions

30. - 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

31. - The applicant, if aggrieved by the decision of the Authority in rules 26 or 29, may appeal to the Fair Competition Tribunal pursuant to the provisions of the Fair Competition Act.

Application for
an Exemption

32. – (1) Any SPP developer 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.

(3) The Authority shall upon receipt of the application in sub-rule (1), proceed to evaluate such application and make a decision either granting or denying the application subject to such terms and conditions it may deem fit.

(4) 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; and
- (b) public interests to be protected.

Validity,
Duration and
Transfer of a
Licence

33. – (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, provided however such term can be extended or renewed by the Authority for a period it may determine.

(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.

Revocation of a
Licence or a
Provisional
Licence

34. – (1) The Authority may revoke a licence or a provisional 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 or a provisional 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-rule (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 the licensee, and manage the affairs of the licensee for such a period as the Authority may determine.

(2) A licence issued by the Authority shall be valid for a term of fifteen years and may be extended for a period to be determined by the Authority.

Exempted
Developers to
Register with the
Authority

35. - An SPP developer who is exempted from licensing requirements pursuant to section 18 (3) of the Act, shall pursuant to orders and directions of the Authority:

- (a) register with the Authority; and
- (b) provide the Ministry and the Authority with accurate information related to its SPP.

PART VII REPORTING REQUIREMENTS

Reporting
Requirements

36. - (1) An SPP developer shall, pursuant to these rules and the SPP Guidelines, submit reports to the Authority on the conduct of its SPP.

(2) An SPP developer shall submit to the Authority its annual report not later than ninety days after the end of its financial year.

Penalty

37. - (1) An SPP developer who refuses to furnish information or statement required by the Authority or knowingly furnishes any false information or statement to the Authority shall be liable to a fine of three million shillings.

(2) An SPP developer who refuses or furnishes any false statement or information to the Authority for the second time shall be liable to a fine of ten million shillings and shall have its licence suspended for a period of twelve months.

PART VIII TARIFFS

Tariff Approval

38. - (1) The Authority shall pursuant to the Act, the EWURA Act and an SPP Tariff Methodology, revise annually an SPP Tariff and a tariff methodology

from time to time.

(2) An SPP developer shall charge an SPP Tariff or a tariff that has been approved by the Authority.

(3) An approved SPP Tariff or a tariff shall remain effective until such time as a new SPP Tariff, tariff becomes effective.

Penalty

39. - (1) Any SPP developer or DNO who contravenes the provisions of this rule shall be liable to a fine of ten million shillings.

(2) Any SPP developer or DNO who contravenes the provisions of this rule for the second or subsequent time shall have its licence suspended for a period of twelve months plus a fine of ten million shillings.

PART IX WORKING GROUP ON SMALL POWER DEVELOPMENT

Composition and Responsibilities of the Working Group

40. - (1) There shall be a Working Group on Small Power Development comprising of:

- (a) one member each from the ministry responsible for electricity, REA and the Authority; and
- (b) one representative to be appointed by the Authority from each of the DNOs, academic institutions, consumers and private sector other than SPP developers.

(2) The Authority shall specify the terms and conditions of the appointment in sub-rule (1) including such matters as remuneration and tenure.

(3) The Working Group shall meet and transact business as required by the Authority and it shall regulate its own proceedings.

(4) The Working Group on Small Power Development shall be responsible for, *inter alia*:

- (a) acting as a representative of the key stakeholders on matters concerning development of SPP;
- (b) liaising with the Authority on matters related to annual computations of SPP Tariffs; and
- (c) advising the Authority on modification or general improvement of an SPP.

PART X DNO SPP UNIT

DNO SPP Unit

41. - (1) A DNO shall establish an SPP Unit that shall serve as a single point of contact to help coordinate interactions with various divisions within the

DNO.

(2) An SPP Unit shall:

- (a) facilitate the issuance of letter of intents;
- (b) facilitate the conclusion of SPPAs;
- (c) review SPP progress reports;
- (d) facilitate and coordinate the activities of an SPP Developer and a DNO in the construction and installation of interconnection and metering equipment and, as required, upgrading of the DNO system; and
- (e) conduct such other activities incidental thereto.

(3) An SPP Unit shall, upon initial interconnection, witness interconnection testing and facilitate the issuance of an interconnection certificate by the DNO.

(4) An SPP Unit shall, during commercial operation of an SPP, accept invoices for electricity sales from the SPPs and forward such invoices to the appropriate division within a DNO for payment.

(5) An SPP Unit shall monitor SPP performance and maintain a database of an SPP power production.

(6) An SPP Unit shall represent a DNO as an active participant in the Working Group on Small Power Development to review an SPP Tariff.

PART XI GENERAL PROVISIONS

General Penalty **42.** - (1) An SPP developer or a DNO that contravenes the provisions of these rules for which no specific penalty is prescribed shall be liable to a fine of three million shillings.

(3) Any partner in an SPP or a DNO shall be jointly and severally liable for the acts or omissions of any other partner in the same firm in so far as the acts or omissions concern the firm.

(4) An SPP developer that 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 they concern an SPP.

Penalty for Continued Defiance **43.** - Any person who is in continuous breach of these rules shall be liable to a fine of three million shillings for everyday on which the contravention occurs or continues.

The Authority to Supplement Procedures **44.** - Where procedures are not provided for in these rules, the Authority may do whatever is necessary and permitted by 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 a jail term of six months or more; and
3. Any other offences as shall be determined by Order of the Authority.

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Haruna Masebu
Director General