

Legal Notice No.....		
THE ENERGY ACT (No. 1 of 2019)		
IN EXERCISE of the powers conferred by Section 167 and 208 of the Energy Act, 2019, the Cabinet Secretary for Energy makes the following Regulations—		
THE ENERGY (ELECTRICITY TARIFFS) REGULATIONS, 2022		
PART I: GENERAL PROVISIONS		
Short title.	1.	These Regulations may be cited as the Energy (Electricity Tariffs) Regulations, 2022
Interpretations	2.	In these Regulations, unless the context otherwise requires – any word or expression defined for the purposes of the Act shall have the same meaning ascribed thereto when used in these Regulations;
		<p>“<i>Act</i>” means the Energy Act, No 1 of 2019;</p> <p>“<i>Authority</i>” means the Energy and Petroleum Regulatory Authority established by 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>Company</i>” means a company within the meaning of the Companies Act;</p> <p>“<i>Control formulae</i>” means the formulae specified by the Authority for the computation of the applicable tariff during a tariff year;</p> <p>“<i>Control period</i>” means the period of the applicable tariff being three years in accordance with section 165 (7) of the Act;</p> <p>“<i>Consumer</i>” has the meaning assigned to it under the Act;</p> <p>“<i>Cost allocation</i>” means the process of correctly identifying, aggregating and assigning a single cost to more than one business activity, process or service in a manner that prevents cross subsidization;</p> <p>“<i>Financial year</i>” means the period of twelve months in respect of which a licensee prepares its accounts in accordance with the requirements of the Companies Act;</p> <p>“<i>Grid</i>” has the meaning assigned to under the Act;</p> <p>“<i>Licensee</i>” means a holder of any licence issued under the Act and one</p>

		<p>to whom these Regulations apply;</p> <p>"Regulatory accounts" means the prescribed system of accounts set out in the Energy (Electricity Regulatory Accounts) Regulations, 2022;</p> <p>"Regulatory Asset Base" means tangible and intangible assets used for the regulated activity, that are directly related to the regulated activity and are used in tariff calculation (except third-party-funded assets);</p> <p>"Tariff" has the meaning assigned to it under the Act;</p> <p>"Tariff applicant" or "Applicant" means the person who makes an application for tariff approval or review in accordance with these Regulations;</p> <p>"Tariff control" means the process of tariff constraint specified in these Regulations;</p> <p>"Tariff constraint" means the maximum allowable level for a tariff control measure;</p> <p>"Tariff control framework" means the processes involved in the determination and periodic review of control formulae, the monitoring and enforcement of tariff constraints, and the operation of incentives;</p> <p>"Tariff control measure" means a financial indicator derived from the books and records of a licensee used to indicate compliance with a tariff constraint; and</p> <p>"Tariff year" means any one period or a series of periods, usually a financial year, as specified by the Authority.</p>
Purpose of the Regulations.	3.	The purpose of the Regulations is to promote a fair, transparent and data-driven methodology of determining tariffs for a sustainable electricity sector.
Application	4.	<p>These Regulations shall apply to persons engaged in—</p> <ul style="list-style-type: none"> (a) purchase or sale of electrical energy as a generator, importer, exporter or retailer; or (b) provision of transmission, distribution and system operations services.
PART II: TARIFF APPROVAL AND REVIEW		

Tariff Application.	5.	(1) A person shall not undertake sale or purchase of electrical energy or charge for provision of transmission, distribution network, system operation services unless under tariffs approved by the Authority.
		(2) A tariff approval application under sub regulation (1) shall be made electronically in the form set out in the First Schedule with one hard copy submitted to the Authority.
		(3) The tariff application shall be accompanied by documents set out in the Second Schedule.
		(4) The Authority shall, within fifteen days of receipt of a tariff application, inform the applicant whether the application is complete.
Approval of Tariffs.	6.	(1) The Authority shall before approving a tariff undertake a public hearing in accordance with Regulation 11.
		(2) In approving the tariffs, the Authority shall consider as applicable— (a) existing tariff policy or guidelines; (b) power procurement costs; (c) investment related costs; (d) network operation and maintenance costs; (e) fuel costs; (f) allowable system losses; (g) submissions during the public hearings including journal articles, studies or reports relied on in the submission; (h) rewards for outperformance and/or penalties for underperformance applicable; (i) sector studies undertaken by the Authority such as cost of service studies; (j) pass through costs; (k) regulatory asset base; (l) allowable rate of return (m) depreciation; and (n) government funded initiatives targeting socio-economic development.
		(3) (a) In approving the tariffs under sub regulation (2), the Authority shall allow only prudently incurred net costs for providing the services and variable costs supported by documentation, and a reasonable rate of return. The net costs and variable costs are as set out in the Third Schedule.

		(b) The tariff applicant shall be responsible for justifying that any costs or investments included in the formulation of tariffs are reasonable, and the Authority may challenge such costs or investments and where necessary reject them if it considers them to be unreasonable or imprudent.
		(4) (a) The Authority shall process the tariff application and publish its decision, no later than sixty days from the date of receipt of a complete tariff application. (b) The Authority may approve, reject or modify the required tariffs taking into account— i. reasons and information submitted by the applicant to justify the tariffs; and ii. comments from stakeholders and the public. c) The Authority shall take into account, and shall endeavour to procure, good quality evidence to inform its decisions.
		(5) The tariff control period for an approved tariff shall be three years.
		(6) (a) The tariff control period in sub regulation (5) shall not apply to sale of electrical energy or provision of transmission or distribution services for long term contracts approved by the Authority under section 163 of the Act. (b) Where a review of the tariff set out in a contract approved under section 163 of the Act is proposed during the term of the contract, parties shall require the Authority's approval before execution of the revised contract. In making its decision, the Authority shall consider the extent of substantive cost changes since the approval of the existing tariff.
		(7) A person who charges tariffs other than those approved by the Authority commits an offence.
Retail Tariff Structure.	7.	(1) Tariffs charged to consumers on the Grid shall indicate building blocks per kWh including generation cost, transmission cost, distribution cost and approved pass through costs.
		(2) The Authority shall publish pass through costs charged on consumers periodically as set out in the Fourth Schedule.

		(3) A licensee shall not earn a return on any pass-through costs.
Regulatory Asset Base.	8.	<p>(1) The Authority shall determine and account for a Regulatory Asset Base for licensees whose tariff application is under processing.</p> <p>(2) The Regulatory Asset Base shall be based on a systematic method for rolling forward considering information reported in regulatory accounts. The accounts shall be from tariff year to tariff year that allows for-</p> <ul style="list-style-type: none"> (a) additions in respect of all investment in non-current business assets incurred in good faith in whole or in part for the purpose of delivering services subject to tariff control; (b) deductions in respect of regulatory depreciation allowances; (c) deductions in respect of consumer capital contributions; (d) deductions in respect of asset disposals, such that the amount deducted represents the proceeds of disposal or the fair value of disposed assets if higher; and (e) adjustments necessary to effect incentives.
Allowances for Return	9.	<p>(1) The Authority shall provide for a fair rate of return on a licensee's Regulatory Asset Base when determining tariffs.</p> <p>(2) The rate of return shall be allowed based on the usage of assets that is consistent with cost allocation methods provided in the Energy (Electricity Regulatory Accounts) Regulations, 2022.</p> <p>(3) The allowed rate of return shall be such as to attract debt and equity capital, maintain financial integrity of the applicant without transferring avoidable costs to the consumer.</p> <p>(4) The Authority shall assess the cost of debt that reflects -</p> <ul style="list-style-type: none"> (a) The interest rate terms and other terms of prudently incurred financial obligations of the tariff applicant; and (b) Competitive forecasts of interest rates for new debt financing and refinancing.

		<p>(5) The Authority shall assess the cost of equity with reference to -</p> <ul style="list-style-type: none"> (a) the Capital Asset Pricing Model or any other justifiable model supported by other regulatory or academic authorities; (b) industry benchmarks; (c) evidence of relevant investor risks; and (d) the taxes payable on profits by the tariff applicant.
Tariff Review	10.	(1) A licensee shall make a tariff review application not later than forty-five days before the tariff's proposed effective date.
		(2) The Authority or licensee may initiate a tariff review within a tariff control period where there are substantive changes and deviations in assumptions or costs considered during the tariff processing and the actual incurred costs.
		(3) A tariff review application shall be made in the form set out in the First Schedule and shall be determined in line with these Regulations.
PART III: PUBLIC HEARING ON TARIFFS		
Public Hearing Preliminaries.	11.	(1) Where a tariff application is for a tariff to be charged on parties that were not part of the tariff development process, the Authority shall conduct a public hearing prior to making its decision.
		(2) The Authority shall give notice of a public hearing at least seven (7) days to the hearing the date. Copies of the tariff application shall be availed on the applicant's and Authority websites.
		<p>(3) The notice shall be in the form set out in the Fifth Schedule and shall at the cost of the applicant be published in any form of mass media or communication with reach to most of the affected parties including:</p> <ul style="list-style-type: none"> (a) in at least one newspaper of wide circulation in Kenya; (b) in a newspaper having general circulation in the area where the proposed subject of the application is to be located; or <p>through any other form of mass media or communication.</p>

		Where the applicant has email addresses and telephone contacts of the affected parties, the applicant shall be required to send personalized communication in a format to be provided by the Authority.
		(4) The Authority may invite any person, body, institution or organization directly to provide expert knowledge/opinion on the submitted application as part of the public hearing.
Conducting public hearings.	12.	(1) The public hearing shall be conducted in English and Swahili and presided by the Authority at the most publicly convenient venues identified so as to collect as much feedback as possible from the affected parties.
		(2) The tariff applicant shall present the submitted application during the public hearings with participants allowed to interrogate the application.
		(3) The Authority shall give a fair hearing to any stakeholder or to any person wishing to give views, comments or submission on the subject matter.
		(4) Any stakeholder or interested person wishing to make a formal presentation during the public hearing shall register their interest with the Authority at least 24 hours before the hearing. The request shall be in writing and highlight the issue to be presented, justification of the need to present, name, address, and affiliation if any.
		(5) The Authority shall review the request for formal presentation and make a decision whether to admit the request or not.
		(6) The Authority shall provide a reasonable time for the applicant to present their tariff, a justification for the requested tariff and respond to raised queries.
		(7) The Authority shall provide a summary of the consultations had at the end of each public hearing, outline the outcomes and maintain a record of the discussion.
		(8) During the public hearing period, the Authority may accept written references such as journals, studies or reports from members of the public for consideration in arriving at the final decision.
PART IV: REPORTING, COMPLIANCE AND ENFORCEMENT		

<p>Reporting</p>	<p>13.</p>	<p>(1) A licensee shall submit to the Authority, within six months after the end of each tariff year, a tariff control compliance statement demonstrating compliance with the tariff control formulae.</p> <p>(2) The tariff control compliance statement shall disclose -</p> <ul style="list-style-type: none"> (a) a computation of the tariff constraints; (b) a statement of the corresponding tariff control measures; and (c) a statement of any variances between (a) and (b) <p>(3) A licensee shall incorporate the compliance statement in the regulatory accounts which shall be subject to audit.</p>
<p>Offences</p>	<p>14.</p>	<p>(1) A person who –</p> <ul style="list-style-type: none"> (a) charges tariffs that are not approved by the Authority commits an offence and shall, upon conviction, be liable to a fine of not less than hundred thousand shillings in accordance with section 221 of the Act or to six months imprisonment, or to both fine and imprisonment. (b) contravenes any of their licence condition related to the application, charging, approval or review of tariffs commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to a term of imprisonment of not less than one year, or to both, in accordance with section 168 (1) (a) of the Act. (c) makes a false statement or a statement one has reason to believe is untrue to the Authority or to an agent or an officer acting on behalf of the Authority commits an offence and is on conviction liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding five years or to both, in accordance with section 210 of the Act. (d) fails to submit a tariff control compliance statement within the due date shall be liable to a fine of ten thousand shillings for every day the non-compliance persists. (e) submits a tariff control compliance statement that demonstrates failure to comply with the tariff control formulae shall be liable to a fine of twenty thousand shillings for every incidence. <p>(2) The fines or penalties in sub regulation (1) are without prejudice to the Authority’s right to suspend or revoke the licensee’s licence or certificate in accordance with the Act.</p>

		(3) Any fines or penalties which are not paid shall be a civil debt recoverable summarily.
Appeal	15.	Any person aggrieved by a decision or order of the Authority may appeal to the Tribunal in accordance with section 24 of the Act.
PART V: TRANSITIONAL PROVISIONS AND COMMENCEMENT		
Transitional provisions	16.	The tariffs existing at the commencement of these Regulations shall continue in place until new tariffs are gazetted under these Regulations.
Commencement	17.	These regulations shall come into effect immediately upon gazettment by the Cabinet Secretary.

**FIRST SCHEDULE (r. 5 (2))
TARIFF APPROVAL APPLICATION FORM**

Type of Tariff applied for (tick relevant option):

Generation of electricity for own use

Generation and sale of electricity

Transmission of electricity

Bulk supply of electricity

System operator

Distribution of electricity

Retail supply or sale of electricity

Export of electricity

Import of electricity

Particulars of intended application:

Name of Applicant:

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Physical address:

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Postal address:

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Telephone:

Mobile phone:

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Fax:

E-mail address:

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PIN:

VAT Registration:

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Name and details of contact person:

Name:

Physical address:

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Postal address:

Telephone:

Mobile phone:

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E-mail address:

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Website address:

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Position Held

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Legal status of applicant:

Indicate legal status of applicant (tick appropriately):

Sole proprietorship

Partnership

Public Limited Liability Company

Private Limited Liability Company

Cooperative Union Society

Other (please specify)

(Attach certificate of registration, certification of incorporation, memorandum and articles of association where applicable or other documentary evidence of legal status)

Particulars of directors

Name	Address	Nationality	Country of Usual Residence

Financial status of applicant:

Share capital of the applicant *(fully paid)*:

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Loans:

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(Provide certified audited financial statements and accounts for the last three (3) years, if available, prior to application)

Name and address of bankers

Bankers in Kenya:

Name	Address	Email Address	Telephone	Fax	Contact Person

Name	Address	Email Address	Telephone	Fax	Contact Person

Bankers outside Kenya:

Name	Address	Email Address	Telephone	Fax	Contact Person

Other referees for the applicant's financial status

No.	Name and Address	Contact Person

Source of funding:

Source of funding for feasibility study (specify the source and amount expected):

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Sources of funding for the proposed project:

Share capital contribution (specify foreign or local):

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Loan capital (specify source and provide evidence):

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Others (specify):

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Main current business activity of applicant:

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Technical capacity and experience.

Technical and industrial competence of applicant.

Provide detailed statements of applicant's technical and industrial competence and

experience to undertake the proposed project

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Describe technical and industrial support from external sources:

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Description of proposed project.

Provide detailed description of intended project (*attach detailed feasibility study*)

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Project site or utilities. (*attach relevant map and drawings and state whether there are access roads required*):

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Capacity of proposed project. (*state amount of power to be generated, transmitted, distributed or supplied*):

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Time plan for implementation of the project:

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Land use at the project site:

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Access roads, generation plant, transmission and distribution required for the project (*attach map*):

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Contact or consultants with local authorities: (*attach relevant documents*):

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State if there is need to access public and /or private land:

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Specified consents or licenses required from other public authorities to undertake project and their status *(attach relevant documents)*:

<i>Consent required and from whom</i>	<i>Description of activity</i>	<i>Legal provisions</i>	<i>Status</i>

Impact of the projects.

Impact on socio - economics.....

Impact on cultural heritage.....

Impact on environment.....

Impact on natural resources.....

Impact on wildlife.....

Response to comments by stakeholders *(attach an evaluation report and a response to comments)*:

Commercial aspects of the project. State intended market for generated power:*(tick relevant option)*

Domestic

Export

Own distribution

Sales to national grid

State the areas to which the power shall be supplied:

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Power Purchase Agreements or Power Sales Agreements where applicable (*attach copy of agreements*)

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Tariff charges and methodology

Provide detailed proposed terms of supply, structure of tariff calculation and methodology:

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Provide detailed statements of total annual revenue requirements projected for first five years:

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Indicate the planned investments in the first five years:

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Indicate the required rate of return:

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Declaration by the applicant:

I/We declare that the proposed project is not unlawful and that the details stated above are, to the best of my/our knowledge, true and correct.

Dated this day of 20.....

Authorized signature(s) and seal of the applicant(s)

Signature.....

Signature

Name

Name

Witnesses to above signatures:

<i>Name</i>	<i>Position</i>	<i>Signature</i>

FOR OFFICIAL USE ONLY

Date of submission of application:

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Results of verification for completeness:

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Date and newspaper in which application was advertised:

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Results of public hearing:

Decision of Authority:

Recommendations by Authority:

Date of Issue:

Date of Expiry:

Other relevant information:

SECOND SCHEDULE (r. 5 (3))
DOCUMENTATION TO ACCOMPANY TARIFF APPLICATIONS

New Applications

The tariff application shall be accompanied by the following supporting documents:

Certified Copy of Certificate of Registration or Certificate of Incorporation and Memorandum and Articles of Association in case of a company (whichever is applicable);

Valid Certified Form CR12

Valid tax compliance certificate from the Kenya Revenue Authority;

PIN certificate.

Proof of Main Office Occupancy

Audited financial statements and accounts for the last (3)three years prior to application

Tariff Model

Detailed Feasibility Study

Environmental Impact Assessment Study from the National Environmental Management Authority

Relevant approvals from Local Authorities

Proof of Land ownership of project site

Maps and drawings of project site

Expression of Interest approval issued by the Cabinet Secretary (where applicable)

Power Purchase Agreements or Power Sales Agreements (where applicable)

Evaluation report and a response to comments by stakeholders

Tariff Review

The application for tariff extension/review approval shall be accompanied by the following supporting documents:

Tariff model

Valid Certified Form CR12

Valid Tax Compliance Certificate from the Kenya Revenue Authority;

Audited Financial statements and accounts last (3) three years prior to application

THIRD SCHEDULE (r. 6 (3) (a))

EXPLANATORY SCHEDULE FOR NET COSTS AND VARIABLE COSTS

REGULATION	EXPLANATION
4 (c)	<p>Where it considers it appropriate, the Authority should seek independent verification or undertake analysis to ensure the evidence base for its decisions is of appropriate quality. Evidence may include:</p>
	<p>Evidence on historical and forecast costs, investment needs, outputs, risks, user demand and user preferences Evidence on the performance and costs of comparable licensees within and outside Kenya</p>
	<p>The net costs of providing the services to which tariffs relate will include:</p>
6 (3) (a)	<p>The costs of procuring electric energy and standby electricity generating capacity,</p>
	<p>Other expenditure necessary to support the relevant services, including the costs of public service obligations, including but not limited to those required to meet environmental and social objectives, where these obligations are imposed by empowered authorities in accordance with relevant legislation,</p>
	<p>The costs of maintaining, renewing and replacing business assets, generally accounted for as depreciation,</p>
	<p>Allowances for profits to provide a reasonable expectation for a fair rate of return on investment in business assets, represented by a Regulatory Asset Base, that is consistent with attracting debt and equity capital and maintaining the finance ability of the licensee's investment programmes.</p>
	<p>Less any other income arising from or otherwise reasonably attributable to the activities and assets of the licensee</p>
8(2)(a)	<p>Non-current business assets will generally include tangible fixed assets and software licences but exclude financial investments,</p>
8 (2) (b)	<p>purchased goodwill and other intangible assets unless the Authority otherwise agrees. The method should ensure that amounts deducted correspond to, or are computed on a consistent basis with, amounts included in the determinations of the control formulae for the relevant period.</p>
8 (2) (c)	<p>Consumer capital contributions would include capital grants and any capital component of connection charges.</p>
10 (2)	<p>To avoid undue asymmetrical risk for licensees/consumers.</p>

REGULATION	EXPLANATION
13	Variables in a tariff control formulae may include:
	A base year value for the respective tariff constraint
	Adjustments for inflation
	Pass-through adjustments
	In respect of outputs, incentive adjustments for:
	variances in service levels
	variances in asset performance
	achievement of milestones in the delivery of outputs, investment
	or other objectives
	In respect of tariff control compliance (for other than fuel cost
	tariffs)
	variances disclosed in a tariff control compliance statement
	compensation for financing costs or benefits associated with
	under-recovery or over-recovery
	In respect of fuel cost tariffs:
	releases of any accumulated surplus from a regulatory fuel cost
	provision in the event that a provision exceeds thresholds
	determined by the Authority after due consultation in
	accordance with Regulation 11
	any accumulated deficit on a regulatory fuel cost provision.
	Any other variables that the Authority considers necessary or
	desirable to further its objectives.

FOURTH SCHEDULE (r. 7 (2))
SCHEDULE OF PERIODIC PUBLICATION FOR PASS THROUGH COSTS

NO	PASS THROUGH	FREQUENCY OF PUBLICATION
1.	Taxes and Levies	As imposed by government from time to time
2.	Inflation Adjustment (INFA)	Biannual
3.	Water Resource Management Authority (WRMA) Levy	Monthly
4.	Fuel Energy Cost (FEC)	Monthly
5.	Foreign Exchange Rate Fluctuation Adjustment (FERFA)	Monthly

FIFTH SCHEDULE (r. 11 (3))
NOTICE OF PUBLIC HEARINGS

Take notice that the Energy & Petroleum Regulatory Authority shall, on the
....day of, 20... hold a public hearing regarding (*nature*
of the application) at..... (*venue*) starting at (*time*).

Government agencies, electricity sector stakeholders and persons affected by the
application are hereby invited to attend the hearing.

All stakeholders and affected persons wishing to make presentations may register
with the Secretary to the Authority not later than the day of
.....20.....

Signed:

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For and on behalf of the Energy & Petroleum Regulatory Authority.

Dated thisday of 20