



ENERGY & PETROLEUM REGULATORY AUTHORITY

**REGULATORY IMPACT ASSESSMENT
(RIA) STUDY FOR DRAFT ELECTRICITY
TARIFFS AND REGULATORY ACCOUNTS
REGULATIONS IN KENYA**

FINAL REPORT

Submitted By:



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PROJECT INFORMATION

The study was conducted by the Energy and Petroleum Regulatory Authority to establish the regulatory impact of the Draft Energy (Electricity Tariff) Regulations, 2022 and the Draft Energy (Electricity Regulatory Accounts), Regulations, 2022 in Kenya. The study included update of the Tariff Review Policy, 2005.

Contact Details	Energy and Petroleum Regulatory Authority Eagle Africa Centre, Longonot Road, Upperhill P.O. Box 42681-00100 Nairobi Email: info@epra.go.ke/ EconReg@epra.go.ke Tel: + 254 722 200947 020 2847000/200
Project Title	Consultancy Services for Study on the Regulatory Impact of Energy (Electricity Tariff) Regulations in Kenya, Energy (Electricity Regulatory Accounts), Regulations and Review of the Tariff Review Policy, 2005
Authors	JKUAT Enterprises Limited P.O. BOX 62000-00200 Nairobi-Kenya Email: jkuates@jkuates.jkuat.ac.ke Tel: +254-724256696/ 736524200 Contact Person: Robert Opini, Project Team Leader Email: ropini@hotmail.com

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EXECUTIVE SUMMARY

Sustainability of the electricity sector is dependent on among others competitively priced tariffs, able to attract capital, promote efficiency and compensate the investors for the risks assumed. In Kenya, the mandate to set, review and adjust electric power tariffs and structures and investigate tariff charges is vested on the Energy and Petroleum Regulatory Authority (Authority). According to section 165(2) of the Energy Act 2019, all tariffs charged for electrical energy supplied shall be just and reasonable. In addition, the tariff should ensure that consumers only pay for costs prudently incurred by the utilities.

To guide the process of setting, reviewing and adjusting electric power tariffs and structures, the Authority developed draft Energy (Electricity Tariff) Regulations, 2022 and the draft Energy (Electricity Regulatory Accounts) Regulations, 2022. The two draft regulations are to provide a framework for addressing: financial sustainability of licensees, operational and organisational independence, transparency and cost reflectivity in the calculation and determination of tariffs. This report provides the findings of a regulatory impact assessment (RIA) conducted as part of the regulations development process.

The study sought to identify potential financial, economic, environmental and social impacts of the draft regulatory instruments on the electricity sector and hence the Kenyan economy once adopted.

The methodology used to conduct the RIA study combined desktop literature review of case studies relevant to the Kenyan context and stakeholders' consultations. Tariff setting methodologies in Uganda, Ghana, South Africa and Canada were reviewed and are documented herein.

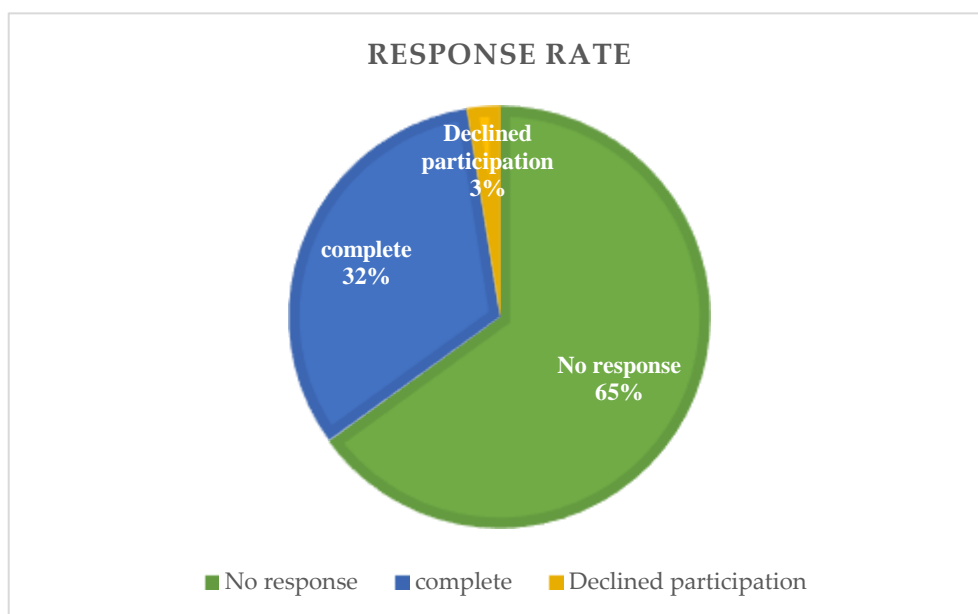
Stakeholders in the electricity sector were mapped for engagement. The mapping considered the electricity supply side (electricity generators, transmission, distribution and reticulation/trading) as well as the demand side (consumers from all customer categories). Further, other actors in the sector such as community-based organizations, civil society, development partners, sector associations and academia were also identified. This is based on the fact that the stakeholders could be impacted either directly or indirectly. Moreover,

the Draft Regulations and tariff review policy were examined in light of the provisions of inter alia, the Constitution of Kenya, the Energy Act 2019, Statutory Instruments Act, 2013. The analysis was to determine whether the provisions and content of the Regulations infringe on human rights as guaranteed in Kenya's Constitution, contradict other written laws in force in Kenya, or are ultra vires to the functions and powers of the Authority as outlined in the Energy Act, 2019. The outputs of both the desktop review, analysis and stakeholder consultations were used to propose changes to the draft Energy (Electricity Tariff) Regulations, 2022, draft Energy (Electricity Regulatory Accounts) Regulations, 2022, and the Tariff Review Policy, 2005. The Tariff Review Policy, 2005 was renamed as “The draft Tariff Guidelines, 2022” to replace the Tariff Review Policy, 2005.

The key take-aways from the desktop reviews of the case studies of relevant jurisdictions include: With respect to tariffs regulations: Tariff Regulations should anchor socio economic imperatives in tariff guidelines to protect the vulnerable and spur economic development. Lifeline tariff threshold should be based on verifiable data; Define the tariff approval process in the tariff regulations to enhance transparency; Provide for a performance-based tariff methodology in the tariff regulations with the guidelines defining the metrics for incentivization. The metrics targets to be set on an annual basis. Require publishing of the tariff approval motions on the Authority website detailing how the final tariff is arrived at. Provide for unbundling of tariffs for generation, transmission, distribution, system operation and retail. Publishing an indicative long-term electricity-pricing outlook for planning purposes. The outlook is to be reviewed annually to increase accuracy; Costs of transmission of electricity to be apportioned equally between generators and customers. With respect to Regulatory Accounts: Regulatory accounting has been adopted in many countries all over the world especially for application by the regulatory authorities over the regulated utilities to address the challenge of information asymmetry.

The RIA study mapped the forty (40) stakeholders that were contacted through questionnaires. 50% (Twenty) confirmed participation with 32% (thirteen) providing complete questionnaires. The following figure shows the summary of stakeholders’

participation in the RIA study through the questionnaires.



Summary of response rate

The following table summarises the main responses from the stakeholders that talks to key questions from the objectives of the Tariffs Regulations RIA:

No.	ITEM	REQUIRMENT	Feedback
1.	Tariff control period	The Act and draft regulations provide three (3) years tariff control period	All consumers and utilities supported the three years tariff control period is sufficient. 20% of the researchers and policy makers felt that the period is not adequate.
2.	Tariff building blocks	The draft regulations identify the main building blocks of the tariff	All responsive consumers and utilities thought the tariff building blocks -system operations, fuel costs, non-fuel costs, transmission tariff, distribution tariff, market entry tariff for merchants, retail tariff and taxes and levies- provided in the regulatory instruments are sufficient. 80% of the researchers and policy makers felt that the blocks are not adequate.
3.	Unbundling of the electricity tariffs	The study wanted to establish whether the Kenya Electricity Market is ready for unbundled tariffs	Most of the stakeholders supported the unbundling of electricity tariffs into the blocks provided above. 67% of the utilities, 80% of the researchers, policy markers and regulators, 50% of the consumers. However, a significant number of stakeholders were either unsure or opposed the unbundling. 17% of the utilities we either unsure with the same number opposing, 20% of researchers and policy markers opposed, with 50% of the consumers opposing
4.	Regulatory Asset Base- (RAB)	The study wanted to establish whether the RAB to should be based on revalued amounts with a real	Here all the researchers, regulators and policy markers supported having the RAB based on revalued amounts with a reasonable rate of return. Consumers were unsure of the model to be adopted.

No.	ITEM	REQUIREMENT	Feedback
		return or historical cost amount with a nominal return	On the other hand, the utilities partially supported, 50% of the RAB based on revalued assets. The others were unsure
5.	Treatment of Work in Progress (WIP) in RAB determination	The study wanted to establish whether RAB should include WIP	66% of the respondents from utilities and 80% from researchers, regulators and policy makers supported having the RAB include WIP. The rest of the respondents for the two categories opposed the inclusion. Consumers in equal percentage opposed or were unsure
6.	Review of Statement of Tariffs (SOT)	The study wanted to establish whether the 45 days for EPRA to review SOT is sufficient	83% of the utilities, 80% of researchers, regulators and policy makers and 50% of the consumers were of the opinion that this time is sufficient.

With regards to the Regulatory Accounts, the stakeholders were of the view that, while this will affect the players, experience from other jurisdictions shows that regulatory reduces information asymmetry between the regulator and the utilities. Regulatory accounts allow for accurate recording of expenses and assets of regulated energy utilities. In effect, this allows for a transparent mechanism of determining prudent costs to be transferred to consumers. This in the long run benefits the end consumers as there is a mechanism of holding the utilities into account and rewarding them for good performance.

On the impact of these regulatory instruments, all respondents noted that they will be affected by the regulatory instruments. Some of the impact identified on the one hand is the increase in compliance cost. But on the other hand, the other impacts identified were: unbundling will see increase in generation as entities can sell directly to other customers apart from KPLC; increase in captive generation for own use; stability of some of the stakeholders allowing for direct financing of said stakeholders; improved decision making by the Authority armed with updated subsector specific information; financial: sustainability and integrity in the operations of economy as a whole and licensee business models. Consumers may benefit from affordable cost of power; Social considerations given sufficient weighting, such as lifeline tariffs; Perceived fairness courtesy of transparency enabled by these regulations; Efficient allocation of resources at the economy level, licensee and by consumers. This is enabled by review and adjustment of allowed costs from one control

period to the next period.

In conclusion, Kenya has in place a policy and legal framework for tariffs and regulatory accounting, however the operationalization of key provisions of these instruments is lacking in the absence of regulations enacted under the Energy Act, 2019 for electricity tariffs and electricity regulatory accounting. The proposed Regulations are therefore necessary to put in place a binding regulatory framework that provides sufficient detail to tariff-controlled licensees to ensure transparency, improved financial sustainability, operational and organisational independence, and cost reflectivity in the calculation and determination of tariffs. Under the Statutory Instruments Act, 2013, the Authority is required to conduct a Regulatory Impact Assessment (RIA) before any Regulation is gazetted. The assessment is necessary to identify potential financial, economic, environmental, and social impacts of the Regulations on the electricity sector and on the Kenyan economy at large and address any barriers and impediments to the implementation of the Regulations as currently drafted at an early stage. Public consultation has been an ongoing process in the carrying out of this RIA study. This Report is intended to be used for Stakeholders Workshops for further consultations.

ABBREVIATIONS AND ACRONYMS

CAPM	Capital Asset Pricing Model
CWIP	Construction Work in Progress
IESO	Independent Electricity System Operator
EPP	Electricity Pricing Policy
EPRA	Energy & Petroleum Regulatory Authority
ERA	Electricity Regulatory Authority
ESI	Electricity Supply Industry
IPPs	Independent Power Producers
Ke	Cost of Equity
Kd	Cost of Debt
MoE&M	Ministry of Energy & Minerals
MYPD	Multi-Year Price Determination
NEB	National Energy Board
NERC	North American Electric Reliability Corporation
NERSA	National Energy Regulator of South Africa
OEB	Ontario Energy Board
PURC	Public Utilities Regulatory Commission
RAB	Regulated Asset Base
RoR	Rate of Return
RR	Revenue Requirements
T	Corporate Tax
USOA	Uniform System of Accounts
WACC	Weighted Average Cost of Capital

CHAPTER ONE

1. INTRODUCTION

1.1 Background

Kenya's development blue print: Vision 2030 cites access to electricity as one of the major drivers of socioeconomic development. For a sustainable electricity sector, the tariffs need to be competitively priced, be able to attract capital, promote efficiency and compensate the investors for the risks assumed.

The Energy & Petroleum Regulatory Authority (herein after 'EPRA', 'the Authority') is established under the Energy Act 2019 as Kenya's energy and petroleum sector regulatory agency. The Authority undertakes economic and technical regulation of electric power, renewable energy, coal, upstream, mid and downstream petroleum sub-sectors.

The Authority is mandated to set, review and adjust electric power tariffs and structures and investigate tariff charges pursuant to section 11(b) of the Energy Act 2019. Further, according to section 165(2), all tariffs charged for electrical energy supplied shall be just and reasonable. Just and reasonable tariffs allow electricity market players to maintain their financial integrity, attract capital, operate efficiently, and fully compensate the investor for the risks assumed. In addition, the tariff should ensure that consumers only pay for costs prudently incurred by the utilities.

Electricity customers in Kenya are categorized into domestic consumers, small commercial, and commercial and industrial consumers. The categorization is based on their supply voltage and amount of electricity consumed. Cost appropriation amongst the various categories is guided by three (3) tariff policy objectives namely: economic, financial and social. A detailed discussion of the objectives is provided in the Tariff Guidelines.

To guide the process of setting, reviewing and adjusting electric power tariffs and structures, the Authority developed draft Energy (Electricity Tariff) Regulations, 2022 and the draft

Energy (Electricity Regulatory Accounts) Regulations, 2022. The two draft regulations aim to provide a framework for addressing: financial sustainability of licensees, operational and organisational independence, transparency and cost reflectivity in the calculation and determination of tariffs.

Under the Statutory Instruments Act, 2013 the Authority is required to conduct a regulatory impact assessment before any Regulation is gazetted. This report provides findings of the regulatory impact assessment study undertaken for draft Energy (Electricity Tariff) Regulations, 2022 and the draft Energy (Electricity Regulatory Accounts) Regulations, 2022. Based on the findings, the draft regulations are updated and a draft Tariff Policy/guideline prepared.

1.2 Study Objectives

1.1.1. Regulatory Impact Assessment study

The study was to identify the potential financial, economic, environmental and social impacts of draft Energy (Electricity Tariff) Regulations, 2021 and the draft Energy (Electricity Regulatory Accounts) Regulations, 2021 on the electricity sector as well as on the Kenyan economy. To achieve this, the specific objectives included:

- i) To conduct a benchmarking exercise of policies, regulations, practices and incentives in other jurisdictions promoting coherent and transparent tariff control and reporting frameworks;
- ii) To review the proposed methodology and costs allowed for providing the service;
- iii) To identify stakeholders to be affected directly by the regulations, consult them and analyse their inputs on the draft regulations;
- iv) To determine the impact of the proposed regulations on the cost of electricity and to the affected utilities;
- v) To study the impact analysis of external factors such as government policies, regulations, practices and incentives on the draft regulations;

- vi) To analyse financial statements of tariff control licensees and reflect on their performance in light of changes in tariffs and tariff policies over various tariff control periods;
- vii) To undertake impact analysis of financial and technical tariff norms which have resulted to either benefit or loss to tariff control licensees;
- viii) To analyse the consequence of regulated tariffs versus tariffs through a competitive bidding process.
- ix) To identify barriers in achieving financial and operational efficiency as envisioned in the draft regulations;
- x) To analyse the impact of the draft regulations on the environment from the viewpoint of energy efficiency and any other parameters;
- xi) To analyse the cost of compliance for tariff control licensees and the cost for enforcement by the Authority on the draft regulations;
- xii) To analyse and determine a framework for performance and incentive-based tariffs that will provide balance between rewards for outperformance and penalties for underperformance;
- xiii) To assess the impact of the draft regulations on poverty alleviation and the need to develop and implement tariff plans that alleviate poverty;
- xiv) To review the methodology for determining prudent Regulatory Asset Base for tariff-controlled licensees in accordance with regulation 8 of the draft regulations;
- xv) To study and analyse the debt market and assumptions applicable in the computation of cost of debt and cost of equity;
- xvi) To review the applicable losses allowed on tariff-controlled licensees and recommend a loss allocation methodology;
- xvii) Identify and assess the current accounting system used by the licensees;
- xviii) To suggest changes and propose amendments to the draft regulations based on the findings of the study and to come up with a policy brief for consultation with the stakeholders;

- xix) Prepare a Regulatory Impact statement to be tabled in parliament and gazetted alongside the Energy (Electricity tariff) and Energy (Electricity Regulatory Accounts) regulations;
- xx) Participate in the stakeholders' engagement process and assist in addressing the concerns of the regulations based on the final draft developed. The stakeholder engagement will take place in at least seven (7) regions covering all counties.

1.1.2. Review of the Tariff Review Policy, 2005

The included a review of the Tariff Review Policy, 2005 to address it with the, Energy Policy of 2018, Energy Act, 2019 and address any emergent issues in the sector. The specific objectives of this segment of the assignment included:

- i) To evaluate relevance of the Tariff Review Policy, 2005 to guide stakeholders with regard to regulations and regulatory decisions on sub-sector tariffs;
- ii) To assess the impact of the objectives of the Tariffs Review Policy, 2005; The Tariff Review Policy identifies the following as its objectives;
 - a) establish an open, fair and transparent regulatory framework that results in competitive, cost-effective, efficient and equitable tariffs;
 - b) protect consumers while ensuring that the licensees remain viable and are incentivised to operate efficiently;
 - c) ensure the financial viability of the power sub-sector
 - d) promote efficient load management
 - e) promote efficient use and equitable provision and expansion of electricity services
 - f) promote the optimal growth and evolution of the Kenyan Electricity Supply Industry (ESI)
 - g) guide consumers, licensees and potential investors with regard to regulations and regulatory decisions on sub-sector tariffs and tariff reforms.

The review of the tariff re view policy therefore seeks to identify whether the policy of 2005 has attained these objectives and what has been there impacts.

1.3 Scope and Limitation of Work

In this assignment, a desktop review of tariff policies, guidelines and regulations in selected jurisdiction was undertaken. The relevant stakeholders -potentially to be affected by the draft Energy (Electricity Tariff) Regulations, 2022, draft Energy (Electricity Regulatory Accounts) Regulations, 2022, and the Tariff Review Policy, 2005 – were identified and consulted. The outputs of the desktop review and stakeholder consultations are used to update the draft regulations and prepare draft Tariff Guidelines to replace the Tariff Review Policy, 2005.

CHAPTER TWO

2. METHODOLOGY

In addressing the objectives of the study, both primary and secondary data and information was collected. The primary data was collected from mapped stakeholders using questionnaires and structured interview guides. On the other hand, secondary data is based on a review of selected jurisdictions of other countries. In addition, Kenya's policy and regulatory framework is analysed to address any conflicts with existing laws and regulations in Kenya. The study approach adopted is summarized in Figure 1.

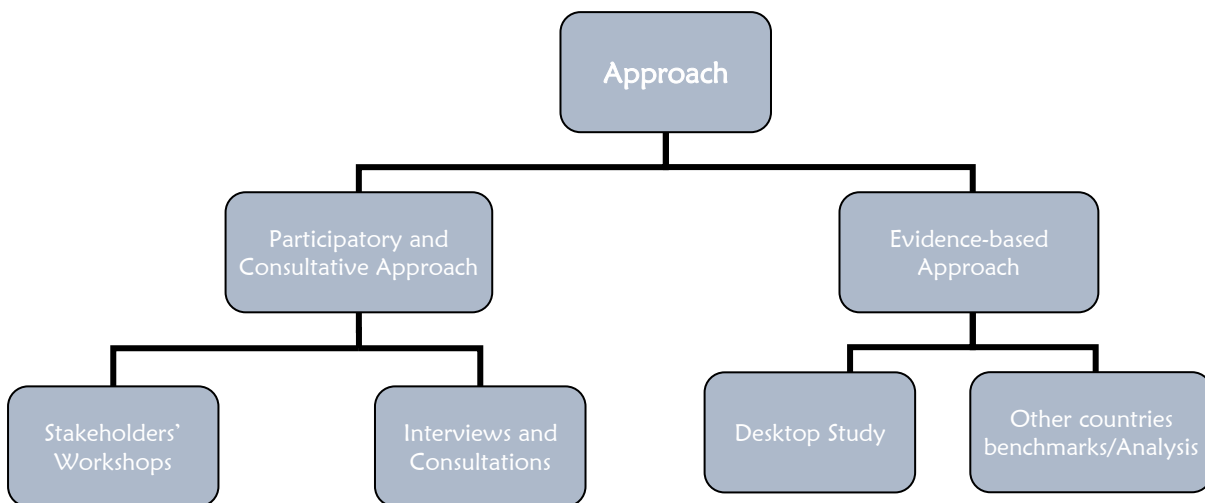


Figure 1: Study Schematic Approach

The subsequent sections of this chapter provide a detailed discussion of the approach.

2.1 Desktop Study/Evidence Based Approach

An initial survey of countries with electricity tariff and regulatory accounts frameworks was undertaken with four (4) countries selected for analysis: Ghana, Uganda, South Africa and Canada. Uganda was selected being one of the countries in Africa with cost-reflective tariffs¹; Ghana and South Africa are comparable case studies with a framework for regulatory accounts while Canada represents best practice for fully liberalized markets. The initial

¹AFDB. (2021). Electricity Regulatory Index for Africa. <https://www.afdb.org/en/documents/electricity-regulatory-index-africa-2020>

review assisted in identifying thematic areas for characterizing the tariff and regulatory accounts framework in the selected countries. A deep dive of previous studies, and policy and regulatory documents obtained online and through contacts from the selected countries and Kenya was undertaken.

In understanding the tariff frameworks, the report documents an overview of the tariff policy and tariff setting processes for the selected case studies. The parameters discussed include:

- a) The legal and policy framework for tariff regulation;
- b) Tariff components and computation of tariffs;
- c) The tariff approval and review process;
- d) Tariff provisions for equitable protection of vulnerable persons;
- e) Monitoring, reporting and transparency;
- f) Incentives and penalties; and,
- g) Tariff control period.

Regulatory Accounting otherwise known as Uniform System of Accounts (USOA) in other jurisdictions is becoming widely adopted by the regulators. In order to get a better understanding and application of the regulatory accounting system in Kenya, we reviewed the regulations and guidelines developed by the regulators in the select jurisdictions.

In addition, the Draft Regulations and policy were examined in light of the provisions of inter alia, the Constitution of Kenya, the Energy Act 2019, Statutory Instruments Act, 2013. The analysis was to determine whether the provisions and content of the Regulations infringe on human rights as guaranteed in Kenya's Constitution, contradict other written laws in force in Kenya, or are ultra vires to the functions and powers of the Authority as outlined in the Energy Act, 2019.

From the findings of document analysis, the best practices were incorporated in the final draft regulations proposed and a process for enacting the regulatory instruments proposed. This is in addition to the output of the synthesized data collected from the stakeholders.

2.2 Participatory and Consultative Approach

Stakeholders in the electricity sector were mapped for engagement. The mapping considered the electricity supply side (electricity generators, transmission, distribution and reticulation/trading) as well as the demand side (consumers from all customer categories). Further, other actors in the sector such as community-based organizations, civil society, development partners, sector associations and academia were also identified. This is based on the fact that the stakeholders could be impacted either directly or indirectly. Figure 2 shows identified stakeholders and how they interact with the regulatory instruments being reviewed.

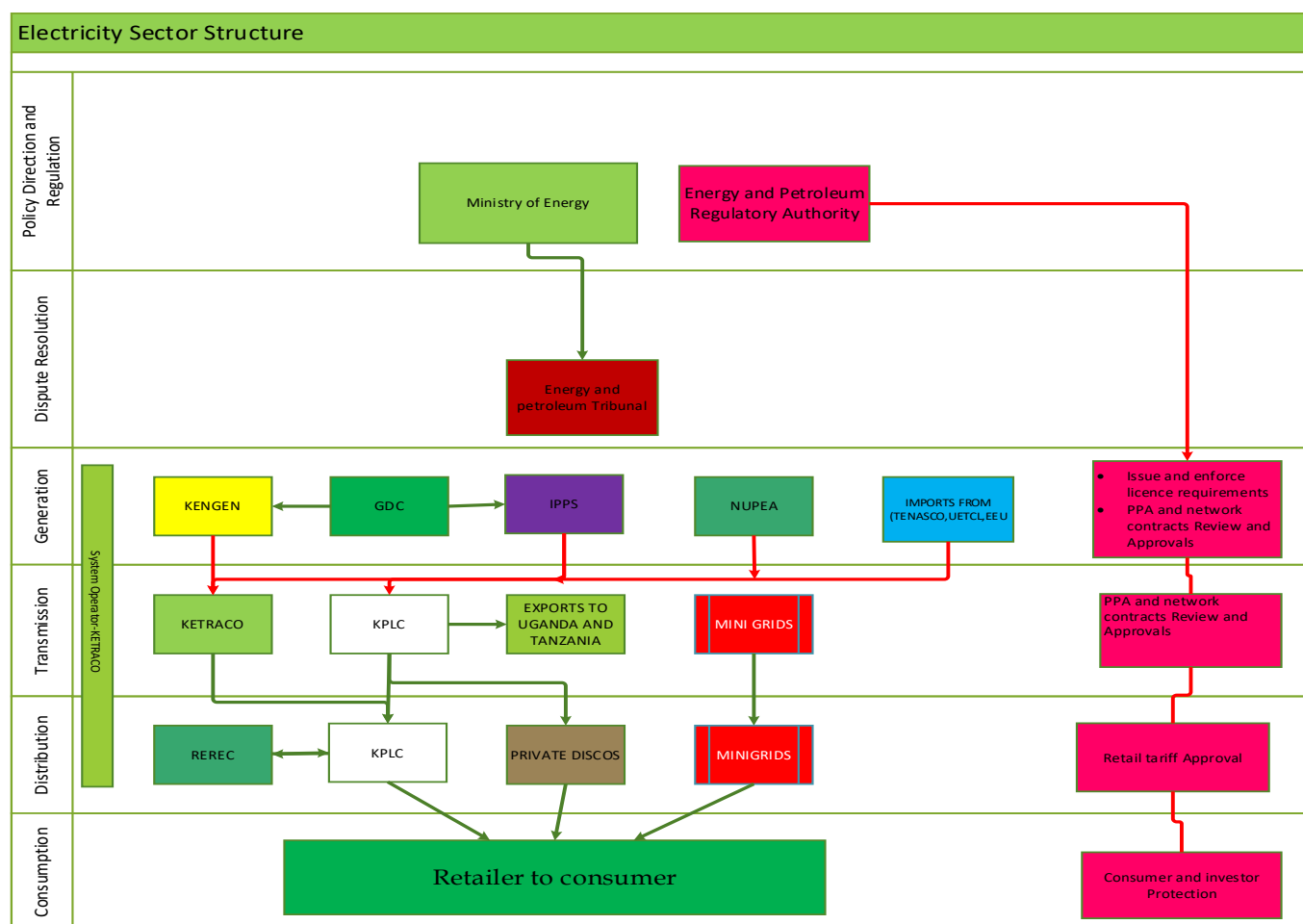


Figure 2: Electricity Sector Stakeholders (Source: LCPDP)

Stakeholder maps were used to understand key actors, their different roles, influence and interests and how these contribute to potential impacts from the developed draft Energy

(Electricity Tariff) Regulations, 2021 and the draft Energy (Regulatory Accounts) Regulations, 2021.

The list of stakeholders identified for consultation is provided in **Annex I**. In this step, semi-structured questionnaires were shared with all the identified stakeholders. The questionnaires used are provided as **Annex II**.

The responses to these questionnaires were collated and analysed. The data was analysed both qualitatively and quantitatively with tables and graphs used to present the results. The responses were complemented by the benchmarking exercise of policies, regulations, practices and incentives in other jurisdictions promoting coherent and transparent tariff control and reporting frameworks discussed in the previous section. The themes analysed according to the objectives of the RIA as enunciated in the terms of reference include, but not limited to:

1. Supply side thematic areas:

- ◆ Proposed methodology and costs allowed of providing the service
- ◆ Impact of the proposed regulations on the cost of electricity and to the affected utilities
- ◆ Barriers in achieving financial and operational efficiency as envisioned in the draft regulations
- ◆ Impact analysis of financial and technical tariff norms which have resulted to either benefit or loss to tariff control licensees
- ◆ Review the applicable losses allowed on tariff-controlled licensees and recommend a loss allocation methodology
- ◆ Use of the tariff to promote better environmental outcomes
- ◆ Mitigation of fluctuating retail prices as a result of changes in throughput costs.

2. Demand side thematic areas:

- ◆ Impact of the draft regulations on consumption of electricity and the need to develop and implement tariff plans that enhance per capita electric consumption
- ◆ Energy efficiency and demand side management initiatives

3. Regulatory/Public Institutions/Policy Thematic Areas

- ◆ Cost of compliance for tariff control licensees and the cost for enforcement by the Authority on the draft regulations
- ◆ Impact of external factors such as government policies, regulations, practices and incentives on the draft regulations.
- ◆ Consequence of regulated tariffs versus tariffs through a competitive bidding process
- ◆ Barriers in achieving financial and operational efficiency as envisioned in the draft regulations
- ◆ The proposed regulatory instruments shall be reviewed in the light of prevailing government policies, incentives and practices. Of particular interest will be the Energy Policy, 2018 which is the guiding policy instrument for the energy sector; current tax policies as pertains to investments in the electric power sector will also be considered.

4. Environmental/Energy Efficiency thematic areas:

- ◆ Impact of the draft regulations on the environment from the viewpoint of energy efficiency, measures to encourage improvements of efficiency and environmental attributes of fossil fuel powered generation plants.

The outputs of both the desktop review and stakeholder consultations were used to propose changes to the draft Energy (Electricity Tariff) Regulations, 2022, draft Energy (Electricity Regulatory Accounts) Regulations, 2022, and the Tariff Review Policy, 2005. The Tariff Review Policy, 2005 was renamed as “The draft Tariff Guidelines, 2022” to replace the Tariff Review Policy, 2005.

CHAPTER THREE

3. ELECTRICITY TARIFF SETTING AND REGULATORY ACCOUNTS IN SELECTED JURISDICTIONS

This chapter presents findings of the desktop review of the policies, regulations, codes, practices, and incentives on electricity tariff setting and regulatory accounts in Uganda, Ghana, South Africa and Canada. The thematic areas considered are outlined in the methodology section. The chapter is divided into three (3) sections: electricity tariff setting regulations section; electricity regulatory accounts section and lessons learnt.

3.1 Tariff Setting Regulations and Policy Case Studies

3.1.1 Uganda

a) The legal and policy framework

The Electricity Act of 1999 establishes a framework for determining a tariff structures and rates of charges for transmission and distribution services in Uganda. The law is supported by the Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007; the Electricity (Tariff Code) Regulations, 2003 and Tariff Determination Guidelines. The mandate for determining the electricity tariff structure and rates of charges for transmission and distribution services is vested on the Electricity Regulatory Authority (ERA), established in 2000 for the regulation of the electricity sector. The Act of 1999 also unbundled the Uganda electricity sector into generation, transmission and distribution assigned to different players²³.

According to the Electricity Act, license applicants propose terms of supply for fixing tariffs, total revenues expected, the structure for tariff, and the current and future investments together with the total energy expected for transmission, distribution or sale. ERA has

² <https://www.era.go.ug/index.php/sector-overview/uganda-electricity-sector>

³ Ministry of Energy and Mineral Development. (1999). Electricity Act. <https://www.era.go.ug/index.php/resource-centre/regulatory-instruments/regulations-codes>

powers to either approve the submitted application or prescribe different tariffs and supply terms for various customer categories or reject the application. In addition, the Electricity Act requires licensees not to discriminate consumers while considering differences in location, time of supply, amount of electricity consumed, load, power factor and purpose for which electricity is taken. Therefore, the Electricity Act lays the foundation for an open, objective, methodology for establishing tariffs with a view of providing a reasonable rate of return on investors with an eye on the customers' quality of service and affordability⁴.

The Electricity (Tariff Code) Regulations, 2003 further outline the scope, objectives, principles and license conditions for tariff setting. Applicable rates and charges for generation, transmission, system operation, bulk supply, distribution, sale of electricity and export, import are included in the scope. The regulations identify best practices in tariff setting: encourage competition and attract investment, ensure use of accurate data, provide fair and reasonable price structure, incentivize best practices from both the licensees and consumers, have tariffs that reflect actual market conditions including cost of service and have a fair and transparent process in rate and tariff determination among others. The responsibility to maintain and provide accurate data for tariff setting is assigned to the licensee. The licensee is responsible for justifying to the Authority costs or investments to be included in the tariff determination⁵. ERA may challenge such costs or investments and where necessary reject them if it considers them to be unreasonable or imprudent.⁶

b) Computation of tariffs

In Uganda's legal framework, the tariff computation methodology forms part of the conditions attached to the license.⁷ To facilitate understanding of the tariff process defined in the Electricity Act and the regulations, the tariff determination guidelines were established

⁴ 1999

⁵ Electricity Regulatory Authority (2003). Electricity (Tariff Code) Regulations. <https://www.era.go.ug/index.php/resource-centre/regulatory-instruments/regulations-codes>

⁶ Regulation 6, 2003

⁷ Regulation 13 (2), Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007

in Uganda in 2006. ERA is required to determine the revenue requirements and apply a rate of return (ROR) for each of the sector players. A performance based ratemaking methodology is provided with metrics such as operating and maintenance costs, level of losses and revenue collection. The ROR is determined annually with pass-through (inflation, fuel prices, forex etc) adjusted quarterly. Other elements of the consumer tariffs defined in the guidelines are the fixed monthly charges, demand charges and energy charges⁸.

There are five (5) categories of tariffs depending on voltage levels and consumption. Other aspects defined in the guidelines are the peak and off-peak hours for purposes of time of use tariffs and methodology for determining the revenue requirements. The tariffs are distinctly, categorized into generation, transmission and distribution with revenue requirements for each segment defined.

The tariffs are adjusted quarterly to allow for pass-throughs: fuel prices, inflation and exchange rates.⁹ ERA calculates the fuel adjustment factor, the exchange rate adjustment factor and the inflation rate adjustment factor using formulas defined in the guidelines. In the implementation of quarterly tariff adjustments, the applicable Tariff Adjustment Factor is capped at 2.5% compared to the previous quarter.¹⁰

c) Protection of the Vulnerable

The current lifeline tariff was approved in 2021 with effect from January 2022. The tariff is meant to help low-income earners access affordable electricity.¹¹ It applies to domestic customers whose consumption does not exceed 100 units per month based on their six months running average. This category of consumers qualifies to purchase the first 15 units

⁸ Electricity Regulatory Authority, Tariff determination in the Uganda Electricity Sector, 2006. Pg 6.

<https://www.era.go.ug/index.php/tariffs/tariff-adjustment-methodology>

⁹ Electricity Regulatory Authority, Tariff determination in the Uganda Electricity Sector, 2006. Pg 6. \

<https://www.era.go.ug/index.php/tariffs/tariff-adjustment-methodology>

¹⁰ Electricity Regulatory Authority, Quarterly Adjustment Methodology, January 2021. Pg. 19. <https://www.era.go.ug/index.php/tariffs/tariff-adjustment-methodology/634-20210426-quarterlytariffadjustmentmethodology2021-pdf/download>

¹¹ The Republic of Uganda, Media Statement: Statement on the changes to the Electricity Tariff Structure. 16th December 2021. <https://www.era.go.ug/index.php/media-centre/press-statements/681-statement-by-the-hon-minister-of-energy-and-mineral-development-on-changes-to-the-electricity-tariff-structure/download>

at a lifeline tariff of UGX 250 per kWh.¹² Units between 16-80 kWh are charged UGX 820.9/kWh, UGX 412/kWh for up to 150 kWh and UGX 820.9 above 150 kWh.

d) Tariff Review Process

The Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007 recognise two categories of tariff review:¹³

- Quarterly automatic tariff adjustments, covering fluctuation and foreign exchange fluctuations based on the agreed tariff methodology rates incorporated in the licence; and
- Other tariff adjustments resulting from the factors provided for where costs have substantially changed as highlighted above or for other justified cause.

For the quarterly automatic tariff review process, ERA, upon receipt of an application for an automatic tariff adjustment, scrutinises the application and verifies the adjustments with the rates incorporated in the licence within fifteen days after receipt of the application. ERA notifies the applicant in writing where there is a disagreement or need to clarify on the proposed adjustments, and the applicant is required to respond in writing to clarify on the issues raised within two weeks after receipt of the notification. ERA approves or rejects the tariff adjustments within thirty days after receipt of the application or the last clarification or required information and notifies the applicant in writing.¹⁴

A lengthier process is set out for major tariff adjustments. When ERA receives an application for other tariff adjustments resulting from changes in other factors or for other justified cause, it scrutinises the application and within thirty days after receipt of the application, acknowledges in writing receipt of the application. Where there is need to clarify or provide more information in the application, the ERA notifies the applicant in writing, and the

¹² <https://www.umeme.co.ug/tariffs>

¹³ Regulation 14 (3).

¹⁴ Regulation 15, Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007.

applicant makes the clarification or provides the required information within a period specified by the Authority.

ERA is also required within fifteen days after receipt of a complete application, to cause a notice of the application to be published in the Gazette and in at least one newspaper of wide circulation in Uganda. The notice is to include a summary of the proposed tariffs; reasons for the changes; an invitation for stakeholders and the public to inspect the application within fifteen days after publication of the notice (subject to restrictions on access to confidential information of the applicant); and an invitation to submit comments or objections to the application. The ERA may approve, reject or modify the required tariffs on the basis of:

- reasons and information submitted to justify changes in the tariffs;
- factors within the control of the applicant; and
- comments from stakeholders and the public.

The public is invited to make comments on the submitted information by licensees. The process of public hearing is further detailed in the Electricity (Application for Permit, License and Tariff Review) Regulations, 2007 where the public is invited to make comments on all components of the tariff. The outputs of the public hearings are documented and published on ERA's website. The regulators decision on the tariff is informed with among other things the outputs of the public hearings.

e) Incentives and penalties

The legal framework also sets out various offences and the penalties incurred by each offence. Specifically, section 83 stipulates offences relating to licences. It provides that a licensee who fails to comply with any of the terms of the licence (including adherence to set prices) commits an offence and is liable upon conviction to a fine not exceeding ten currency points for every day or part of a day during which the offence continues after conviction.¹⁵

¹⁵ Section 83, Electricity Act, 1999. Available at <https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/ELECTRICITY%20ACT%201999.1.pdf>

In conclusion, Uganda has adopted best practices in tariff determination. The process is anchored on use of accurate information with frequent reviews to reflect the market conditions. Both the licensees and consumers are incentivized based on performance. The key takeaways for considering in the Kenya's tariff policy/guidelines and regulations include:

- Provide for unbundling of the tariffs for generation, transmission, distribution, system operation, retail etc.;
- Anchor the lifeline tariff threshold in the tariff policy/guidelines. The threshold to be based on verifiable data;
- Define the tariff approval process in the tariff regulations to enhance transparency; and
- Provide for a performance-based tariff methodology in the tariff regulations with the policy defining the metrics for incentivization. The targets to be set on an annual basis.
- Require publishing of the tariff approval motions on the Authority website detailing how the final tariff is arrived at.

3.1.2 Ghana

a) Legal and policy framework

In Ghana, technical and economic regulation of electricity and water utility functions is handled separately. The Public Utilities Regulatory Commission (PURC) established under the Public Utilities Regulatory Commission Act of 1997 (Act 538) is in charge of economic regulation while the Energy Commission is charged with technical regulations. PURC in addition to examining and approving tariffs/rates for provision of utilities is required to: develop guidelines on determination of chargeable rates, protect interests of both consumers and investors, monitor performance of regulated utilities, promote competition and collect

and maintain data on the utilities¹⁶.

Accordingly, PURC has developed rate setting guidelines for electricity distribution and supply. The guidelines that are in five (5) volumes outline the principles, methodology and processes for approving electricity distribution and supply tariffs¹⁷. The first volume issued in 2017 outlines the key aspects of tariff setting while the others provide complementary information on the applicable methodologies for determining the different building blocks required for tariff setting. This includes determination of revenue requirements for each of the electricity distributors. Currently, PURC sets rates for more than four (4) electricity distributors that serve different regions in Ghana¹⁸.

b) Tariff Review Process and Control Period

The rate setting guidelines espouse processes that consider consumer interests, investor interests, sector financial viability, fairness among various categories of consumers and economic development of the country.

Utilities are required to notify PURC of their intention to submit a tariff sixty (60) days to expiry of the tariff with an application filed within fourteen (14) days following the notification. The guidelines outline what should accompany the tariff applications including details of the business plan, contents of the investment plan, corporate data, estimates of the annual review requirements among others¹⁹. For materially complete applications PURC requires the applicant to publish the application and undertake public education on the contents. Submissions from the public are accepted and reviewed together with the application in the formal review. PURC is required to decide on the application within thirty (30) days after the hearing and publish its decision. Approved tariffs are gazetted by PURC.

¹⁶ Government of Ghana. (1997). Public Utilities Regulatory Commission Act. <https://www.purc.com.gh/attachment/382265-20201119091155.pdf>

¹⁷ PURC. (2017). Rate Setting Guidelines for Electricity Distribution and Supply (Volume 1). <https://www.purc.com.gh/attachment/438724-20201119111122.pdf>

¹⁸ Felix Ankomah and Ezekiel Clottey, Ghana's Electricity Industry, ESI Africa (2007). <https://www.esi-africa.com/top-stories/ghana-s-electricity-industry/>

¹⁹ Public Utilities Regulatory Commission, Electricity Rate Setting Guidelines – Tariff Guidelines, PURC Ghana (1999) . http://www.ecowrex.org/system/files/repository/1999_electricity_rate_setting_-_purc.pdf

The applicants have an opportunity to file an appeal on an approved tariff within ten (10) days from its gazettment. The appeals should be given a fair hearing and a decision made within ten (10) days of its filing. The tariff review process is summarized below:

- PURC undertakes a preliminary review of the submitted proposals to ensure compliance with the tariff filing and data requirements. For materially complete applications, the utility companies are required to publish summaries of their proposals to enable interested parties and members of the public examine the basis of their requests. These are published on the companies' websites and the newspapers.
- PURC invites submissions on the proposed tariffs from interested persons and all stakeholders. These include members of the public, electricity distribution companies, power companies and the Ministry of Energy.
- As required under Section 18 (4) of the Act, the PURC holds a series of Technical Committee hearings with each regulated utility company. This is then followed by regional stakeholder consultations and a further joint consultative meeting with regulated utility companies and stakeholders. The latter is often covered extensively by journalists from print and electronic media houses and often televised for more publicity.
- As provided in Section 16 of the Act, the PURC is obliged to consider consumer interest, investor interest, the cost of production of the service, and assurance of the financial integrity of the public utility in its Rate Setting Guidelines. These considerations form the basis of tariff examination and approval. All representations made by regulated utility companies and other stakeholders are therefore considered by the PURC in arriving at a decision.

In approving tariffs, utilities are only allowed to recover efficient and prudently incurred costs when meeting the needs of electricity consumers with investments required to be compensated at a reasonable rate of return. The methodology provides for both incentives

and penalties based on the performance of the utilities. It therefore means that utilities cannot benefit from pass-through costs. In addition, a multi-year tariff framework is provided for, with a tariff control period of five (5) years. The tariff control period signals certainty for investment in the country²⁰. Reviews on the prices are done annually or upon submission of a tariff review proposal where the PURC will take it into consideration and agree if the same is feasible or not.

The PURC introduced the Automatic Adjustment Formula (AAF) in 2010 after consultation with utility companies in Ghana with the aim of sustaining the real value of tariffs by adjusting them based on variations in factors such as fuel price, foreign exchange and inflation. Its reintroduction after being discontinued in 2002 and 2006 was to ensure the set rates take into account the current trends of crude oil prices on the international market, cost of generating and producing electricity and other external factors.²¹

c) Tariff structure and Administration

Ghana's objective is to ensure that electricity pricing is efficient and competitive while providing rates that are affordable and as such, PURC must always ensure they have this in mind as they review the tariff proposals by the suppliers and operators. The electricity tariff structure is calculated in units which are at a fixed price per Kilowatt and one can easily read the units used from their meter and multiply by the fixed charge per unit.²² The fixed charge includes the operational costs by the providers, capital investment costs and the relevant taxes.

With a uniform tariff for the same category of customers, cross-subsidies are applied among customers in the same category. Areas with more revenues due to high customer density cross subsidize those with less revenues. The independent system operation is responsible

²⁰ PURC. (2017)

²¹ Public Utilities Regulatory Commission, Explanatory Notes to revised Automatic Adjustment Formula for Setting Electricity and Water Tariffs. January 2011. <https://www.purc.com.gh/attachment/459821-20210309110346.pdf>

²² Patrick Asere, Ghana's electricity tariff structure: killing the goose that lays the golden egg, Graphic Opinion (2016) <https://www.graphic.com.gh/features/opinion/ghana-s-electricity-tariff-structure-killing-the-goose-that-lays-the-golden-egg.html>

for managing the collections and payments between lower cost electricity distribution utilities and electricity retail sale licensees(s) and higher costs electricity distribution utilities and electricity retail sale licensees(s). The transfers are managed through an Equalization Pool monitored by PURC²³. This is an important lesson for Kenya that is looking at having different distributors going forward.

d) Equitable protection of the vulnerable persons

Electricity costs in Ghana have increased by 27.15% after the last review done in 2021.²⁴ Amid the ravaging corona virus in 2020, the government set out to absorb electricity bills of vulnerable persons by offering a 50% subsidy. As a long-term solution, PURC has also instituted the lifeline tariff for low-income consumers with significantly low consumption levels at tariffs below the cost of electricity provision, in consonance with the Government of Ghana's Poverty Reduction Strategy (GPRS).²⁵

The PURC Act makes a provision for different rates for different consumer classes and the protection of consumer interest. Subsequently, the PURC interprets these rates in their 2019-2020 Electricity and water Major Tariff Review Decision.

Section 16 of the PURC Act provides for consumer interest as one of the considerations for the determination of tariffs. The commission interprets this as ensuring value for money in terms of price, quality and reliability; maintaining an optimum balance between affordability and availability of service; fair apportionment of total cost of supply to various classes of consumers; provision of a minimum level of service (lifeline supply) at an affordable price to a specified category of residential customers; ensuring long term availability of service.²⁶ The lifeline philosophy contends that electricity is an essential service rather than a luxury and

²³ PURC. (2017)

²⁴Nomvuyo Tena, Ghana: PURC to increase electricity and water tariffs effective September, ESI Africa (2022) Available at [Ghana: PURC increases electricity and water tariffs \(esi-africa.com\)](https://esi-africa.com/ghana-purc-increases-electricity-and-water-tariffs/)

²⁵Ghanian President nana Addo Dankwa Akufo-Addo announced that the government will absorb bills of active lifeline electricity users for January, February and March 2021 following the Covid-19 outbreak. Available at <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Coronavirus-Govt-to-absorb-water-electricity-bills-of-lifeline-consumers-Nana-Addo-1146377>

²⁶Section 16 (3a), 2019-2020 Electricity and water Major Tariff Review Decision. PURC

people of low income should not be deprived of it because they cannot afford to pay the full cost of supply.²⁷ The lifeline supply is incorporated into the tariff structure and this as well as the beneficiaries are determined by the PURC.

e) Incentives and penalties

In order to ensure accountability from the utility companies, the PURC has put in place safeguards to ensure the companies do not act beyond the scope of their mandate. This is expressly set out in Section 38 of the PURC Act which provides for certain offences and penalties that apply.²⁸ The Section provides that any public utility which; fails to comply with the set performance standards; charges or demands rates not approved by the commission for its services; charges or demands a higher rate than the approved rate; fails to submit their report within the required time or fails to submit new or revised rates for approval or review; commits an offense and is liable upon conviction to a fine not exceeding 10 million cede and in default, imprisonment for a term not exceeding 2 years.²⁹ The Act does not however incentivise record keeping and reporting and instead considers it as an obligation that attracts a penalty for non-compliance.

The tariff determination guidelines provide for an elaborate and consultative process for rate determination. The objectives for the rate process are adequately outlined. After a tariff review, PURC provides a detailed memorandum on the motions of the process together with the considerations in arriving at the tariff. However, like some of the other jurisdictions reviewed, challenges of verifying some of the submitted information were reported. For example, the 2019-2020 tariff determination report notes that the system losses provided by the applicants could not be verified. The report recommends an independent study to

²⁷ Clause 6.1.1, Public Utilities Regulatory Commission, Electricity Rate Setting Guidelines – Tariff Guidelines, PURC Ghana (1999) Available at http://www.ecowrex.org/system/files/repository/1999_electricity_rate_setting_-_purc.pdf

²⁸ Public Utilities Regulatory Commission Act, 1997 (Act 538) Available at [Public Utilities Regulatory Commission Act, 1997 \(act 538\) \(lawsghana.com\)](http://lawsghana.com/PublicUtilitiesRegulatoryCommissionAct,1997(act538))

²⁹ Ibid

establish loss figures to be applied in subsequent reviews³⁰.

The key takeaways for considering in the Kenya's tariff guidelines and regulations include:

- Include a provision for cross subsidization among different distribution licensees;
- Define the tariff approval process in the tariff regulations to enhance transparency; and
- Provide for a performance-based methodology in the tariff regulations with the policy defining the metrics for incentivization.
- Provide for development of guidelines on how to determine the building blocks of costs for tariff determination.

3.1.3 South Africa

a) Legal and policy framework

The Electricity Regulation Act No 4 of 2006 provides for the regulation of prices and tariffs for generation, transmission, distribution, import, export and trading of electricity in South Africa. The Electricity Pricing Policy of 2008 guides the application of the Electricity Regulation Act. The mandate of regulating prices and tariffs is vested on the National Energy Regulator of South Africa (NERSA) established under the National Energy Regulator Act of 2004. The South African electricity supply industry is essentially vertically integrated with Eskom Holdings Limited (Eskom) the key player. Eskom generates more than 90 % of South Africa's electric energy, is the transmission system operator, and distributes electricity to final consumers³¹. Eskom is the single buyer for electricity generated by independent power producers. Further, NERSA has licensed several municipalities as distributors of electricity. The Electricity Regulation Act requires that a person who operates any generation, transmission, distribution, import, or export of electricity; or is involved in trading obtain a

³⁰ PURC. (2020). 2019-2020 Electricity and Water Major Tariff Review Decision. <https://www.purc.com.gh/attachment/691834-20210309110327.pdf>

³¹ <https://www.eskom.co.za/about-eskom/company-information/>

license from NERSA³². In approving the license, NERSA may make the license subject to licensing conditions that include; the setting and approval of prices, charges, rates and tariffs charged by the licensees and the methodology to be used in the determination of these rates, tariffs and charges. The Regulation further defines tariff principles in the determination of licensing conditions. It requires that the prices, charges, rates and tariffs;

- i) must enable an efficient licensee to recover the full cost of its licensed activities including a reasonable margin of return;
- ii) must provide for or prescribe incentives for continued improvement of the technical and economic efficiency with which services are to be provided;
- iii) must give end users proper information regarding the costs that their consumption imposes on the licensee's business
- iv) must avoid undue discrimination between customer categories; and
- v) may permit the cross subsidy of tariffs to certain classes of customers.

The regulation prohibits a licensee from charging any rates other than those prescribed in the license conditions.

b) Computation of Tariffs

The tariff determination function of NESRA is based on principles set out in the Electricity Pricing Policy of 2008. The document was developed by the Ministry of Energy and Minerals. The document includes 60 policy positions covering general pricing principles, generation pricing, transmission pricing, distribution pricing, cross subsidies, demand side management among others. The Electricity Pricing Policy requires that all prices charged by licensees be cost reflective. The costs charged are to reflect energy costs, network usage costs and service charges. The policy also requires that NERSA on consulting with stakeholders publish a long-term pricing outlook that covers a minimum 10 years for the customers planning requirements. The policy allows for sale of ancillary services by customers who are

³² Eric le Grange, Electricity regulation in South Africa: overview, ENS Africa, Practical Law, (2019). [https://uk.practicallaw.thomsonreuters.com/w-018-5347?contextData=\(sc.Default\)&transitionType=Default&firstPage=true#co_anchor_a928409](https://uk.practicallaw.thomsonreuters.com/w-018-5347?contextData=(sc.Default)&transitionType=Default&firstPage=true#co_anchor_a928409)

able to supply the same.

In transmission pricing, the policy requires that the tariff be unbundled to include charges for time of use, line losses, customer service and connection to reflect more accurately the cost of supply. Transmission network costs are apportioned 50/50 between the generators and customers and are geographically differentiated.

Distribution licensees are required to undertake a cost of supply study every five years or when significant licensee structure changes occur to affect the relationship between components and sales volume. Components of non-technical losses and bad debts, which exceeds the approved standard, are considered unacceptable and are removed from the approved revenue base. NERSA publishes on its website a manual on the information required for review of tariff applications.

NERSA approves tariffs for its licensees on an annual basis (except for Eskom, which is considered on a multi-year basis for its revenues and annually for its retail tariffs). The approved tariffs are communicated to all licensees and published on NERSA's website as well as on the tariff publication. The tariff publication is made available to all relevant stakeholders. Tariff names and categories are varied depending on the licensees' tariff applications. The different tariff categories are mainly Domestic/Residential Low, Domestic/Residential high, Commercial Prepaid, Commercial Conventional, Industrial Low, Industrial High and Industrial Time of Use. Similarly, the tariff structures are varied based on the tariff applications submitted by distribution licensees. The basic tariff structures include inclining block tariff, single energy rate tariff, two-part tariff consisting of a fixed charge and an energy rate tariff, three-part tariff consisting of fixed charge, energy charge and demand charge, and two/three part time of use tariffs. Each distribution licensee is required to provide Free Basic Electricity (FBE) of 50 kWh per household per month for a grid energy system. The National Treasury provides the funding for the FBE initiative to local authorities. A Distribution licensee may in its application to NERSA include a lifeline tariff. The EPP requires that the level of the lifeline tariff be set to breakeven with the cost reflective tariffs for a 20 Amp supply at a recommended consumption level of 350 kWh per

month³³.

In February 2022, the Minister for Minerals and Energy gazetted draft bill to amend the Electricity Regulation Act 2006 for public comments. The draft bill provides for a competitive multi market structure for the electricity industry and the establishment of a transmission system and market operator³⁴.

c) Tariff Review Process

Electricity prices are reviewed annually or adjusted from time to time based on the market circumstances. NERSA has the power to approve a deviation from the set tariffs contemplated under Section 15(3) of the Electricity Regulation Act No. 4 of 2006. This however can only be done under certain circumstances which include;³⁵

- When the electricity demand is higher and threatens the sustainability of the electricity supply industry.
- When the national savings target of at least 10% is not met.
- When the sector saving target as may be determined by the Minister after consultation with the stakeholders is not being achieved.

These deviations could be applied nationally or municipally depending on the application. To trigger the review process, ESKOM first submits a tariff restructuring application to NERSA with the proposed changes in the tariff structure or methodology for consideration by the regulator.³⁶ The proposed changes ought to be accompanied with the reasons for seeking the price review since that forms the basis of the regulator's consideration.

³³ Electricity Pricing Policy 2008

³⁴ https://www.gov.za/sites/default/files/gcis_document/202203/45898gon1746.pdf

³⁵ Department of Mineral and Energy, Electricity Regulations on Deviation from Set or Approved tariff, Government Gazette Notice No. 31793, 16th January 2009. <https://www.energy.gov.za/files/policies/Electricity%20Regulations%20on%20Deviation%20from%20Set%20or%20Approved%20Tariffs%2016Jan2009.pdf>

³⁶ Hanno Labuschagne, Eskom proposes big changes for electricity tariffs in South Africa — Including R938 fee for using 0kWh, My Broadband (2022) .<https://mybroadband.co.za/news/energy/455867-eskom-proposes-big-changes-for-electricity-tariffs-in-south-africa-including-r938-fee-for-using-0kwh.html>

Public Participation is entrenched in South Africa's constitution and requires NERSA to communicate whatever they intend to do and invite the members of the public to air their views and opinions on the proposals. The challenge with this is that some of the gazetted locations are not accessible by most people and therefore very few get the chance to participate yet the new tariffs if approved will apply to everyone.

d) Equitable protection of the vulnerable persons

To ensure everyone is catered for, including those from lower income households, South Africa has made adequate provisions for such users. First, there is a structured access program allocated by ESKOM to support low-income households. FBE is set at a level of electricity considered sufficient to run basic lighting, basic media access, basic ironing and boil water using an electrical kettle.³⁷

The application of FBE is currently reported to be proceeding well and reaching the target market, though there are certain implementation problems that need to be continually monitored to ensure the initiative meets and addresses the needs of the low income.³⁸ One of the main challenges so far has been the misappropriation of funds set aside for the program. According to research published by the Public Affairs Research Institute (PARI), the government set aside 9 billion rand to be disbursed to the National treasury for distribution to local governments for the program in the 2019/2020 financial year and these funds were misappropriated.³⁹

³⁷ Nicolette Pombo-van Zyl, Eskom intensifies efforts to distribute free basic electricity, ESI Africa (2020) <https://www.esi-africa.com/industry-sectors/metering/eskom-intensifies-efforts-to-distribute-free-basic-electricity/>

³⁸ Department of Minerals and Energy, Electricity Pricing Policy of the South African Electricity Supply Industry, Electricity Pricing Policy, Government Notice No. 31741. 19th December 2008. https://www.gov.za/sites/default/files/gcis_document/201409/317411398.pdf

³⁹ Dr. Tracy Ledger, Broken Promises: Electricity access for low-income households – good policy intentions, bad trade-offs and unintended consequences. (2021). https://justurbantransitions.com/our_resources/broken-promises-electricity-access-for-low-income-households-good-policy-intentions-bad-trade-offs-and-unintended-consequences/

In addition to the FBE program, South Africa also has a lifeline tariff consumption threshold level of 50 kWh. This has been found to reduce the energy burden of the poor by one-third.⁴⁰ This is part of the low-income customer tariff subsidy provided in the pricing policy.

The key takeaways for consideration in the Kenya's tariffs guidelines and regulation include;

- Provide for unbundling of tariffs for generation, transmission, distribution, system operation and retail.
- Publishing an indicative long-term electricity-pricing outlook for planning purposes. The outlook is to be reviewed annually to increase accuracy
- Costs of transmission of electricity to be apportioned equally between generators and customers.
- Annual review of retail electricity tariffs.

3.1.4 Canada

a) Regulatory framework

Electricity regulation in Canada is governed by the Canadian Energy Regulator Act of 2019. The regulatory framework also consists of the Canada Electricity Security Policy 2019 and the National Energy Board Electricity Regulation 1997.⁴¹

The Electricity Act of 1998 establishes the Independent Electricity System Operator (IESO) for ensuring reliability of the power system by; managing and operating the power grid, managing and operating the wholesale electricity market, system planning and promoting energy efficiency.⁴² The Market Surveillance Panel (MSP), complements IESO through monitoring of the electricity market competition.

Certain aspects of the sector are also governed by the North American Electric Reliability Corporation (NERC) which serves as the watchdog organization that develops and improves

⁴⁰ H. Winkler et al., Access and affordability of electricity in developing countries, World Development Volume 39, Issue 6, June 2011, Pages 1037-1050. [Access and Affordability of Electricity in Developing Countries - ScienceDirect](#)

⁴¹ Jeff Christian and Lana Shipley, Electricity regulation in Canada: overview, Lawson Dundell LLP, (2020) Available at [Electricity regulation in Canada: overview | Practical Law \(thomsonreuters.com\)](#)

⁴² Part II, Electricity Act, 1998, SO 1998, c 15, Sch A. Available at <https://www.canlii.org/en/on/laws/stat/so-1998-c-15-sch-a/latest/so-1998-c-15-sch-a.html>

the reliability standards, monitors and enforces compliance, provides education and leadership to the industry, and issues penalties for violations or nonconformance.⁴³

Regulatory functions are devolved to the provincial administrations.⁴⁴ The electricity markets in Canada are regulated primarily at the provincial (as opposed to federal) level. Consequently, the legal and policy framework in each province is different. While other provinces are dominated by government owned utilities, Alberta and Ontario have competitive open access markets.⁴⁵ For this analysis, the report focuses on Ontario which stands out as the most advanced in terms of electricity regulation among the provinces.

The main governing body in Ontario is the Ontario Energy Board (OEB) which is established by the Ontario Energy Board Act 1998 (OEB Act). The OEB Act requires that all electricity generators, transmitters, distributors and retailers be licensed by the OEB. The license binds the generator, transmitter, distributor and retailer to a variety of regulatory Codes promulgated by the OEB.⁴⁶ The Ontario Energy Board (OEB) is responsible for provincial electricity regulation and their roles include:⁴⁷

- i. Reviewing and approving transmission and distribution construction, operation and decommissioning decisions, according to system needs identified by the IESO.
- ii. Approving applications for siting of new power generation

b) Computation of tariffs

Whereas commercial or large consumers use a bulk tariff system, there are two electricity rates systems which are used especially for residential and small consumers. These are:

- i. Time of Use (ToU) where the rate chargeable depends on the time one uses electricity. These times are classified as off-peak, mid-peak and on-peak. The rates are more

⁴³ North American Electric Reliability Corporation. <https://www.nerc.com/pa/Stand/Pages/default.aspx>

⁴⁴ Ibid

⁴⁵ Richard J. King, Getting the Deal Through – *Electricity Regulation 2017*, Law Business Research 2016. <https://www.osler.com/osler/media/Osler/reports/energy/Electricity-Regulation-in-Ontario-2017.pdf>

⁴⁶ Ibid

⁴⁷ Section 4, Ontario Energy Board Act, 1998, S.O. 1998, C. 15, Sch B. <https://www.ontario.ca/laws/statute/98o15#BK91>

expensive when it is on-peak for example evenings when everyone is home from work or during winter when people majorly use electrical heating systems.

- ii. Tiered system which is a multi-level rate system where there is a set amount of electricity each month at a lower price and if the threshold increases, a higher price is chargeable.

No matter which rate system is used, it factors in the global adjustment costs by the IESO. Just like the overall tariff system where the cost must include adequate return on investment for the service provider, the global adjustment cost ensures the same and the electricity generating companies get a guaranteed price for the electricity they produce. This means that, in developing their methodology and their rates, Ontario uses an automatic calculator to come up with how much the user contributes to their share of the global adjustment which is not factored into their cost but charged separately in both the Time of Use and Tiered system.⁴⁸ If one signs up for a contract with an energy retailer, you have to pay your share of the Global Adjustment on top of the contract price. Simply put, every user pays for the electricity they use and an additional cost for the electricity generating company.

Briefly, Canada's tariff formulae can be summarized as;

Fixed electricity charge + Global adjustments + Delivery charges + Regulatory charges.

This is an advanced tariff system which not only guarantees the electricity providers a return on their investment but also helps the government know where and when to provide subsidies through the Ontario Electricity Rebate.⁴⁹

c) Tariff Review Process

Ontario has two key aspects to pricing that are applicable to the tariff system; the Hourly Ontario Energy Price (HOEP) and the Wholesale Electricity Price. The [HOEP](#) is the basis of the wholesale (or commodity) price of electricity in Ontario, that all consumers pay, unless

⁴⁸ Ontario Energy Board, Electricity Rates. Available at <https://www.oeb.ca/consumer-information-and-protection/electricity-rates>

⁴⁹ Ibid

they've entered a retail contract. IESO calculates the HOEP, which is based on market clearing prices that are set every five minutes.⁵⁰

The Electricity Act requires the IESO to submit its proposed business plans for the fiscal year to the minister for approval. This includes the proposed expenditure, revenue requirements and the fee it proposes to charge during the year for review and approval from the board.⁵¹ The tariff rates for the previous year remain effective until the new rates are approved and published.

For the set tariffs to be reviewed;⁵²

- The utility provider makes an application indicating the new proposed rates and the justification for the same to the OEB;
- The OEB then publishes a notice to all customers that may be affected by the price changes. These are often customers who receive their electricity from the applicant provider. The notice invites the customers to interrogate the application published on the OEB website and also gives them information on the public hearing to be conducted in consideration of the proposed tariffs;
- The OEB then holds a public hearing to consider the utility provider's application. During this hearing, which could be an oral or written hearing, the OEB and the members of the public present get to interrogate the utility providers on their case for a rate increase. This includes hearing questions and arguments from individuals that have registered to participate (called intervenors) in the OEB's hearing; and,
- At the end of this hearing, the OEB will decide what, if any, rate increase will be allowed and a notice to that effect is released to the public.

⁵⁰ Active Business Services, Ontario's Electricity Prices: Understanding HOEP and How Pricing is Established. 2017. Available at <https://activebusinessservices.com/ontarios-electricity-prices-understanding-hoep-pricing-established/>

⁵¹ Section 24, 25, Electricity Act, 1998, SO 1998, c 15, Sch A. <https://www.canlii.org/en/on/on/laws/stat/so-1998-c-15-sch-a/latest/so-1998-c-15-sch-a.html>

⁵² Ontario Energy Board Notice. [https://www.hydroone.com/abouthydroone/RegulatoryInformation/remotecomunities/Documents/Notice HORCI Rates_20220926.pdf](https://www.hydroone.com/abouthydroone/RegulatoryInformation/remotecomunities/Documents/Notice_HORCI_Rates_20220926.pdf)

To ensure a growing economy and improved quality of life for all Ontarians, the OEB must have the trust of the regulated community, the consumers they serve and the elected representatives to which they are accountable. In particular, sector stakeholders and intervenors make a significant contribution to the work of the OEB through ongoing adjudicative and policy consultation processes and established advisory committees. The board therefore has to engage the various stakeholders before approving the new rates proposed by the IESO.⁵³ These stakeholders include consumers, governments both federal, provincial and municipal, interest groups in the energy sector and regulated entities partners.⁵⁴

d) Equitable protection of vulnerable persons

There are programs in place to ensure protection of vulnerable persons. One such program is the Ontario Electricity Rebate (“OER”) which provides eligible customers with a 17% reduction on the amount of their bill. The program is governed by the Ontario Rebate for Electricity Consumers Act, 2016. There is also the Ontario Electricity Support Program (OESP) which provides monthly on-bill credits for lower-income customers to reduce their electricity bills.⁵⁵

e) Monitoring, reporting and transparency

Monitoring and enforcement authority ultimately rests with provincial regulators but based on the enforcement standards by NERC. The provincial authorities have the power to monitor and report on the progress in an annual review. The IESO implements compliance monitoring and enforcement processes in Ontario for NERC reliability standards and the NPCC criteria. The IESO’s Market Assessment and Compliance Division is responsible for reliability standards enforcement.⁵⁶ This is simply to enhance accountability and also act as a

⁵³ Ontario Energy Board, Stakeholder Engagement. <https://www.oeb.ca/stakeholder-engagement/stakeholder-engagement>

⁵⁴ Ibid

⁵⁵ Section 85, , Electricity Act, 1998, SO 1998, c 15, Sch A. <https://www.canlii.org/en/on/laws/stat/so-1998-c-15-sch-a/latest/so-1998-c-15-sch-a.html>

⁵⁶ Richard J. King, Getting the Deal Through – Electricity Regulation 2017, Law Business Research 2016. <https://www.osler.com/osler/media/Osler/reports/energy/Electricity-Regulation-in-Ontario-2017.pdf>

guideline on areas of improvement in the next year. It relies on a progressive reporting system where stakeholders report quarterly to enable them to measure the prices progressively and have a comprehensive report at the end of the year. This also helps IESO know the profit and loss margin of the stakeholders and how well their pricing methodology works.

f) Incentives and penalties

The IESO plays an enforcement role for breaches of the Market Rules, which enables the IESO to impose financial penalties and other sanctions such as the issuance of letters of non-compliance, trading suspension orders, termination orders or disconnection orders. A breach of the Market Rules is also a breach of an OEB licence condition, which can lead to the issuance of a compliance order, the levying of a financial penalty, or revocation of a licence.⁵⁷ These warrant administrative penalties as stipulated in the OEB Act.⁵⁸ The purpose of an administrative penalty is simply to promote compliance with the requirements established under the OEB Act.

In approving or fixing just and reasonable rates for the end user and ensuring fair compensation for the utility provider, the board has the power to offer incentives to a transmitter or a distributor in relation to the siting, design and construction of an expansion, reinforcement or other upgrade to the transmitter's transmission system or the distributor's distribution system. This is to encourage them to increase their activity to ensure every citizen has access to this utility. The board may also make necessary provision for the recovery of costs incurred or to be incurred by a transmitter or distributor in relation to their activities.⁵⁹

⁵⁷ Ibid

⁵⁸ Section 112.5 (1), Ontario Energy Board Act, 1998, S.O. 1998, C. 15, Sch B.
<https://www.ontario.ca/laws/statute/98o15#BK91>

⁵⁹ Section 78 (3.0.5), Ontario Energy Board Act, 1998, S.O. 1998, C. 15, Sch B.
<https://www.ontario.ca/laws/statute/98o15#BK91>

Table 1: Comparative summary of the reviewed case studies

SN.	Key features	Jurisdiction			
		South Africa	Ghana	Canada	Uganda
1.	Enabling policy and legal framework	South Africa's electricity sector is governed by the National Energy Act of 2008 and the Electricity Regulation Act of 2006 primarily. The law establishes the national Energy regulator of South Africa (NERSA) which is responsible for setting and reviewing tariffs, issuing licenses and enforcing the set regulatory provisions. South Africa has in place two volumes of a Regulatory Reporting Manual for use by regulated electricity businesses, published in 2008.	The National Energy Policy 2010 (the Policy) is the underlying policy guiding governmental actions and strategies in the power sector. Electricity regulation falls within the mandate of the Public Utilities Regulatory Commission Ghana (PURC), which is responsible for setting tariffs and providing guidelines for electricity distribution and supply. The body is governed by the PURC Act which sets out its functions, membership and gives it authority in the sector.	Electricity regulation in Canada is decentralized and wholly left to the regional governments to regulate. In Canada, Ontario stands out as the most advanced in terms of regulation of the electricity sector. It is governed by certain National and regional legislation. The regulatory framework consists of the Canadian Energy Regulator Act of 2019, the Canada Electricity Security Policy 2019 and the National Energy Board Electricity Regulation 1997 which establishes the IESO to manage and operate the power grid system and the electricity market. There is also a regional watchdog for North America and Canada called the North American Electric Reliability Corporation (NERC) which develops and improves the reliability standards, monitors and enforces compliance	The primary legislation for the sector is Electricity Act 1999 which establishes the Electricity Regulatory Authority; Electricity (Uniform System of Accounts) Regulations, 2020; and a Tariff Review Adjustment. Methodology published quarterly, amongst others.
2.	Tariff computation	NERSA uses the Multi-Year Price Determination (MYPD) methodology to determine the rate chargeable for electricity within a given year. It	Ghana's electricity tariff structure is calculated in units which are at a fixed price per Kilowatt. The fixed price per unit is then multiplied by the units	Canada has a bulk tariff system for commercial or large consumers and two electricity rates systems for residential and small consumers. These are the Time of Use (ToU) system where the rate chargeable	The computation of tariffs in respect of a licence is carried out in accordance with the tariff methodology, procedures of tariff calculation and terms of

SN.	Key features	Jurisdiction			
		South Africa	Ghana	Canada	Uganda
		relies on the rate of return mechanism where allowable revenues= costs to supply + ROA. This is to ensure a return on investment or costs incurred and a fair pricing for the end user.	consumed to determine how much a person pays for the utility. PURC, Electricity Rate Setting Guidelines – Tariff Guidelines set out the tariff approval process, the minimum requirement for the licensees, the methodology including the formulae for calculating tariffs.	depends on the time one uses electricity and the Tiered system which is a multi-level rate system where there is a set amount of electricity each month at a lower price and if the threshold increases, a higher price is chargeable. The formula applied in computing tariffs is Fixed electricity charge + Global adjustments + Delivery charges + Regulatory charges. This guarantees the electricity providers a return on their investment but also helps the government know where and when to provide subsidies.	supply approved by the Authority in respect of the licence applied for, and in accordance with the Electricity (Tariff Code) Regulations, 2003 The components of the computation include; power acquisition related costs; operation and maintenance costs; investment related costs; return on investment; adjustment factors, for system losses, inflation and foreign exchange; and other costs as approved by the Authority.
3.	Tariff review process	Electricity prices are reviewed annually or adjusted in light of the market circumstances. These circumstances include electricity demand versus supply, the national target or any reason deemed justifiable by NERSA.	The PURC is mandated by Sections 3(a) and (b) of the Public Utilities Regulatory Commission Act, 1997 (Act 538) to set and review tariff rates. This is done annually and the adjustment rates are determined by an Automatic Adjustment Formula (AAF). The review is initiated by proposals from utility providers and various stakeholders, then a preliminary review, review	To ensure a growing economy and improved quality of life for all Ontarians, the OEB must have the trust of the regulated community, the consumers, and elected representatives. In particular, sector stakeholders and intervenors make a significant contribution to the work of the OEB through ongoing adjudicative and policy consultation processes and established advisory committees. Upon the application for a tariff review by a utility provider, the	Tariff review is governed by the Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007. There is the quarterly review and any other review and adjustment based on the justification provided. The Regulations provide that a licensee may, if permitted in the licence to do so, apply for a tariff review where any of the

SN.	Key features	Jurisdiction			
		South Africa	Ghana	Canada	Uganda
			by a technical committee, public participation and finally publishing of the new rates.	OEB notifies the public and invites them as intervenors in the stakeholder engagement. This puts the utility providers to task in trying to explain the reason behind the application to review the tariffs. The rates can be approved wholly or subject to certain changes after the hearing and stakeholder engagement is concluded.	costs such as power acquisition related costs, operation and maintenance costs, investment related costs, returns on investment, adjustment factors for system losses, inflation or foreign exchange rates, tariff methodologies and other approved costs have substantively changed since the issuance of the licence or approval of the existing tariffs.
4.	Equitable protection of vulnerable persons	South Africa has two main programs rolled out to ensure adequate provision of electricity to low-income households. These are; the Free Basic Electricity Program to run basic household electronics and lighting and the lifeline tariff which is a subsidy provided in the pricing policy to ease the burden of the poor citizens.	Amid the ravaging corona virus in 2020, the government set out to absorb electricity bills of vulnerable persons by offering a 50% subsidy. As a long-term solution, PURC has also instituted the lifeline tariff for low-income consumers with significantly low consumption levels at tariffs below the cost of electricity provision, in consonance with the Government of Ghana's Poverty Reduction Strategy	There are programs in place to protect the vulnerable persons. One such program is The Ontario Electricity Rebate ("OER") which provides eligible customers with a 17% reduction on the amount of their bill. The program is governed by the Ontario Rebate for Electricity Consumers Act, 2016. There is also the Ontario Electricity Support Program (OESP) which provides monthly on-bill credits for lower-income customers to reduce their electricity bills	In 2021, Uganda introduced a lifeline tariff to help low-income earners access affordable electricity for domestic use as part of the amendments to the reviewed Electricity Tariff Structure which was set to take effect from January 2022.

SN.	Key features	Jurisdiction			
		South Africa	Ghana	Canada	Uganda
			(GPRS).		
5.	Monitoring, reporting and transparency	To ensure compliance and enhance accountability, NERSA requires utility providers to submit a report on their progress and compliance annually. The reports will then be used to prepare a final report on NERSA's findings which are then published.	Section 3 of the PURC Act sets out the functions of the PURC and gives the Commission the mandate to monitor performance standards by the utility providers. This same stipulation is echoed in section 13(1). The PURC has the power under Section 24 to request the utility providers to submit financial and operational reports at intervals specified by the PURC and the utility companies are obligated to comply. The utility company however must be given sufficient notice of the intention by PURC to monitor their progress. This ties in with their duty to keep detailed and audited records for every financial year as they may be required by the PURC for monitoring purposes.	Monitoring and enforcement authority ultimately rests with provincial regulators but based on the enforcement standards by NERC. The provincial authorities have the power to monitor and report on the progress in an annual review. The IESO implements compliance monitoring and enforcement processes in Ontario for NERC reliability standards and the NPCC criteria. The IESO's Market Assessment and Compliance Division is responsible for reliability standards enforcement.	Section 7 of the Uniform Accounting Regulations require all licence holders to prepare and submit a report to the authority on 31st March of every year. There are also quarterly monitoring meetings for electricity suppliers to report on the status of delivery and the grid systems. There are also annual reports submitted to ERA with the relevant financial and technical information including losses.
6.	Incentives and penalties	Incentives for tariffs include Negotiated Price Agreement guidelines	Section 38 of the PURC Act provides for certain offences and penalties that apply to	The IESO plays an enforcement role for breaches of the Market Rules, which enables the IESO to impose	The Uniform System of Accounts Regulations set out a fine of not more than

SN.	Key features	Jurisdiction			
		South Africa	Ghana	Canada	Uganda
		which allows utility providers to pay a minimum set amount agreed for a specific period and can be renewed based on the terms of the agreement. NESRA may also issue tax reliefs to licensees to simply encourage more companies to increase connectivity especially in rural areas.	utility providers who act beyond their mandate or who fail to comply with the license requirements or performance standards. There is however little to no provision for incentives since record keeping and reporting are required by law and the regulations seem to focus on deterrence as opposed to incentivising compliance from utility providers.	financial penalties and other sanctions such as the issuance of letters of non-compliance, trading suspension orders, termination orders or disconnection orders. The purpose of an administrative penalty is simply to promote compliance with the requirements established under the OEB Act.	two hundred currency points for a licensee who fails to maintain and submit information required by the regulations and for continuing offences, an additional fine of not more than five currency points. The Act however does not make any provision for incentives and also relies on the penalties to essentially force compliance.

3.2 Regulatory Accounts Regulations Case Studies

3.2.1 Introduction

Regulatory accounting has been adopted in many countries all over the world especially for application by the regulatory authorities over the regulated utilities. Regulatory accounting/uniform system of accounting is designed to identify and categorize the costs of providing service and provide a basis upon which to calculate the level of revenue needed to cover all the utility's costs including a return on investment.

There are several types of accounting systems, each with its own purpose. Generally Accepted Accounting Principles (GAAP) comprise a set of rules relating to the treatment of revenues, expenses and assets. International Financial Reporting Standards (IFRS) address how information should be reported publicly to investors, in order to protect investors and the financial markets and allow a fair comparison among investment choices. Income Tax Accounting incorporates the relevant jurisdiction's tax rules to ensure proper collection of revenues for government operation.

These various systems are not mutually exclusive. Indeed, virtually all utilities maintain sets of books under at least three systems: IFRS, Tax Accounting, and Regulatory Accounting, with guidance for entries in each often guided by GAAP⁶⁰. For a regulated utility, however, the Regulatory Accounting system is the core from which the information entered into all other systems can be drawn. All of the basic information (drawn from invoices and receipts and other source documents) is recorded and categorized in the Regulatory Accounting system; from there it can be summarized, and adjusted, if necessary (for example for differences in depreciation treatment), for entries into reports for the tax authorities or investors.

⁶⁰ The USoA is generally consistent with GAAP; for a review of the differences, and efforts to increase that consistency. "Overview of Accounting Systems," NARUC, <https://pubs.naruc.org/pub.cfm?id=538E66C7-2354-D714-51E9-23D0C31CD7BB>.

<https://www.publicpower.org/system/files/documents/Public%20Utility%20Accounting%20Manual%202018.pdf>.

3.2.2 Uganda

a) Legal Framework

The legal framework for regulatory accounting/ Uniform system of accounting is founded on sections 10 (k) and 119 (2) (e) of the Electricity Act, 1999. The Electricity Regulatory Authority (ERA) of Uganda established the Electricity (Uniform System of Accounts) Regulations, 2020 in furtherance of its mandate and pursuant to the provisions of the Act.

b) Application

The regulations apply to;

- a) any person who has a license issued under the Electricity Act, 1999 for the generation, transmission, distribution, sale, import or export of electrical energy to consumers; and
- b) any person who has a certificate of exemption issued under the Act

The regulations prescribe the reporting procedures and requirements for licensees and holders of certificates of exemption for purposes of achieving uniformity and consistency in reporting of elements that are required for tariff setting, approval and monitoring.

c) Form and Content of Uniform System of Accounts

In Uganda, the regulations require the licensee or a holder of a certificate of exemption to provide the following statements as part of the regulatory accounts.

- i. Statement of Comprehensive income
- ii. Statement of financial position
- iii. Statement of changes in equity
- iv. Statement of cashflow
- v. Related explanatory notes

The USOA are prepared on an accrual basis and transactions are made by matching revenues with related expenses.

d) Cost Allocation Methodology

The regulations provide that the licensees or holders of certificate of exemption should allocate costs to the activity giving rise to the cost. This requires that direct costs are assigned directly to services while indirect costs are traced to an activity centre or cost pool from where

the primary cost driver is used to allocate the costs between regulated and non-regulated services.

The licensee and holder of certificate of exemption are required to develop cost allocation manual setting out the cost allocation method, affiliate transactions and transfer pricing policies.

e) Audit, offences and penalties

The regulations give powers to the Authority (ERA) to prequalify a list of auditors from whom the licensees and holders of certificate of exemption will procure their auditor. The auditor is required to submit the audited USOA within three months after the end of the financial year and that the licensee or the holder of certificate of exemption shall not engage the same auditor for more than three years.

A licensee or a holder of certificate of exemption is liable who does not maintain and submits information to the Authority is liable to a fine not exceeding UGX 4,000,000 equivalent to approximately US\$ to 1,062.84.⁶¹

3.2.3 South Africa

a) Legal Framework

The legal framework for regulatory accounting/ Uniform system of accounting is founded on sections 47 of the Electricity Regulation Act, 2006. Section 47 (3) provides that the regulator, after consultation may make rules on keeping information by the licensees, the period and format in which the information must be kept.

The National Energy Regulator of South Africa (NERSA), has developed the General Regulatory Reporting Procedures and Administrative Matters which prescribe and provide guidance to the regulated entities in the energy sector on the format, content, preparation and submission to the energy regulator of required information to perform its functions.

b) Purpose of Regulatory Reporting Manual

The purpose of the Regulatory Reporting Manual (RRM) is to prescribe reporting procedures

⁶¹ Exchange rate of UGX 3,763.50=1US\$

and requirements in order to achieve uniformity and consistent reporting of elements that are required for tariff setting, monitor and/or tariff approval like: operating and maintenance expenses (O&M), capex/asset values, depreciation, taxes, return on investment as well as profit commensurate with risk.

The RRM accommodates financial segregation between regulated activities in a vertically integrated business, segregation of regulated business from non-regulated business, provides guidance necessary for unbundling cost allocation and rate design and provides consistency of format in regulatory financial reports in the energy sector.

c) Benefits of RRM Implementation

Some of the benefits realized from RRM implementation are:-

- a. Consistency of reported regulatory information which provides for easier understanding and submitting of tariff applications. The RRM also ensures the information requested for regulatory purposes is submitted correctly and should reduce further information requests. There is value in reporting in a consistent basis from year to year.
- b. Comparability of information over time both within and between regulated entities

It is much easier to compare information when it has been recorded on a consistent basis thereby improving the Energy Regulator's ability to test whether applications and budgets are reasonable. Standardization allows the development and calculation of metrics and performance measures that can be used for comparison purposes and starting point to understanding variations.

- c. More complete and comprehensive applications: To a great extent, it helps resolve the issue of how much and what type of information to include in a regulatory application which in turn result in reduced information requests. Both the regulated entity and the Energy Regulator have greater certainty on regulatory reporting requirements.
- d. Regulatory efficiencies: It engenders high standards, quality applications on a consistent basis, better understanding of applications, reduce information requests and hence lead to more regulatory efficiency. The RRM will save time spent in hearings by

shifting focus from “what is contained in the application” to “why”.

- e. Monitoring compliance with Energy Regulator conditions/requirements. The regulatory financial reports allow the Energy Regulator to detect whether the full intentions of their decision have been complied with and that license conditions have been complied with.
- f. Informing tariff reviews and setting/approving of tariffs
- g. Detection of cross-subsidization and discrimination within businesses, all or part of which are regulated.

d) Application

The RRM applies to all entities regulated by NERSA and has implications for the regulated entity’s affiliates to the extent that there are transactions with the affiliate(s), allocation of cost to/from/between these affiliates and the regulated entity.

In this regard, the RRM has been designed for use by:

- a. Each regulated entity’s accounting, financial and regulatory personnel
- b. The regulated entity’s auditors
- c. NERSA regulatory staff

e) Form and Content of Uniform System of Accounts

The regulatory financial reports are prepared on an accrual basis. In South Africa, the following statements form part of the regulatory financial reports;

- a. Balance sheet (statement of financial position)
- b. Statement of retained earnings (statement of changes in net assets)
- c. Income statement (statement of financial performance/comprehensive income)
- d. Statement of changes in financial position (statement of cash flow)
- e. Commentary explaining the financial statements. The commentary should include:
 - i. A comparison between actual current period results and assumption made during tariff application/approval.
 - ii. An explanation of variances between current period actual results, the results of previous year and the assumptions made in

setting/approving tariffs.

- iii. A discussion of the results against plan and an outline of the forward plans for key business drivers such as capex, financing arrangements, organizational shape, operational performance, etc.
- iv. A formal statement from the directors of the licensee that the licensee has complied with licence obligations and that licensee has not cross-subsidized or discriminated.
- v. Detailed disclosure of basis of preparation of regulatory financial reports. A discussion of asset valuation basis and depreciation.
- vi. Detailed cost attribution, cost allocation and inter-affiliate business charges Reconciliation between information in the regulatory financial reports and statutory accounts.
- vii. The entity's statutory accounts with their supporting documents or/and notes.
- viii. A signed declaration to the effect that the information presented is complete and accurate and complies with the RRM. This declaration shall be signed by a suitable official that normally signs the statutory accounts for entity, or Municipal Manager in the case of a Municipality.
- ix. Other surveillance/monitoring reports that NERSA may specifically request for ongoing evaluation of performance, tariffs, revenues, etc.

f) Cost Allocation Methodology & Separation Principles

NERSA's cost allocation methodology adheres to the principles below;

i. Causality

This means there is a causal relationship between the cost driver and the costs incurred in performing the activity. Revenues, costs, assets and liabilities must be attributed in accordance with the activities which cause the revenues to be earned or costs and liabilities to be incurred or the assets to be acquired.

Where cost causation cannot be easily ascertained or established cost drivers should be

selected based on benefits received.

ii. Objectivity

The attribution methods should be objective, prevent cross-subsidization and ensure equitable cost sharing among the entity's regulated businesses, non-regulated business and its affiliates without unduly benefiting any of them.

iii. Consistency

The attribution/allocation methods should be consistent from year to year. Where there are changes to the methodology, the regulated entity should restate the previous year's (or any other applicable comparative figures) regulatory financial reports to reflect the impact of the changes.

iv. Transparency

The attribution method should be transparent. All direct and allocated costs, revenues, assets and liabilities separately distinguishable from each other should be traceable on the accounting records of the regulated entity to the applicable regulatory financial reports submitted by the entity.

Each licensee is required to submit its Cost Allocation Manual (CAM) to the energy regulator for approval before the licensee makes its first filing to the regulator under the RRM.

g) Audit, offences and penalties

Section 45 of the Electricity Regulation Act grants any person authorised by the Energy Regulator in writing right of entry to inspect, among others, books, account or other document relating to the regulated entity found thereat.

Regulatory Financial Reports must be audited in the same frequency as, and by the same auditors that are auditing, the regulated entity's statutory accounts. Using the same auditors will be more cost-effective as the auditors already has knowledge of the regulated entity's business and would avoid duplicating some of the work performed for statutory audits.

Using the same auditors may also enhance the timeliness of regulatory reporting. However, this would not preclude the Energy Regulator from appointing an auditor, in terms of Section 45 of the Electricity Regulation Act to audit the Regulatory Financial Reports, where the Energy Regulator deems it appropriate to use a different auditor from the regulated entity's incumbent auditors.

The audit of regulatory financial reports is to be performed in accordance with the International Standards on Auditing or, in the case of public entities and municipalities, as prescribed by the Auditor General. The regulatory reports audited are prepared in accordance with the RRM's.

The manual does not prescribe any penalties for failure to prepare regulatory financial records. It is however recommended that Kenya prescribes the penalties so as to ensure all the regulated utilities are compliant.

3.3 Lessons for Kenya's Electricity Tariff and Regulatory Accounts Framework

From the analysis of the regulatory framework for tariffs and regulatory accounts in other jurisdictions, this study makes the following recommendations for an effective regulatory framework for Kenya:

3.3.1 Tariff Regulations

The approval and review of tariffs in Kenya is provided for under the Energy Act. To ensure the process is clearer and more robust, there is need for an electricity tariff regulatory approach that provide for much-needed more detail. Countries such as Uganda have in place specific tariff regulations specifically relating to the setting and review of tariffs. As set out in Electricity (Tariff Code) Regulations, 2003 as well as the Electricity (Application for Permit, Licence, and Tariff Review) Regulations, 2007. Others such as Ghana are reliant on more general laws such as Public Utilities Regulatory Commission Act which have a bearing on tariffs as set by the Commission. The country also has tariff guidelines in place as exemplified by the Electricity Rate Setting Guidelines which prescribe the tariff approval process, the minimum requirement for the licensees, and the methodology including the formulae for

calculating tariffs. A regulation is recommended for Kenya as it provides a more binding framework for tariff governance.

A key feature of the tariff regulatory framework as highlighted in the review is the provision of a clear tariff computation framework to ensure a fair and considerate tariff system to both the consumer and the licensee. In all jurisdictions under review, structured tariff - setting and review procedures are comprehensive and ensure members of the public are well informed and involved. While tariff computation methodologies differ, each jurisdiction is clear and transparent about its tariff computation approach.

Additionally, clearly defined circumstances that warrant a review of set tariffs are set out in provisions included in the regulatory framework of jurisdictions included in the study. In South Africa for example, electricity tariffs are reviewed annually or adjusted within the year in light of market circumstances. In Uganda, reviews are of two kinds-scheduled quarterly automatic tariff adjustments, covering fluctuation and foreign exchange fluctuations based on the agreed tariff methodology rates incorporated in the licence; and other tariff adjustments which can be sought at any time. For other tariff adjustments that lie outside the quarterly review window, a licensee may, if permitted in the licence to do so, apply for a tariff review where any of the following costs have substantively changed since the issuance of the licence or approval of the existing tariffs: power acquisition related costs; operation and maintenance costs; investment related costs; returns on investment; adjustment factors for system losses, inflation or foreign exchange rates; tariff methodologies; and other costs approved by Uganda's Electricity Regulatory Authority. Further, Uganda has a quarterly tariff adjustment methodology whereby in any given quarter, the applicable Tariff Adjustment Factor shall be capped at a level where it does not lead to an increase in the End-User Tariff of more than 2.5% compared to the previous quarter.

In Kenya, the tariff-control period is prescribed as three years by the mother law-the Energy Act, 2019, and this must be adhered to in the regulations. However, EPRA has the power under Section 11 (c) of the Act to set, review and adjust electric power tariffs and tariff

structures and investigate tariff charges, whether or not a specific application has been made for a tariff adjustment, and may rely on this power as and when needed.

Stakeholder engagement is key in the tariff setting and review process. In Ghana, the review is initiated by proposals from utility providers and various stakeholders, then a preliminary review, review by a technical committee, and public participation are carried out. In Uganda, the Electricity (Application for permit, licence and tariff review) Regulations, 2007 elaborately makes provision for public hearings for tariff applications. It contains detail on notice of public hearing, procedure at public hearing, presentation of application at public hearing, presentations by stakeholders and the public, reference to journals, studies and reports, closing response by applicant, overview of public hearing, adjournment, media coverage and decision on application by Authority and the report of public hearing. Public participation is a constitutional value and principle and given the need for stakeholder involvement to ensure users and supplier of electricity services have an opportunity to have their needs met in an open process, there is need to include public hearing provisions in Kenya's tariff Regulations for a robust, participatory, fair and inclusive tariffs framework.

It is important to highlight that the tariff governance frameworks in the different countries under review demonstrate the provision of protection mechanisms for low- income households. These are implicit in the tariff computation provisions that clearly set out allowable costs that are aimed to ensure tariffs are just and reasonable. In Uganda, the regulations explicitly provide that, the licensee is responsible for justifying that any costs or investments included in the formulation of tariffs are reasonable, and Uganda's Electricity Regulatory Authority may challenge such costs or investments and where necessary reject them if it considers them to be unreasonable or imprudent. This clarity is necessary for Kenya's proposed regulations. Importantly, socio-economic imperatives are also contained in supportive programmes and schemes in the different jurisdictions such as Ghana and South Africa, aimed at ensuring electricity is not priced out of the reach of low-income communities. These include lifeline tariffs as a subsidy provided in the pricing policy as in the case of South Africa.

3.3.2 Regulatory Account Regulations

Kenya's Energy Act envisions that the Authority shall prescribe the manner and form in which a licensee shall keep accounts.⁶² In the jurisdictions under review, different ways have been used to make such prescription. In South Africa, two volumes of a Regulatory Reporting Manual for use by regulated electricity businesses, published in 2008 guide the sector on regulatory reporting, while in Uganda, more recent regulations enacted on the 12th of June 2020- the Electricity (Uniform System of Accounts) Regulations, 2020- which prescribe reporting procedures and requirements for licensees and holders of certificate of exemption, for purposes of achieving uniformity and consistent reporting of elements that are required for tariff setting, approval and monitoring. The study recommends the use of electricity account regulations as opposed to statutory accounts as these offer a more binding framework for uniform accounting.

Whereas in jurisdictions reviewed such as Uganda, the Uniform Accounting Regulations require all licence holders to prepare and submit a report to the authority on 31st March of every year, in Kenya to align with different companies financial years' and differing accounting periods no specific date is set out, however each licensee should have its regulatory accounts examined and audited by independent auditors, and then submit the audited accounts to the Authority within three months after the end of its financial year. With regards to auditing, whilst a licensee must select an auditor from a list of EPRA prequalified auditors, the study proposes that the same auditor may not be used by a licensee for more than three years consecutively.

Kenya's Energy Act envisages that a licensee may be exempt from the requirement to keep separate and distinct accounts as prescribed where EPRA is satisfied with the form and manner in which the records and accounts of the licensee are kept and audited; or such exemption is provided for in the licence.⁶³ There is also need for EPRA to review compliance

⁶² Section 129, Energy Act 2019.

⁶³ Section 129 (4), Energy Act, 2019

with the proposed regulatory accounts regulations within three years of their enactment to provide an understanding of incentive frameworks that are needed to guide the accounting process. A review of comparative jurisdictions in the study highlights that there is a dearth of incentives for regulatory accounting, and a further understanding of market reception to the proposed regulations in Kenya will be key in guiding an appropriate incentives framework.

CHAPTER FOUR

4. FIELD STUDY FINDINGS

This chapter presents a summary and analysis of feedback obtained from the stakeholders' consultations. These include stakeholders as mapped out in the methodology section and provided Annex V. The respondents assisted in analyzing the relevance of the clauses proposed in the draft regulations. In addition, feedback on the possible financial, social, and environmental impacts that would arise from enacting the regulatory instruments was also sought. The chapter addresses, among others, objectives (ii), (iii), (iv), (vii) and (xv) of the study.

Response Rate

In the study, the forty (40) stakeholders identified in the methodology section were contacted through questionnaires. Out of the targeted respondents, twenty (20) confirmed participation with thirteen (13) providing complete questionnaires. Figure 3 shows the summary of stakeholders' participation in the study through the questionnaires.

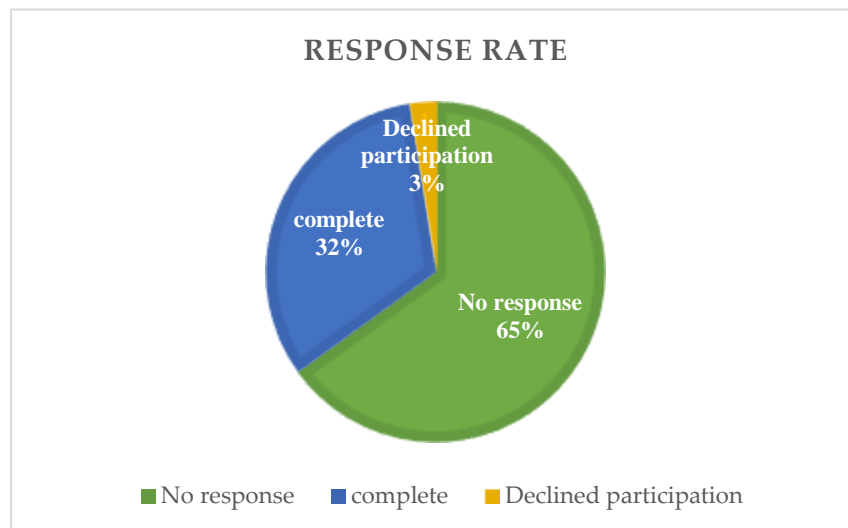


Figure 3: Summary of response rate

Table 2 gives the breakdown of the number of respondents who participated in the survey for each category of stakeholders.

Table -2:Stakeholders participation in survey

Targeted stakeholder category	Sample population	Actual no. of respondents	Respondents as percentage of sample population (%)
Utilities	25	6	24
Consumers	5	2	40
Policy makers, academic and research institutions	10	5	50
TOTAL	40	13	32

From Figure 3, the response rate to the study is 32% which is relatively low. Repeated efforts were made to reach out to the Independent Power Producers (IPP) but most were not willing to participate in the study. This could be attributed to the fact that their tariffs are already secured in the Power Purchase Agreements (PPAs) signed. The stakeholders directly involved in the retail tariff determination or represent groups directly affected by the tariffs participated in the study; this includes, KAM, KPLC, AMDA, KEREAA, ESAK, KEPSA among others. The categorization is provided in Table 2. In addition, sampling was not applied in the study as the entire population of identified stakeholders were reached to. Therefore, more than 30% of the population participated in the study and hence providing a good feel of what is expected from the stakeholders.

Analysis of Field Responses in Individual Regulatory Instruments

The questionnaires were based on both the closed and the open-ended questions. Both responses were analyzed as detailed in the methodology. The questionnaires received were analyzed to various levels depending on their completeness. The detailed responses are summarized in Annex VI.

4.1.1. Stakeholders' views on Draft Tariff Regulations

The draft tariff regulations, outline a process for determining retails tariffs considering the building blocks of generation, transmission, system operations, distribution, supply and retail. The regulations are developed to operationalize Section 167 of the Energy Act, 2019.

The summary of responses is provided in Table 3 and discussed in subsequent paragraphs.

Table -3: Summary of feedback on Retail Tariff Regulations

No.	ITEM	REQUIREMENT	Feedback
1.	Tariff control period	The Act and draft regulations provide three (3) years tariff control period	All consumers and utilities supported the three years tariff control period is sufficient. 20% of the researchers and policy makers felt that the period is not adequate.
2.	Tariff building blocks	The draft regulations identify the main building blocks of the tariff	All responsive consumers and utilities thought the tariff building blocks -system operations, fuel costs, non-fuel costs, transmission tariff, distribution tariff, market entry tariff for merchants, retail tariff and taxes and levies- provided in the regulatory instruments are sufficient. 80% of the researchers and policy makers felt that the blocks are not adequate.
3.	Unbundling of the electricity tariffs	The study wanted to establish whether the Kenya Electricity Market is ready for unbundled tariffs	Most of the stakeholders supported the unbundling of electricity tariffs into the blocks provided above. 67% of the utilities, 80% of the researchers, policy markers and regulators, 50% of the consumers. However, a significant number of stakeholders were either unsure or opposed the unbundling. 17% of the utilities were either unsure with the same number opposing, 20% of researchers and policy markers opposed, with 50% of the consumers opposing
4.	Regulatory Asset Base- (RAB)	The study wanted to establish whether the RAB should be based on revalued amounts with a real return or historical cost amount with a nominal return	Here all the researchers, regulators and policy markers supported having the RAB based on revalued amounts with a reasonable rate of return. Consumers were unsure of the model to be adopted. On the other hand, the utilities partially supported, 50% of the RAB based on revalued assets. The others were unsure
5.	Treatment of Work in Progress (WIP) in RAB determination	The study wanted to establish whether RAB should include WIP	66% of the respondents from utilities and 80% from researchers, regulators and policy markers supported having the RAB include WIP. The rest of the respondents for the two categories opposed the inclusion. Consumers in equal percentage opposed or were unsure
6.	Review of Statement of Tariffs (SOT)	The study wanted to establish whether the 45 days for EPRA to review SOT is	83% of the utilities, 80% of researchers, regulators and policy markers and 50% of the consumers were of the opinion that this time is sufficient.

No.	ITEM	REQUIREMENT	Feedback
		sufficient	

4.1.1.1. Tariff control periods

Electricity tariffs represent a significant proportion of households and commercial and industrial consumers costs. A multi-year electricity tariffs allows electricity consumers to project their expenses in the short to medium term. In most jurisdictions, the tariff control period (TCP) ranges between 3 – 5 years⁶⁴. Frequent changes in electricity tariffs lead to unpredictability and increase regulatory costs while on the other hand, very long TCP provide tariffs made on many assumptions which may not be accurate. Based on the results in Table 3, the three (3) years tariff control period is acceptable to the stakeholders and should be maintained in the Act and the tariff regulations. However, stakeholders noted that this has not been adhered to in the past with tariffs provided for one (1) year or remaining unreviewed for periods longer than the three (3) years thus leading to unpredictability. Therefore, the players in the electricity sector are encouraged to comply with the provision going forward.

4.1.1.2. Retail Tariff Blocks

The draft tariff regulations identify building blocks that should be considered when determining the retail tariffs. The regulations envision fully unbundled tariffs showing the system operations, fuel costs, non-fuel costs, transmission tariff, distribution tariff, market entry tariff for merchants, retail tariff and taxes and levies. While most stakeholders support the unbundling as provided in Table 4, there were reservation as listed below.

- There was a suggestion that the provided components were not adequate since it is not clear if the envisioned tariff components account for embedded / grid-tied generation tariff.
- One of the generators requested for further breakdown of some of the components for clarity. However, they did not specify which of the components should be broken

⁶⁴ 5 years for Ghana, 4 years Uganda

down.

Here it is recommended that further tariff reviews consider the possible impact of embedded generation. The generation systems will definitely cut projected demand. Considering that most of these systems rely on the main grid to operate, appropriate cost allocations should be determined so as not to punish the other consumers who do not have the on-site generation. This is in line with the principle of fairness defined in the regulatory instruments.

4.1.1.3. Readiness for Retail Tariffs Unbundling

From Table 4, most of the stakeholders supported the unbundling of retail electricity tariffs. However, unlike the responses to the other questions, here there were mixed reactions with a significant proportion of the respondents raising issues on the process and impact of the unbundling to the electricity sector. Notably, 50% of the consumer representative groups opposed the unbundling of retail electricity tariffs.

Both individual consumers and consumer associations felt that the market is not ready for unbundling of retail electricity tariffs. The intentions of promoting transparency through unbundling were clearly noted. However, there were fears that this could lead to an increase in electricity retail tariffs with each of the entities involved including a premium on their assets and government cutting support to the sector. This called for a gradual unbundling with the impact on the retail tariffs closely monitored. Therefore, it is important that the regulator ensures that only prudent costs are included in the tariff methodology so as not to negate the benefits of tariff unbundling. The provided costs have to be audited and be competitive relative to comparable markets.

Pertinent questions on the preparedness to unbundling of the retail electricity tariffs were raised by the existing generators, distribution and retail licensees, and transmission licensee. They include;

- Are there adequate plans to protect existing investors/utilities to ensure that sunk costs will be recovered upon entry of different players?

- Have we carried adequate audit of our distribution and transmission network to determine the ability of supporting open access without compromising quality of supply?
- Have we been able to determine the actual cost of service at various levels (generation, transmission, distribution and retail) to be able to develop cost reflective tariffs?
- Upon unbundling, and considering that Kenyan tariffs are heavily cross-subsidized, what happens to the social tariffs?
- Will there be capacity building support to existing utilities to enable them develop accurate use of system charges and wheeling charges?
- How will current PPAs be impacted? Will IPPs object to these changes?
- Will new PPAs be required? How will power purchase terms be set?
- How will management contracts be impacted?
- How is ownership of assets impacted by a new ownership structure?

It is clear that there fears from existing players on the impact of unbundling to their sustainability and sustainability of the sector in general. While these are legitimate concerns, this should not stop the unbundling process. However, in addition to the internal steps of restructuring (legal, functional, accounting, ownership), external impacts of each new phase of market development should be closely studied and monitored. The steps on the unbundling process in Kenya and considerations at each of the steps are documented in the Power Market Study published in 2021. Therefore, this needs to be considered in the process.

4.1.1.4. Capital Asset Pricing Mechanism (CAPM)

On the adequacy of the CAPM on determining cost of equity, there were reservations that the methodology while widely used, is not without shortcomings, e.g., some assumptions behind the CAPM formula have been shown not to hold up in reality. Given its shortcomings CAPM should not be solely used to determine the cost of equity. The stakeholders proposed that CAPM should be complemented with other techniques and sound judgment to develop realistic estimates for cost of equity. Further, one of the consumers proposed the use of capex investment allowable rebate scheme. Modern financial theory rests on two assumptions:

- i. Securities markets are very competitive and efficient (that is, relevant information about the companies is quickly and universally distributed and absorbed).
- ii. These markets are dominated by rational, risk-averse investors, who seek to maximize satisfaction from [returns on their investments](#).

4.1.1.5. Construction Work in Progress

For the question of whether Construction Work in Progress (CWIP) should form part of RAB or not, there were mixed reactions. Some of the utilities noted that Work in Progress (WIP) should not form part of RAB. However, a licensee should be allowed to make a reasonable projection to be confirmed and adjusted in the following review period on when the WIP will be transferred to the asset register within a tariff control period. The transferred assets will be part of projected RAB for the purposes of earning a return. The other utilities stated that it should form part of RAB. On the part of consumers, it was clear that the CWIP should not be included in the RAB.

The debate on CWIP and how it should be treated is still active in the electricity market. Critics contend that inclusion of Construction Work in Progress (CWIP) in the rate base unfairly makes current customers pay higher utility bills and provides investors a return on capital invested in projects that provide no service to current customers. However, the CWIP issue is really part of a larger issue, namely, the determination by regulators that electric utility companies need rate relief. When regulators determine that a utility company needs rate relief to maintain financial integrity and to finance necessary construction programs, they have several alternatives to achieving that goal-one of which is inclusion of CWIP in the rate base. Regardless of the alternatives chosen, the result will be the same-higher utility bills. Thus, the CWIP issue must be viewed in the context of the effects that other alternatives for providing rate relief would have on utility bills. Basically, the controversy over CWIP in the rate base involves two issues: - To what extent must an electric utility use profits as a source of capital for new construction in order to maintain financial integrity? When will consumers pay for the financial costs of capital used to construct new facilities?

In conclusion, most of the players were opposed to the inclusion of the CWIP as part of RAB. However, an adjustment mechanism should be included in the tariff methodology to allow for inclusion of commissioned assets within the tariff control period. In addition, there should be a mechanism for providing resources to enhance the network where the benefits are justifiable and benefit electricity consumers. Such investments need to be presented to the regulator in advance, analyzed and considered by the stakeholders as part of the tariff review process.

4.1.1.6. Review of statement of tariffs and charges

Stakeholders were asked whether the forty-five (45) days in the regulations- for the Authority to review and to review and determine the statement of tariffs and charges submitted by the tariff-controlled licensee- was adequate. All but two agreed with the period. The two (2) proposed a longer period of at least 60 working days. Based on the feedback, the forty-five (45) days was maintained in the draft regulations.

In addition, respondents identified the following reasons for submission of a revised statement of tariffs and charges other than the time stipulated in the regulations;

- Upon request by the regulator resubmit a revised statement of the tariffs and charges.
- A change in Government policy that could see a licensee take up extra costs that materially alters the approved revenue requirements.
- A surge in demand that reduces the average yield significantly to warrant the benefit to be passed to customers through a revised tariff.
- A material error of omission in the original submission.
- Structural and operational changes of the licensee (e.g unbundling for a Government owned licensee).
- Drastic shifts in the macroeconomic environment.

The identified reasons for resubmission need to be captured in the regulatory instruments to avoid ambiguity and abuse.

4.1.2. Stakeholders' views on Draft Regulatory Accounts Regulations

The study sought to know whether six (6) months is adequate for the submission of audited regulatory accounts to the Authority after the end of the regulatory reporting period. All the respondents save for one, agreed that the period is sufficient. The stakeholder with reservations proposed a longer period of nine (9) months. However, it is noted that regulatory accounts need to be submitted to the Authority promptly for informed decision on the sector. In addition, considering the period of six (6) months was supported by most stakeholders, the same is maintained in the draft regulatory accounts' regulations.

4.1.3. Stakeholder views on cross cutting issues

4.1.3.1. Regulatory Instrument Objectives

The study sought to know the objectives that stakeholders wanted addressed in the draft electricity tariffs and draft regulatory accounts regulations, and the tariff guidelines. The objectives identified by the stakeholders were already captured in the draft regulatory instruments. Some of the responses provided include:

- To ensure that utility services are being provided at just and reasonable rates “electric power tariffs” and tariff structures are reviewed and adjusted to ensure the commercial viability of the utility while protecting consumer interests/needs.
- The main objective of the regulations is to give clarity on the role of the Regulator (EPRA) and individual licensees in the review and implementation of electricity tariffs. The regulations also act as the framework for tariff review highlighting key issues to be considered including timelines and cost consideration. Another objective is to give tariff review predictability and this is a key incentive for investors.
- Operationalize Energy Act, 2019 Section 163(4).
- Regulate tariffs in the electricity sector to ensure: reasonable returns and profitability to investors, competitiveness, sustainability, bankability, equity to all investors, availability and quality of services.
- To provide transparency in the determination of electricity tariffs.
- To protect the consumers from possible exploitation.
- To ensure resource sustainable development and protection of the environment.

- Regulate tariffs in the electricity sector to ensure: reasonable returns and profitability to investors, competitiveness, sustainability, bankability, equity to all investors, availability and quality of services.
- To provide transparency in the determination of electricity tariffs
- To protect the consumers from possible exploitation
- To ensure resource sustainable development and protection of the environment
- To ensure utilities receive revenues that will allow them operate efficiently and viably.
- To migrate electricity tariffs to Cost reflective levels. Therefore, in electricity tariff determination, the EPRA be guided by the need to move tariffs to cost reflectivity.
- The regulations are intended to objectively guide determination of tariffs at different stages of the electrical energy supply chain.
- To ensure that electricity supplied is reliable and to ensure that the tariff is affordable to consumers by being cost reflective in a transparent ecosystem.
- To regulate the tariffs charged by various actors in the electricity market.
- Ensuring the viability of all entities in the electricity sector and enabling a fair charge to the consumer.
- Equity in distribution of energy supply cost to different classes of consumers. Tariffs being charges are justification for each category use.
- To give direction and predictability of tariff.
- To rationalize competitiveness of utility providers and provide control.
- To streamline the tariff structure.

The responses showed that the respondents understood the broad purpose of tariff regulation. Each of the objectives has been highlighted in the draft regulatory instruments included as part of this report.

4.1.3.2. Rewards/Incentives/Sanctions for Electricity Utilities Licensees

Regulations are not only meant to sanction players for nonperformance but also incentivize them to provide better quality of service. As part of the study, the stakeholders were required

to provide a list of rewards/incentives that could be offered to utilities for good performance. The respondents provided the following (Table 4) as some the rewards and penalties to be considered.

Table -4: Incentives and Sanctions proposed for Electricity Utilities

Incentives	Sanctions
<ul style="list-style-type: none"> Electricity Production Tax Credit Investment Tax Credit, Solar investment tax credit The Modified Accelerated Cost Recovery System Subsidies for renewable energy component Efficiency bonus Achievement of an agreed level of operational losses 	<ul style="list-style-type: none"> System inefficiency penalty Dominant position abuse penalties Environmental degradation penalty Continued failure to restore power supply to customers within the agreed time period based on some set standards Financial penalties for breach of a condition or other requirement imposed on regulated entities

The retail electricity tariff methodology proposed herein provides a methodology for rewards/sanctions pegged on the actual performance of the utilities.

4.1.3.3. Tariff review outside the TCP

The stakeholders were asked to identify circumstances under which the Authority could initiate a review of the tariff outside the TCP. In response, the following were provided:

- Sudden change in the availability and prices of inputs and labour like in the case of an economic recession;
- Force majeure;
- Change in taxes;
- Change in national policy that could affect the tariffs;
- Significant global geopolitical events such as war that affect the usual functioning of inputs to the electricity market; and,
- Significant global financial events that result in significant change in return requirements at a global scale.

In the draft tariff regulations and guidelines provided in this report, a mechanism for adjusting change in taxes, forex exchange and inflation has been provided through the pass-

through costs that are gazetted on a monthly basis by the Authority. Other adjustments that result in changes of tariffs should be taken through the public hearing process provided in the regulations.

4.1.3.4. Transparency in Tariff Determination

In the recent years, there has been a perception that the tariff determination process has not been transparent. Stakeholders were asked to provide recommendations on how to improve the process. The stakeholders proposed the following measures;

- Adequate participation and contribution of all stakeholders.
- Ensure relevant information related to the involved parties is publicly available.
- Avail contact information for inquiry, and establish inquiry points within available resources to answer reasonable inquiries and ease accessibility.
- Publish information on new or amended laws and regulations as early as possible before their entry into force.
- Present information in a simple and clear manner that is not designed to discriminate or to make it difficult for stakeholders to understand.
- Disseminate the information in other ways, in addition to the Internet. e.g. official gazettes and bulletins.

From the responses, stakeholders requested for adequate information, in an easy to understand format during the tariff review process. The information could be availed through the website, gazette and bulletins among others. This information will allow them to contribute positively in the tariff determination process. In the proposed draft tariff regulations, the Authority is required to adequately engage the stakeholders during the decision-making stage and publish the outcome of a tariff review process.

4.1.3.5. Regulatory Asset Base

Utilities are given a return on their RAB. Stakeholders were asked to identify what should be included in the determination of the RAB. According to the stakeholders, RAB should include:

- All assets that are applied in provision of the regulated service

- Existing Assets
- Depreciation
- Capital contribution
- Working capital
- Construction work in progress
- New investments
- Indexing Incentive
- Replacement Cost
- Depreciated Optimized Replacement Cost

However, the stakeholders indicated that the value of assets should be based on what is sufficient to carry out the regulated activity. If assets are excessive, the Authority is at liberty to determine what to include guided by what is actually useful for service delivery. Audited total projects costs should also be used to mine accurate information. While the provided components are in line with best accounting practice, CWIP should be treated in line with the earlier discussions on the same.

4.1.3.6. Determination of Cost of Debt

According to the stakeholders, the cost of debt should be based on the prevailing market rates. It can be estimated by computing the ratio of the interest expenses to the current and long-term debt balances. Alternatively, debt capital markets provide a useful measure of the return required by investors on a company's bonds.

Therefore, it will be prudent for the Authority to continually monitor trends in the market for an indication on the cost of debt.

4.1.3.7. Exemption to Reporting Requirements in the Draft Regulations

The respondents were asked to provide circumstances under which the Authority should grant exemptions on the reporting formats provided in the regulations and individual licences. The generally stated circumstances include;

- When formats/schedules provided would conflict with those required by financiers/creditors;
- When suggested licensee formats/schedules give clearer info/data and does not conflict with the Authority's;

- Smaller licensees such as mini-grid developers (generally electricity distributors with capacity not exceeding 1MW) should be granted exemptions through use of simple formats with a view to ensure minimal additional operational cost that would be attributed to the reporting.

Based on the responses, the draft regulations should clarify on who is required to comply with the electricity uniform System of Accounts. The other exemptions of be dealt on a case by case basis.

4.1.3.8. Support Incentives and Policies for the Regulatory Instruments

Stakeholders identified the incentives and policies provided in Table 5 for the successful implementation of the regulatory instruments.

Table -5: Support Incentives and Policies to the proposed Regulatory Instruments

Incentives	Policies
<ul style="list-style-type: none"> • Grants and loans-Authorized legislation designed to fund energy-efficient projects/technologies. • Tax incentives for energy efficient products/technologies. • Demand side management incentives-financial and non-financial incentives and technical services/programs that encourage technology investment and energy efficient behaviour of the end user. • Financial Incentives – Programs that offer incentives on energy efficient measures e.g. that encourage manufacturers to produce energy-efficient appliances. • Incentives can be channeled through bill credits, cash rebates etc. 	<ul style="list-style-type: none"> • Decoupling policies -alleviates the throughput incentive by reducing the connection between increased sales and increased revenue. They complement other policies that encourage energy efficiency, low-carbon resources, and demand response. • Government policies that define benefits such as tax exemptions, loan guarantees, and loan interest subsidies that encourage market uptake of energy-efficient technologies and behaviors. • Carbon tax

4.1.3.9. Impact of the Regulatory Instruments to Stakeholders

The stakeholders were asked whether the proposed regulatory instruments shall affect them directly. All respondents noted that they will be affected by the regulatory instruments. For the utilities and representatives of utilities, the main impact identified is the compliance cost. The following impacts were identified:

- Increase in generation as generation entities can sell directly to other entities apart from KPLC
- Increase in captive generation for own use
- Stability of some of the stakeholders allowing for direct financing of said stakeholders
- Improved decision making by the authority armed with updated, subsector specific information
- Financial: Sustainability & integrity in the operations of Economy as a whole and Licensee business models. Consumers may benefit from affordable cost of power.
- Social: Perceived fairness courtesy of transparency enabled by these regulations.
- Environmental: The regulations will provide a transparent framework for monitoring and auditing the extent of implementation of the Climate Change policy across the various economic agents (Licensees and consumers).
- Economic: Efficient allocation of resources at the economy level, licensee and by consumers. This is enabled by review and adjustment of allowed costs from one control period to the next period.

Based on the instruments, all generators, transmitters, distributors and retailers shall be required to maintain and provide electricity regulatory accounts to the Authority in addition to other forms of reporting. While this will affect the players, experience from other jurisdictions shows that uniform system of accounts (USoA) reduces information asymmetry

between the regulator and the utilities⁶⁵. USoA allows for accurate recording of expenses and assets of regulated energy utilities. In effect, this allows for a transparent mechanism of determining prudent costs to be transferred to consumers. This in the long run benefits the end consumers as there is a mechanism of holding the utilities into account and rewarding them for good performance.

⁶⁵ Wendland, W. A. (1949). Some accounting implications of the Federal Power Commission's uniform system of accounts.

CHAPTER FIVE

5. REVIEW OF DRAFT REGULATIONS

5.1 The enabling environment for the Electricity Tariff and Electricity Regulatory Account Regulations, 2022

The Energy and Petroleum Regulatory Authority (EPRA) has developed the draft Energy (Electricity Tariff) Regulations and the Energy (Electricity Regulatory Accounts), 2020 (the "Regulations") to solve the challenges experienced in the tariff control framework. These challenges include inefficiency of tariff-controlled licensees which affects the financial sustainability, operational and organisational independence, as well as lack of transparency and cost reflectivity in the calculation and determination of tariffs.

5.1.1. Law-making authority

The Regulations are developed pursuant to Section 167 and 208 of the Energy Act, 2019 (the "Energy Act"). Section 167 empowers the Cabinet Secretary, upon the recommendation of EPRA to make regulations necessary for the achievement of objectives and purposes of the Energy Act in particular *"prescribing the form and manner in which any application for review or adjustment of tariffs is to be made and the procedure for the review or adjustments of tariffs"* and *"prescribing the form and manner in which every licensee shall keep his accounts and records of income and expenditure for the purposes of this Act"*. Section 208 empowers the Cabinet Secretary, on recommendation of EPRA to *"make regulations with respect to any matter that is necessary for carrying out or giving effect to the Energy Act."*

5.1.2. Enabling laws and policies

The Energy Act as the primary law governing the energy sector establishes EPRA which is responsible for economic and technical regulation of the electricity, renewable energy and petroleum sub sectors in Kenya. EPRA is empowered under various sections of the Energy Act to regulate tariffs. In particular, EPRA has powers to set, review and adjust electric power tariffs and tariff structure and investigate tariff charges, whether or not a specific application

has been made for a tariff adjustment.⁶⁶

Section 165 of the Energy Act specifically makes provision for retail tariffs charged for electrical energy supplied. According to this section of the Act, the tariff structure and terms for the supply of electrical energy to consumers shall be in accordance with principles prescribed by EPRA.⁶⁷ In addition, all tariffs charged for electrical energy supplied are required to be just and reasonable and EPRA is required to review the retail tariff every three years.⁶⁸ EPRA approve applications for review of tariffs and the Act sets out that the application for review of tariffs should be made to EPRA not later than 45 days before the proposed effective date and the application shall be made in the form prescribed.⁶⁹ EPRA has discretionary power to suspend a schedule of tariffs increase for up to five months.⁷⁰

Section 163 deals with contracts for bulk supply and network services. EPRA is required when considering contracts for the sale of electrical energy as well as provision of transmission and distribution network services, between and among licensees, and between licensees and retailers and eligible customers, to ensure that the rates or tariffs established in the contracts are just and reasonable. A just and reasonable tariff in this Section is set out to mean a rate that enables a licensee to, *inter alia*, maintain financial integrity, attract capital, operate efficiently and compensate investors for the risks assumed.⁷¹

With respect to regulatory accounts, the Energy Act under Section 129 require licensees accounts to be kept separate and distinct and in a manner and form prescribed by EPRA unless specifically exempted. EPRA may give exemptions upon being satisfied with the form and manner which the records and accounts are kept and audited, or such exemption is provided for in the license. Licensees are also required to have their annual accounts, examined, audited by independent auditors and submit the audited accounts to EPRA within

⁶⁶ Section 11 (c)

⁶⁷ Section 165 (1)

⁶⁸ Section 165 (7)

⁶⁹ Section 165 (4)

⁷⁰ Section 165 (3)

⁷¹ Section 163 (4)

three months after the end of each financial year. EPRA has powers to inspect or investigate any books and accounts found at licensees' premise and take copies and also require licensees to furnish EPRA with books, accounts, records or other documents in such form as may be demanded. Failure to allow inspection is an offence and shall on conviction be liable to a fine not exceeding fifty thousand shillings for each day or part thereof that the obstruction occurs or continues.⁷²

At the policy-level, tariff control is guided by the Energy Policy, 2018 which is the overarching policy document for the energy sector. The specific objectives of the Energy Policy include, among others, improving access to affordable, competitive, and reliable energy services; promotion of cost effective and equitable pricing of energy products; and protection of investor, producer, supplier, consumer and other stakeholder interests. The Energy Policy also recognizes that some of the challenges facing the electricity sector are high end user electric tariffs and lack of a legal framework for opening retail for competition. As such, the Energy Policy requires the government implements certain measures to address the challenges. Such measures include implementing mechanisms for a national uniform tariff and facilitating investors in implementation of a strategy to achieve optimal energy mix, so as to bring down end user electricity tariffs.⁷³

Kenya also has in place a Tariffs Review Policy developed in 2005, which guides stakeholders on the regulation of tariff and tariff reform in the energy sector.⁷⁴ The Tariff Review Policy aims to establish an open, fair and transparent framework that results in competitive, efficient and equitable tariffs, protection of consumers while ensuring that the licensees remain viable and incentivized to operate efficiently and ensure the financial viability of the power sub-sector.

The Tariff Review Policy sets out the objectives of retail tariffs which are designed to satisfy economic, financial and social policy objectives, outlines the desirable characteristics of tariff which include cost reflective, simplicity, consumer responsive, stable and administrative

⁷² Section 130

⁷³ Government of Kenya, The National Energy Policy, 2018, pp.64

⁷⁴ Government of Kenya, Retail Electricity Tariff Review Policy 2005

feasibility. In addition, the Tariff Review Policy also sets out the various stages in the design of retail tariffs. These stages range from demand forecasting for bulk and retail markets, generation planning to meet forecasted demand, determination of revenue requirements based on forecasted costs and marginal costs based on pricing periods, allocation of total revenue requirements to consumers on basis of marginal costs and price sensitivity to computation of initial tariff proposals and determination of the final retail tariffs.

The Policy also prescribes the tariff review period and reference year, elements of revenue requirement, allowed rate of return, allowable KPLC expenses, and system losses. It also outlines the customer categories which include existing customers and new customers and further sets out determinants of customer classes and considerations for targeting the Life-Line Tariff. Further, the Tariff Review Policy sets out the composition of the tariff structure, which include billing determinants and degree of tariff unbundling, expounds on pass through elements in the tariff structure which include fuel oil adjustment costs and foreign exchange rate fluctuation adjustments, and surcharge.

As highlighted above, Kenya has in place a policy and legal framework for tariffs and regulatory accounting, however the operationalization of key provisions of these instruments is lacking in the absence of regulations enacted under the Energy Act for electricity tariffs and electricity regulatory accounting. The proposed Regulations are therefore necessary to put in place a binding regulatory framework that provides sufficient detail to tariff-controlled licensees to ensure transparency, improved financial sustainability, operational and organisational independence, and cost reflectivity in the calculation and determination of tariffs

5.1.3. The Regulation-making process

Under the Statutory Instruments Act, 2013, the Authority is required to conduct a Regulatory Impact Assessment (RIA) before any Regulation is gazetted. The assessment is necessary to identify potential financial, economic, environmental, and social impacts of the Regulations on the electricity sector and on the Kenyan economy at large and address any barriers and

impediments to the implementation of the Regulations as currently drafted at an early stage. Public participation is a critical element of the regulation-making process. The Statutory Instruments Act requires a regulation making authority, prior to making regulations which are likely to have a direct or a substantial indirect effect on business or restrict competition, to make appropriate consultations with all persons likely to be affected by the proposed instrument.⁷⁵ Public consultation has been an ongoing process in the carrying out of this study.

⁷⁵ Section 5 of the Statutory Instruments Act, 2013

CHAPTER SIX

6. CONCLUSION AND RECOMMENDATIONS

Under the Statutory Instruments Act, 2013, the Authority is required to conduct this Regulatory Impact Assessment (RIA) before any Regulation is gazetted. The assessment is necessary to identify potential financial, economic, environmental, and social impacts of the Regulations on the electricity sector and on the Kenyan economy at large and address any barriers and impediments to the implementation of the Regulations as currently drafted at an early stage.

From the foregoing analysis of the regulatory frameworks for tariffs regulation and regulatory accounts regulations in other jurisdictions, as well as stakeholders' consultations, this RIA study concludes and recommends as follows:

The Tariff Regulations should enable the provision of a clear tariff computation methodology to ensure a fair and just tariff system to both the consumer and the licensee. Additionally, there should be clearly defined circumstances that warrant a review of tariffs included in the regulatory framework, and subject to the tariff-control period of three years as prescribed by the Energy Act, 2019. Stakeholder engagement is key in the tariff setting and review process. Public participation is a constitutional value and principle and given the need for stakeholder involvement to ensure users and supplier of electricity services have an opportunity to have their needs met in an open process, there is need to include public hearing provisions in Kenya's tariff Regulations for a robust, participatory, fair and inclusive tariffs framework.

It is important to highlight that the tariff governance frameworks in the different countries reviewed demonstrate the provision of protection mechanisms for low-income households. Socio-economic imperatives are also contained in supportive programmes and schemes in the different jurisdictions such as Ghana and South Africa, aimed at ensuring electricity is not priced out of the reach of low-income communities. These include lifeline tariffs as a

subsidy provided in the pricing policy. Therefore, Kenya Tariff Regulations should embed these socio-economic protections.

With respect to Regulatory Account Regulations, in the jurisdictions under review, different ways have been used to make such prescription. Kenya's Energy Act envisions that the Authority shall prescribe the manner and form in which a licensee shall keep accounts. The study recommends the use of electricity account regulations as opposed to statutory accounts as these offer a more binding framework for uniform accounting.

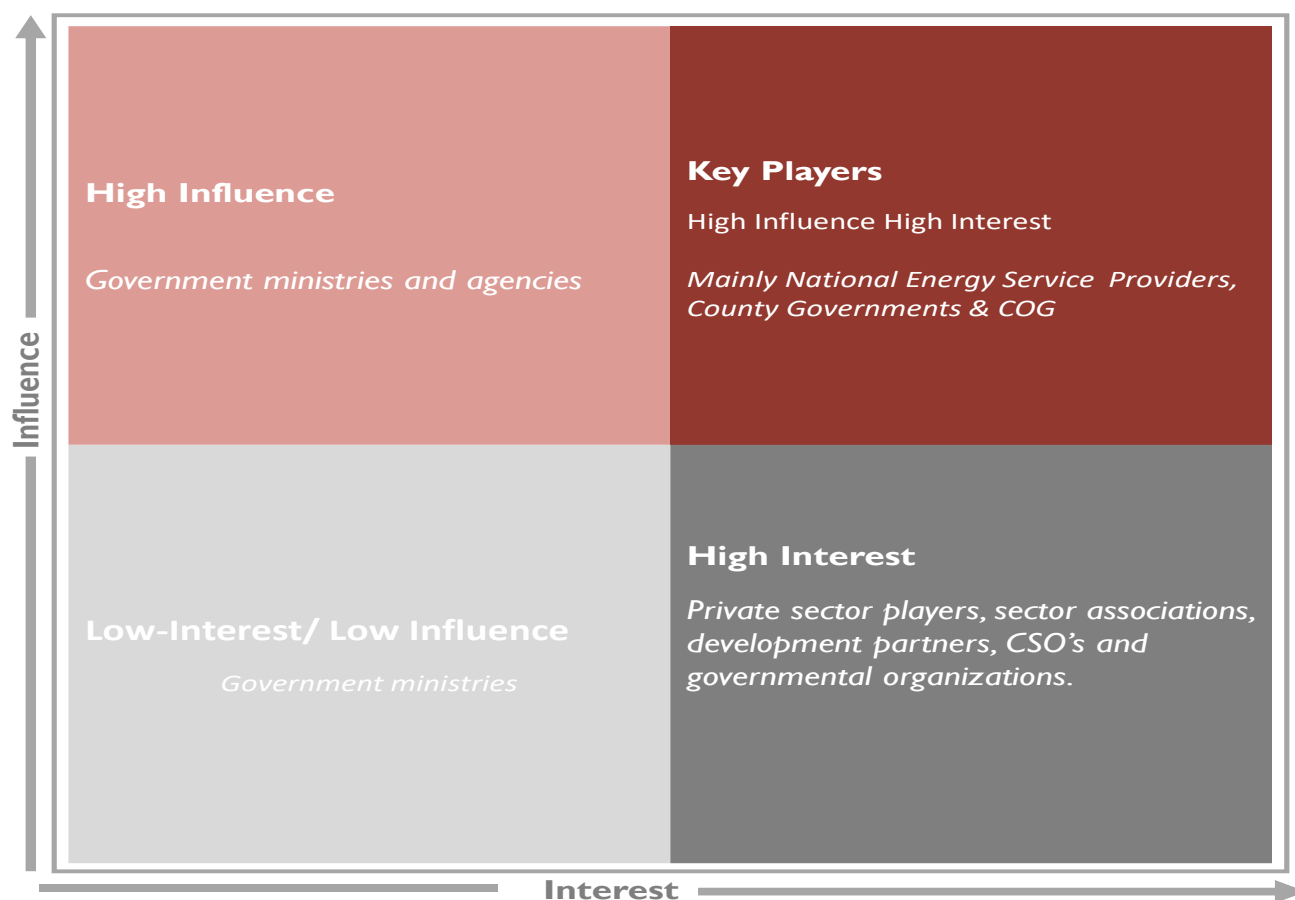
From the stakeholders' consultation' feedback on the impact the regulatory instruments, all respondents noted that they will be affected by the regulatory instruments. Some of the impact identified on the one hand is the increase in compliance cost. But on the other hand, the other impacts identified were: unbundling will see increase in generation as entities can sell directly to other customers apart from KPLC; increase in captive generation for own use; stability of some of the stakeholders allowing for direct financing of said stakeholders; improved decision making by the Authority armed with updated subsector specific information; financial: sustainability and integrity in the operations of economy as a whole and licensee business models. Consumers may benefit from affordable cost of power; Social considerations given sufficient weighting, such as lifeline tariffs; Perceived fairness courtesy of transparency enabled by these regulations; Efficient allocation of resources at the economy level, licensee and by consumers. This is enabled by review and adjustment of allowed costs from one control period to the next period.

In conclusion, the RIA study discerned that proposed Regulations are necessary to put in place a binding regulatory framework that provides sufficient detail to tariff-controlled licensees to ensure transparency, improved financial sustainability, operational and organisational independence, and cost reflectivity in the calculation and determination of tariffs. The Statutory Instruments Act requires a regulation making authority, prior to making regulations which are likely to have a direct or a substantial indirect effect on

business or restrict competition, to make appropriate consultations with all persons likely to be affected by the proposed instrument. Public participation is a critical element of the regulation-making process. This public consultation has been an ongoing process in the carrying out of this RIA study.

ANNEXURES

ANNEX I: STAKEHOLDERS MAPPING



ANNEX II: DATA COLLECTION TOOLS

A.1. RESPONDENT'S PROFILE

A.1.1. Electricity Consumers

Name	
County	
Telephone contact	
E-mail Address	
Contact Person	
Date of visit	

A.1.2. Electricity Utilities

Name	
County	
Telephone contact	
E-mail Address	
Contact Person	
Date of visit	

A.2. INTERVIEW GUIDE

A.1.3. QUESTIONS TO GOVERNMENT AND NON-GOVERNMENTAL ORGANISATIONS' OFFICERS and OTHER STAKEHOLDERS

1. What would you deem as the objectives of Electricity tariff and regulatory accounts regulations in Kenya?
2. Who are the potential players to be affected directly by the Electricity tariff and Regulatory Accounts regulations?
3. Is the tariff control period of three years adequate? Should it be extended or reduced?
4. Are the different tariff components established adequate?
5. Do you think the Kenyan electricity market is adequately prepared for the unbundling of the tariff along the supply chain and with the different players?

6. What rewards/incentives should the Authority established for tariff-controlled licensees?
7. What penalties should the Authority established for tariff-controlled licensees?
8. Under what circumstances do you thin the Authority should review the tariff control formula before the expiry of the period of validity?
9. What steps should the Authority undertake to ensure that tariff control is transparent?
10. What approach should the Authority use in establishing/determining the initial valuation of the regulated Asset Base?
11. In your opinion what should be the components of the Regulated Asset Base?
12. Should Work in Progress form part of the Regulated Asset Base?
13. Is the Capital Asset Pricing Model (CAPM) adequate for determining the cost of equity?
14. What should be the cost of debt allowed for tariff-controlled licensees?
15. Is the forty-five days adequate for the Authority to review and determine the statement of tariffs and charges submitted by the tariff-controlled licensee?
16. Under what circumstances should the tariff control licensee submit a revised statement of tariffs and charges other that the time stipulated in the regulations?
17. Under What circumstances should the Authority grant exemptions to on the reporting formats, schedules to the licensee?
18. In your opinion will tariff controlled licensee incur additional costs in preparing regulatory accounts?
19. Should revalued amounts form part of the regulated Asset Base?
20. IS six months adequate for the submission of audited regulatory accounts to the Authority by the licensee?
21. What incentives and policy support are necessary for the success of these regulations?
22. Which financial, social, environmental, and economic impacts on Kenya's economy and the tariff-controlled licensee are likely to result from implementation of these regulations?

A.1.4. **Government and Non-Governmental agencies interviewed**

Government Agencies	KPLC
	Ministry of Energy
	REREC
	County governments through the Council of Governors
	Kenya Electricity Generating Company (KenGen)
	Kenya Electricity Transmission Company (KETRACO)
	Geothermal Development Company (GDC)
	Nuclear Power and Energy Agency (NuPEA)
	EPRA
Non-governmental Agencies	Independent Power Producers (IPPs)
	Energy Industry Associations (KEREAA, AMDA, KEPSA, KAM, ESAK, ESCOs, COFEK AEPEA, EAPA among others)

ANNEX III: PROPOSED AMENDMENTS TO THE REGULATIONS

A.1.5. Schedule of Amendments

The Energy (Electricity Tariffs) Regulations 2020

Section	Current provision	Proposed amendment
Title	The Energy (Electricity Tariffs) Regulations 2020	The Energy (Electricity Tariffs) Regulations 2022 The year of the regulations should be updated to the year when the regulations shall be gazetted.
Regulation 1: heading	Citation	Include the Short Title
Regulation 2: Application	These Regulations shall apply to – i. The Authority; and ii. Any person who has a licence issued under sections 117 and 119 of the Act for the generation, exportation, importation, transmission or distribution of electrical energy or for the retail supply of electrical energy to consumers	This has been clarified under Regulation 4 to exclude mention of the Authority, being the regulator. The proposed amendment is as follows: These Regulations shall apply to persons engaged in the: (a) purchase or sale of electrical energy as a generator, importer, exporter or retailer; (b) provision of transmission, distribution and system operations services.
Regulation 3: Definitions	Company; Cost Allocation; Regulatory Accounts; Regulatory Asset Base; Tariff Applicant;	Include definitions of terms used in the regulations that had not been previously included
Regulation 4: Objectives of tariff control	In exercising its power to set, review and adjust electric power tariffs and tariff structures under the Act, and in furtherance of its objects and functions in the Act, the Authority shall endeavour to carry out its activities to – (1) Provide reasonable assurance that an efficient, well managed and appropriately financed tariff-controlled licensee will, taking one year with another, receive revenues that will cover the net costs of providing the services to which the tariffs relate.	Delete. This section fits more as a policy provision as opposed to a Regulation.

	<p>(2) Provide economic and reputational incentives on the owners and managers of tariff controlled licensee to deliver better outcomes, where appropriate through competition, but otherwise through the design of a tariff control framework that provides economic and reputational incentives signaled in advance and honoured after the event.</p> <p>(3) Avoid undue discrimination between users or suppliers of services, with reference to the principles of cost relatedness and to social objectives directed by the Cabinet Secretary.</p> <p>(4) Avoid abuse of dominant position or undue restriction of competition by any licensee.</p> <p>(5) Ensure that the Authority's process of regulation is transparent, that it follows principles consistently and that its decisions are evidence-based and informed by effective consultation with interested parties.</p>	
Regulation 5: Scope of tariff control	<p>In respect of each tariff-controlled licensee -</p> <p>(1) The Authority shall maintain a tariff control framework in respect of all sales of electrical energy or provision of transmission, distribution or system operation services, except where –</p> <p>(a) The sale of electrical energy or provision of transmission or distribution services is subject to contracts approved by the</p>	<p>Delete.</p> <p>This section fits more as a policy provision as opposed to a Regulation.</p>

	<p>Authority under section 163 of the Act, or</p> <p>(b) Subject to Regulation 7 and principles that may be prescribed in accordance with the Act, and after considering the effectiveness of competition in the relevant markets and the materiality of the sales involved, the Authority determines that tariff control would not materially further the objects of the Act.</p> <p>(2) Tariff control shall apply to relevant sales and services between the separate businesses of a tariff-controlled licensee as well as to sales and services to consumers.</p>	
Application for tariffs	Not included	<p>The Regulations ought to provide detail on the tariff application process. Proposed provision:</p> <p>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.</p> <p>b.) 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.</p> <p>c.) The tariff application shall be accompanied by documents set out in the Second Schedule.</p>

		d.) The Authority shall, within fifteen days of receipt of a tariff application inform the applicant whether the application is complete.
Approval of tariffs	Not included	<p>In addition to the need for a detailed tariff application process, the Regulations ought to make provision on the tariff approval framework including need for public hearings, and considerations made by the Authority in approving the tariff as highlighted in the proposed amendment below:</p> <p>6 (1) The Authority shall before approving tariffs undertake a public hearing in accordance with regulation 11.</p> <p>(2) In approving the tariffs, the Authority shall consider as applicable—</p> <ul style="list-style-type: none"> 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 journals, studies or reports provided 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

		<p>n) government funded initiatives targeting socio-economic development.</p> <p>3 a) 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.</p> <p>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.</p> <p>4a) The Authority shall process the tariff application and publish its decision in the Kenya Gazette, no later than sixty days from the date of receipt of a complete tariff application, in accordance with section 23 of the Act.</p> <p>b) The Authority may approve, reject or modify the required tariffs taking into account—</p> <ul style="list-style-type: none"> i. reasons and information submitted by the applicant to justify the tariffs; and ii. comments from stakeholders and the public. <p>c) The Authority shall take into account, and shall endeavour to procure, good quality evidence to inform its decisions.</p>
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		<p>5. The tariff control period for an approved tariff shall be three years. The tariff control period 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.</p> <p>6. A person who charges tariffs other than those approved by the Authority commits an offence.</p>
Retail Tariff Structure	Not included.	<p>(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.</p> <p>(2) The Authority shall publish pass through costs charged on consumers periodically as set out in the Fourth Schedule.</p> <p>(3) A licensee shall not earn a return on any pass-through costs.</p> <p>Since the Regulations provide for treatment of tariffs to retail consumers, it is important to provide a proper structure for retail tariffs.</p>
Regulation Transparency	7:	<p>(1) The Authority shall ensure that tariff control is a transparent, evidence-based process, informed by effective consultation.</p> <p>(2) The Authority shall publish a consultation timetable for any material decision, ensure consultation material is readily accessible and allow</p> <p>Delete as these elements on transparency now covered in the newly inserted proposed provisions on the tariff approval process.</p>

		<p>no less than thirty days, for responses to be prepared and submitted.</p> <p>(3) Prior to any material decision, the Authority shall ensure that the interested parties have an opportunity to consider and comment on the rationale for the Authority's decision.</p> <p>In reporting any material decision, the Authority shall set out the written reasons for its decision.</p>	
Regulation Regulatory Base	8: Asset	<p>(1) The Authority shall determine and account for a Regulatory Asset Base for each tariff controlled licensee.</p> <p>(2) For the first determination of tariff formulae for a tariff controlled licensee under these Regulations, the Authority shall make a just and reasonable initial valuation of the Regulatory Asset Base that reflects, where appropriate, the prevailing basis for tariff regulation.</p>	<p>8 (1) The Authority shall determine and account for a Regulatory Asset Base for <u>licensees whose tariff application is under processing</u>.</p> <p>(2) For the first determination of tariff formulae for a tariff controlled licensee under these Regulations, the Authority shall make a just and reasonable initial valuation of the Regulatory Asset Base that reflects, where appropriate, the prevailing basis for tariff regulation.</p>
Regulation Allowance for profit	9:	<p>(3) The Authority shall make allowances for profits in determining control formulae for a tariff controlled licensee that provide for a fair rate of return on that licensee's Regulatory Asset Base.</p> <p>(4) The Authority shall endeavor to ensure that allowances for profits are consistent with attracting debt and equity capital and maintaining the financeability of the tariff</p>	<p>Amend to provide for allowance for return.</p> <p>9 (1) The Authority shall provide for a fair rate of return on licensee's Regulatory Asset Base when determining tariffs.</p> <p>(1) The rate of return shall be allowed based on the usage of assets that is consistent with the cost allocation methods provided in the Energy (Electricity Regulatory Accounts) Regulations.</p>

	<p>controlled licensee's investment programmes.</p> <p>(5) The Authority shall make an assessment of a fair rate of return with reference to a computation of the Weighted Average Cost of Capital for an efficiently financed business.</p> <p>(6) The Authority shall make an assessment of the cost of debt that reflects -</p> <p>i. The interest rate terms and other terms of prudently incurred financial obligations that the tariff controlled licensee has at the time of making the assessment, and</p> <p>ii. Reasonable forecasts for interest rates for new debt financing and refinancing.</p> <p>(7) The Authority shall make an assessment of the cost of equity -</p> <p>(a) With reference to the Capital Asset Pricing Model unless, in its judgement and subject to Regulation 7, the Authority considers another methodology that has widespread support from regulatory or academic authorities that better meets the Authority's objectives or other methodology in</p>	<p>(2) 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>(3) The Authority shall assess the cost of debt that reflects:</p> <p>(e) The interest rate terms and other terms of prudently incurred financial obligations of the tariff applicant; and</p> <p>(f) Competitive forecasts of interest rates for new debt financing and refinancing.</p> <p>(4) The Authority shall assess the cost of equity with reference to -</p> <p>(a) the Capital Asset Pricing Model or any other justifiable model supported by other regulatory or academic authorities;</p> <p>(b) industry benchmarks;</p> <p>(c) evidence of relevant investor risks; and</p> <p>(d) the taxes payable on profits by the applicant.</p>
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	<p>consultation with the licensee,</p> <p>(b) With reference to objective criteria based on comparable benchmarks,</p> <p>(c) With reference to evidence of relevant investor risks,</p> <p>(d) With reference to the levels of tax that will be payable on profits made by the tariff controlled licensee.</p> <p>(8) The Authority shall allocate allowances for profits to the categories of tariffs in Regulation 6(1) on a basis that reflects the usage of assets and is consistent with the cost allocation methods specified in the regulations in respect of electricity regulatory accounts.</p> <p>(9) The Authority may compute a fair rate of return on a pre-tax basis, accounting for tax costs under Regulation 4(1) appropriately in each case. It shall compute and publish an equivalent pre-tax rate of return.</p>	
<p>Regulation 10: Preparation, approval and publication of a statement of tariffs</p>	<p>(1) No later than forty-five days before the start of the control period, a tariff controlled licensee shall furnish the Authority with a materially complete proposed statement of tariffs and charges.</p> <p>(2) In exceptional circumstances and at any time during the tariff year, a controlled licensee may furnish the Authority</p>	<p>Amend heading to read Tariff Review and amend provisions to reflect concise tariff review. As below:</p> <p>10 (1) A licensee shall make a tariff review application at least forty-five days before the end of the tariff control period.</p> <p>a. The Authority or licensee may initiate a tariff</p>

	<p>with a materially complete proposed statement of revised tariffs.</p> <p>(3) The proposed statement of tariffs in paragraph (1) or (2) of this regulation shall not be materially complete unless it is accompanied by:</p> <p>(a) Evidence that the proposed tariffs would not cause tariff control measures to exceed the relevant tariff constraints;</p> <p>(b) Evidence that the proposed tariffs comply with any tariff structure condition communicated to the tariff controlled licensee by the Authority;</p> <p>(c) Where for any reason other than a tariff structure condition the structure of tariffs is materially different from the prevailing structure –</p> <p>(i) Justification for the proposed changes with reference to principles of cost relatedness and the avoidance of undue discrimination, abuse of dominant position or undue restriction of competition; and</p> <p>(ii) Evidence of informed consultation with users, the results of that consultation and the steps taken by the tariff controlled licensee to address any concerns expressed during that consultation.</p>	<p>review within a tariff control period where there are substantive changes or deviations in assumptions or costs considered during the tariff processing and the actual incurred costs.</p> <p>b. A tariff review application shall be made in the form set out in the First Schedule and processed in line with sub-regulation 7(2).</p>
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	<p>(4) Where a tariff controlled licensee is engaged in retail activities, it may propose a bundled tariff in place of a retail tariff.</p> <p>(5) Where a bundled tariff is proposed, for the purpose of demonstrating compliance with tariff constraint in respect of retail activity tariffs, the retail activity component of the bundled tariff will be defined as the residual after taking into account tariffs in respect of all other activities.</p> <p>(6) The Authority may at any time communicate to a tariff controlled licensee, and at the same time publish, a tariff structure condition that specifies characteristics of the tariff structure for any future statement of tariffs, together with the reasons for the condition.</p> <p>(7) The Authority may make amendments to the proposed statement of tariffs or revised tariffs that it considers appropriate, provided that the reasons for such amendments are material, explained in writing to the tariff controlled licensee.</p> <p>(8) The Authority shall approve a proposed or amended statement of tariffs prior to the later of the start of each tariff year or forty-five days after the submission of a materially complete proposed statement under paragraph (1) or (2).</p>	
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	The Authority shall publish the approved statement of tariffs in the Kenya Gazette.	
Public Hearing	Not included	<p>Add a new provision on public hearing in Regulation 11 as below:</p> <p>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.</p> <p>(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> <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> <p>(a) in at least one newspaper of wide circulation in Kenya;</p> <p>(b) in a newspaper having general circulation in the area where the proposed subject of the application is to be located; or</p> <p>(c)through any other form of mass media or communication.</p> <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</p>

		<p>Authority.</p> <p>(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.</p> <p>Also include provision on conducting public hearings.</p>
Offences	Not included	<p>Insert new provision in Regulation 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

		<p>ten million shillings or imprisonment for a term not exceeding five years or to both, in accordance with section 210 of the Act.</p> <p>(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.</p> <p>(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> <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> <p>(2) Any fines or penalties which are not paid shall be a civil debt recoverable summarily.</p>
Appeal	Any tariff controlled licensee aggrieved by a decision by the Authority under these regulations may appeal to the Energy and Petroleum Tribunal established under section 25 of the Act.	<p>Amend to provide a general reference to a person aggrieved by the decision of EPRA in the tariff application since this may involve persons other than the tariff controlled licensee such as a member of the public. Also reflect procedure for appeals as set out in Section 24 of the Energy Act. Proposed amendment is as below:</p> <p>15) Any tariff controlled licensee <u>person</u> aggrieved by a decision by the Authority under these regulations may appeal to the</p>

		Energy and Petroleum Tribunal established under section 25 of the Act Tribunal in accordance with section 24 of the Act.
Transitional Provisions	Not included	Proposed Regulation 16: The tariffs existing at the commencement of these Regulations shall continue in place until new tariffs are gazetted under these Regulations.
Regulation 12: Commencement	These regulations shall come into effect immediately	New Regulation 17 proposed to include commencement as below: These regulations shall come into effect immediately <u>upon gazette</u> ment by the Cabinet Secretary.

A.1.6. Schedule of Amendments

The Energy (Electricity Regulatory Accounts) Regulations 2022

Clause	Current clause	Proposed amendment
Title	The Energy (Electricity Regulatory Accounts) Regulations 2020	The Energy (Electricity Regulatory Accounts) Regulations 2022
Regulation 2: Application	These Regulations shall apply to any person who has a licence issued under Sections 117 and 119 of the Act for the generation, importation or exportation, transmission or distribution of electrical energy or for the retail supply of electrical energy to consumers.	Move to Regulation 4 and amend to capture holder of licenses and those exempted as below: These Regulations shall apply to any person who has a licence issued under Sections 117 and 119 of the Act for the generation, importation or exportation, transmission or distribution of electrical energy or for the retail supply of electrical energy to consumers.
Regulation 3: Definitions	Not included.	Introduce definition to the following terms, and where applicable as per the Act: Associate, Auditor, Beneficial Owner, Licence, Cost Allocation, Grid, IFRS, Vertically integrated business as they are used in the body of the Regulations.
Regulation 3: Definition of "Fiscal year"	"Fiscal year" means a year, or any other period, in respect of which a licensee prepares statutory accounts	Amend to "Financial year" means a period of 365 days or any other period in respect of which a licensee is required to prepare statutory accounts. This is a more precise definition as opposed to the previous one which does not define the period and aligns with terminology used in Companies Act and Energy Act.
Regulation 3: Definition of Regulatory asset base	"Regulatory asset base" means a deemed regulatory valuation of the net investment in business asset attributable to a tariff-controlled licensee	Amend to read "Regulatory asset base" means a tangible and intangible asset used for the regulated activity, that are directly related to the regulated activity and are used in tariff calculation (except third-party-funded assets).
Purpose of the regulations	Not included	Insert Regulation 3: The purpose of these regulations is to prescribe reporting procedures and requirements for licensees, for purposes of

		achieving uniformity and consistent reporting of elements that are required for tariff setting, approval and monitoring
Regulation 5: Requirement to keep records for separate businesses	<p>(1) A licensee shall keep or cause to be kept, for a period of a minimum of seven years, such accounting and other records as are necessary to ensure that all of the revenues, costs, assets, liabilities, reserves, and provisions of, or reasonably attributable in accordance with these regulations to, any of the following business activities of the licensee are separately identifiable as such in those records:</p> <ul style="list-style-type: none"> a.) System operation b.) Electricity generation/importation/exportation c.) Electricity transmission d.) Electricity distribution e.) Electricity supply activities f.) Electricity retail activities g.) Any other corporate activities <p>(2) Subject to the exemptions in Regulation 5, in addition to statutory accounts required under any other written law;</p> <ul style="list-style-type: none"> a.) A licensee shall in the case of a generating licensee, prepare generation summary statements from the accounting and other records referred to in Regulation 4 in the form and with content specified in First Schedule in respect of 	Amend as follows:

	<p>each installation within the generating plant for which a license would be required under Section 117 and 119 of the Act.</p> <p>b.) In respect of all other licensees, prepare regulatory accounts from the accounting and other records referred to in Regulation 4 in the form and with the content specified in Regulation 9.</p>	
Regulation 5: Exemptions	<p>The Authority, upon application by a licensee, may grant an exemption in writing on the reporting formats, schedules and the regulatory reporting period.</p>	<p>Amend to provide greater detail and clarity on exemptions as below:</p> <p>6 (1) A licensee may apply to the Authority for an exemption from the application of these Regulations.</p> <p>(2)The Authority shall consider the application made under sub regulation (1) and the reasons advanced thereof by the licensee and may grant an exemption where:</p> <ul style="list-style-type: none"> a) it is satisfied with the form and manner in which the records and accounts of the licensee are kept and audited; or b) such exemption is provided for in the licence. <p>(1) A licensee exempted under this regulation shall maintain its books of accounts in accordance with IFRS.</p>
Regulation 8: Form and content of regulatory accounts	<p>The form and content of regulatory accounts shall be as follows:</p> <p>a.) Except where otherwise required or permitted by these Regulations, regulatory accounts shall comply with standards</p>	<p>Amend to set out the form and content of regulatory accounts as per the schedules to the regulations.</p>

	<p>appropriate for the preparation of annual financial statements.</p> <p>b.) Regulatory accounts shall be prepared to present fairly, in all material respects and in accordance with these Regulations:</p> <p>i. The regulatory financial performance for the regulatory reporting period of each of the licensee's separate businesses and, in aggregate, of the licensee as per Second Schedule;</p>	
Regulation 15: Requirement to procure and audit report	<p>a. The licensee shall procure an audit of regulatory accounts and generation summary statements.</p> <p>b. In respect of generation summary statements prepared in accordance with Regulation 5(b)5, the licensee shall procure a report by a person duly qualified under the Companies Act as an auditor for a company, addressed to the Authority that states whether in his opinion the summary accounts have been properly prepared in accordance with these Regulations.</p> <p>c. In respect of regulatory accounts:</p> <p>a.) The auditor shall be a person duly qualified under the Companies Act as an auditor for the licensee</p>	<p>Amend to simplify the audit process as below:</p> <p>16 (1) The Authority shall pre-qualify auditors for the purposes of auditing the regulatory accounts once every year.</p> <p>(2) A licensee shall procure an audit from the prequalified list under sub-regulation (1) to undertake an audit of its regulatory accounts and generation summary statements.</p> <p>(3) The auditor shall submit to the Authority the audited regulatory accounts and generation summary statements within three months after the end of the financial year.</p> <p>(4) The licensee shall not procure services from the same auditor for a period of more than three consecutive years.</p>

	<p>b.) The licensee shall procure a report by that auditor, addressed to the Authority, that states whether in his opinion:</p> <ul style="list-style-type: none"> i.) The regulatory accounts and accompanying statements have been properly prepared in accordance with these Regulations; ii.) The regulatory accounts present fairly, in all material respects and in accordance with these Regulations, the licensee's regulatory financial performance and of its separate businesses; iii.) The regulatory accounts present fairly, in all material respects and in accordance with these Regulations the financial position and the cash flows of the licensee. <p>c.) The Authority may specify and communicate to the auditor, with supporting reasons, particular factors that it considers to be material in the context of the regulatory accounts and the auditor's report.</p> <p>d.) After due consultation with the licensee, the Authority may agree with the auditor a list of procedures that the</p>	
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	auditor will perform and the form of a separate report to the Authority on the findings of those procedures.	
Publication and provision	<p>(1) The licensee shall deliver audited regulatory accounts, to the Authority as soon as is reasonably practicable and in any event before six months after the end of the regulatory reporting period to which the regulatory accounts relate.</p> <p>(2) The audited regulatory accounts shall be submitted either separately or as part of the licensee's annual financial statements.</p>	Delete as this is covered in preceeding provisions.
Incentives	Not included	<p>Insert a new provision as below:</p> <p>17. The Authority shall review licensee compliance with these Regulations within three years of the Regulations coming into force, and subject to findings of the review, the Authority shall establish incentive mechanisms to facilitate compliance as appropriate.</p>
General penalty	18 (1) Where any default in or contravention of any of the provisions of this these regulations is made for which no fine or penalty is expressly stated, the person so defaulting or contravening shall, on conviction, be liable to a fine not less than one hundred thousand shillings.	<p>Amend to include more specific penalties as below:</p> <p>19 (1) A licensee who does not maintain and submit information in accordance with these Regulations commits an offence and is liable on conviction to a fine of not less than one hundred thousand shillings.</p> <p>(2)In the case of a continuing offence, Director's of a licensee shall be liable upon conviction to a penalty of six months imprisonment.</p>

		<p>(3) The fines or penalties in these Regulations are without prejudice to the Authority's right to suspend or revoke the licensee's licence or certificate in accordance with the Act.</p> <p>(4) Any fines or penalties which are not paid shall be a civil debt recoverable summarily.</p>
Transitions	Not included	The accounting processes that a licensee has in place at the commencement of these Regulations shall continue until the start of the licensee's financial year immediately succeeding the effective date of these Regulations, upon which the licensee's regulatory reporting period and system of accounting shall be aligned to and prepared in compliance with these Regulations.

ANNEX IV: PROPOSED REGULATIONS

A. Electricity Tariff Regulations

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</p>

	<p>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 to whom these Regulations apply;</p> <p><i>“Regulatory accounts”</i> means the prescribed system of accounts set out in the Energy (Electricity Regulatory Accounts) Regulations, 2022;</p> <p><i>“Regulatory Asset Base”</i> 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><i>“Tariff”</i> has the meaning assigned to it under the Act;</p> <p><i>“Tariff applicant”</i> or <i>“Applicant”</i> means the person who makes an application for tariff approval or review in accordance with these Regulations;</p> <p><i>“Tariff control”</i> means the process of tariff constraint specified in these Regulations;</p> <p><i>“Tariff constraint”</i> means the maximum allowable level for a tariff control measure;</p> <p><i>“Tariff control framework”</i> 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><i>“Tariff control measure”</i> means a financial indicator derived from</p>
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		<p>the books and records of a licensee used to indicate compliance with a tariff constraint; and</p> <p><i>“Tariff year”</i> 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> <p>(a) purchase or sale of electrical energy as a generator, importer, exporter or retailer; or</p> <p>(b) provision of transmission, distribution and system operations services.</p>
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.
		<p>(2) In approving the tariffs, the Authority shall consider as applicable—</p> <p>a) existing tariff policy or guidelines;</p>

		<ul style="list-style-type: none"> 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.
		<p>(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.</p> <p>(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.</p>
		<p>(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.</p> <p>(b) The Authority may approve, reject or modify the required tariffs taking into account —</p> <ul style="list-style-type: none"> iii. reasons and information submitted by the applicant to justify the tariffs; and

		<p>iv. comments from stakeholders and the public.</p> <p>c) The Authority shall take into account, and shall endeavour to procure, good quality evidence to inform its decisions.</p>
		(5) The tariff control period for an approved tariff shall be three years.
		<p>(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.</p> <p>(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.</p>
		(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</p>

		<p>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>

		<p>(a) the Capital Asset Pricing Model or any other justifiable model supported by other regulatory or academic authorities;</p> <p>(b) industry benchmarks;</p> <p>(c) evidence of relevant investor risks; and</p> <p>(d) the taxes payable on profits by the tariff applicant.</p>
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> <p>(a) in at least one newspaper of wide circulation in Kenya;</p> <p>(b) in a newspaper having general circulation in the area where the proposed subject of the application is to be located; or</p>

		<p>through any other form of mass media or communication.</p> <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.</p>
		(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		
Reporting	13.	<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>
Offences	14.	<p>(1) A person who –</p> <ul style="list-style-type: none"> (b) charges tariffs that are not approved by the Authority commits an offence and shall, upon conviction, be liable to a fine twice the amount collected, and in any event the fine imposed shall not be less than one hundred thousand shillings. (f) 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. (g) makes a false statement or a statement one has reason to believe is untrue to the Authority or to an agent or an officer

		<p>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.</p> <p>(h) 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.</p> <p>(i) 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> <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> <p>(3) Any fines or penalties which are not paid shall be a civil debt recoverable summarily.</p>
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:

.....

Physical address:

.....

.....

Postal address:

.....

.....

Telephone:

Mobile phone:

Fax:

E-mail address:

.....

PIN:

VAT Registration:

.....

Name and details of contact person:

Name:

Physical address:

.....

Postal address:

.....

Telephone:

Mobile phone:

E-mail address:

.....
Website address:

.....
Position Held

.....
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)*:

.....
Loans:

.....
(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

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):

.....

Sources of funding for the proposed project:

Share capital contribution (*specify foreign or local*):

.....

Loan capital (*specify source and provide evidence*):

.....

Others(*specify*):

.....

Main current business activity of applicant:

.....

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

.....

Describe technical and industrial support from external sources:

.....

Description of proposed project.

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

.....

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

.....

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

.....

Time plan for implementation of the project:

.....

.....
Land use at the project site:

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

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

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

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

Consent required and from whom	Description of activity	Legal provisions	Status

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:

.....
.....
.....

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

.....
.....
.....

Tariff charges and methodology

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

methodology:

.....

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

.....

Indicate the planned investments in the first five years:

.....

Indicate the required rate of return:

.....

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:

.....

Results of verification for completeness:

.....

Date and newspaper in which application was advertised:

.....

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)	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:
	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
	The net costs of providing the services to which tariffs relate will include:
6 (3) (a)	The costs of procuring electric energy and standby electricity generating capacity,
	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,
	The costs of maintaining, renewing and replacing business assets, generally accounted for as depreciation,
	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.
	Less any other income arising from or otherwise reasonably attributable to the activities and assets of the licensee
8(2)(a)	Non-current business assets will generally include tangible fixed assets and software licences but exclude financial investments, purchased goodwill and other intangible assets unless the Authority otherwise agrees.
8 (2) (b)	The method should ensure that amounts deducted correspond

REGULATION	EXPLANATION
	to, or are computed on a consistent basis with, amounts included in the determinations of the control formulae for the relevant period.
8 (2) (c)	Consumer capital contributions would include capital grants and any capital component of connection charges.
10 (2)	To avoid undue asymmetrical risk for licensees/consumers.
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 theday 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 of20.....

Signed:

.....

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

Dated thisday of 20

B. The Draft Energy (Electricity Regulatory Accounts) Regulations, 2022

Legal Notice No		
THE ENERGY ACT (No. 1 of 2019)		
IN EXERCISE of the powers conferred by Sections 167 and 208 of the Energy Act, 2019, the Cabinet Secretary for Energy hereby makes the following Regulations: -		
THE ENERGY (ELECTRICITY REGULATORY ACCOUNTS) REGULATIONS, 2022		
PART I: GENERAL PROVISIONS		
Citation	1.	These Regulations may be cited as the Energy (Electricity Regulatory Accounts) 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>“Act” means the Energy Act, No 1 of 2019;</p> <p>“Activity-based” means a methodology for the allocation of costs in relation to the way resources are consumed and with reference to the causation of cost at the level of business activities;</p> <p>“Associate” means bodies corporate that are subsidiaries to the same body corporate or where one of the body corporates is a subsidiary of the other;</p> <p>“Auditor” means an independent person qualified under the Companies Act and who is prequalified by the Authority to carry out an audit under these Regulations;</p> <p>“Authority” means the Energy and Petroleum Regulatory Authority established by Section 9 of the Act;</p> <p>“Beneficial owner” has the meaning assigned to it under the Companies Act;</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for energy;</p> <p>“Consumer” has the meaning assigned to it under the Act;</p> <p>“Cost Allocation” means the process of correctly identifying,</p>

	<p>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>"IFRS"</i> means the International Financial Reporting Standards developed by the International Accounting Standards;</p> <p><i>"Licence"</i> means a license issued by the Authority under the Act;</p> <p><i>"Licensee"</i> means a holder of any licence issued under the Act;</p> <p><i>"Regulatory accounts"</i> means the prescribed system of accounts or framework used by licensees to provide financial data and information to the Authority in a specific and consistent format as set out in these Regulations;</p> <p><i>"Regulatory asset base"</i> 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><i>"Regulatory financial performance"</i> means financial performance in relation to the form of tariff control and any forecasts and assumptions made and disclosed by the Authority at the time of determining that tariff control;</p> <p><i>"Related or affiliated licensee"</i> means</p> <ol style="list-style-type: none"> any subsidiary of a licensee; any company in which the shareholders of a licensee hold an aggregate beneficial interest not less than twenty percent; any company whose directors are accustomed or under an obligation whether formal or informal to act in accordance with the shareholders of a licensee; or a subsidiary or associate. <p><i>"Separate businesses"</i> means separation of business activities referred to in these Regulations;</p> <p><i>"Statutory accounts"</i> means accounts laid before the company in its</p>
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		<p>general meeting in accordance with the Companies Act, 2015;</p> <p>"<i>Subsidiary</i>" has the meaning assigned to it under the Companies Act;</p> <p>"<i>Tariff controlled licensee</i>" means a licensee subject to the Energy (Electricity Tariffs) Regulations, 2022; and</p> <p>"<i>Vertically integrated business</i>" means an electricity undertaking or a group of undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity.</p>
Purpose of Regulations	3.	The purpose of these regulations is to prescribe reporting procedures and requirements for licensees, for purposes of achieving uniformity and consistent reporting of elements that are required for tariff setting, approval and monitoring.
Application	4.	These Regulations shall apply to any person who has a licence issued under Sections 117 and 119 of the Act for the generation, importation or exportation, transmission or distribution of electrical energy or for the retail supply of electrical energy to consumers.
PART II: REGULATORY REPORTING REQUIREMENTS		
Requirement to keep records for separate businesses	5.	<p>1) A licensee shall –</p> <p>a) keep or cause to be kept, for a period of a minimum of seven years, such accounting and other records as are necessary to ensure that all of the revenues, costs, assets, liabilities, reserves, and provisions of, or reasonably attributable in accordance with these Regulations, to the licensed or exempted activity;</p> <p>b) keep the regulatory accounts in the manner set out in the First Schedule to these Regulations;</p> <p>c) map its existing chart of accounts to the uniform chart of accounts set out in the Second Schedule to these Regulations; and</p>

		<p>d) keep the regulatory accounts in Kenya Shillings unless exempted by the Authority.</p> <p>2) In keeping the accounts and records referred to in sub regulation (a) the licensee shall ensure that each of the following business activities of the licensee are separately identifiable:</p> <ul style="list-style-type: none"> a) system operation; b) electricity generation/importation/exportation; c) electricity transmission; d) electricity distribution; e) electricity supply activities; f) electricity retail activities; and g) any other corporate activities <p>3) Subject to the exemptions in Regulation 6, in addition to statutory accounts required under any other written law:</p> <ul style="list-style-type: none"> a) A licensee shall in the case of a generating licensee, prepare generation summary statements from the accounting and other records referred to in Regulation 5 (1) in the form and with content specified in the Third Schedule in respect of each installation within the generating plant for which a license would be required under Section 117 and 119 of the Act. b) In respect of all other licensees, prepare regulatory accounts from the accounting and other records referred to in Regulation 5 (1) in the form and with the content specified in Regulation 10. <p>4) The accounting records maintained under these Regulations shall ensure:</p> <ul style="list-style-type: none"> a) licensees segregate accounting records between licensed activities or services in a vertically integrated business; b) licensees to segregate regulated business from non-regulated business; and c) they apply the prescribed principles and methodologies for cost allocation under these Regulations.
Exemptions	6.	<p>(1) A licensee may apply to the Authority for an exemption from the application of these Regulations.</p>

		<p>(2) The Authority shall consider the application made under sub regulation (1) and the reasons advanced thereof by the licensee and may grant an exemption where:</p> <ul style="list-style-type: none"> c) it is satisfied with the form and manner in which the records and accounts of the licensee are kept and audited; or d) such exemption is provided for in the licence. <p>(3) A licensee exempted under this regulation shall maintain its books of accounts in accordance with IFRS.</p>
Regulatory reporting periods	7.	<p>1) Regulatory reporting periods shall start at the end of any previous regulatory reporting period and end at the start of any subsequent regulatory reporting period.</p> <p>2) Unless otherwise specified in writing by the Authority:</p> <ul style="list-style-type: none"> a) All licensees' regulatory reporting periods shall coincide with the licensees' financial years. b) A regulatory reporting period for every licensee shall commence in the financial year immediately succeeding the effective date of these regulations.
Form and content of regulatory accounts	8.	<p>1) The form and content of regulatory accounts shall be as follows:</p> <ul style="list-style-type: none"> i) Except where otherwise required or permitted by these Regulations, regulatory accounts shall comply with standards appropriate for the preparation of annual financial statements. ii) Regulatory accounts shall be prepared to present fairly, in all material respects and in accordance with these Regulations: <ul style="list-style-type: none"> i.) A statement of income and the regulatory financial performance for the regulatory reporting period of each of the licensee's separate businesses and, in aggregate, of the licensee as per the Fourth Schedule; ii.) The financial position at the end of the regulatory reporting period of the licensee;

		<p>iii.)The fixed assets at the end of the regulatory reporting period of each of the licensee separate businesses as per the Third Schedule;</p> <p>iv.)Regulatory Asset Base at the end of the regulatory reporting period of each of the licensee separate businesses as per the Fifth Schedule; and</p> <p>v.) The cash flows of the licensee for the regulatory reporting period.</p> <p>iii) Regulatory accounts shall comprise:</p> <p>i.) A segmental statement of regulatory financial performance, which may take the form of a segmental statement of comprehensive income, analyzed with reference to the business activities referred to in Regulation 5 (2) and in the form of the Fourth Schedule;</p> <p>ii.) A statement of the financial position for the licensee;</p> <p>iii.)A statement of changes in equity for the licensee;</p> <p>iv.)A statement of cash flows for the licensee;</p> <p>v.) A segmental statement of fixed assets in accordance with Regulation 10 and in the form of the Third Schedule;</p> <p>vi.)A segmental statement of the Regulatory Asset Base prepared in accordance with the Energy (Electricity Tariffs) Regulations, 2022, analyzed with reference to the business activities referred to in Regulation 5 (2) and in the form of the Third Schedule;</p> <p>vii.) Any other related notes, where appropriate in the form of Schedules to these regulations.</p> <p>iv) Regulatory accounts shall be accompanied by:</p> <p>i.) A directors' report;</p> <p>ii.) A corporate governance statement;</p> <p>iii.)A business review;</p> <p>iv.)A report of the auditor on the regulatory accounts;</p> <p>v.) A statement of the accounting policies adopted;</p> <p>vi.)A tariff control statement disclosing, in respect of the fiscal year;</p> <p>(a) the values of all tariff control measures, specified by the Authority in accordance with</p>
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		<p>the Energy (Electricity Tariffs) Regulations, 2022;</p> <p>(b) the computation of all tariff control constraints, specified by the Authority in accordance with the Energy (Electricity Tariffs) Regulations, 2022;</p> <p>(c) the monetary value of any material variances, distinguishing between variances in fuel cost tariffs and other variances, in the form of Sixth Schedule;</p> <p>(d) Other statements providing statistics relating to service performance, asset performance, asset condition, other asset characteristics, operational matters, as the Authority may from time to time specify.</p> <p>2) The Authority may permit adaptations of the format and presentation of regulatory accounts to reflect IFRS and other conventions familiar to users or potential users of regulatory accounts.</p> <p>3) In presenting the regulatory financial accounts, the licensee shall provide comparative information which shall include:</p> <p>a) information relating to the prior regulatory reporting period; and</p> <p>b) information relating to forecasts and assumptions in respect of the regulatory reporting period made and disclosed by the Authority at the time of determining any relevant tariff control.</p> <p>4) The licensee shall give prominence to comparative information under sub regulation (3) (b) in relation to the regulatory financial performance of each of the licensee's separate businesses and, in aggregate, of the licensee.</p> <p>5) Unless otherwise provided for in these regulations, regulatory accounts shall be prepared on a basis that is consistent with the licensee's statutory accounts. A reconciliation of consolidated income and equity with amounts disclosed in the licensee's statutory accounts shall be presented in respect of any material differences.</p>
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		6) Where there are any material differences between the basis of preparation, the presentation of information or allocation of costs in the regulatory accounts and any information used by the Authority when determining the relevant tariff basis, regulatory accounts shall disclose sufficient information to permit users of regulatory accounts to understand the impact of these differences on the regulatory financial performance of the licensee and its separate businesses and on the financial position of the licensee.
PART III: COST ALLOCATIONS		
Segmental statement of fixed assets	9.	<p>(1) For the purpose of preparing a segmental statement of fixed assets, the value of the licensee's fixed assets in the company's statutory accounts shall be allocated to the separate activities referred to in Regulation 5 (2) in relation to the dominant purpose or function of the fixed asset.</p> <p>(2) The purpose or function of a fixed asset should be assessed in relation to its role, if any, in the licensee's electrical systems, the purpose for which the asset was acquired and its expected use over its economic life.</p> <p>(3) Where the dominant purpose or function of a fixed asset is to support a single business activity referred to in Regulation 5 (2), or derives from such a business activity, that asset shall be allocated to that activity.</p> <p>(4) Where a fixed asset relates to the conveyance of electrical energy from one business activity to another, such as a transformer, it shall be treated as supporting the upstream activity.</p> <p>(5) Where a fixed asset does not have a dominant purpose or function that relates to a single business activity:</p> <ol style="list-style-type: none"> If the asset forms part of the licensee's electrical systems, it shall be allocated to the upstream activity that it relates to; Otherwise, it shall be allocated to corporate activities. <p>(6) For the purpose of this regulation, fixed assets include all non-current assets that would, were they to be acquired during the currency of these regulations, be eligible for inclusion as additions to the Regulatory Asset Base in accordance with the Energy (Electricity Tariffs) Regulations, 2022.</p>

Other asset and liability allocations	10.	For the purpose of preparing a statement of financial position, unless the licensee considers that the financial position of its separate businesses can be considered as distinct from its financial position and it would be misleading to a reader of the regulatory accounts not to do so, liabilities and non-fixed assets need not be allocated to the licensee's separate businesses.
Cost allocations	11.	<ol style="list-style-type: none"> 1) Operating costs, including depreciation, shall be allocated to the separate businesses referred to in Regulation 5 (2) in relation to the way resources are consumed and with reference to the causation of cost at the level of business activities (activity-based). 2) Costs which are incurred in respect of more than one activity, or which are not readily attributable to a single activity, shall be allocated objectively using a reasonable methodology, having regard to the materiality of the allocations, on: <ol style="list-style-type: none"> a) a cost-allocation methodology that materially meets best practice standards of activity-based allocation, or b) where an activity basis cannot be computed at a reasonable cost, an alternative basis that provides a reasonable proxy for an activity-based allocation of costs in the light of best available information about the causation of cost. 3) The Authority may require licensees to develop activity-based cost allocation systems. 4) Except where costs do not relate to services supported by regulated tariffs, such as costs of corporate activities set out under Regulation 5 (2)(g), all other costs shall be fully allocated to the other activities of the holder where they fall under Regulations 5 (2) (a) to (f), as appropriate. 5) The allocation of depreciation of fixed assets will reflect the usage of assets and will not necessarily reflect the balance sheet allocation of fixed assets under Regulation 10, as inter-activity recharges of depreciation.
Revenue allocations	12.	1) Revenues shall be allocated as follows:

		<p>a) In respect to tariff-controlled licensees, revenues from the following tariffs shall be allocated in accordance with the business activities set out in Regulation 5(2) as follows:</p> <ul style="list-style-type: none"> i.) System operation tariffs shall be allocated to activities under Regulation 5 (2) (a). ii.) Fuel cost tariffs shall be allocated to activities under Regulation 5 (2) (b). iii.) Non-fuel power procurement tariffs shall be allocated to activities under Regulation []. iv.) Electricity transmission tariffs shall be allocated to activities under Regulation 5 (2) (c). v.) Electricity distribution tariffs shall be allocated to activities under Regulation 5 (2) (d). vi.) Retail supply activity tariffs shall be allocated to activities under Regulation 5 (2) (e) and (f). <p>b) Other revenues shall be allocated in relation to the nature of the services provided and the allocation of the costs that are associated with providing those services.</p>
Asset base valuation adjustments	13.	<p>In order to ensure the regulatory accounts, present fairly the regulatory financial position of the licensee and of its separate business activities:</p> <ul style="list-style-type: none"> a) The regulatory accounts balance sheet shall include adjustments to reflect any material difference between the book values of the licensee's net assets, excluding financing liabilities, and the Authority's assessment of the Regulatory Asset Base under the Energy (Electricity Tariffs) Regulations, 2022. b) The regulatory accounts balance sheet shall incorporate any balance on any regulatory fuel cost recovery provision maintained in accordance with the Energy (Electricity Tariffs) Regulations, 2022, treating any accumulated surplus as a liability and any accumulated deficits (negative balance) as an asset.
Transactions with related licensee's	14.	<p>The regulatory accounts shall include an explanatory note disclosing the following:</p>

		<p>a.) The nature and scale of transactions with related or affiliated licensee's, analyzed by party and in enough detail for a user of regulatory accounts to understand components of the regulatory financial performance and statement of financial position that would be mainly affected.</p> <p>b.) Confirmation, where appropriate and material to the regulatory accounts, that transactions with related or affiliated licensees are negotiated on an arm's length basis and on normal commercial terms.</p> <p>c.) Whether transactions with related or affiliated licensees were subject to competitive tendering.</p> <p>d.) Estimates of the effects on the comprehensive income, balance sheet and cash flows of any material transactions or groups of transactions that are not negotiated on an arm's length basis and on normal commercial terms.</p>
Directors' report, regulatory corporate governance statement, regulatory business review	15.	<p>(1) The licensee shall prepare a directors' report, a regulatory corporate governance statement and a regulatory business review.</p> <p>(2) Subject to the following, the licensee may include summarized extracts of the corresponding statements in the licensee's statutory accounts.</p> <p>(3) The regulatory business review shall include commentary on the licensee's financial performance in relation to the Authority's forecasts and other assumptions made and disclosed at the time it determined the relevant tariff control, any major events and changes to the business environment not anticipated in those assumptions and the impact on the position of investors and users.</p> <p>(4) The regulatory corporate governance statement shall provide a description of the licensee's approach to generating value for investors and users under the incentive arrangements established by the Authority.</p>
Audit	16.	<p>1) The Authority shall pre-qualify auditors for the purposes of auditing the regulatory accounts once every year.</p>

		<p>2) A licensee shall procure an audit from the prequalified list under sub-regulation (1) to undertake an audit of its regulatory accounts and generation summary statements.</p> <p>3) The auditor shall submit to the Authority the audited regulatory accounts and generation summary statements within three months after the end of the financial year.</p> <p>4) The licensee shall not procure services from the same auditor for a period of more than three consecutive years.</p>
PART V: COMPLIANCE AND ENFORCEMENT		
Incentives	17.	The Authority shall review licensee compliance with these Regulations within three years of the Regulations coming into force, and subject to findings of the review, the Authority shall establish incentive mechanisms to facilitate compliance as appropriate.
Disputes and Appeals	18.	<p>1) Any complaints and/or disputes under these regulations shall be referred to the Authority for resolution in accordance with the Energy (Complaints and Disputes Resolution) Regulations 2022 or any replacement of the same.</p> <p>2) Any person who is dissatisfied/aggrieved by a decision of the Authority shall lodge an appeal with the Energy and Petroleum Tribunal.</p>
Penalties	19.	<p>1) A licensee who does not maintain and submit information in accordance with these Regulations commits an offence and is liable on conviction to a fine of not less than one hundred thousand shillings.</p> <p>2) In the case of a continuing offence, Director's of a licensee shall be liable upon conviction to a penalty of six months imprisonment.</p> <p>3) The fines or penalties in these Regulations are without prejudice to the Authority's right to suspend or revoke the licensee's licence or certificate in accordance with the Act.</p> <p>4) Any fines or penalties which are not paid shall be a civil debt recoverable summarily.</p>

PART VI: TRANSITIONAL PROVISIONS AND COMMENCEMENT

Transitions	20.	The accounting processes that a licensee has in place at the commencement of these Regulations shall continue until the start of the licensee's financial year immediately succeeding the effective date of these Regulations, upon which the licensee's regulatory reporting period and system of accounting shall be aligned to and prepared in compliance with these Regulations.
Commencement	21.	These Regulations commence immediately upon their gazettment by the Cabinet Secretary

**FIRST SCHEDULE (r.5(1) b)
REGULATORY ACCOUNT FORMAT**

1. General information including;
 - a) the name of licensee;
 - b) the reporting period;
 - c) the name, title and contact of accounting officer;
 - d) legal status;
 - e) the nature of share capital including the issued, subscribed, paid up share capital, premium on issue of shares, discount on issue of shares and redeemable capital;
 - f) the details of directors who held office at any time during the year; and
 - g) any changes that have occurred to the company including change in directorship and ownership of property of the company.
2. Control over licensee and state;
 - a) the name of the controlling company;
 - b) the manner in which control was held; and
 - c) the extent of control.
3. Companies controlled by licensee including names of all companies, business, trusts and similar organisations controlled directly or indirectly by the licensee at any time during the year.
4. Remuneration of officers- name, title and salary of officers whose salary is over Ksh. 12,000,000/- per annum.
5. Change in structure during the year including;
 - a) change in name; and
 - b) changes in and important additions to franchise rights.
6. Financial summary including;
 - a) comparative balance sheet including assets and other debits;
 - b) comparative balance sheet including liabilities and other credits;
 - c) income statement for the year;
 - d) reconciliation with statutory financial statements including balance sheet and income statement;
 - e) statement of retained earnings for the year; and
 - f) cash flow statement for the year.
7. Explanatory notes to uniform system of accounts, changes to the business environment not anticipated and the impact on the position of the licensee.
8. Non-utility property owned or under finance lease including;
 - a) type of property;
 - b) property value at the beginning of the year;
 - c) additions and any disposals; and
 - d) accumulated depreciation.
9. Electric plant leased to others including;
 - a) a description of the property;
 - b) the authorisation or lease agreement;

- c) expiration of the lease; and
- d) accumulated depreciation.
- 10. Electric plant held for future use including;
 - a) the date entered on accounts of a licensee; and
 - b) expected date of use.
- 11. Construction work in progress including;
 - a) a description of the project; and
 - b) percentage of completion at the end of the year.
- 12. Investment in subsidiary or affiliate companies including;
 - a) a description of the investment;
 - b) the date of acquisition;
 - c) the equity in the subsidiary or affiliate; earnings from the subsidiary or affiliate; and
 - d) gain or loss from disposal of investment.
- 13. Long term advances, deposits and prepayments including;
 - a) long term security deposits; and
 - b) long term prepayments.
- 14. Inventory.
- 15. Accounts receivables, allowance for bad and doubtful debts and trade debts (age analysis) including;
 - a) explanations relating to provision of doubtful and bad debts; and
 - b) bad and doubtful debts in respect of disconnected customers.
- 16. Details of source of finance and associated costs including;
 - a) concession loans;
 - b) debentures;
 - c) bank loans;
 - d) liability subject to finance lease;
 - e) advances from subsidiaries or affiliate companies; and
 - f) other short-term loans.
- 17. Taxes payable including;
 - a) provisional tax;
 - b) payments; and
 - c) adjustments, if any.
- 18. Operating revenue including;
 - a) sale of electricity;
 - b) concession lease income;
 - c) maximum demand charge;
 - d) wheeling and interconnection income;
 - e) sale of electric poles;
 - f) carbon credits; and
 - g) other electric charges.
- 19. Research development, demonstration activities and associated costs.

SECOND SCHEDULE (r.5(1)c)

CHART OF ACCOUNTS

Account Code	Account	Account Type	Account Category
10101010	Leasehold land	Assets	Land and buildings
10101020	Freehold Land	Assets	Land and buildings
10101030	Land Rights	Assets	Land and buildings
10101040	Buildings and fixtures Leased	Assets	Land and buildings
10101050	Buildings and fixtures owned	Assets	Land and buildings
10101060	Leasehold improvements	Assets	Land and buildings
10101070	Reservoirs, waterways, dams	Assets	Machinery and equipment
10101080	Waterwheels, turbines and generators	Assets	Machinery and equipment
10101090	Roads, Railroads and bridges	Assets	Machinery and equipment
101010100	Accessory electric equipment	Assets	Machinery and equipment
101010110	Boiler plant equipment	Assets	Machinery and equipment
101010120	Engine and engine driven generator	Assets	Machinery and equipment
101010130	Turbo generator units	Assets	Machinery and equipment
101010140	Reactor plant equipment	Assets	Machinery and equipment
101010150	Fuel holders, producers and accessories	Assets	Machinery and equipment
101010160	Prime movers	Assets	Machinery and equipment
101010170	Generators	Assets	Machinery and equipment
101010180	Measurement and testing equipment	Assets	Machinery and equipment
101010190	Electric plant purchase	Assets	Machinery and equipment
101010200	Other installation on customers premises	Assets	Machinery and equipment
101010210	Load management controls-utility premises	Assets	Machinery and equipment
101010220	Transport equipment	Assets	Machinery and equipment
101010230	Other utility plant	Assets	Machinery and equipment

Account Code	Account	Account Type	Account Category
10102140	Experimental electric plant unclassified	Assets	Machinery and equipment
10102150	Electric plant in the process of reclassification	Assets	Machinery and equipment
10102160	Electric plant held for future use	Assets	Machinery and equipment
10102170	Electric plant and equipment leased to others	Assets	Machinery and equipment
10102180	Completed construction not classified-electric	Assets	Machinery and equipment
10102190	Construction work in progress	Assets	Machinery and equipment
10102200	Renovation work in progress	Assets	Machinery and equipment
10102210	Non-utility property owned or under lease	Assets	Machinery and equipment
10102220	Rural electrification projects	Assets	Machinery and equipment
10102230	Electric plant acquisition adjustments	Assets	Machinery and equipment
10102240	Other electric plant adjustments	Assets	Machinery and equipment
10102250	Other utility plant	Assets	Machinery and equipment
10102260	Transformer Station Equipment - Normally Primary above 50Kv	Assets	Machinery and equipment
10102270	Distribution Station Equipment- Normally Primary helm/50 Kv	Assets	Machinery and equipment
10102280	Storage battery equipment	Assets	Machinery and equipment
10102290	Poles, lowers and fixtures	Assets	Machinery and equipment
10102300	Overhead conductors and devices	Assets	Machinery and equipment
10102310	Underground conduit	Assets	Machinery and equipment
10102320	Underground conductors and devices	Assets	Machinery and equipment
10102330	Linc transformers	Assets	Machinery and equipment
10102340	Services	Assets	Machinery and equipment

Account Code	Account	Account Type	Account Category
10102350	Meters	Assets	Machinery and equipment
10102360	Leased property on customer's premises	Assets	Machinery and equipment
10108090	Accumulated depreciation on water wheels, turbines and generators	Assets	Accumulated depreciation
10108100	Accumulated depreciation on roads, railroads and bridges	Assets	Accumulated depreciation
10108110	Accumulated depreciation on accessory electric equipment	Assets	Accumulated depreciation
10108120	Accumulated depreciation on boiler plant equipment	Assets	Accumulated depreciation
10108130	Accumulated depreciation on engine and engine-driven generator	Assets	Accumulated depreciation
10108140	Accumulated depreciation on turbo generator units	Assets	Accumulated depreciation
10108150	Accumulated depreciation on reactor plant equipment	Assets	Accumulated depreciation
10108160	Accumulated depreciation on electrical holders, producers and accessories	Assets	Accumulated depreciation
10108170	Accumulated depreciation on prime movers	Assets	Accumulated depreciation
10108180	Accumulated depreciation on generators	Assets	Accumulated depreciation
10108190	Accumulated depreciation on measurement and testing equipment	Assets	Accumulated depreciation
10108200	Accumulated depreciation on electric plant	Assets	Accumulated depreciation
10108210	Accumulated depreciation on experimental electric plant unclassified	Assets	Accumulated depreciation

Account Code	Account	Account Type	Account Category
10108220	Accumulated depreciation on electric plant in the process of reclassification	Assets	Accumulated depreciation --
10108230	Accumulated depreciation on experimental electric plant held for li.1turc use	Assets	Accumulated depreciation
10108240	Accumulated depreciation on electric plant and equipment leased to others	Assets	Accumulated depreciation
10108250	Accumulated depreciation on implemented construction not classified	Assets	Accumulated depreciation
10108290	Accumulated depreciation on motor vehicles-general	Assets	Accumulated depreciation
10108300	Accumulated depreciation on motor vehicles-network operations	Assets	Accumulated depreciation
10108310	Accumulated depreciation on specialized trucks	Assets	Accumulated depreciation
10108320	Accumulated depreciation on goodwill	Assets	Accumulated depreciation
10108330	Accumulated depreciation on franchises and consents	Assets	Accumulated depreciation
10108340	Accumulated depreciation on computer software	Assets	Accumulated depreciation
10108350	Accumulated depreciation on miscellaneous intangible plant	Assets	Accumulated depreciation
10108360	Accumulated depreciation on office furniture and equipment	Assets	Accumulated depreciation
10108370	Accumulated depreciation on computer equipment-hardware	Assets	Accumulated depreciation
10108380	Accumulated depreciation on stores equipment	Assets	Accumulated depreciation

Account Code	Account	Account Type	Account Category
10108390	Accumulated depreciation on fire and safety system	Assets	Accumulated depreciation
10201020	Investment in associated companies	Assets	Group companies (intercompany investments)
10201030	Investment in subsidiary company	Assets	Group companies (intercompany investments)
10202010	Term finance certificate	Assets	Investments and financial instruments
10202020	Deposit certificates	Assets	Investments and financial instruments
10202030	Sinking fund	Assets	Investments and financial instruments
10202040	Other special or collateral funds	Assets	Investments and financial instruments
10202050	Long term security deposits	Assets	Investments and financial instruments
10202060	Long term repayments	Assets	Investments and financial instruments
10202070	Other long term receivables	Assets	Investments and financial instruments
10305010	Unrecovered plant and regulatory study costs	Assets	Deferred charged
10305020	Preliminary survey and investigation charges	Assets	Deferred charged
10305030	Development charge deposits/receivables	Assets	Deferred charged
10305040	Deferred development costs	Assets	Deferred charged
10305050	Deferred losses from disposition of utility plant	Assets	Deferred charged
10305060	Un-amortized loss on required debt	Assets	Deferred charged
10305070	Preliminary survey and investigation charges	Assets	Deferred charged
10306010	Research and development costs	Assets	Deferred charged

10305050	Derivative instrument asset	Assets	Deferred charged
10305060	Deferred tax asset	Assets	Deferred charged
10305070	Miscellaneous deferred debits	Assets	Deferred charged
10306010	Loans to staff	Assets	Loans and receivables
10305050	Prepayments	Assets	Prepayment and other current assets
10203020	Derivative instrument asset	Assets	Derivative financial asset
10404010	Derivative instrument asset hedges	Assets	Derivative financial asset

THIRD SCHEDULE (r.5(3)a, r.8(b)iii, r.8(c)v and r.8(c)vi)

FORM OF GENERATION SUMMARY STATEMENTS

Generation summary statements							
	Name of installation	Name of installation	Name of installation	Name of installation	Name of installation	Name of installation	Name of installation
Type (Geothermal, hydro, diesel, etc.)							
Capacity (MW electricity)							
Availability (hours)							
Output for the year (GWh)							
Sales of electricity							
Electricity for own use							
Sales of heat							
Heat for own use							
<i>Ksh thousands or Ksh millions</i>							
Revenues from sales of electricity							
Under PPA with single buyer							
Under FiT							
Other							
Revenues from sales of heat							
Other revenues							
Total revenues	-	-	-	-	-	-	-
Fuel costs							
Water and other consumables							
Salary, wages and other people costs							
Other operating expenditure							
Depreciation							
Net income/(costs)							
Tangible fixed assets, including software licences							
Tangible fixed assets at the start of the year							
Additions							

Grants and other contributions							
Disposals							
Depreciation							
Tangible fixed assets at the end of the year							

FOURTH SCHEDULE (r. 8(b)i and r.8(c)i)

FORMAT FOR REGULATORY FINANCIAL PERFORMANCE STATEMENT

Regulatory financial performance									
	System operation	Single buyer	Electricity	Electricity	Electricity	Electricity retail	corporate activities	Consolidated	Total
Operating income									
Tariff charges									
Power procured by single buyer									
Power purchased other than by single buyer									
Generation fuel costs									
Operating expenditure									
Depreciation and related items									
Operating profits									
Finance income									
Finance costs									
Profit before tax									
Income tax expense									
Profit for the year									

FIFTH SCHEDULE (r.8(b)iv)

FORMAT FOR ANALYSIS OF THE REGULATORY ASSET BASE

Regulatory Asset Base									
	System operation	Single buyer	Electricity generation	Electricity transmission	Electricity distribution	Electricity retail	Corporate activities	Consolidation adjustments	Total
<i>Ksh thousands or Ksh millions</i>									
Movements in the Regulatory Asset Base									
Regulatory Asset Base at the start of the year									
Additions									
Customer contributions (connection charges etc.)									
Government and other grants									
Internal transfers									
Proceeds of disposals, or fair value if higher									
Regulatory depreciation for the year									
Balance at the end of the year									

SIXTH SCHEDULE (r.8(d)(vi)(c))

FORMAT FOR ANALYSIS OF TARIFF CONTROL VARIANCES

Tariff control variances									
	System operation	Single buyer	Electricity generation	Electricity transmission	Electricity distribution	Electricity retail	Corporate activities		Total
<i>Ksh thousands or Ksh millions</i>									
Movements in prices control variances									
Cumulative variances at the start of the year									
Variances applied in control formulae for the year									
Net variances brought forward									
Tariff control variances for the year									
Cumulative variances at the end of the year									

ANNEX V: DETAILED FEEDBACK TO QUESTIONNAIRES

No.	Provision in Draft Regulations	Agree with provision?								
		Utilities			Policy makers, Researchers & Regulators			Consumers		
		Yes	No	Not sure	Yes	No	Not sure	Yes	No	Not sure
1	The Electricity Tariff and Regulatory Accounts regulations will affect the potential stakeholders	100%	0%	0%	100%	0%	0%	100%	0%	0%
2	The tariff control period of three years as provided for in the Act and the Regulations is adequate and operational	100%	0%	0%	80%	20%	0%	100%	0%	0%
3	All the different tariff components established adequate.	100%	0%	0%	20%	80%	0%	100%	0%	0%
4	Kenyan electricity market is adequately prepared for the unbundling of the tariff along the supply chain and with the different players.	67%	17%	17%	80%	20%	0%	50%	50%	0%
5	<i>RAB shall be formed by;</i>									
	i. Revalued amounts (with a real rate of return)	50%	33%	17%	100%	0%	0%	0%	50%	50%
	ii. Historical cost amount (with nominal rate of return)	33%	50%	17%	0%	0%	0%	50%	0%	50%
6	Construction Work in Progress (CWIP) should form part of the Regulated Asset Base	66%	44%	0%	80%	20%	0%	0%	50%	50%
7	The Capital Asset Pricing Model (CAPM) is adequate for determining the cost of equity. If not suggest practical alternative with examples of regulators using the suggested alternative.	83%	17%	0%	80%	20%	0%	50%	0%	50%
8	Forty-five days are adequate for the Authority to review and determine the	83%	17%	0%	80%	20%	0%	50%	0%	50%

No.	Provision in Draft Regulations	Agree with provision?								
		Utilities			Policy makers, Researchers & Regulators			Consumers		
		Yes	No	Not sure	Yes	No	Not sure	Yes	No	Not sure
	statement of tariffs and charges submitted by the tariff-controlled licensee.									
9	The tariff controlled licensee will incur additional costs in preparing audited regulatory accounts.	66%	17%	17%	80%	0%	20%	100%	0%	0%
10	Six months is adequate for the submission of audited regulatory accounts to the Authority by the licensee.	83%	17%	0%	100%	0%	0%	100%	0%	0%

ANNEX VI: THE DRAFT ENERGY (ELECTRICITY REGULATORY ACCOUNTS) REGULATIONS, 2023

Legal Notice No.....		
THE ENERGY ACT (No. 1 of 2019)		
IN EXERCISE of the powers conferred on him by Sections 167 and 208 of the Energy Act, 2019, the Cabinet Secretary for Energy hereby makes the following Regulations: -		
THE ENERGY (ELECTRICITY REGULATORY ACCOUNTS) REGULATIONS, 2023		
PART I: GENERAL PROVISIONS		
Citation	1.	These Regulations may be cited as the Energy (Electricity Regulatory Accounts) Regulations, 2023.
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>"Act" means the Energy Act, No 1 of 2019;</p> <p>"Activity-based" means a methodology for the allocation of costs in relation to the way resources are consumed and with reference to the causation of cost at the level of business activities;</p> <p>"Associate" means bodies corporate that are subsidiaries to the same body corporate or where one of the body corporates is a subsidiary of the other;</p> <p>"Auditor" means an independent person qualified under the Companies Act and who is prequalified by the Authority to carry out an audit under these Regulations;</p> <p>"Authority" means the Energy and Petroleum Regulatory Authority established by Section 9 of the Act;</p> <p>"Beneficial owner" has the meaning assigned to it under the Companies Act;</p> <p>"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for energy;</p>

		<p>"Consumer" has the meaning assigned to it under the Act;</p> <p>"Cost Allocation" 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>"Financial Year" 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>"IFRS" means the International Financial Reporting Standards developed by the International Accounting Standards;</p> <p>"Licence" means a licence issued by the Authority under the Act;</p> <p>"Licensee" means a holder of any licence issued under the Act;</p> <p>"Regulatory accounts" means the prescribed system of accounts or framework used by licensees to provide financial data and information to the Authority in a specific and consistent format as set out in these Regulations;</p> <p>"Regulatory asset base" means tangible and intangible assets measured at cost 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>"Regulatory financial performance" means financial performance in relation to the form of tariff control and any forecasts and assumptions made and disclosed by the Authority at the time of determining that tariff control;</p> <p>"Related or affiliated licensee" means</p> <ol style="list-style-type: none"> any subsidiary of a licensee; any company in which the shareholders of a licensee hold an aggregate beneficial interest not less than twenty percent;
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		<p>c) any company whose directors are accustomed or under an obligation whether formal or informal to act in accordance with the shareholders of a licensee; or</p> <p>d) a subsidiary or associate.</p> <p><i>"Separate businesses"</i> means separation of business activities referred to in these Regulations;</p> <p><i>"Statutory accounts"</i> means accounts laid before the company in its general meeting in accordance with the Companies Act, 2015;</p> <p><i>"Subsidiary"</i> has the meaning assigned to it under the Companies Act;</p> <p><i>"Tariff controlled licensee"</i> means a licensee subject to the Energy (Electricity Tariffs) Regulations, 2023; and</p> <p><i>"Vertically integrated business"</i> means an electricity undertaking or a group of undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission or distribution, and at least one of the functions of generation or supply of electricity.</p>
Purpose of Regulations	3.	The purpose of these regulations is to prescribe reporting procedures and requirements for licensees, for purposes of achieving uniformity and consistent reporting of elements that are required for tariff setting, approval and monitoring.
Application	4.	These Regulations shall apply to any licensee holding a licence issued under Sections 117 and 119 of the Act for the generation, importation or exportation, transmission or distribution of electrical energy or for the retail supply of electrical energy to consumers.
PART II: REGULATORY REPORTING REQUIREMENTS		
Requirement to keep records for separate businesses	5.	<p>1) A licensee shall –</p> <p>a) keep or cause to be kept, for a period of a minimum of seven years, such accounting and other records as are necessary to ensure that all of the revenues, costs, assets, liabilities, reserves, and provisions of, or reasonably attributable in</p>

		<p>accordance with these Regulations, to the licensed or exempted activity;</p> <p>b) keep the regulatory accounts in the manner set out in the First Schedule to these Regulations;</p> <p>c) map its existing chart of accounts to the uniform chart of accounts set out in the Second Schedule to these Regulations; and</p> <p>d) keep the regulatory accounts in Kenya Shillings unless exempted by the Authority.</p> <p>2) In keeping the accounts and records referred to in sub regulation (a) the licensee shall ensure that each of the following business activities of the licensee are separately identifiable:</p> <p>a) system operation;</p> <p>b) electricity generation/importation/exportation;</p> <p>c) electricity transmission;</p> <p>d) electricity distribution;</p> <p>e) electricity supply activities;</p> <p>f) electricity retail activities; and</p> <p>g) any other corporate activities</p> <p>3) Subject to the exemptions in Regulation 6, in addition to statutory accounts required under any other written law:</p> <p>a) A licensee shall in the case of a generating licensee, prepare generation summary statements from the accounting and other records referred to in Regulation 5 (1) in the form and with content specified in the Third Schedule in respect of each installation within the generating plant for which a license would be required under Section 117 and 119 of the Act.</p> <p>b) In respect of all other licensees, prepare regulatory accounts from the accounting and other records referred to in Regulation 5 (1) in the form and with the content specified in Regulation 10.</p> <p>4) The accounting records maintained under these Regulations shall ensure:</p>
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		<ul style="list-style-type: none"> a) licensees segregate accounting records between licensed activities or services in a vertically integrated business; b) licensees to segregate regulated business from non-regulated business; and c) they apply the prescribed principles and methodologies for cost allocation under these Regulations.
Exemptions	6.	<ul style="list-style-type: none"> 1) A licensee may apply to the Authority for an exemption from the application of these Regulations. 2) The Authority shall consider the application made under sub regulation (1) and the reasons advanced thereof by the licensee and may grant an exemption where: <ul style="list-style-type: none"> a) it is satisfied with the form and manner in which the records and accounts of the licensee are kept and audited; or b) such exemption is provided for in the licence. 3) A licensee exempted under this regulation shall maintain its books of accounts in accordance with IFRS.
Regulatory reporting periods	7.	<ul style="list-style-type: none"> 1) Regulatory reporting periods shall start at the end of any previous regulatory reporting period and end at the start of any subsequent regulatory reporting period. 2) Unless otherwise specified in writing by the Authority: <ul style="list-style-type: none"> a) All licensees' regulatory reporting periods shall coincide with the licensees' financial years. b) A regulatory reporting period for every licensee shall commence in the financial year immediately succeeding the effective date of these regulations.
Form and content of regulatory accounts	8.	<ul style="list-style-type: none"> 1) The form and content of regulatory accounts shall be as follows: <ul style="list-style-type: none"> a) Except where otherwise required or permitted by these Regulations, regulatory accounts shall comply with standards appropriate for the preparation of annual financial statements.

		<p>b) Regulatory accounts shall be prepared to present fairly, in all material respects and in accordance with these Regulations:</p> <ul style="list-style-type: none"> i) A statement of income and the regulatory financial performance for the regulatory reporting period of each of the licensee's separate businesses and, in aggregate, of the licensee as per the Fourth Schedule; ii) The financial position at the end of the regulatory reporting period of the licensee; iii) The fixed assets at the end of the regulatory reporting period of each of the licensee separate businesses as per the Third Schedule; iv) Regulatory Asset Base at the end of the regulatory reporting period of each of the licensee separate businesses as per the Fifth Schedule; and v) The cash flows of the licensee for the regulatory reporting period. <p>2) Regulatory accounts shall comprise:</p> <ul style="list-style-type: none"> a) A segmental statement of regulatory financial performance, which may take the form of a segmental statement of comprehensive income, analyzed with reference to the business activities referred to in Regulation 5 (2) and in the form of the Fourth Schedule; b) A statement of the financial position for the licensee; c) A statement of changes in equity for the licensee; d) A statement of cash flows for the licensee; e) A segmental statement of fixed assets in accordance with Regulation 10 and in the form of the Third Schedule; f) A segmental statement of the Regulatory Asset Base prepared in accordance with the Energy (Electricity Tariffs) Regulations, 2022, analyzed with reference to the business activities referred to in Regulation 5 (2) and in the form of the Third Schedule; g) Any other related notes, where appropriate in the form of Schedules to these regulations. <p>3) Regulatory accounts shall be accompanied by:</p> <ul style="list-style-type: none"> a) A directors' report; b) A corporate governance statement;
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		<ul style="list-style-type: none"> c) A business review; d) A report of the auditor on the regulatory accounts; e) A statement of the accounting policies adopted; f) A tariff control statement disclosing, in respect of the fiscal year; <ul style="list-style-type: none"> i) the values of all tariff control measures, specified by the Authority in accordance with the Energy (Electricity Tariffs) Regulations, 2022; ii) the computation of all tariff control constraints, specified by the Authority in accordance with the Energy (Electricity Tariffs) Regulations, 2022; iii) the monetary value of any material variances, distinguishing between variances in fuel cost tariffs and other variances, in the form of Sixth Schedule; iv) Other statements providing statistics relating to service performance, asset performance, asset condition, other asset characteristics, operational matters, as the Authority may from time to time specify. 4) The Authority may permit adaptations of the format and presentation of regulatory accounts to reflect IFRS and other conventions familiar to users or potential users of regulatory accounts. 5) In presenting the regulatory financial accounts, the licensee shall provide comparative information which shall include: <ul style="list-style-type: none"> a) information relating to the prior regulatory reporting period; and b) information relating to forecasts and assumptions in respect of the regulatory reporting period made and disclosed by the Authority at the time of determining any relevant tariff control. 6) The licensee shall give prominence to comparative information under sub regulation (3) (b) in relation to the regulatory financial performance of each of the licensee's separate businesses and, in aggregate, of the licensee. 7) Unless otherwise provided for in these regulations, regulatory accounts shall be prepared on a basis that is consistent with the
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		<p>licensee's statutory accounts. A reconciliation of consolidated income and equity with amounts disclosed in the licensee's statutory accounts shall be presented in respect of any material differences.</p> <p>8) Where there are any material differences between the basis of preparation, the presentation of information or allocation of costs in the regulatory accounts and any information used by the Authority when determining the relevant tariff basis, regulatory accounts shall disclose sufficient information to permit users of regulatory accounts to understand the impact of these differences on the regulatory financial performance of the licensee and its separate businesses and on the financial position of the licensee.</p>
PART III: COST ALLOCATIONS		
Segmental statement of fixed assets	9.	<p>1) For the purpose of preparing a segmental statement of fixed assets, the value of the licensee's fixed assets in the company's statutory accounts shall be allocated to the separate activities referred to in Regulation 5 (2) in relation to the dominant purpose or function of the fixed asset.</p> <p>2) The purpose or function of a fixed asset should be assessed in relation to its role, if any, in the licensee's electrical systems, the purpose for which the asset was acquired and its expected use over its economic life.</p> <p>3) Where the dominant purpose or function of a fixed asset is to support a single business activity referred to in Regulation 5 (2), or derives from such a business activity, that asset shall be allocated to that activity.</p> <p>4) Where a fixed asset relates to the conveyance of electrical energy from one business activity to another, such as a transformer, it shall be treated as supporting the upstream activity.</p> <p>5) Where a fixed asset does not have a dominant purpose or function that relates to a single business activity:</p> <ul style="list-style-type: none"> a) If the asset forms part of the licensee's electrical systems, it shall be allocated to the upstream activity that it relates to; b) Otherwise, it shall be allocated to corporate activities.

		6) For the purpose of this regulation, fixed assets include all non-current assets that would, were they to be acquired during the currency of these regulations, be eligible for inclusion as additions to the Regulatory Asset Base in accordance with the Energy (Electricity Tariffs) Regulations, 2022.
Other asset and liability allocations	10.	For the purpose of preparing a statement of financial position, unless the licensee considers that the financial position of its separate businesses can be considered as distinct from its financial position and it would be misleading to a reader of the regulatory accounts not to do so, liabilities and non-fixed assets need not be allocated to the licensee's separate businesses.
Cost allocations	11.	<ol style="list-style-type: none"> 1) Operating costs, including depreciation, shall be allocated to the separate businesses referred to in Regulation 5 (2) in relation to the way resources are consumed and with reference to the causation of cost at the level of business activities (activity-based). 2) Costs which are incurred in respect of more than one activity, or which are not readily attributable to a single activity, shall be allocated objectively using a reasonable methodology, having regard to the materiality of the allocations, on: <ol style="list-style-type: none"> a) a cost-allocation methodology that materially meets best practice standards of activity-based allocation, or b) where an activity basis cannot be computed at a reasonable cost, an alternative basis that provides a reasonable proxy for an activity-based allocation of costs in the light of best available information about the causation of cost. 3) The Authority may require licensees to develop activity-based cost allocation systems. 4) Except where costs do not relate to services supported by regulated tariffs, such as costs of corporate activities set out under Regulation 5 (2)(g), all other costs shall be fully allocated to the other activities of the holder where they fall under Regulations 5 (2) (a) to (f), as appropriate. 5) The allocation of depreciation of fixed assets will reflect the usage of assets and will not necessarily reflect the balance sheet

		allocation of fixed assets under Regulation 10, as inter-activity recharges of depreciation.
Revenue allocations	12.	<p>Revenues shall be allocated as follows:</p> <ul style="list-style-type: none"> a) In respect to tariff-controlled licensees, revenues from the following tariffs shall be allocated in accordance with the business activities set out in Regulation 5(2) as follows: <ul style="list-style-type: none"> i) System operation revenue shall be allocated to activities under Regulation 5 (2) (a). ii) Fuel cost revenue shall be allocated to activities under Regulation 5 (2) (b). iii) Electricity generation revenue shall be allocated to activities under Regulation 5 (2) (b). iv) Electricity transmission revenue shall be allocated to activities under Regulation 5 (2) (c). v) Electricity distribution revenue shall be allocated to activities under Regulation 5 (2) (d). vi) Retail supply activity revenue shall be allocated to activities under Regulation 5 (2) (e) and (f). b) Other revenues shall be allocated in relation to the nature of the services provided and the allocation of the costs that are associated with providing those services.
Asset base valuation adjustments	13.	<p>In order to ensure the regulatory accounts, present fairly the regulatory financial position of the licensee and of its separate business activities:</p> <ul style="list-style-type: none"> 1) The regulatory accounts balance sheet shall include adjustments to reflect any material difference between the book values of the licensee's net assets, excluding financing liabilities, and the Authority's assessment of the Regulatory Asset Base under the Energy (Electricity Tariffs) Regulations, 2022. 2) The regulatory accounts balance sheet shall incorporate any balance on any regulatory fuel cost recovery provision maintained in accordance with the Energy (Electricity Tariffs) Regulations, 2022, treating any accumulated surplus as a liability and any accumulated deficits (negative balance) as an asset.

Transactions with related licensee's	14.	<p>The regulatory accounts shall include an explanatory note disclosing the following:</p> <ul style="list-style-type: none"> a) The nature and scale of transactions with related or affiliated licensee's, analyzed by party and in enough detail for a user of regulatory accounts to understand components of the regulatory financial performance and statement of financial position that would be mainly affected. b) Confirmation, where appropriate and material to the regulatory accounts, that transactions with related or affiliated licensees are negotiated on an arm's length basis and on normal commercial terms. c) Whether transactions with related or affiliated licensees were subject to competitive tendering. d) Estimates of the effects on the comprehensive income, balance sheet and cash flows of any material transactions or groups of transactions that are not negotiated on an arm's length basis and on normal commercial terms.
Directors' report, regulatory corporate governance statement, regulatory business review	15.	<ul style="list-style-type: none"> 1) The licensee shall prepare a directors' report, a regulatory corporate governance statement and a regulatory business review. 2) Subject to the following, the licensee may include summarized extracts of the corresponding statements in the licensee's statutory accounts. 3) The regulatory business review shall include commentary on the licensee's financial performance in relation to the Authority's forecasts and other assumptions made and disclosed at the time it determined the relevant tariff control, any major events and changes to the business environment not anticipated in those assumptions and the impact on the position of investors and users. 4) The regulatory corporate governance statement shall provide a description of the licensee's approach to generating value for investors and users under the incentive arrangements established by the Authority.

Audit	16.	<ol style="list-style-type: none"> 1) The Authority shall pre-qualify auditors for the purposes of auditing the regulatory accounts once every year. 2) A licensee shall procure an audit from the prequalified list under sub-regulation (1) to undertake an audit of its regulatory accounts and generation summary statements. 3) The auditor shall submit to the Authority the audited regulatory accounts and generation summary statements within three months after the end of the financial year. 4) The licensee shall not procure services from the same auditor for a period of more than three consecutive years.
PART V: COMPLIANCE AND ENFORCEMENT		
Incentives	17.	The Authority shall review licensee compliance with these Regulations within three years of the Regulations coming into force, and subject to findings of the review, the Authority shall establish incentive mechanisms to facilitate compliance as appropriate.
Disputes and Appeals	18.	<ol style="list-style-type: none"> 1) Any complaints and/or disputes under these regulations shall be referred to the Authority for resolution in accordance with the Energy (Complaints and Disputes Resolution) Regulations 2022 or any replacement of the same. 2) Any person who is dissatisfied/aggrieved by a decision of the Authority shall lodge an appeal with the Energy and Petroleum Tribunal.
Penalties	19.	<ol style="list-style-type: none"> 1) A licensee who does not maintain and submit information in accordance with these Regulations commits an offence and is liable on conviction to a fine of not less than one hundred thousand shillings. 2) In the case of a continuing offence, Director's of a licensee shall be liable upon conviction to a penalty of six months imprisonment. 3) The fines or penalties in these Regulations are without prejudice to the Authority's right to suspend or revoke the licensee's licence or certificate in accordance with the Act. 4) Any fines or penalties which are not paid shall be a civil debt recoverable summarily.

PART VI: TRANSITIONAL PROVISIONS AND COMMENCEMENT		
Transitions	20.	The accounting processes that a licensee has in place at the commencement of these Regulations shall continue for a maximum period of one year immediately succeeding the effective date of these Regulations, upon which the licensee's regulatory reporting period and system of accounting shall be aligned to and prepared in compliance with these Regulations.
Commencement	21.	These Regulations commence immediately upon their gazettment by the Cabinet Secretary

**FIRST SCHEDULE (r.5(1) b)
REGULATORY ACCOUNT FORMAT**

2. General information including;
 - h) the name of licensee;
 - i) the reporting period;
 - j) the name, title and contact of accounting officer;
 - k) legal status;
 - l) the nature of share capital including the issued, subscribed, paid up share capital, premium on issue of shares, discount on issue of shares and redeemable capital;
 - m) the details of directors who held office at any time during the year; and
 - n) any changes that have occurred to the company including change in directorship and ownership of property of the company.
3. Control over licensee and state;
 - d) the name of the controlling company;
 - e) the manner in which control was held; and
 - f) the extent of control.
4. Companies controlled by licensee including names of all companies, business, trusts and similar organisations controlled directly or indirectly by the licensee at any time during the year.
5. Remuneration of officers- name, title and salary of officers whose salary is over Ksh. 12,000,000/- per annum.
6. Change in structure during the year including;
 - c) change in name; and
 - d) changes in and important additions to franchise rights.
7. Financial summary including;
 - g) comparative balance sheet including assets and other debits;
 - h) comparative balance sheet including liabilities and other credits;
 - i) income statement for the year;
 - j) reconciliation with statutory financial statements including balance sheet and income statement;
 - k) statement of retained earnings for the year; and
 - l) cash flow statement for the year.
8. Explanatory notes to uniform system of accounts, changes to the business environment not anticipated and the impact on the position of the licensee.
9. Non-utility property owned or under finance lease including;
 - e) type of property;
 - f) property value at the beginning of the year;
 - g) additions and any disposals; and
 - h) accumulated depreciation.

10. Electric plant leased to others including;
 - e) a description of the property;
 - f) the authorisation or lease agreement;
 - g) expiration of the lease; and
 - h) accumulated depreciation.
11. Electric plant held for future use including;
 - c) the date entered on accounts of a licensee; and
 - d) expected date of use.
12. Construction work in progress including;
 - c) a description of the project; and
 - d) percentage of completion at the end of the year.
13. Investment in subsidiary or affiliate companies including;
 - e) a description of the investment;
 - f) the date of acquisition;
 - g) the equity in the subsidiary or affiliate; earnings from the subsidiary or affiliate; and
 - h) gain or loss from disposal of investment.
14. Long term advances, deposits and prepayments including;
 - c) long term security deposits; and
 - d) long term prepayments.
15. Inventory.
16. Accounts receivables, allowance for bad and doubtful debts and trade debts (age analysis) including;
 - c) explanations relating to provision of doubtful and bad debts; and
 - d) bad and doubtful debts in respect of disconnected customers.
17. Details of source of finance and associated costs including;
 - g) concession loans;
 - h) debentures;
 - i) bank loans;
 - j) liability subject to finance lease;
 - k) advances from subsidiaries or affiliate companies; and
 - l) other short-term loans.
18. Taxes payable including;
 - d) provisional tax;
 - e) payments; and
 - f) adjustments, if any.
19. Operating revenue including;
 - h) sale of electricity;
 - i) concession lease income;
 - j) maximum demand charge;
 - k) wheeling and interconnection income;

- l) sale of electric poles;
 - m) carbon credits; and
 - n) other electric charges.
20. 19. Research development, demonstration activities and associated costs.

SECOND SCHEDULE (r.5(1)c)
CHART OF ACCOUNTS

Account Code	Account	Account Type	Account Category
10101010	Leasehold land	Assets	Land and buildings
10101020	Freehold Land	Assets	Land and buildings
10101030	Land Rights	Assets	Land and buildings
10101040	Buildings and fixtures Leased	Assets	Land and buildings
10101050	Buildings and fixtures owned	Assets	Land and buildings
10101060	Leasehold improvements	Assets	Land and buildings
10101070	Reservoirs, waterways, dams	Assets	Machinery and equipment
10101080	Waterwheels, turbines and generators	Assets	Machinery and equipment
10101090	Roads, Railroads and bridges	Assets	Machinery and equipment
101010100	Accessory electric equipment	Assets	Machinery and equipment
101010110	Boiler plant equipment	Assets	Machinery and equipment
101010120	Engine and engine driven generator	Assets	Machinery and equipment
101010130	Turbo generator units	Assets	Machinery and equipment
101010140	Reactor plant equipment	Assets	Machinery and equipment
101010150	Fuel holders, producers and accessories	Assets	Machinery and equipment
101010160	Prime movers	Assets	Machinery and equipment
101010170	Generators	Assets	Machinery and equipment
101010180	Measurement and testing equipment	Assets	Machinery and equipment
101010190	Electric plant purchase	Assets	Machinery and equipment
101010200	Other installation on customers premises	Assets	Machinery and equipment
101010210	Load management controls-utility	Assets	Machinery and equipment

Account Code	Account	Account Type	Account Category
	premises		
101010220	Transport equipment	Assets	Machinery and equipment
101010230	Other utility plant	Assets	Machinery and equipment
10102140	Experimental electric plant unclassified	Assets	Machinery and equipment
10102150	Electric plant in the process of reclassification	Assets	Machinery and equipment
10102160	Electric plant held for future use	Assets	Machinery and equipment
10102170	Electric plant and equipment leased to others	Assets	Machinery and equipment
10102180	Completed construction not classified-electric	Assets	Machinery and equipment
10102190	Construction work in progress	Assets	Machinery and equipment
10102200	Renovation work in progress	Assets	Machinery and equipment
10102210	Non-utility property owned or under lease	Assets	Machinery and equipment
10102220	Rural electrification projects	Assets	Machinery and equipment
10102230	Electric plant acquisition adjustments	Assets	Machinery and equipment
10102240	Other electric plant adjustments	Assets	Machinery and equipment
10102250	Other utility plant	Assets	Machinery and equipment
10102260	Transformer Station Equipment - Normally Primary above 50Kv	Assets	Machinery and equipment
10102270	Distribution Station Equipment- Normally Primary helm/50 Kv	Assets	Machinery and equipment
10102280	Storage battery equipment	Assets	Machinery and equipment
10102290	Poles, lowers and fixtures	Assets	Machinery and equipment
10102300	Overhead conductors and devices	Assets	Machinery and equipment

Account Code	Account	Account Type	Account Category
10102310	Underground conduit	Assets	Machinery and equipment
10102320	Underground conductors and devices	Assets	Machinery and equipment
10102330	Line transformers	Assets	Machinery and equipment
10102340	Services	Assets	Machinery and equipment
10102350	Meters	Assets	Machinery and equipment
10102360	Leased property on customer's premises	Assets	Machinery and equipment
10108090	Accumulated depreciation on water wheels, turbines and generators	Assets	Accumulated depreciation
10108100	Accumulated depreciation on roads, railroads and bridges	Assets	Accumulated depreciation
10108110	Accumulated depreciation on accessory electric equipment	Assets	Accumulated depreciation
10108120	Accumulated depreciation on boiler plant equipment	Assets	Accumulated depreciation
10108130	Accumulated depreciation on engine and engine-driven generator	Assets	Accumulated depreciation
10108140	Accumulated depreciation on turbo generator units	Assets	Accumulated depreciation
10108150	Accumulated depreciation on reactor plant equipment	Assets	Accumulated depreciation
10108160	Accumulated depreciation on electrical holders, producers and accessories	Assets	Accumulated depreciation
10108170	Accumulated depreciation on prime movers	Assets	Accumulated depreciation
10108180	Accumulated depreciation on generators	Assets	Accumulated depreciation

Account Code	Account	Account Type	Account Category
10108190	Accumulated depreciation on measurement and testing equipment	Assets	Accumulated depreciation
10108200	Accumulated depreciation on electric plant	Assets	Accumulated depreciation
10108210	Accumulated depreciation on experimental electric plant unclassified	Assets	Accumulated depreciation
10108220	Accumulated depreciation on electric plant in the process of reclassification	Assets	Accumulated depreciation --
10108230	Accumulated depreciation on experimental electric plant held for li.1turb use	Assets	Accumulated depreciation
10108240	Accumulated depreciation on electric plant and equipment leased to others	Assets	Accumulated depreciation
10108250	Accumulated depreciation on implemented construction not classified	Assets	Accumulated depreciation
10108290	Accumulated depreciation on motor vehicles-general	Assets	Accumulated depreciation
10108300	Accumulated depreciation on motor vehicles-network operations	Assets	Accumulated depreciation
10108310	Accumulated depreciation on specialized trucks	Assets	Accumulated depreciation
10108320	Accumulated depreciation on goodwill	Assets	Accumulated depreciation
10108330	Accumulated depreciation on franchises and consents	Assets	Accumulated depreciation

Account Code	Account	Account Type	Account Category
10108340	Accumulated depreciation on computer software	Assets	Accumulated depreciation
10108350	Accumulated depreciation on miscellaneous intangible plant	Assets	Accumulated depreciation
10108360	Accumulated depreciation on office furniture and equipment	Assets	Accumulated depreciation
10108370	Accumulated depreciation on computer equipment-hardware	Assets	Accumulated depreciation
10108380	Accumulated depreciation on stores equipment	Assets	Accumulated depreciation
10108390	Accumulated depreciation on fire and safety system	Assets	Accumulated depreciation
10201020	I Investment in associated companies	Assets	Group companies (intercompany investments)
10201030	Investment in subsidiary company	Assets	Group companies (intercompany investments)
10202010	Term finance certificate	Assets	Investments and financial instruments
10202020	Deposit certificates	Assets	Investments and financial instruments
10202030	Sinking fund	Assets	Investments and financial instruments
10202040	Other special or collateral funds	Assets	Investments and financial instruments
10202050	Long term security deposits	Assets	Investments and financial instruments
10202060	Long term repayments	Assets	Investments and financial instruments
10202070	Other long term receivables	Assets	Investments and financial instruments

10305010	Unrecovered plant and regulatory study costs	Assets	Deferred charged
10305020	Preliminary survey and investigation charges	Assets	Deferred charged
10305030	Development charge deposits/receivables	Assets	Deferred charged
10305040	Deferred development costs	Assets	Deferred charged
10305050	Deferred losses from disposition of utility plant	Assets	Deferred charged
10305060	Un-amortized loss on required debt	Assets	Deferred charged
10305070	Preliminary survey and investigation charges	Assets	Deferred charged
10306010	Research and development costs	Assets	Deferred charged
10305050	Derivative instrument asset	Assets	Deferred charged
10305060	Deferred tax asset	Assets	Deferred charged
10305070	Miscellaneous deferred debits	Assets	Deferred charged
10306010	Loans to staff	Assets	Loans and receivables
10305050	Prepayments	Assets	Prepayment and other current assets
10203020	Derivative instrument asset	Assets	Derivative financial asset
10404010	Derivative instrument asset hedges	Assets	Derivative financial asset

THIRD SCHEDULE (r.5(3)a, r.8(b)iii, r.8(c)v and r.8(c)vi)

FORM OF GENERATION SUMMARY STATEMENTS

Generation summary statements							
	Name of installation	Name of installation	Name of installation	Name of installation	Name of installation	Name of installation	Name of installation
Type (Geothermal, hydro, diesel, etc.)							
Capacity (MW electricity)							
Availability (hours)							
Output for the year (GWh)							
Sales of electricity							
Electricity for own use							
Sales of heat							
Heat for own use							
<i>Ksh thousands or Ksh millions</i>							
Revenues from sales of electricity							
Under PPA with single buyer							
Under FiT							
Other							
Revenues from sales of heat							
Other revenues							
Total revenues	-	-	-	-	-	-	-
Fuel costs							
Water and other consumables							
Salary, wages and other people costs							
Other operating expenditure							
Depreciation							
Net income/(costs)							
Tangible fixed assets, including software licences							

Tangible fixed assets at the start of the year							
Additions							
Grants and other contributions							
Disposals							
Depreciation							
Tangible fixed assets at the end of the year							

FOURTH SCHEDULE (r. 8(b)i and r.8(c)i)

FORMAT FOR REGULATORY FINANCIAL PERFORMANCE STATEMENT

Regulatory financial performance									
	System operation	Single buyer	Electricity	Electricity	Electricity	Electricity retail	corporate activities	Consolida	Total
Operating income									
Tariff charges									
Power procured by single buyer									
Power purchased other than by single buyer									
Generation fuel costs									
Operating expenditure									
Depreciation and related items									
Operating profits									
Finance income									
Finance costs									
Profit before tax									
Income tax expense									
Profit for the year									

FIFTH SCHEDULE (r.8(b)iv)

FORMAT FOR ANALYSIS OF THE REGULATORY ASSET BASE

Regulatory Asset Base									
	System operation	Single buyer	Electricity generation	Electricity transmission	Electricity distribution	Electricity retail	Corporate activities	Consolidation	Total
<i>Ksh thousands or Ksh millions</i>									
Movements in the Regulatory Asset Base									
Regulatory Asset Base at the start of the year									
Additions									
Customer contributions (connection charges etc.)									
Government and other grants									
Internal transfers									
Proceeds of disposals, or fair value if higher									
Regulatory depreciation for the year									
Balance at the end of the year									

SIXTH SCHEDULE (r.8(d)(vi)(c))

FORMAT FOR ANALYSIS OF TARIFF CONTROL VARIANCES

Tariff control variances									
	System operation	Single buyer	Electricity generation	Electricity transmission	Electricity distribution	Electricity retail	Corporate activities		Total
<i>Ksh thousands or Ksh millions</i>									
Movements in prices control variances									
Cumulative variances at the start of the year									
Variances applied in control formulae for the year									
Net variances brought forward									
Tariff control variances for the year									
Cumulative variances at the end of the year									

DRAFT THE ENERGY (ELECTRICITY TARIFFS) REGULATIONS, 2022

S/N	DOCUMENT	SECTION	COMMENT	RESPONSES
1.	ELECTRICITY (GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY) TARIFF SETTING GUIDELINES	1.4 GENERAL PRINCIPLES	Amend No. xvi to read as "...When making such amendments, relevant stakeholders and the general public will be consulted"	Amended
2.		2.7 RETURN ON REGULATORY ASSET BASE	In the formulas for calculating Cost of Equity and Cost of Debt: <ul style="list-style-type: none"> Define R_m Explain the meaning of β_e Explain how to get β_a Show how to calculate DRP 	Explained the meaning of β_e and the formula for determining β_a Debt Risk premium is the return over and above the risk free rate that debt providers would require.
3.		3.1 GUIDING PRINCIPLES FOR TARIFF DESIGN	Amend no. v to read as "Access charges for the use of a transmission or distribution system shall be based upon extent of use or comparable charges for comparable use"	Amended accordingly

S/N	DOCUMENT	SECTION	COMMENT	RESPONSES
4.		Fuel Energy Cost	<ul style="list-style-type: none"> Imports/exports should be left open or general but should not be limited from Uganda only Page 20 - replace Commission with Authority 	Corrected
5.		Foreign Exchange Rate Fluctuation Adjustment	Clarify/specify the "Company" in page 24	Clarified
6.		2.10 System Operator Revenue Requirements	The revenue requirement methodology seems to imply that the system operator will not be compensated for the investments the operator makes. Clarity is required on the assets of the system operator and the compensation of the assets.	The system operator is assumed not to own any assets. The transmission assets are owned by the transmission owner
7.		2 Determination of Revenue Requirement	The revenue requirement methodologies require clarity on the retreatment of tax. Tax is only included in the revenue requirement	Agreed. There are two ways of looking at it, either chose to provide a pre return tax on equity and drop the tax component in the RR

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			methodology for distribution and retail utility companies	
8.		2.3 ALLOWABLE OPERATION AND MAINTENANCE EXPENSES (O&M/OPEX)	The section lists allowable O&M gives qualifying criteria for the same. However, it does not give the criteria for determining the ex-ante O&M allowance	Proposed that the Regulator uses the actual costs as reported in the Energy (regulatory Accounts Regulations) in determining what is the actual costs. A justification is necessary as to the variation in the actual costs compared to the forecasted costs in order to dis-incentivize the utility from letting the
9.		2.6: REGULATORY ASSET BASE (RAB	The section proposes the inclusion of working capital in the RAB as a proportion of the Utility's annual operating expenses. However, it is silent on the said proportion. Therefore, there is a need to provide more clarity in the guideline as to what the	The practice has been to allow for 45 working days of the annual opex. Change incorporated. Depreciation is excluded in the determination of opex.

S/N	DOCUMENT	SECTION	COMMENT	RESPONSES
0			<p>proposed proportions should be.</p> <p>There is no single way of calculating the working capital for regulatory purposes, as there are different options available. The key approaches are: ♦ Lead-Lag approach ♦ Opex approach/Formul a approach ♦ Balance Sheet approach</p> <p>The guideline states that the determination of working capital will be a proportion of the Utility's annual O&M. However, included in the said O&M is depreciation. Therefore, there is a need to explicitly state the exclusion of depreciation from</p>	

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			the O&M for purpose of determining the annual working capital for the Utility.	
10.		2.8 GENERATION TARIFF SETTING METHODOLOG Y	The guideline does not give guidance on the distinction between fixed and variable generation O&M	Distinction given in the formular on the variable and fixed generation costs
11.		2.10: SYSTEM OPERATOR REVENUE REQUIREMENT	This formula provides for depreciation, yet it does not provide for a Return on the Assets of the system operator. Therefore, there is a need to clarify whether or not the assets are assumed to be owned by the transmission operator and if so, drop the provision for depreciation from its Revenue Requirement.	
12.		3.3: PERIODIC TARIFF ADJUSTMENT	The proposed true-up mechanisms for	In our understanding, the inflation adjustment is just meant to restate

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
		APPLICATION	<p>adjusting any variations in the RR solves the need for inflation adjustments.</p> <p>Common shareholders are not promised an inflation adjusted return. Therefore, there is no justification to guarantee electricity sector investors an inflation-adjusted return. In any case, this proposal forestalls any future possibility to negotiate for a fixed tariff PPA.</p> <p>We propose that inflation adjustments be dropped in light of the proposed true-up mechanism adjustment. In the alternative, we propose an annual reconciliation of the revenues collected through inflation</p>	<p>the prices to the current prices and does not constitute an inflation adjusted return.</p>

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			adjustment and the actual variance in the Utility's O&M.	
13.		2.2: REVENUE REQUIREMENT FORMULA	<p>The basis upon which the Z Factor is to be applied is not clear. For instance: a) There should be clarification on whether the Z Factor applies to variations between forecast and actual on; Capital Expenditure, Sales and O&M. b) The Z Factor is not specific as to whether or not it applies to only the off-taker or the transmission system owner, generators and the system operator. c) The section is general and does not give conditions for a true-up mechanism. It entertains the idea that the</p>	<ul style="list-style-type: none"> The Z factor relates only to revenues; once tariff setting is done, it is expected that utility will recover a certain amount of revenue (this is what is adjusted at the end of control period) either for under/over recovery Z factor should apply in case of a transmission operator, system operator and distribution/retail licensee This is cured by the Regulatory accounts Regulations We did not consider inflation adjustment as a compensation but a

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			<p>utility can be compensated for its inefficiencies in cost management. If the Utility is fully compensated for any revenue shortfall, without any pre-conditions, it would face no particular incentive to reduce the expenditures. d) It does not recognize that upward variations on O&M for the off-taker and variable Power Purchase Costs are already compensated in the form of Inflation adjustments through the existing passthrough mechanism monthly.</p>	<p>restatement of prices to reflect the current prices</p>

Energy (Electricity Tariff Regulations), 2022

SNO	ORGANIZATION	SECTION	COMMENT	ACTION
1.	KETRACO	Part II-Tariff approval and review 6. 3(b)	Provide a clarification on what constitutes reasonable costs/investments to be included in the tariff formulation. It may preferable to provide the exclusions	Defined in Regulation 9(3), 9(4) and 9(5)
2.	KETRACO	Tariff review 10. (2)	It could be better to put a threshold of cost changes e.g. a certain % instead of indicating “substantive change”, otherwise clarify the same	The tariff review application shall be treated like any other tariff application and taken through all the necessary motions
3.	KETRACO	Offences 14. (1) a	It’s better if the fine is pegged to the amounts benefited by the person as a result of charging the tariff not approved by the authority.	Updated to twice the amount collected
4.	KENGEN	Interpretation	Define bundled tariff	The term not sighted in the regulations
5.	KENGEN	Control period	Control period is already specified in Energy Act section 165.	Regulation referenced to the Act
6.	KENGEN	Regulation 8 (3) (b)	The regulation refers to regulation 6(7) which appear to be referenced in error	Dropped, wrong reference
7.	KENGEN	Regulation 9 (6)	The regulation refers to regulation 6(1) which appear to be a referenced in error. The reference should be regulation 6(2).	Dropped, wrong reference

8.	KENGEN	Regulation 10 (1)	EPRA should consider having a sample template of the proposed statement of tariffs and charges	Dropped, wrong reference
9.	KENGEN	Regulation 11 (3)	The regulation refers to regulation 6(1) which appear to be a referenced in error. The reference should be regulation 6(2).	Dropped, wrong reference
10.	KENGEN	Regulation 11 (3)	EPRA should consider having a sample template of the proposed tariff control compliance statement since it's a requirement for reporting and audit in the energy regulatory accounts regulation.	The Authority shall provide a template as a guide during reporting
11.	KENGEN	Explanatory schedule	Insert the missing references.	Updated accordingly
12.	KENGEN	Tariff Compliance Statement	Please provided a sample for the tariff compliance statement.	Repeated
13.	KENGEN		Formula with regard to CAPM, Xfactor and process of updating	Not sighted in the regulations

ENERGY (REGULATORY ACCOUNTS REGULATIONS), 2022

SNO	ORGANIZATION	SECTION	COMMENT	ACTION
1	KENGEN	Clause 7(1)b i.) Form and content of regulatory accounts	The regulatory financial performance for the regulatory reporting period of each of the licensee's separate businesses and, in aggregate, of the licensee as per Second Schedule • Seek clarification on the	Regulatory financial performance defined in the revised regulations

			definition of “Regulatory Financial Performance” • Does it mean the sectoral financial statements	
2		Clause 7(1)b iii.) Form and content of regulatory accounts	The fixed assets at the end of the regulatory reporting period of each of the licensee separate businesses as per the First Schedule • We need clarity on the basis of the Regulated Asset Base at the start of the year e.g. is it the acquisition cost or the Revalued amount. • The method and interval of Revaluation needs to be clear for all the entities in the sector. • There is a likelihood of having two asset registers i.e. one used for statutory accounts and another one used for Regulatory accounts because the classification of assets will vary depending on the set of accounts. This might eventually lead to inconsistencies.	The Regulated asset base is measured at acquisition cost. Revaluation policies of licensees does not affect the RAB.
3		Clause 7(1)b v.) Form and content of regulatory account	“The cashflows of the licensee for the regulatory reporting period.” • There is no specific schedule provided for the cashflows. • KenGen’s proposal is for the Regulatory cashflow to be the same as the company’s statutory cashflows.	Discuss

4		Clause 7(1) d.) iv.) Form and content of regulatory accounts	<p>“Regulatory accounts shall be accompanied by:</p> <p>iv) A report of the auditor on the regulatory accounts”</p> <p>Clarification; Are the Regulatory accounts similar to the Statutory accounts? • If no, the need for a report of the auditor on the regulatory accounts may lead to two audits or additional tasks to the Statutory auditor and additional costs to the organization • The additional costs of compliance will require to be factored in the tariff. There is also a likelihood of different opinions from the auditor based on the two reports i.e Statutory report Vis a Vis Regulatory report.</p>	<p>The two reports are for different users and premised different requirements. The regulator needs to have a different set of accounts kept in a prescribed format. Regulatory accounts and associated reports will solely be used for tariff setting, approval and monitoring.</p>
5		Clause 7(6) Form and content of regulatory accounts	<p>“regulatory accounts shall disclose sufficient information to permit users of regulatory accounts to understand the impact of these differences on the regulatory financial performance”</p> <p>• There is need for clarification on who are the users of the regulatory accounts</p>	<p>Proposed to change users changed to Authority.</p>
6		Clause 8(3) Segmental statement of fixed assets	<p>“Where the dominant purpose or function of a fixed asset is to support a single business activity</p>	<p>Is it possible to separate assets used for ancillary</p>

			referred to in Regulation, or derives from such a business activity, that assets shall be allocated to that activity. KenGen offers two services; 1. Electricity generation 2. Ancillary services Both of these services should be considered when allocating the assets	services from generation assets?
7		Clause 10(5) Cost allocations	<p>“The allocation of depreciation of fixed assets will reflect the usage of assets and will not necessarily reflect the balance sheet allocation of fixed assets under Regulation 10”</p> <ul style="list-style-type: none"> • There will be need for two assets registers. The regulatory accounts require allocation of fixed assets to be activity based and not function based. KenGen uses function based allocation. • Changing to activity based allocation will require change of the accounting module used hence additional costs 	Not change of accounting system but rather have two accounting systems which yes increases the cost of compliance
8		Clause 11(1) c.) Revenue allocations	<p>“Non-fuel power procurement tariffs”</p> <ul style="list-style-type: none"> • There is need for a better definition in order to reflect KenGen’s Revenues i.e. Revenues from power generation. 	Amended the regulations to reflect revenues.

9		Clause 19 Commencement	<p>“These regulations commence upon their publication in the Gazette”</p> <ul style="list-style-type: none"> • The commencement period after publication in the Gazette should have a window e.g for one year. 	A transition period of one year provided.
10		First schedule	<p>Out for the Year (GWh) •</p> <p>Sales of heat</p> <ul style="list-style-type: none"> • Heat for own use • Need for clarity on the definition of the terms “sales of heat” and “heat for own use 	To be discussed
11	CIVIL SOCIETY		<p>A secondary auditor to assess the regulatory accounts is an additional expense as companies already have their auditors for the financial statements. SMEs would not be able to manage.</p>	

ANNEX VII: PROPOSED COMMENTS/INPUTS

DRAFT THE ENERGY (ELECTRICITY TARIFFS) REGULATIONS, 2022

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
1	ELECTRICITY (GENERATION, TRANSMISSION , DISTRIBUTION AND SUPPLY) TARIFF SETTING GUIDELINES	1.4 GENERAL PRINCIPLES	Amend No. xvi to read as "...When making such amendments, relevant stakeholders and the general public will be consulted"	Amended
2.		2.7 RETURN ON REGULATORY ASSET BASE	In the formulas for calculating Cost of Equity and Cost of Debt: <ul style="list-style-type: none"> • Define R_m • Explain the meaning of β_e • Explain how to get β_a • Show how to calculate DRP 	Explained the meaning of β_e and the formula for determining β_a Debt Risk premium is the return over and above the risk free rate that debt providers would require.
3.		3.1 GUIDING PRINCIPLES FOR TARIFF DESIGN	Amend no. v to read as "Access charges for the use of a transmission or distribution system shall be based upon extent of use or comparable charges for comparable use"	Amended accordingly

S/N	DOCUMENT	SECTION	COMMENT	RESPONSES
4.		Fuel Energy Cost	<ul style="list-style-type: none"> Imports/exports should be left open or general but should not be limited from Uganda only Page 20 - replace Commission with Authority 	Corrected
5.		Foreign Exchange Rate Fluctuation Adjustment	Clarify/specify the "Company" in page 24	Clarified
6.		2.10 System Operator Revenue Requirements	The revenue requirement methodology seems to imply that the system operator will not be compensated for the investments the operator makes. Clarity is required on the assets of the system operator and the compensation of the assets.	The system operator is assumed not to own any assets. The transmission assets are owned by the transmission owner
7.		2 Determination of Revenue Requirement	The revenue requirement methodologies require clarity on the retreatment of tax. Tax is only included in the revenue requirement	Agreed. There are two ways of looking at it, either chose to provide a pre return tax on equity and drop the tax component in the RR

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			methodology for distribution and retail utility companies	
8.		2.3 ALLOWABLE OPERATION AND MAINTENANCE EXPENSES (O&M/OPEX)	The section lists allowable O&M gives qualifying criteria for the same. However, it does not give the criteria for determining the ex-ante O&M allowance	Proposed that the Regulator uses the actual costs as reported in the Energy (regulatory Accounts Regulations) in determining what is the actual costs. A justification is necessary as to the variation in the actual costs compared to the forecasted costs in order to dis-incentivize the utility from letting the
9.		2.6: REGULATORY ASSET BASE (RAB	The section proposes the inclusion of working capital in the RAB as a proportion of the Utility's annual operating expenses. However, it is silent on the said proportion. Therefore, there is a need to provide more clarity in the guideline as to what the	The practice has been to allow for 45 working days of the annual opex. Change incorporated. Depreciation is excluded in the determination of opex.

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			<p>proposed proportions should be.</p> <p>There is no single way of calculating the working capital for regulatory purposes, as there are different options available. The key approaches are: ♦ Lead-Lag approach ♦ Opex approach/Formul a approach ♦ Balance Sheet approach</p> <p>The guideline states that the determination of working capital will be a proportion of the Utility's annual O&M. However, included in the said O&M is depreciation. Therefore, there is a need to explicitly state the exclusion of depreciation from</p>	

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			the O&M for purpose of determining the annual working capital for the Utility.	
10.		2.8 GENERATION TARIFF SETTING METHODOLOG Y	The guideline does not give guidance on the distinction between fixed and variable generation O&M	Distinction given in the formular on the variable and fixed generation costs
11.		2.10: SYSTEM OPERATOR REVENUE REQUIREMENT	This formula provides for depreciation, yet it does not provide for a Return on the Assets of the system operator. Therefore, there is a need to clarify whether or not the assets are assumed to be owned by the transmission operator and if so, drop the provision for depreciation from its Revenue Requirement.	
12.		3.3: PERIODIC TARIFF ADJUSTMENT	The proposed true-up mechanisms for	In our understanding, the inflation adjustment is just meant to restate

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
		APPLICATION	<p>adjusting any variations in the RR solves the need for inflation adjustments.</p> <p>Common shareholders are not promised an inflation adjusted return. Therefore, there is no justification to guarantee electricity sector investors an inflation-adjusted return. In any case, this proposal forestalls any future possibility to negotiate for a fixed tariff PPA.</p> <p>We propose that inflation adjustments be dropped in light of the proposed true-up mechanism adjustment. In the alternative, we propose an annual reconciliation of the revenues collected through inflation</p>	<p>the prices to the current prices and does not constitute an inflation adjusted return.</p>

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			adjustment and the actual variance in the Utility's O&M.	
13.		2.2: REVENUE REQUIREMENT FORMULA	<p>The basis upon which the Z Factor is to be applied is not clear. For instance: a) There should be clarification on whether the Z Factor applies to variations between forecast and actual on; Capital Expenditure, Sales and O&M. b) The Z Factor is not specific as to whether or not it applies to only the off-taker or the transmission system owner, generators and the system operator. c) The section is general and does not give conditions for a true-up mechanism. It entertains the idea that the</p>	<ul style="list-style-type: none"> The Z factor relates only to revenues; once tariff setting is done, it is expected that utility will recover a certain amount of revenue (this is what is adjusted at the end of control period) either for under/over recovery Z factor should apply in case of a transmission operator, system operator and distribution/retail licensee This is cured by the Regulatory accounts Regulations We did not consider inflation adjustment as a compensation but a

S/N o	DOCUMENT	SECTION	COMMENT	RESPONSES
			<p>utility can be compensated for its inefficiencies in cost management. If the Utility is fully compensated for any revenue shortfall, without any pre-conditions, it would face no particular incentive to reduce the expenditures. d) It does not recognize that upward variations on O&M for the off-taker and variable Power Purchase Costs are already compensated in the form of Inflation adjustments through the existing passthrough mechanism monthly.</p>	<p>restatement of prices to reflect the current prices</p> <ul style="list-style-type: none"> •

Energy (Electricity Tariff Regulations), 2022

SNO	ORGANIZATION	SECTION	COMMENT	ACTION
14.	KETRACO	Part II-Tariff approval and review 6. 3(b)	Provide a clarification on what constitutes reasonable costs/investments to be included in the tariff formulation. It may preferable to provide the exclusions	Defined in Regulation 9(3), 9(4) and 9(5)
15.	KETRACO	Tariff review 10. (2)	It could be better to put a threshold of cost changes e.g. a certain % instead of indicating “substantive change”, otherwise clarify the same	The tariff review application shall be treated like any other tariff application and taken through all the necessary motions
16.	KETRACO	Offences 14. (1) a	It’s better if the fine is pegged to the amounts benefited by the person as a result of charging the tariff not approved by the authority.	Updated to twice the amount collected
17.	KENGEN	Interpretation	Define bundled tariff	The term not sighted in the regulations
18.	KENGEN	Control period	Control period is already specified in Energy Act section 165.	Regulation referenced to the Act
19.	KENGEN	Regulation 8 (3) (b)	The regulation refers to regulation 6(7) which appear to be referenced in error	Dropped, wrong reference
20.	KENGEN	Regulation 9 (6)	The regulation refers to regulation 6(1) which appear to be a referenced in error. The reference should	Dropped, wrong reference

			be regulation 6(2).	
21.	KENGEN	Regulation 10 (1)	EPRA should consider having a sample template of the proposed statement of tariffs and charges	Dropped, wrong reference
22.	KENGEN	Regulation 11 (3)	The regulation refers to regulation 6(1) which appear to be a referenced in error. The reference should be regulation 6(2).	Dropped, wrong reference
23.	KENGEN	Regulation 11 (3)	EPRA should consider having a sample template of the proposed tariff control compliance statement since it's a requirement for reporting and audit in the energy regulatory accounts regulation.	The Authority shall provide a template as a guide during reporting
24.	KENGEN	Explanatory schedule	Insert the missing references.	Updated accordingly
25.	KENGEN	Tariff Compliance Statement	Please provided a sample for the tariff compliance statement.	Repeated
26.	KENGEN		Formula with regard to CAPM, Xfactor and process of updating	Not sighted in the regulations
27.	INFROTRACK RESEARCH AND CONSULTING LTD		The tariff application and approval as per the regulations is complex for SMEs.	Comment well noted. To consider ways of simplifying to enhance understanding

28.	CIVIL SOCIETY		The purpose of the electricity tariff and Regulatory Accounts regulation is to ensure fairness and transparency. How does the Authority assess transparency?	EPRA to ensure to find ways to ensure presentations are understood by the public in order to receive valuable input.
29.	CIVIL SOCIETY		The electricity regulations provide for public hearings and invitation of expert knowledge. What is the outcome of the public hearing?	The Authority takes into consideration comments from the public in its final determination.
30.	CIVIL SOCIETY		“The Authority shall publish pass through costs charged on consumers periodically as set out in the Fourth Schedule”. What control does EPRA have over the pass-through cost? Is there return on the pass-through costs?	EPRA review pass through costs every month for FEC, FXA and WARMA and every six months for INFLA to ensure that utilities can fully recover legitimate and prudently incurred costs and consumers only pay for those costs prudently incurred by the utilities.
31.	CIVIL SOCIETY		On the section on offences, the fines and penalties are too lean.	Penalties revised.
32.	CIVIL SOCIETY		Allowing tariff review applications within the tariff control	Provision deleted to conform with three-year period set out in

			period is contrary to timeline set out in Act, allows a loophole in the framework and can be subject to abuse	the Act
33.	KTDA		Is the electricity tariff regulations applicable for the captive use generation?	Captive use generation will be guided by captive power policy that is under development. The electricity tariff regulations apply to: a) purchase or sale of electrical energy as a generator, importer, exporter, or retailer; or (b) Provision of transmission, distribution, and system operations services.
34.	KTDA		Where are costs such as ancillary services included in the tariff?	The Authority is undertaking an Ancillary services study that will recommend pricing mechanisms and computational models as well as suggest a tariff methodology that would best suit ancillary services power plants.

ENERGY (REGULATORY ACCOUNTS REGULATIONS), 2022

SNO	ORGANIZATION	SECTION	COMMENT	ACTION
1	KENGEN	Clause 7(1)b i.) Form and content of	The regulatory financial performance for the regulatory reporting period	Regulatory financial performance

		regulatory accounts	of each of the licensee's separate businesses and, in aggregate, of the licensee as per Second Schedule <ul style="list-style-type: none"> • Seek clarification on the definition of "Regulatory Financial Performance" • Does it mean the sectoral financial statements 	defined in the revised regulations
2		Clause 7(1)b iii.) Form and content of regulatory accounts	The fixed assets at the end of the regulatory reporting period of each of the licensee separate businesses as per the First Schedule <ul style="list-style-type: none"> • We need clarity on the basis of the Regulated Asset Base at the start of the year e.g. is it the acquisition cost or the Revalued amount. • The method and interval of Revaluation needs to be clear for all the entities in the sector. • There is a likelihood of having two asset registers i.e. one used for statutory accounts and another one used for Regulatory accounts because the classification of assets will vary depending on the set of accounts. This might eventually lead to inconsistencies. 	The Regulated asset base is measured at acquisition cost. Revaluation policies of licensees does not affect the RAB.
3		Clause 7(1)b v.) Form and content of regulatory account	"The cashflows of the licensee for the regulatory reporting period." <ul style="list-style-type: none"> • There is no specific schedule provided for the 	Discuss

			cashflows. • KenGen's proposal is for the Regulatory cashflow to be the same as the company's statutory cashflows.	
4		Clause 7(1) d.) iv.) Form and content of regulatory accounts	<p>"Regulatory accounts shall be accompanied by:</p> <p>iv) A report of the auditor on the regulatory accounts"</p> <p>Clarification; Are the Regulatory accounts similar to the Statutory accounts? • If no, the need for a report of the auditor on the regulatory accounts may lead to two audits or additional tasks to the Statutory auditor and additional costs to the organization • The additional costs of compliance will require to be factored in the tariff. There is also a likelihood of different opinions from the auditor based on the two reports i.e Statutory report Vis a Vis Regulatory report.</p>	<p>The two reports are for different users and premised different requirements. The regulator needs to have a different set of accounts kept in a prescribed format. Regulatory accounts and associated reports will solely be used for tariff setting, approval and monitoring.</p>
5		Clause 7(6) Form and content of regulatory accounts	<p>"regulatory accounts shall disclose sufficient information to permit users of regulatory accounts to understand the impact of these differences on the regulatory financial performance"</p> <p>• There is need for clarification on who are the users of the regulatory</p>	<p>Proposed to change users changed to Authority.</p>

			accounts	
6		Clause 8(3) Segmental statement of fixed assets	<p>“Where the dominant purpose or function of a fixed asset is to support a single business activity referred to in Regulation, or derives from such a business activity, that assets shall be allocated to that activity.</p> <p>KenGen offers two services;</p> <ol style="list-style-type: none"> 1. Electricity generation 2. Ancillary services <p>Both of these services should be considered when allocating the assets</p>	Is it possible to separate assets used for ancillary services from generation assets?
7		Clause 10(5) Cost allocations	<p>“The allocation of depreciation of fixed assets will reflect the usage of assets and will not necessarily reflect the balance sheet allocation of fixed assets under Regulation 10”</p> <ul style="list-style-type: none"> • There will be need for two assets registers. The regulatory accounts require allocation of fixed assets to be activity based and not function based. KenGen uses function based allocation. • Changing to activity based allocation will require change of the accounting module used hence additional costs 	Not change of accounting system but rather have two accounting systems which yes increases the cost of compliance
8		Clause 11(1) c.) Revenue	“Non-fuel power procurement tariffs”	Amended the regulations to

		allocations	<ul style="list-style-type: none"> • There is need for a better definition in order to reflect KenGen's Revenues i.e. Revenues from power generation. 	reflect revenues.
9		Clause 19 Commencement	<p>"These regulations commence upon their publication in the Gazette"</p> <ul style="list-style-type: none"> • The commencement period after publication in the Gazette should have a window e.g for one year. 	A transition period of one year provided.
10		First schedule	<p>Out for the Year (GWh) • Sales of heat</p> <ul style="list-style-type: none"> • Heat for own use • Need for clarity on the definition of the terms "sales of heat" and "heat for own use" 	To be discussed

**ANNEX VIII: DRAFT ENERGY (ELECTRICITY TARIFF) REGULATIONS 2023_28
FEB 2023**

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, 2023		
PART I: GENERAL PROVISIONS		
Short title.	1.	These Regulations may be cited as the Energy (Electricity Tariffs) Regulations, 2023
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</p>

		<p>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 to whom these Regulations apply;</p> <p><i>“Regulatory accounts”</i> means the prescribed system of accounts set out in the Energy (Electricity Regulatory Accounts) Regulations, 2023;</p> <p><i>“Regulatory Asset Base”</i> 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><i>“Tariff”</i> has the meaning assigned to it under the Act;</p> <p><i>“Tariff applicant”</i> or <i>“Applicant”</i> means the person who makes an application for tariff approval or review in accordance with these Regulations;</p> <p><i>“Tariff control”</i> means the process of tariff constraint specified in these Regulations;</p> <p><i>“Tariff constraint”</i> means the maximum allowable level for a tariff control measure;</p> <p><i>“Tariff control framework”</i> 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><i>“Tariff control measure”</i> means a financial indicator derived</p>
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		<p>from the books and records of a licensee used to indicate compliance with a tariff constraint; and</p> <p><i>“Tariff year”</i> 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 provide 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 any tariff undertake a public hearing in accordance with Regulation 11.
		<p>(2) In approving the tariffs, the Authority shall consider as applicable—</p> <ul style="list-style-type: none"> a) existing tariff policy or guidelines;

		<ul style="list-style-type: none"> 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.
		<p>(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.</p> <p>(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.</p>
		<p>(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.</p> <p>(b) The Authority may approve, reject or modify the required tariffs taking into account —</p> <ul style="list-style-type: none"> i) reasons and information submitted by the applicant to justify the tariffs; and

		<p>ii) comments from stakeholders and the public.</p> <p>c) The Authority shall take into account, and shall endeavour to procure, good quality evidence to inform its decisions.</p>
		(5) The tariff control period for approved tariffs shall be three years in accordance with the provisions of section 165 of the Act.
		<p>(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.</p> <p>(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.</p>
		(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, 2023.</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>

		<p>(a) the Capital Asset Pricing Model or any other justifiable model supported by other regulatory or academic authorities;</p> <p>(b) industry benchmarks;</p> <p>(c) evidence of relevant investor risks; and</p> <p>(d) the taxes payable on profits by the tariff applicant.</p>
Tariff Review	10.	(1) The Authority shall review the retail tariffs every three years in accordance with Section 165 (7) of the Act.
		(2) A licensee shall make a tariff review application not later than forty-five days before the tariff's proposed effective date.
		(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.
		(4) The Authority shall review and adjust electric power tariffs and tariff structures and investigate tariff charges, whether or not a specific application has been made for a tariff adjustment in accordance with Section 11(c) of the Act.
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> <p>(a) in at least one newspaper of wide circulation in Kenya;</p>

		<p>(b) in a newspaper having general circulation in the area where the proposed subject of the application is to be located; or</p> <p>(c) through any other form of mass media or communication.</p> <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.</p>
		(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		
Reporting	13.	<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>
Offences	14.	<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 twice the amount collected, and in any event the fine imposed shall not be less than one hundred thousand shillings. 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

		<p>imprisonment of not less than one year, or to both, in accordance with section 168 (1) (a) of the Act.</p> <p>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.</p> <p>d) fails to submit a tariff control compliance statement within the due date shall be liable to a fine of one hundred thousand shillings for every day the non-compliance persists, for a maximum of thirty days.</p> <p>e) submits a tariff control compliance statement that demonstrates failure to comply with the tariff control formulae, shall be liable to a fine of not less than one hundred thousand shillings.</p> <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> <p>(3) Any fines or penalties which are not paid shall be a civil debt recoverable summarily.</p>
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 | <input type="checkbox"/> | Distribution of electricity | <input type="checkbox"/> |
| Generation and sale of electricity | <input type="checkbox"/> | Retail supply or sale of electricity | <input type="checkbox"/> |
| Transmission of electricity | <input type="checkbox"/> | Export of electricity | <input type="checkbox"/> |
| Bulk supply of electricity | <input type="checkbox"/> | Import of electricity | <input type="checkbox"/> |
| System operator | <input type="checkbox"/> | | |

Purpose of Application: New Application Tariff Review (Please tick (ü) as appropriate)

Particulars of intended application:

Name of Applicant:

.....

Physical address:

.....
.....

Postal address:

.....
.....

Telephone:

Mobile phone:

Fax:

E-mail address:

.....

PIN:

VAT Registration:

.....

Name and details of contact person:

Name:

Physical address:

.....

Postal address:

.....

Telephone:

Mobile phone:

E-mail address:

.....

Website address:

.....

Position Held

.....

Legal status of applicant:

Indicate legal status of applicant (tick appropriately):

- a) Sole proprietorship
- b) Partnership
- c) Public Limited Liability Company
- d) Private Limited Liability Company
- e) Cooperative Union Society
- f) 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)*:

.....

.....

.....

Loans:

.....

.....

.....

(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

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):

.....

Sources of funding for the proposed project:

Share capital contribution (*specify foreign or local*):

.....

Loan capital (*specify source and provide evidence*):

.....

.....
.....
Others(specify):

.....
.....
.....
.....
Main current business activity of applicant:

.....
.....
.....
.....
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*):

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

Time plan for implementation of the project:

.....

.....

.....

Land use at the project site:

.....

.....

.....

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

.....

.....

.....

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

.....

.....

.....

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

.....

.....

.....

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.....

.....

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Impact on cultural

heritage.....
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Impact on
environment.....
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Impact on natural
resources.....
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Impact on
wildlife.....
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Response to comments by stakeholders (*attach an evaluation report and a response to comments*):
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.....

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:

.....
.....
.....

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

.....
.....
.....

Tariff charges and methodology

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

.....

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

.....

Indicate the planned investments in the first five years:

.....

Indicate the required rate of return:

.....

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:

.....

Results of verification for completeness:

.....

Date and newspaper in which application was advertised:

.....

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:

- a) Certified Copy of Certificate of Registration or Certificate of Incorporation and Memorandum and Articles of Association in case of a company (whichever is applicable);
- b) Valid Certified Form CR12
- c) Valid tax compliance certificate from the Kenya Revenue Authority;
- d) PIN certificate.
- e) Proof of Main Office Occupancy
- f) Audited financial statements and accounts for the last (3)three years prior to application
- g) Tariff Model
- h) Detailed Feasibility Study
- i) Environmental Impact Assessment Study from the National Environmental Management Authority
- j) Relevant approvals from Local Authorities
- k) Proof of Land ownership of project site
- l) Maps and drawings of project site
- m) Expression of Interest approval issued by the Cabinet Secretary (where applicable)
- n) Power Purchase Agreements or Power Sales Agreements (where applicable)
- o) Evaluation report and a response to comments by stakeholders

Tariff Review

- a) The application for tariff extension/review approval shall be accompanied by the following supporting documents:
- b) Tariff model
- c) Valid Certified Form CR12
- d) Valid Tax Compliance Certificate from the Kenya Revenue Authority;
- e) 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)	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:
	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
	The net costs of providing the services to which tariffs relate will include:
6 (3) (a)	The costs of procuring electric energy and standby electricity generating capacity,
	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,
	The costs of maintaining, renewing and replacing business assets, generally accounted for as depreciation,
	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.
	Less any other income arising from or otherwise reasonably attributable to the activities and assets of the licensee
8(2)(a)	Non-current business assets will generally include tangible fixed assets and software licences but exclude financial investments, purchased goodwill and other intangible assets unless the Authority otherwise agrees.
8 (2) (b)	The method should ensure that amounts deducted correspond

REGULATION	EXPLANATION
	to, or are computed on a consistent basis with, amounts included in the determinations of the control formulae for the relevant period.
8 (2) (c)	Consumer capital contributions would include capital grants and any capital component of connection charges.
10 (2)	To avoid undue asymmetrical risk for licensees/consumers.
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 theday 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:

.....

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

Dated thisday of 20

ANNEX IX: ACTION ON RECEIVED COMMENTS (Tariffs Regulations) _ 28
Feb 2023

PROPOSED COMMENTS/INPUTS
DRAFT THE ENERGY (ELECTRICITY TARIFFS)
REGULATIONS, 2022

S/No	DOCUMENT	SECTION	COMMENT	RESPONSES
1.	ELECTRICITY (GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY) TARIFF SETTING GUIDELINES	1.4 GENERAL PRINCIPLES	Amend No. xvi to read as "...When making such amendments, relevant stakeholders and the general public will be consulted"	Amended
2.		2.7 RETURN ON REGULATORY ASSET BASE	In the formulas for calculating Cost of Equity and Cost of Debt: <ul style="list-style-type: none"> • Define R_m • Explain the meaning of β_e • Explain how to get β_a • Show how to calculate DRP 	Explained the meaning of β_e and the formula for determining β_a Debt Risk premium is the return over and above the risk free rate that debt providers would require.
3.		3.1 GUIDING PRINCIPLES FOR TARIFF DESIGN	Amend no. v to read as "Access charges for the use of a transmission or distribution system shall be based upon extent of use or comparable charges for comparable use"	Amended accordingly
4.		Fuel Energy Cost	<ul style="list-style-type: none"> • Imports/exports should be left open or general 	Corrected

S/No	DOCUMENT	SECTION	COMMENT	RESPONSES
			<p>but should not be limited from Uganda only</p> <ul style="list-style-type: none"> Page 20 - replace Commission with Authority 	
5.		Foreign Exchange Rate Fluctuation Adjustment	Clarify/specify the “Company” in page 24	Clarified
6.		2.10 System Operator Revenue Requirements	The revenue requirement methodology seems to imply that the system operator will not be compensated for the investments the operator makes. Clarity is required on the assets of the system operator and the compensation of the assets.	The system operator is assumed not to own any assets. The transmission assets are owned by the transmission owner
7.		2 Determination of Revenue Requirement	The revenue requirement methodologies require clarity on the retreatment of tax. Tax is only included in the revenue requirement methodology for distribution and retail utility companies	

SNO	ORGANIZATION	SECTION	COMMENT	ACTION
1.	KETRACO	Part II-Tariff approval and review 6. 3(b)	Provide a clarification on what constitutes reasonable costs/ investments to be included in the tariff formulation. It may preferable to provide the exclusions	Defined in Regulation 9(3), 9(4) and 9(5)
2.	KETRACO	Tariff review 10. (2)	It could be better to put a threshold of cost changes e.g. a certain % instead of indicating “substantive change”, otherwise clarify the same	The tariff review application shall be treated like any other tariff application and taken through all the necessary motions
3.	KETRACO	Offences 14. (1) a	It’s better if the fine is pegged to the amounts benefited by the person as a result of charging the tariff not approved by the authority.	Updated to twice the amount collected
4.	KENGEN	Interpretation	Define bundled tariff	The term not sighted in the regulations
5.	KENGEN	Control period	Control period is already specified in Energy Act section 165.	Regulation referenced to the Act
6.	KENGEN	Regulation 8 (3) (b)	The regulation refers to regulation 6(7) which appear to be referenced in error	Dropped, wrong reference
7.	KENGEN	Regulation 9 (6)	The regulation refers to regulation 6(1) which appear to be a referenced in error. The reference should be regulation 6(2).	Dropped, wrong reference
8.	KENGEN	Regulation 10 (1)	EPRA should consider having a sample template of the proposed statement of	Dropped, wrong reference

SNO	ORGANIZATION	SECTION	COMMENT	ACTION
			tariffs and charges	
9.	KENGEN	Regulation 11 (3)	The regulation refers to regulation 6(1) which appear to be a referenced in error. The reference should be regulation 6(2).	Dropped, wrong reference
10.	KENGEN	Regulation 11 (3)	EPRA should consider having a sample template of the proposed tariff control compliance statement since it's a requirement for reporting and audit in the energy regulatory accounts regulation.	The Authority shall provide a template as a guide during reporting
11.	KENGEN	Explanatory schedule	Insert the missing references.	Updated accordingly
12.	KENGEN	Tariff Compliance Statement	Please provided a sample for the tariff compliance statement.	Repeated
13.	KENGEN		Formula with regard to CAPM, Xfactor and process of updating	Not sighted in the regulations

**ANNEX X: REGULATORY IMPACT STATEMENT (ELECTRICITY TARIFFS)
REGULATIONS, 2023**



**THE ENERGY (ELECTRICITY TARIFFS)
REGULATIONS, 2023**

(Pursuant to Sections 167 (1) (a) and 208 of the Energy Act, 2019)

REGULATORY IMPACT STATEMENT

FEBRUARY 2023

Issued by the Energy and Petroleum Regulatory Authority

THE ENERGY (ELECTRICITY TARIFFS) REGULATIONS, 2022

The Energy (Electricity Tariffs) Regulations, 2023 (**Regulations**) have been developed within the provisions of Section 167 (1) (a) and 208 of the Energy Act, 2019 (**Act**) and shall constitute Regulations to the Act. The Regulations will amongst others, provide guidance on the tariff control framework, providing a fair, transparent and data-driven methodology of determining tariffs for a sustainable electricity sector.

INTRODUCTION

Access to electricity is an essential input to the social, economic and political transformation of a country major and is a key determinant of sustainable growth and development. However, access to electricity in Kenya has been hindered by *inter alia*, high costs of power in the country. Affordable and sustainable supply of electricity is required to make Kenya a middle-income economy with improved standards of living and a high quality of life by 2030.

The Energy sector can enhance the country's economic growth through provision of competitively priced electricity, which is paramount for industrialization. It is recognized globally that the success of a country's developmental agenda depends on an adequate supply of sustainable and affordable energy, and this requires a robust policy and regulatory framework that enhances transparency and cost reflectivity in the calculation and determination of tariffs and ensures that socio- economic imperatives are in place to protect the vulnerable households.

Kenya's electricity sector is currently regulated by the Energy and Petroleum Regulatory Authority (**EPRA**) in accordance with the provisions of the Act. EPRA together with other stakeholders, undertook to develop the current Regulations to address gaps identified in the energy sector as relates to the setting, review and adjustment of tariffs and align the existing regime to the Act.

Presented herein is a Regulatory Impact Statement of implementation (**RIS**) of the Regulations.

BACKGROUND

EPRA established under the Act is responsible for economic and technical regulation of the electricity, renewable energy and petroleum sub sectors in Kenya. EPRA has the powers to set, review and adjust electric power tariffs and structures and investigate tariff charges pursuant to section 11(b) of the Act. Further, section 165(2) of the Act requires all tariffs charged for electrical energy supplied shall be just and reasonable.

Electricity is mainly consumed in the manufacturing, commercial, residential, power generation and street lighting. As a result, customers are essentially categorized into domestic consumers, small commercial and commercial and industrial consumers based on

their electricity consumption. This ensures tariffs charged on the individual consumption category are affordable.

The retail tariffs are designed to satisfy three policy objectives as highlighted below:

- i. The Economic Policy Objective of the retail tariffs is to achieve efficient resource allocation within the economy with consumers only paying for the costs prudently incurred by the utilities;
- ii. The Financial Policy Objective aims to ensure short- and long-term financial viability of sector utilities; and
- iii. The Social Policy Objective is to re-allocate costs amongst consumers with a view to safeguarding specific vulnerable consumer groups. This may require subsidies; however, the sum of Tariffs and Subsidies must be sufficient to cover the full cost of the sub-sector.

The design of tariffs involves the following steps:

- i. Demand forecasting for the bulk and retail markets informed by an understanding of the social, economic, and political environment and their impact on the key parameters driving demand
- ii. Generation and transmission planning to meet the forecasted demand. This involves long range planning of the mix of generating capacity in terms of technology, and preferred developer: whether Public or Private Sector. It also involves planning for the transmission and distribution network development in order to enable the conveyance of the power generated to the final consumer.
- iii. Determination of the sector revenue requirements based on forecasts of costs likely to be incurred for generation, transmission, distribution and supply of power.
- iv. Determination of marginal costs of generation, transmission, distribution and retailing; based on approved pricing periods.
- v. Allocation of total revenue requirement among approved customer classes on the basis of the marginal costs and price sensitivity
- vi. Computation of initial retail tariff proposals
- vii. Sensitivity analysis of the proposed retail tariffs
- viii. Public exposure of the proposed tariffs, leading to public debate and hearing
- ix. Determination of the final retail tariffs

In light of these requirements, EPRA has developed the Regulations to clearly set out the tariff regulatory regime in Kenya and the principles, procedures and processes requiring observation by tariff-controlled licensees. The Regulations in effect address the challenges in the current tariff control framework such as inefficiency of the tariff-controlled licensees who affect the financial sustainability, operational and organisational independence, as well as lack of transparency and cost reflectivity in the calculation and determination of tariffs.

OBJECTIVES OF THE REGULATION

The objectives of the Regulation are the:

1. Facilitation of cost reflective tariff regime by providing reasonable assurance that efficient, well managed and appropriately financed tariff-controlled licensees receive revenues that will cover the net costs of providing the services to which the tariffs relate.
2. Enhanced economic and reputational incentives on the tariff-controlled licensee to deliver better outcomes.
3. Satisfaction of the economic, financial and social policy considerations of tariffs.
4. Enhanced competition and avoid abuse of dominant position or undue restriction of competition by any licensee.
5. Increased transparency and consistency in the tariff control framework.

REGULATORY ALTERNATIVES

Do nothing option

This option assumes a 'business-as-usual' scenario. In the current situation however, there is a lack of transparency and clarity of approach in the electricity sector as it relates to tariffs. Without laid out assurances, tariff-controlled licensees lack clarity on how to achieve cost reflective tariff and remain appropriately financed to receive revenues that will cover the net costs of providing the services to which the tariffs relate. Without a defined tariff approval process, transparency is limited, and consumers do not have clear redress in the absence of laid down procedures and standardized requirements for tariff setting, review and adjustment. A lack of penalties for failure to adhere to requirements is also a challenge in the country. The Regulations are therefore an important addition in the regulatory framework for tariff control to address the challenges currently facing the sector

Self-regulation

Another alternative to the Regulation is self-regulation. In this alternative, major stakeholders in the electricity sector would come together to set common principles that offer mutual benefits to all. The working of such a system should also be transparent and accessible to the consumers. The system should also have credible and adequate sanctions to support the agreed decisions. To be realized all the players would have to engage in detailed negotiations where all parties agree that their interests are protected. This approach would be effective where all stakeholders have formed a strong association or a common discussion

platform. In addition, the government enters into a negotiated agreement with the players to come up with self-regulatory mechanisms. In such a system, it is envisaged that consumers should have easy access to complaint launching processes.

However, self-regulatory systems run the risk of not adequately focusing on the interest of the consumers, especially in light of the differing objectives of tariff policy. Further, without an overarching regulatory body offering checks and balances, in the absence of mechanisms of censuring non-compliant members, self-regulation would likely lead to inequitable consequences.

The most suitable regulatory option is the Regulations. Importantly, the Act envisages that in the case of tariffs, regulatory oversight would be required and provides that the Cabinet Secretary may upon recommendation of EPRA make such regulations as may be necessary or expedient for the achievement of the objectives and purposes of the Energy Act and in particular, for *inter alia*, prescribing the form and manner in which any application for review or adjustment of tariffs is to be made and the procedure for the review or adjustments of tariffs. These Regulations therefore provide a unified mechanism of having all the players comply with the regulatory requirements in the electricity sector thus providing a framework for ensuring competitive tariffs, and sustainable and affordable supply of electricity.

COST AND BENEFITS OF THE REGULATION

Economic impacts

Goal 7 of the Sustainable Development Goals (SDG) provides for access to affordable, reliable, sustainable, and modern energy for all. This SDG goal is reflected in Kenya's target of realizing Universal Access to electricity. The Regulations through the facilitation of cost reflective tariff regime will aid in ensuring that tariff rates are just, reasonable, and affordable to the consumers, thereby reducing the cost of electricity. This will have a positive impact as many customers are able to afford electricity thus enhancing access to universal access to electricity. Additionally, in ensuring that tariffs are affordable to the consumers, other stakeholders from the supply side are also impacted positively through effective allocation of resources. This ensures that costs incurred are reduced and together with the economic and reputational incentives, the licensees are able to meet revenue requirements and operate efficiently and deliver better outcomes.

Social impacts

The social benefits of the Regulations include the promotion of access to electricity in line with Sustainable Development Goal 7, which aims to 'ensure access to affordable, reliable, sustainable and modern energy for all'. The Regulation also advances Kenya's goal of achieving universal electrification. The public participation framework laid out in the Regulations for the conduct of public hearings following tariff review applications is essential

for the building a critical mass of knowledgeable and aware citizens and fulfills the human right to public participation and access to information.

Environmental impacts

The Regulations will lead to a better regulated and more competent and accountable electricity sector and enhance electricity access in the country. Access to affordable and sustainable supply of electricity from renewable sources reduces the reliance on fossil fuels which are associated with negative environmental impacts.

Cost of implementation of the Regulations

The Regulations propose that the public hearing for a tariff review application shall be at the cost of the applicant, and these are primarily costs of publication of the hearing in any form of mass media or communication with reach to most of the affected parties. Licensees will also incur minimal costs in meeting the reporting requirements of the regulations.

EPRA as regulator will incur oversight costs including in the deployment of Information Technology Systems which shall be used to ensure efficiency in the monitoring and reporting as required in the Regulations. These costs shall be borne through funds available to the EPRA from sources provided for in Section 20 of the Act. The enactment of these Regulations will not result in any additional resource allocation from the government.

CONCLUSION AND RECOMMENDATION

This RIS has analysed the available options of no regulation and self-regulation. EPRA recommends adoption of the recommended Regulations as opposed to the available alternatives as the alternatives will not allow for achievement of the set objectives for the good of the electricity sector in Kenya.

Once adopted, the Regulations will allow EPRA to streamline the electricity sector by providing a framework for tariff control. The current regulatory instrument was developed through a participatory process involving all relevant stakeholders in the electricity sector including consumers, investors, and licensed entities.

IMPLEMENTATION AND REVIEW

EPRA will implement the Regulations through gazettelement in the Kenya Gazette. Review shall be done as per the provisions of the Statutory Instruments Act No. 23 of 2013 and in consultation with stakeholders.

ANNEX XI: REGULATORY IMPACT STATEMENT (ELECTRICITY
REGULATORY ACCOUNTS) REGULATIONS, 2023



THE ENERGY (ELECTRICITY REGULATORY ACCOUNTS) REGULATIONS, 2023

(Pursuant to Sections 167 (1) (d) and 208 of the Energy Act, 2019)

REGULATORY IMPACT STATEMENT

FEBRUARY 2023

Issued by the Energy and Petroleum Regulatory Authority

THE ENERGY (ELECTRICITY REGULATORY ACCOUNTS) REGULATIONS, 2023

The Energy (Electricity Regulatory Accounts) Regulations, 2023 (**Regulations**) have been developed within the provisions of Section 167 (1) (d) and 208 of the Energy Act, 2019 (**Act**) and shall constitute Regulations to the Act. The Regulations will, amongst others, prescribe reporting procedures and requirements for licensees for purposes of achieving uniformity and consistent reporting of elements that are required for tariff setting, approval, and monitoring.

INTRODUCTION

Ensuring proper electricity regulatory accounts is instrumental in keeping the electricity market in order, protecting the interest of investors, enterprises, users (consumers) and public interest, ensuring the safe and reliable operation of electricity, and facilitating healthy development of the industry.

Regulatory accounting has been adopted in many countries all over the world especially for application by the regulatory authorities over the regulated utilities to address the challenge of information asymmetry. A sustainable well-functioning electricity system requires accurate, timely, verifiable, and comprehensive accounting data to identify and categorize the costs of providing service and provide a basis upon which to calculate the level of revenue needed to cover all the utility's costs including a return on investment.

Kenya's electricity sector is currently regulated by the Energy and Petroleum Regulatory Authority (EPRA) in accordance with the provisions of the Act. EPRA together with other stakeholders, undertook development of the Regulations to address gaps identified in the energy sector and ensure the regulatory framework is aligned with the Act.

Presented herein is a Regulatory Impact Statement of implementation (RIS) of the Regulations.

BACKGROUND

Providing reliable service safely and at economically efficient rates are crucial functions of licensees under the Act. This is further dependent upon the ability of the licensees to obtain revenues, through regulated rates, that are sufficient, but not excessive, to build, operate and maintain the licensees' services. The regulator's role is to ensure that the licensees' rates satisfy this need while protecting consumers from waste and inefficiency.

EPRA, being the regulator, is responsible for economic and technical regulation of the electricity, renewable energy, and petroleum sub sectors in Kenya. The Act requires where a person holds a licence or licences, the accounts of each undertaking under each licence shall, unless specifically exempted by EPRA be subject to the provisions of the Act and be kept separate and distinct and in the manner and form prescribed by the Authority. EPRA is

therefore obligated to ensure that there is accurate, timely and transparent accounting to ensure that prudent costs are transferred to consumers.

EPRA's regulatory role is further justified by the fact that the Energy sector can enhance the country's economic growth through provision of competitively priced electricity, which is paramount for industrialization and sustainable development. The country's development agenda depends on an adequate supply of sustainable and affordable energy as energy is considered a major infrastructural enabler.

EPRA has thus developed the Regulations to prescribe accounting procedures and requirements for licensees for the purpose of achieving accurate and transparent reporting.

OBJECTIVES OF THE REGULATION

The objectives of the Regulations are to:

1. Prescribe the structure, duration and manner of the accounting and keeping of other records to effect accurate and coherent data concerning the licensee's transactions to enable the regulator to ensure that the utility performs its essential functions at a reasonable cost to customers.
2. Facilitate a cost-reflective tariff regime by providing reasonable assurance that efficient, well managed and appropriately financed licensees receive revenues that will cover the net costs of providing the services to which the tariffs relate.
3. Enhance economic and reputational incentives on the licensee to deliver better outcomes and set out a regime for penalties for underperformance.
4. Increase transparency and consistency in the electricity sector.

REGULATORY ALTERNATIVES

Do nothing option

This option assumes a 'business-as-usual' scenario. In the current situation, barriers exist in the country that have hindered the acquisition of accurate and coherent data concerning the licensee's transactions to enable EPRA to ensure that the utility performs its essential functions at a reasonable cost to customers. These barriers include the lack of laid down procedures and standardized requirements setting out how the accounts of each undertaking under each licence are kept and the manner and form of regulatory accounting in Kenya general, and the Regulations address this challenge facing the sector.

Self-regulation

Another alternative to the Regulation is self-regulation. In this alternative, major stakeholders in the electricity sector from both the demand and supply side would come up

to set common principles that offer mutual benefits to all. Self-regulation has to incorporate the specific interests of the consumers and other relevant stakeholders in the electricity sector. However, self-regulatory systems may be a challenge for the protection of consumer interests in the absence of complaint launching processes and dependence on licensees on their own volition, offer transparency and accessibility of their records, data and information. Self-regulation also requires credible and adequate sanctions to support the agreed decisions and to be successful, all the players would have to engage in detailed negotiations where all parties agree that their interests are protected.

This approach would be effective where all stakeholders have formed a strong association, or a common discussion platform and the government enters into a negotiated agreement with the players to come up with self-regulatory mechanisms. In Kenya, the self-regulation mechanism is not viable considering that there is no existing umbrella organizations that represent all the players and provide education, training and skills development to all players which is a requirement for self-regulation. Similarly, there are no mechanisms of censuring non-compliant members. Regulation thus resolves these challenges of self-regulation and provides a more robust opportunity to ensure a balance between rewards for outperformance and penalties for underperformance.

COSTS AND BENEFITS OF THE REGULATION

Economic impacts

The Sustainable Development Goal 7 that provides for access to affordable, reliable, sustainable and modern energy for all is in line with Kenya's target of realizing universal access to electricity. The Regulations through the facilitation of an effective electricity accounting regime will aid in ensuring that there is transparency and addressing the challenge of information asymmetry. While it adds costs, it enables a transparent mechanism of determining prudent costs to be transferred to consumers, which in the long run benefits the end consumers as there is a mechanism of holding the utilities into account and rewarding them for good performance.

Social impacts

The social benefits of the Regulations include the promotion of access to electricity in line with Sustainable Development Goal 7, which aims to 'ensure access to affordable, reliable, sustainable and modern energy for all'. The Regulation also advances Kenya's goal of achieving universal electrification and enables transparency, access to information, and accountability in the electricity sector which is important for social development.

Environmental impacts

The Regulations will lead to a better regulated and more competent and accountable electricity sector and enhance sustainable and environmentally friendly electricity access in the country. The accounting framework set out in the Regulations requires submission of

licensee reports on corporate governance, business review among others, with a bearing on environmental performance.

Cost of implementation of the Regulations

The Regulations impose reporting costs on licensees caught within its ambit. However, the Regulations allow EPRA to exempt a licensee from the requirements of the Regulations in where it is satisfied with the form and manner in which the records and accounts of the licensee are kept and audited.

EPRA as regulator will incur oversight costs including in the deployment of Information Technology Systems which may be used to ensure efficiency in the monitoring of reporting, reviewing audit reports as well as pre-qualifying auditors for the purposes of auditing the regulatory accounts once every year. These costs shall be borne through funds available to the EPRA from sources provided for in Section 20 of the Act. The enactment of these Regulations will not result in any additional resource allocation from the government.

CONCLUSION AND RECOMMENDATION

This RIS has analysed the available options of no regulation and self-regulation. EPRA recommends adoption of the recommended Regulations as opposed to the available options as these options will not allow for achievement of the set objectives to better the electricity sector in Kenya.

Once adopted, the regulations will allow EPRA to streamline the electricity sector by providing a framework for electricity accounting. The current regulatory instrument was developed through a participatory process involving all relevant stakeholders in the electricity sector including consumers, investors and licensed entities. In addition, the regulations provide a framework for promotion of renewable energy technology.

IMPLEMENTATION AND REVIEW

EPRA will implement the Regulations through gazettelement in the Kenya gazette. Review shall be done as per the provisions of the Statutory Instruments Act No. 23 of 2013 and in consultation with stakeholders.