

THE ENERGY ACT

(No. 12 of 2006)

IN EXERCISE of the powers conferred by sections 63 and 110 of the Energy Act, 2006, the Minister for Energy makes the following Regulations:—

THE ENERGY (ELECTRICITY LICENSING) REGULATIONS,
2012

1. These Regulations may be cited as the Energy (Electricity Licensing) Regulations, 2012.

Citation.

2. These Regulations shall apply to any person who engages or intends to engage in the generation, transmission, distribution and supply of electrical energy in Kenya.

Application.

3. In these Regulations, unless the context otherwise requires —

Interpretation.

“ancillary services” means the services required to facilitate the delivery of electrical energy to consumers at stable frequencies and

voltages, including frequency regulation or control, spinning reserves, voltage and reactive power support, black start and load shedding facilities;

“application” means an application for a licence, permit or transfer of a licence or permit, renewal or modification of a licence or permit under the Act, and references to an application in respect of a licence or permit shall be construed accordingly;

“connection point” means the agreed point of supply established between a network service provider, electric power producer or consumer as appropriate;

“electricity distribution or supply licence or permit” means a licence or permit granted to a public or local authority, company, person or body of persons, in these Regulations referred to as a public electricity supplier, to distribute and/or supply electrical energy within the area defined therein, and such licence or permit shall also entitle the public electricity supplier to receive supply in bulk from an electric power producer or from another public electricity supplier;

“electricity generation licence or permit” means a licence or permit granted to a public or local authority, company, person or body of persons, in these Regulations referred to as an electric power producer, to generate electrical energy for his own use or to supply such electrical energy to another electric power producer or public electricity supplier within the area described therein;

“transmission licence” means a licence granted or to be granted to a public or local authority, company, person or body of persons to operate, manage or control facilities consisting of high voltage electric supply lines for the movement of electrical energy in bulk from and between electric power producers to public electricity suppliers and large consumers within the area described therein;

“Grid Code” means the grid, distribution or metering codes designed to facilitate the development, operation and maintenance of an efficient, co-ordinated and economical Kenyan electric power system by specifying to all parties connected to that system their technical and procedural obligations;

“licence” means a document or instrument authorising any person to import, export, generate, transmit, distribute and/or supply electrical energy, in the manner described in such document or instrument;

“licensee” means a person authorised by a licence or permit to import, export, generate, transmit, distribute and/or supply electrical energy;

“network services” means electrical energy transmission or distribution services, including the ancillary services that are necessary to maintain voltages and frequency within the agreed limits;

“permit” means an authorisation granted to a person to engage in the generation or distribution of electrical energy of a capacity that does not exceed 3,000 kW;

“prudent operating practice” means the exercise of a degree of skill, diligence, prudence and foresight that would reasonably be expected from licensees under conditions comparable to those applicable to the relevant undertaking consistent with applicable laws, regulations, licences or permits, Codes, reliability, safety and environmental protection, determined by taking into account factors such as the relative size, duty, age and technological status of the relevant undertaking and the applicable laws, regulations, licences or permits and Codes;

“transfer” means a transfer of licence or permit granted or to be granted under section 34 of the Act.

4. (1) An application shall be—

Form and manner of application.

- (a) made in the form set out in the First Schedule and shall contain the information required therein and be accompanied by the information and documents specified in the Second Schedule;
- (b) addressed to the Commission, signed and dated by or on behalf of the applicant, stating, where the application was signed and specifying the capacity of the signatory; and
- (c) submitted in an electronic format together with three paper based copies, delivered or sent by prepaid post to the Commission at its principal office.

5. Where an application is in respect of a licence or permit for electric power, the application shall be accompanied by the relevant additional information and documents specified in the Third Schedule.

Additional information and documents.

6. (1) An application for a licence shall be accompanied by a non-refundable fee of ten thousand shillings payable to the Rural Electrification Authority.

Application fees.

(2) An application for a permit shall be free of charge.

7. (1) The applicant shall, fifteen days before making the application to the Commission, publish and serve a notice of application in accordance with section 28 (2) and (3) of the Act.

Notice of application.

(2) The notice of application referred to in paragraph (1) shall—

- (a) indicate the date that the intended application is to be made;
- (b) contain a description of the nature and location of the proposed undertaking;
- (c) inform members of the public the date from which the application may, subject to the limits of commercial confidentiality, be inspected at the offices of the applicant or the Commission; and
- (d) invite the persons, who may be directly affected or are in the areas that are likely to be affected by the undertaking, who object the grant of the licence or permit, whether on personal, environmental or other grounds, to lodge with the Commission an objection, in writing, setting out the grounds

the of objection, within thirty days from the date of the application as stated in the notice and forward a copy of such objection to the applicant.

Objection to grant
of licence or permit.

8. (1) Where a person objects to the grant of a licence or permit applied for under the Act, the Commission shall, on the request of the applicant or an objector, hold a hearing and give, both the applicant and the objector, a notice of the hearing:

Provided that, the Commission may refuse to hold a hearing if in its opinion the objection is of a trivial or vexatious nature.

(2) The Commission may, on its own motion, from initiating, hold a hearing in relation to the grant of any licence or permit after giving the applicant and any objector notice of the place and time of the hearing.

Objection hearing.

9. (1) The Commission may hear any objections in public, at the time and place specified in a notice given to the applicant and to every objector, at least fifteen days before the hearing date.

(2) The hearing shall be conducted in accordance with procedures issued by the Commission, and the duration of the hearing shall not be considered as part of the licence or permit processing period specified in section 30(2) of the Act.

Decision of the
Commission.

10. (1) The Commission may, after holding a hearing, reject an objection, accept an objection or direct the applicant to amend the application or provide additional information regarding the application and communicate its decision regarding the objection to the parties to the objection within thirty days after the hearing.

(2) Where the Commission has—

- (a) rejected an objection, the Commission shall communicate its decision on the application for a permit or licence within ninety days after the rejection of the objection;
- (b) accepted an objection, the Commission shall reject the application for a licence or permit, and inform the applicant, in writing, of its reasons for the rejection within thirty days after the hearing; or
- (c) directed that the application should be amended or requested for additional information, the applicant shall amend the application or provide the additional information within fifteen days of receiving the directions and the Commission shall reconsider the application and communicate its final decision on the objection within ninety days.

Invitation
applications for
licence or permit.

11. (1) The Commission may, in accordance with section 29 of the Act, invite applications for a licence or permit under the Act.

(2) The invitation for application under paragraph (1) shall specify—

- (a) details of the criteria and schedule for the awarding the licence or permit;

- (b) manner of submission of applications by bidders;
- (c) additional information that should accompany the application, and
- (d) criteria for assessment and award of licence or permit by the Commission.

12. The Commission shall, on receipt of an application, note thereon the date of its receipt and shall within seven days thereof send to the applicant an acknowledgement stating the date of receipt.

Acknowledgement of application.

13. The Commission may, after scrutinizing an application, require an applicant to furnish it, within fourteen days, with such additional information or particulars or documents as may be necessary for the purpose of dealing with the application.

Calling for additional information.

14. If an application is complete and is accompanied by the requisite information, particulars and documents and the applicant has complied with all the requirements for making the application the Commission shall notify the applicant that the application is materially complete in all respects and shall be processed within ninety days as provided in section 30(2) of the Act.

Notifying the due filing of the application.

15. The Commission shall, in granting or rejecting an application for a licence or permit, consider—

Factors to be considered in granting an application.

- (a) the impact of the undertaking on the social, cultural or recreational life of the community;
- (b) the need to protect the environment and to conserve the natural resources in accordance with the Environmental Management and Coordination Act, 1999;
- (c) land use or the location of the undertaking;
- (d) the economic and financial benefits to the country or area of supply of the undertaking;
- (e) the economic and energy policies in place from time to time;
- (f) the cost of the undertaking and the financing arrangements;
- (g) the ability of the applicant to operate in a manner designed to protect the health and safety of users of the service for which the licence or permit is required and other members of the public who would be affected by the undertaking;
- (h) the technical and financial capacity of the applicant to render the service for which the licence or permit is required;
- (i) any representations or objections made under Regulation 8;
- (j) the proposed tariff offered, and
- (k) any other matter that would, in the opinion of the Commission, have a bearing on the undertaking.

No. 8 of 1999.

16. (1) The Commission shall inform the applicant of the grant of a licence or permit and specify the conditions to be satisfied by the applicant including the fees to be paid to the Kenya Rural Electrification Authority for the grant of the licence or permit.

Notice of grant of licence or permit and applicable fees.

(2) The applicant shall pay the fees specified in second column of the Fourth Schedule, for the licence or permit of the description specified in first column, within thirty days of the grant of the licence or permit.

(3) A licensee shall pay the fees specified in the second column of the Fourth Schedule for the renewal, transfer or modification of any licence or permit of the description specified in second column.

Form of licence or permit.

17. The Commission shall issue a licence or permit in the form set out in the Fifth Schedule.

Date of commencement of licence or permit.

18. A licence or permit issued under these Regulations shall come into operation on the date of its issue, or on such other date as may, on the request of the licensee, specified in the permit.

Suspension or revocation of the licence or permit

19. (1) Notwithstanding an order issued or a sanction, penalty or fine imposed by the Commission, a licence or permit issued under these Regulations or the Act may, be suspended or revoked where the Commission is satisfied that the licensee is not operating in accordance with the terms and conditions of the licence or permit.

(2) The Commission shall give a notice of not less than thirty days to the licensee requiring the licensee to show cause why the licence or permit should not be suspended or revoked.

(3) A notice issued to the licensee shall clearly state the grounds on which it is proposed to suspend or revoke the licence or permit.

(4) The Commission shall, before suspending or revoking a licence or permit, give the licensee an opportunity to be heard.

(5) Where the Commission suspends or revokes any licence or permit, either in whole or in part, it shall give notice by public advertisement of such suspension or revocation within thirty days of the revocation.

Appeals

20. Any person aggrieved by a decision or order of the Commission may, within thirty days of communication to him of the order or decision appeal to the Energy Tribunal established under section 107 of the Act.

FIRST SCHEDULE

(r. 4)

FORM OF APPLICATION

APPLICATION IN RESPECT OF A LICENCE OR PERMIT FOR THE
GENERATION*, TRANSMISSION*, DISTRIBUTION* AND/OR SUPPLY* OF
ELECTRICAL ENERGY

(* delete undertaking if it does not apply)

UNDER THE ENERGY ACT, NO 12 OF 2006

GENERAL PARTICULARS

1. State

(1) name and address of applicant in full; in the case of a partnership or other joint venture (other than a body corporate), give the names and addresses of each party concerned

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(2) name, address and telephone number of person to whom correspondence or enquiries concerning the application should be directed

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(3) whether the application is an application for licence, permit, transfer, renewal or modification of licence or permit

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(4) the date from which the licence, permit, transfer, renewal or modification of licence or permit is desired to take effect

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2. (1) State whether the applicant is a public limited company, private limited company, overseas company, other body corporate, partnership, unincorporated association, sole trader or other entity (and in the last case give particulars of the legal status).

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(2) If the applicant is a body corporate, state—

(a) the jurisdiction under which it is incorporated
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(b) if applicable, its registered number
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(Attach copies of Certificate of Registration, Certificate of Incorporation, Memorandum and/or Articles of Association where applicable)

(c) the full names and addresses of its current directors
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(d) the name and registered office of any holding company (within the meaning of section 154 of Cap 486) of the applicant
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(3) If the applicant is neither a body corporate nor a sole trader, give the name(s) and address(es) of the person or persons in whom effective control of the applicant rests.
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(4) Where any person (other than a person whose name is given at paragraph 2(2)(d) or paragraph 2(3) above) holds 20 per cent or more of any class of the shares of the applicant, give the name and address of each such person, specifying in each case the number of shares so held and the percentage of the aggregate number of shares of that class represented thereby.
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(5) Give particulars of any licences or permits under the Act held, applied for (whether or not successfully) or intended to be applied for by the applicant or (so far as is known to the applicant) by any person who is a related person in relation to the applicant.

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MODIFICATION OF THE CONDITIONS OF LICENCE OR PERMIT

3. If the application is for a licence or permit describe-

(1) any modification requested to any of the general conditions for the type of licence or permit; and

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(2) the grounds on which the applicant believes that-

(a) any such modification is requisite to meet the circumstances of the particular case;

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and

(b) any such modification is such that-

(i) the licence or permit holder would not be unduly disadvantaged in competing with other holders of licence or permit of that type;

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and

(ii) no other holder of a licence or permit of the same type would be unduly disadvantaged in competing with other holders of such licences or permits (including the applicant).

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 4. This application has been made and signed by the person(s) whose particulars are specified in paragraph 4(1) and on the date specified in paragraph 4(2) herebelow.

(1) Name(s) and designation(s) of person(s) signing the application:-

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 (2) Date of application:

SECOND SCHEDULE

(r. 4)

DOCUMENTS TO ACCOMPANY APPLICATION

Interpretation

1. In this Schedule -

"annual accounts" has the meaning given by Cap 486;

"auditors' report" means a report prepared under Cap 486;

"Cap 486" means the Companies Act of the Laws of Kenya;

"company" means a company within the meaning of Cap 486;

"competent engineer" means a registered engineer in accordance with cap 530;

"group accounts" means such accounts as are provided by section 150 (1) of the Companies Act (Cap. 486);

"holding company" and "subsidiary undertaking" have the meanings given by the Companies Act (Cap. 486);

Financial Information

2. Where the applicant is a company, the documents specified in sub-paragraph (a) shall be submitted, and, if the applicant is a subsidiary undertaking, additional documents

specified in sub-paragraphs (b) shall be submitted, and, if applicable, those specified in sub-paragraph (c) below —

(a) Copies of—

- (i) the most recent audited annual report and accounts of the applicant in respect of which an auditors' report has been prepared, together with that auditors' report;
- (ii) the audited annual report and accounts of the applicant for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) above relate, together with the appropriate auditors' reports; and
- (iii) such interim accounts and management accounts (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraphs (a) and (b) above.

(b) Copies of—

- (i) the most recent audited annual accounts in respect of the group of which the subsidiary undertaking forms part and in respect of which an auditors' report has been prepared, together with that report;
- (ii) the audited annual accounts in respect of that group for the two financial years preceding that to which the accounts referred to in sub-paragraph (a) above relate, together with the appropriate auditors' reports; and
- (iii) such interim accounts and management accounts for that group (whether audited or not) as may have been prepared in respect of a period more recent than that covered by any of the documents specified in sub-paragraphs (a) and (b) above.

(c) If the documents specified in sub-paragraph (2) above do not include the consolidated audited annual accounts for any holding company or subsidiary undertaking of the applicant established outside Kenya, copies of such accounts, together with any auditors' reports, as indicate the financial state of affairs of the group in question—

- (i) at the time of the application; and
- (ii) at the end of each of the three financial years preceding that time.

(d) Where the applicant is not a company, such accounts and other information as indicate the financial state of affairs of the applicant and its profit and loss, and the statements for the most recent period, together with copies of the latest audited annual accounts where such accounts have been prepared, and of any person in whom effective control of the applicant resides—

- (i) at the time of the application; and
- (ii) at the end of each of the three financial years preceding that time.

(e) Where any of the documents mentioned in paragraph 2 or, where applicable, paragraph 3 above cannot be supplied, an explanation of why they cannot be supplied together with such financial information to the like effect as can reasonably be supplied.

(f) A statement giving particulars of financial projections, sources of finance and capital proposed to be expended, as will, in conjunction with such information

and documents as is provided in accordance with paragraphs 2, 3, or 4 above, indicate whether the applicant would be likely to be able to finance the activities authorised by his licence or permit if the application were granted.

Proposed business

- (g) An outline statement of the business proposals, for that business of the applicant to which the application relates, for the next five years including annual forecasts of costs, sales and revenues and project financing, stating the assumptions underlying the figures provided. (The statement of the first year's forecasts of costs, sales and revenues and project financing to be broken down on a month by month basis.)
- (h) Details of any expected subsequent substantial capital outflows including major decommissioning costs.
- (i) Estimates of net annual cash flows for subsequent periods sufficient to demonstrate the financial security and feasibility of the project(s) to which the application relates.

Expertise of applicant

- (j) A statement giving such particulars of the applicant, and of any sub-contractors or other persons on whose expertise the applicant proposes to rely, as may indicate whether the applicant has or will acquire the necessary skills to undertake the activities in respect of which the application is made.
- (k) The report of a competent engineer on the proposed undertaking.

Environmental Approvals

3. (1) Unless expressly exempted by the Commission in consultation with National Environmental Management Authority, the applicant shall, in respect of the undertaking for which the application is made, provide copies of any of the following documents issued by National Environmental Management Authority:

- (a) Environmental Impact Assessment Licence; or
 - (b) Acknowledgement of receipt of Environmental Audit Report.
- (2) Without prejudice to, and in the absence of either of the documents contemplated in, paragraph (1), the applicant—
- (a) may submit his application accompanied by a scoping report for the Environmental Impact Assessment of the undertaking approved by the National Environmental Management Authority, and
 - (b) shall use his best endeavours to obtain the Environmental Impact Assessment Licence before his application is approved by the Commission.

THIRD SCHEDULE

(r. 5)

PART I—ELECTRIC POWER GENERATION

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A GENERATION LICENCE OR PERMIT

1. The following information and documents shall accompany application for a generation licence or permit—

- (a) A sufficient description adequately specifying the actual or proposed location of each generating station operated or intended to be operated under the licence or permit if granted, and the description must be sufficient to make clear the nature and extent of the undertaking or proposed undertaking, and enable the areas, location or premises concerned to be adequately and readily identified by map or by any other convenient means.
- (b) A statement of—
 - (i) the number of generating plants or stations operated or to be operated;
 - (ii) a description of how each of those plants or stations shall, in each case, be fuelled or driven;
 - (iii) the date when any proposed generating plants or stations are expected to be commissioned;
 - (iv) the maximum power (MW, MVA, MVAR) for each of the next five years expected to be available from each generating plant or station at any one time in each of the next five years and the aggregate power (MW, MVA, MVAR) expected to be available from each generating plant or station during any year, excluding in each case such wattage as is expected to be consumed at the station;
 - (v) the efficiency of each mode of generation;
 - (vi) the expected life of each generating plant or station;
 - (vii) for each generating plant or station for each of the next five years, the numbers of generating units and the capacity of each generating unit; and
 - (viii) particulars of the entity or entities to whom the applicant intends for each of the next five years to provide electricity and particulars of the distribution of that electricity, including details of the electric supply lines to be constructed.

(c) A statement of the extent (if any) to which the applicant considers it necessary for powers under section 54 of the Act (including compulsory acquisition of land) to be given through the licence or permit for which the application is made.

PART II—ELECTRIC POWER TRANSMISSION

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A TRANSMISSION LICENCE

1. The following information and documents shall accompany application for a transmission licence—

- (a) A sufficient description adequately specifying the actual or proposed locations of the electric supply lines and electrical plant constituting the intended transmission system, and the area to which the application relates and the description shall be sufficient to make clear the nature and extent of the undertaking, and enable the areas, location or premises concerned to be adequately and readily identified by map or by any other convenient means.
- (b) An indication of the extent to which, and the locations in which, those electric supply lines are or will be placed underground.
- (c) An identification of the voltages of the electric supply lines forming part of the intended transmission system.
- (d) A statement of the extent (if any) to which the applicant considers it necessary for powers under section 54 of the Act (compulsory acquisition of land etc) to be given through the licence for which he is applying.
- (e) Provide a statement of—
 - (i) particulars of the person or persons from whom, and the points at which, the applicant expects for the next five years to receive the electricity which he will transmit; particulars of the transmission of the electricity; particulars of the expected connection points; and quantities;
 - (ii) interconnections to other transmission systems;
 - (iii) proposed metering arrangements;
 - (iv) schedule of generating plant owned by the applicant including pumped storage, clutched gas turbine generators and synchronous or static compensators;
 - (v) forecast annual maximum demands for each of the next five years in his transmission system (MW or GW) and energy (GWh) to be transmitted;
 - (vi) summary large scale map, together with detailed maps providing information on areas where activities are concentrated as necessary, and
 - (vii) a single line diagram of the transmission system should be provided. All transmission voltage levels should be shown on the diagram.
- (f) A description of the applicant's proposed arrangements for compliance with the applicable provisions of the Grid Code.

PART III—ELECTRIC POWER DISTRIBUTION AND SUPPLY

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A DISTRIBUTION AND SUPPLY LICENCE OR PERMIT

1. The following information and documents shall accompany application for a distribution and supply licence or permit—

- (a) A sufficient description adequately specifying the actual or proposed location of the system of electric supply lines and electrical plant by means of which the applicant intends to enable a supply of electricity to be given, indicating which plant and electric supply lines are to be constructed and which are existing plant and electric supply lines, and further identifying any parts of that system which will not be owned by or otherwise in the possession or control of

the applicant, and the area to which the application relates and the description shall be sufficient to make clear the nature and extent of the undertaking, and enable the areas, location or premises concerned to be adequately and readily identified by map or by any other convenient means.

- (b) A statement of the extent (if any) to which the applicant considers it necessary for powers under section 54 of the Act, including compulsory acquisition of land to be given through the licence or permit for which he is applying.
- (c) A statement of—
 - (i) particulars of the person or persons from whom the applicant intends for each of the next five years to receive the electricity which he will distribute, particulars of the arrangements made for distribution of electricity; particulars of the expected connection points; and quantities.
 - (ii) forecast of the annual maximum demand for each of the next five years in his distribution system (MW) and energy (GWh) to be distributed.
 - (iii) details of the voltage levels and types (AC or DC), and frequency of operation. Include details of expected circuit length per voltage level for each of the next five years;
 - (iv) details of estimated connections per voltage level;
 - (v) details of any existing or proposed embedded generating plant or station, including location, type, maximum power (MW, MVA, MVA_r) for each of the next five years expected to be available from each generating plant or station at any one time, and the aggregate power (MW, MVA, MVA_r) for each of the next five years expected to be available from each generating plant or station during any year, in each case excluding such wattage as is expected to be consumed on site; and
 - (vi) detailed map or maps, to scale sufficient to show clearly the area to which the application relates, including the distribution system above 11kV, location of infeeds (connection points), overhead lines, interconnectors, cable routes and associated substations, showing which electric supply lines, cables and substations are to be constructed and which are already in existence.
- (d) A map drawn to an appropriate scale showing the actual or proposed configuration of the distribution system the applicant would operate if the application were granted, showing—
 - (i) all electric supply lines and electrical plant effecting connection to the system operated by any other authorised distributor; and
 - (ii) all points through which it is proposed that electricity would be conveyed to the applicant's distribution system.
- (e) Such particulars as will indicate whether any distribution system through which the applicant would be authorised to convey electricity if the application were granted would be operated safely.
- (f) Particulars of the applicant's proposed arrangements to secure the performance of any obligations in relation to supplies of electricity illegally taken imposed on him by section 64 of the Act.

(g) Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of the Grid Code.

(h) A description of the applicant's proposed arrangements for compliance with the continuity of supply requirements in accordance with section 36 of the Act.

2. In this Part of this Schedule, if the application is for a renewal or modification of a licence or permit, information and documents need only be given in so far as, in any material respect, they differ from or add to the most recent information or documents which were provided in relation to the same requirement—

(a) with an application made by the applicant in accordance with these Regulations; or

(a) subsequent to such an application in pursuance of a condition of the applicant's licence or permit.

3. In this schedule, "embedded generating station" means a generating station connected within a distribution network and not having direct access to the transmission network;

PART IV—ELECTRIC POWER GENERATION, DISTRIBUTION AND SUPPLY

FURTHER INFORMATION AND DOCUMENTS TO ACCOMPANY AN APPLICATION IN RESPECT OF A LICENCE OR PERMIT FOR THE GENERATION, DISTRIBUTION AND SUPPLY OF ELECTRICAL ENERGY

1. The following information shall accompany an application for a licence of a permit for the generation, distribution and supply of electrical energy—

(a) A sufficient description adequately specifying the actual or proposed location of each generating station operated or intended to be operated under the licence or permit if granted. The description must be sufficient to make clear the nature and extent of the undertaking or proposed undertaking, and enable the areas, location or premises concerned to be adequately and readily identified by map or by any other convenient means.

(b) A statement of—

(i) the number of generating stations (to be) operated;

(ii) how each of those stations will, in each case, be fuelled or driven;

(iii) the date when any proposed generating stations are expected to be commissioned;

(iv) the maximum power (MW, MVA, MVA_r) for each of the next five years expected to be available from each generating plant or station at any one time and the aggregate power (MW, MVA, MVA_r) expected to be available from each generating plant or station during any year, exclude in each case such wattage as is expected to be consumed at the plant or station);

(v) the efficiency of each mode of generation;

(vi) the expected life of each generating plant or station;

(vii) for each generating plant or station for each of the next five years, the numbers of generating units and the capacity of each generating unit; and

- (viii) particulars of the entity or entities to whom the applicant intends for each of the next five years to provide electricity and particulars of the distribution of that electricity, including details of the electric supply lines to be constructed.
- (c) A sufficient description adequately specifying the actual or proposed location of the system of electric supply lines and electrical plant by means of which the applicant intends to enable a supply of electricity to be given, indicating which plant and electric supply lines are to be constructed and which are existing plant and electric supply lines, and further identifying any parts of that system which will not be owned by or otherwise in the possession or control of the applicant, and the area to which the application relates, which description shall be sufficient to make clear the nature and extent of the undertaking, and enable the areas, location or premises concerned to be adequately and readily identified by map or by any other convenient means.
- (d) A statement of the extent (if any) to which the applicant considers it necessary for powers under section 54 of the Act, including compulsory acquisition of land) to be given through the licence or permit for which he is applying.
- (e) A statement of—
 - (i) particulars, if any, of any person or persons from whom the applicant intends for each of the next five years to receive the electricity which he will distribute, particulars of the arrangements made for distribution of electricity; particulars of the expected connection points; and quantities;
 - (ii) forecast annual maximum demand for each of the next five years in his distribution system (MW) and energy (GWh) to be distributed;
 - (iii) details of the voltage levels and types (AC or DC), and frequency of operation. Include details of expected circuit length per voltage level for each of the next five years, and
 - (iv) details of estimated connections per voltage level.
- (f) Such particulars as shall indicate whether any distribution system through which the applicant would be authorised to convey electricity if the application were granted would be operated safely.
- (g) Particulars of the applicant's proposed arrangements to secure the performance of any obligations in relation to supplies of electricity illegally taken imposed on him by section 64 of the Act.
- (h) Particulars of the applicant's proposed arrangements for compliance with the applicable requirements of the Grid Code.
- (i) A description of the applicant's proposed arrangements for compliance with the continuity of supply requirements in accordance with section 36 of the Act.

FOURTH SCHEDULE

(r. 16 (2))

LICENCE AND PERMIT FEES

The fees specified in the Second Column of this Schedule shall be chargeable in respect of the corresponding licence or permit specified in the First Column.

COLUMN 1	COLUMN 2
Description of Licence or Permit for	Fees payable, amounts in KShs
1 Electricity Generation	
(a) Grant of licence or permit	10,000 per MW of installed capacity
(b) Annual fee, and fees for modification or transfer of licence or permit	5,000 per MW of installed capacity
2. Electricity Transmission	
(a) Grant of licence	2,000 per MW of transfer capacity
(b) Annual fee, and fees for modification or transfer of licence	1,000 per MW of transfer capacity
3. Electricity Distribution and/or Supply	
(a) Grant of licence or permit to distribute and supply electricity within a specified area	1,000 per GWhr of energy proposed to be supplied in first year of operation
(b) Annual fee, and fees for modification or transfer of licence or permit to distribute electricity within a specified area	1,000 per GWhr of energy actually supplied in the preceding year
4. Electricity Generation, Distribution and/or Supply	
(a) Grant of licence or permit to generate, distribute and supply electricity within a specified area	20,000 per MW of installed capacity
(b) Annual fee, and fees for modification or transfer of licence or permit	10,000 per MW of installed capacity
5. Electricity Supply	
(a) Grant of licence or permit to supply electricity within a specified area	1,000 per GWhr of energy proposed to be supplied in first year of operation
(b) Annual fee, and fees for modification or transfer of licence or permit	500 per GWhr of energy supplied in the preceding year

FIFTH SCHEDULE

(r. 15)

FORM OF LICENCE OR PERMIT

ENERGY REGULATORY COMMISSION

(STATE UNDERTAKING) LICENCE OR PERMIT

Issued to

NAME OF LICENSEE

In respect of

NAME AND/OR PARTICULARS OF UNDERTAKING

By

ENERGY REGULATORY COMMISSION

Dated

Licence or permit Ref No

THE ENERGY ACT

(No. 12 of 2006)

STATE TYPE OF LICENCE OR PERMIT

1. Definitions and Interpretation

(1) Any word or expression defined for the purposes of the Act or the General Interpretations Act, Chapter 2 of the Laws of Kenya shall, unless the context otherwise requires, have the same meaning ascribed thereto when used in the Conditions.

(2) Any reference to a statute shall include any statutory amendments, modification or re-enactment thereof and subsidiary legislation made thereunder after the date when this licence or permit comes into force and effect

(3) Except where the context otherwise requires, the following terms shall have the following meanings:

“Act” means the Energy Act, 2006 and includes any subsidiary legislation made thereunder.

“Commission” means the Energy Regulatory Commission established under section 4 of the Act.

“Force Majeure” means circumstances beyond the Licensee’s control which shall include, but not be limited to, acts of God, fire, flood, tempest, civil commotion, acts of government or parliamentary authority and breakdown of communication lines.

“Grid Code” means the grid, distribution or metering codes designed to facilitate the development, operation and maintenance of an efficient, co-ordinated and economical Kenyan electric power system by specifying to all parties connected to that system their technical and procedural obligations;

“Lenders” means any financial institutions, which have provided loans or hedging facilities to the licensee for purposes of developing the Licensed Power Station, and includes their agents, trustees, transferees and assigns;

"Licensee" means (Insert name and address of licensee), holder of Certificate of Incorporation (Insert Country of issue and No) and includes his successors and permitted transferees;

"Minister" means the Minister for the time being responsible for matters of energy in the Government of the Republic of Kenya;

"Power Purchase Agreement" means the Power Purchase Agreement dated (Insert date) and made between the licensee and (Insert the name of the buyer or seller of electrical energy) and approved by the Commission.

2. Grant of (State Type of) Licence or Permit

IN EXERCISE of the powers conferred by the provisions of sections 6 (a), 27 and 31 of the Energy Act, 2006, the ENERGY REGULATORY COMMISSION (the Commission), HEREBY GRANTS this (STATE TYPE OF) LICENCE OR PERMIT to (Insert licensee Name), a limited liability company incorporated in the Republic of Kenya under Certificate of Incorporation (Insert Certificate No) whose registered office is situated at (Insert Physical and Postal Addresses), Kenya (the licensee) to (State the Undertaking) at (State Location of) and brief particulars of the undertaking more particularly described in this (State Type of Licence or Permit).

3. Undertaking to which the Licence or Permit Relates

This licence or permit is specific and limited to the (Describe the Undertaking) situated (state location), which is procured, constructed, installed, owned, maintained and operated by the licensee. For the avoidance of doubt, it is hereby stated that the licence or permit does not authorize nor entitle the licensee to carry out any other undertaking except the undertaking herein specified and licensed.

4. Duration of Licence or Permit

This licence or permit shall come into force and effect on the date hereof, (which date shall for the purposes of the Act be the Date of the Commencement of the licence or permit) and shall continue in operation from the Date of Commencement for a duration of (Insert Number) years subject to the provisions of the Act and to the Conditions specified herein.

5. Renewal of the licence or permit

- (1) This licence or permit may be renewed in accordance with section 28(1) of the Act.
- (2) If the licensee wishes to renew this licence or permit after its expiration date, the licensee shall submit to the Commission an application for renewal not later than thirty six (36) months prior to the expiration of this licence or permit.
- (3) The Commission shall have the right to accept or reject the application for renewal in light of the licensee's performance during the period preceding the application for renewal.

6. Alteration, suspension or revocation of the Licence or Permit

(1) The Conditions of this licence or permit are subject to modification, alteration, revision or amendment in accordance with the terms herein specified or with section 31 (3) of the Act.

(2) This licence or permit may not be altered, revised or modified by the Commission, except with the consent of the licensee.

(3) The licence may be suspended or revoked in accordance with section 36 of the Act, and is further subject to the conditions as to revocation specified in Condition 38 hereof.

7. Exceptions and limitations on the licensee's obligations

If the licensee is prevented from performing any of his obligations under this licence or permit because of Force Majeure:

(1) the licensee shall notify the Commission of the obligations he is prevented from performing as soon as reasonably practicable; and

(2) the Commission may suspend those obligations and the licensee will not be liable to perform those obligations, for so long as the Force Majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this licence or permit, or other reasonable precautions and the inability cannot reasonably be circumvented by the licensee at his expense through the use of alternative sources, work-around plans or other means.

8. Liability under tort and contract laws of Kenya

Notwithstanding any provisions of this licence or permit, the licensee is subject to liability under tort and contract laws of Kenya.

9. Establishment of an office in Kenya

(1) The licensee shall at the commencement of this licence or permit provide to the Commission an electronic, postal and physical address of an office in Kenya at which communication from the Commission may be sent or delivered.

(2) The licensee shall maintain such offices until this licence or permit expires or is revoked under the Act.

10. Acquisition of any property for purposes of this licence or permit

(1) The licensee shall ensure that any compulsory acquisition or taking of any land or property by the licensee for purposes related to the electric power undertaking by virtue of this licence or permit shall be made in compliance with Article 40 of the Constitution of Kenya, 2010.

(2) In contracting or arranging for the provision of goods, assets and services required to enable the licensee to carry out his undertaking, the licensee shall purchase or otherwise acquire such goods, assets and services from the most economical sources available to him, having regard to the quantity and nature of the goods, assets and services required to enable him to discharge his obligations under the Act and this licence or permit and to the diversity, number and reliability of such goods, assets and services at that time available for purchase or other acquisition.

(3) Any contracts or arrangements for the purchase of goods, assets and services from an associated company or a related undertaking shall be on arm's length terms.

11. Disposal of assets, change in capital and change in control

(1) The licensee shall be required, for the duration of the licence or permit, to notify the Commission of any of the following:

(a) any action that may lead to a decrease of the licensee's share capital existing on the date this licence or permit was issued;

- (b) any acquisition by a third party of more than 25% of the licensee's share capital;
- (c) a Change in Control of the licensee;
- (d) the intention of the licensee to increase or decrease its authorized capital or its paid up capital.

(2) The licensee shall be required, for the duration of the licence or permit, to obtain the prior written approval of the Commission for any of the following:

- (a) Subject to paragraph (4), disposal of any part of the licensee's electric power undertaking (including any of the assets forming part of the undertaking) by means of sale, transfer, merger, lease or any other means; and
- (b) any action that may lead to a decrease of the licensee's share capital existing at the time this licence or permit was issued that may affect the financial, technical or operational qualifications on which the granting of this licence or permit was based.

(3) For the purposes of paragraph a (1) (c) above and notwithstanding anything to the contrary contained in this licence or permit, a person shall be considered to have control of the licensee if the person exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the licensee's affairs, and in particular, but without prejudice to the generality of the foregoing, if the person possesses or is entitled to acquire a majority of the issued share capital of the licensee or to exercise a majority of the voting rights in the licensee.

(4) For the purpose of paragraph (2) (a), the licensee shall have the right to dispose of an asset or part of its undertaking without the prior approval of the Commission if the Commission has issued a directive granting a general consent for the disposal of the assets of a specified description or below a specified value, and the licensee has provided, prior to the disposal, the Commission with evidence that the asset or part of undertaking to be disposed of falls within the provisions of such directive.

(5) Without prejudice to paragraph (4) above, the licensee may apply by notice to Commission for permission of disposal of assets, specifying assets to be disposed and the reasons, or for the approval of any of the actions set out in paragraph (2) (b) above.

(6) The licensee may dispose of the relevant assets, or may undertake any of the actions set out in paragraph (2) (b) above, as specified in the notice referred to in paragraph (5), if—

- (a) the Commission confirms in writing that it consents to such disposal or action; or
- (b) the Commission does not inform in writing of any objection to such disposal or action within thirty (30) days of the notice;
- (c) paragraph (4) above applies, or
- (d) the licensee is obliged by law or final order of a competent court to dispose of the relevant asset or part of its undertaking, but without prejudice to the Commission's power to revoke this licence or permit as a result of such disposal.

12. Transferability of the licence or permit, and other licences or permits

(1) Subject to paragraph (2) herein below, the licensee shall not transfer or otherwise divest himself of any rights, powers or obligations conferred or imposed upon him by this licence or permit without the written consent of the Commission.

(2) The Commission hereby consents to the transfer of the undertaking and the licence or permit to the secured lenders or to parties duly nominated by them under the terms and conditions of the financing agreements relating to the undertaking.

(3) Subject to the provisions of section 27 of the Act and to this licence or permit, the licensee may apply for other licences or permits for electric power undertakings in any area within the Republic of Kenya.

(4) The licensee shall not purchase or acquire any undertaking or associate himself with any public or local authority, company, person or body of persons supplying electrical energy under any licence or permit, except with the authority of the Commission.

(5) The Commission may revoke this licence or permit, in addition to such other action as the Commission may deem fit, if the licensee contravenes the provision of paragraph (1) above.

13. Provision of information to the Commission and other licensees

(1) The licensee shall on request by the Commission provide it with any information relating to his activities conducted under or in connection with this licence or permit, as the Commission may consider necessary for the purpose of performing the functions assigned to it by or under the Act.

(2) After the end of each financial year, the licensee shall submit to the Commission an annual performance report indicating the quality of service and performance of the licensee during the previous year against the Performance Standards established in Condition 27.

(3) The licensee shall also furnish to other licensees such information as may be reasonably required by those licensees in order to ensure the secure and efficient operation, co-ordinated development and inter-operability of the electricity network.

(4) The information requested in paragraphs (1), (2) and (3) shall be provided by the licensee:

(a) as soon as possible but in any case not later than a reasonable date specified in the request, and

(b) in such form and manner as the Commission or other licensee may require.

(5) The licensee shall submit annual reports to the Commission on his undertakings that encompass the financial and technical aspects, performance within one hundred and eighty (180) days of the end of the licensee's financial year, or such other period approved by the Commission, and such other reports as required by the Commission.

(6) For purposes of this Condition, "information" shall include any plans, drawings, specifications, designs, documents, reports, accounts, statistics, registers (including registers relating to the licensee's Members or Directors and Secretaries from time to time) or planned annual maintenance schedules (whether or not prepared specifically at the request of the Commission or other licensee) of any description specified in the request.

(7) The Commission or any person authorized by the Commission in writing may:

(a) at all reasonable times, enter upon the premises of the licensee and inspect or investigate any plant, machinery, books, accounts and other documents found thereat and take copies thereof, and/or

- (b) require the licensee to furnish to the Commission, books, accounts, records and other documents in such form as the Commission may demand.

(8) The Commission may require that the accuracy of any documents or particulars be verified by a person who, in the Commission's opinion, is competent to verify such documents or particulars or render a professional opinion thereon.

(9) A person authorized by the Commission, shall produce proof of such authorization at the request of any person affected by his activities.

(10) The licensee shall submit the following financial data to the Commission when requested by the Commission:

- (a) the licensee's financial statements for each Financial Year, together with the report of an external auditor and his remarks on such financial statements;
- (b) any other financial data the Commission may specify with a reasonable prior notice.

(11) The Commission may ask for other reports as needed to fulfil its responsibilities.

14. Monitoring of Compliance

(1) The licensee shall give officers of the Commission or any person or persons duly authorized by the Commission access to the licensee's works for the purposes of any inspection under the Act or for ascertaining if the provisions of the Act and/or this licence or permit are being complied with.

(2) The licensee shall also comply with the provisions of the Grid Code in respect of inspection and testing of his works by other licensees.

(3) Entry into the licensee's works pursuant to paragraphs (1) and (2) of this Condition shall be upon reasonable notice and with the prior permission of the licensee. Such permission shall not be unreasonably refused.

15. Events of which licensee must promptly notify the Commission in writing

The licensee shall promptly notify the Commission in writing of the occurrence of any of the following events:

- (a) any accident by electric shock, and also of any other accident of such kind as has, or to would have been likely to cause loss of life or personal injury, and of any explosion or fire, which has arisen from and in the course of the generation, transformation, conversion, transmission, distribution or supply of electrical energy by the licensee, or which has arisen in or about any generating station, substation, switch station, factory, works or electric supply lines of the licensee and also notice of any loss of life or personal injury occasioned by any such accident, explosion or fire;

Provided that such notice shall be sent by the earliest practicable post and/or electronic means, after the accident, explosion or fire occurs, or, as the case may be, after the loss of life or personal injury becomes known to the licensee.

- (b) any event which threatens the licensee's financial ability to discharge his obligations under this licence or permit or any Power Purchase Agreement;

- (c) any forced outage affecting a significant portion of the undertaking which is likely to subsist for a continuous predetermined duration specified in the special conditions of this licence or permit;
- (d) changes relating to the physical, electronic and postal address of the licensee in Kenya;
- (e) any change in the composition or structure of the shareholding of the licensee affecting the original or subsequent subscribers to the licensee's registered memorandum of association; or in the event that the securities of the licensee become listed in a securities exchange, any transaction with the effect of making a single person control five percent (5%) or more of the voting power at any general meeting of the licensee; or
- (f) any transfer of the undertaking and licence or permit under Condition 12.

16. Confidentiality and use of information

(1) The licensee shall maintain the confidentiality of the information and data it possesses on other licensee, in accordance with the agreements with such licensee, where applicable, and may not disclose such information to third parties (other than the Commission) except when requested by laws or relevant authorities, or to the extent authorised by the concerned licensee or the Commission, or required in relevant Codes or Regulations.

(2) The licensee shall ensure (and shall procure that its affiliates shall also ensure) that all information received by it relating to the undertaking—

- (a) is not used by the licensee or its affiliates for any purpose other than that for which it was provided or for a purpose permitted by this licence or permit or a Code; and
- (b) is not used by the licensee or its affiliates for any commercial advantage in the provision of any service other than a service comprised in the undertaking.

(3) The licensee may request the Commission not to disclose commercially sensitive information provided by the licensee to the Commission pursuant to this licence or permit. Upon satisfaction of the Commission that the information is commercially sensitive, the Commission shall not disclose any part of or all of such information, as applicable, without the prior approval of the licensee. These restrictions shall not apply to:

- (a) information which is in the public domain; or
- (b) information which is, or becomes, publicly known or available otherwise than through the action of the Commission; or
- (c) information relating to performance and the level of compliance of the licensee with the Performance Standards.

17. Environmental, health and safety obligations

(1) The licensee shall comply with the provisions of all environmental, health and safety laws in force in Kenya from time to time.

(2) The Commission may, after consultations with the appropriate authorities, issue orders relieving the licensee of his obligations under paragraph (1) hereof relating to environmental laws to the extent that such exemption is permitted under the applicable environmental laws.

(3) The licensee shall carry out his undertaking in a manner that is designed to protect the health and safety of persons employed by the licensee at the undertaking and the users of the service and other members of the public who would be affected by his operations.

18. Insurance

The licensee shall adopt and implement reasonable and prudent policies in relation to the management and insurance of risks associated with the undertaking.

19. Licence or permit fees

(1) The licensee shall, at the times stated hereunder, pay to the Rural Electrification Authority fees of the amount specified in, or determined under, the following paragraphs of this Condition.

(2) Within 30 days after the commencement of this licence or permit, the licensee shall pay to the Rural Electrification Authority a grant of licence or permit fee of (Insert amount in Kenya Shillings calculated in accordance with Schedule 4 of these Regulations).

(3) In respect of the year beginning on the expiration of twelve calendar months from the commencement date of this licence or permit, and in every subsequent year, the licensee shall pay to the Rural Electrification Authority an annual fee of (Insert amount in Kenya Shillings calculated in accordance with Schedule 4 of these Regulations). The fee shall be paid by the Licensee to the Rural Electrification Authority within thirty (30) days of the annual anniversary of the commencement date of this licence until expiry.

20. Payments to the licensee

(1) The payments to be made to the licensee in respect of electrical energy sold or ancillary or network services provided by virtue of this licence or permit shall be in accordance with the Power Purchase Agreement or Network Service Contract or tariffs (or any other subsequent Power Purchase Agreement or Network Service Contract or tariffs) as approved by the Commission.

(2) Except as stated in the Power Purchase Agreement or Network Service Contract or tariffs approved by the Commission, no rebate or reduction in the maximum prices will apply in consideration of any stated improvement in the conditions of the demand by reason of load factor, time of the demand or other circumstances of the demand.

21. Accounts and audit

(1) Where the licensee holds one or more licences or permits in addition to this licence or permit he shall, unless specifically exempted or treated as a single undertaking by the Commission, ensure that the accounts of each undertaking under each licence or permit is kept separate and distinct and in the manner and form prescribed by the Commission.

(2) The licensee shall maintain his books of accounts (relating to his undertaking by virtue of this licence or permit) in the form and particulars prescribed by the Commission under the Act

(3) The licensee shall ensure that the accounts pertaining to the licensee's undertaking are examined and audited by such competent and impartial persons appointed by the licensee and approved by the Commission.

(4) The Commission may at any time, and at the licensee's expense, require auditors to investigate and report to it upon any such particular matter or things relating to or arising out of the accounts of the licensee in respect of the undertaking to which this licence or permit relates.

(5) The licensee shall give to the auditor and his personnel access to such of the books and documents relating to the undertaking as are necessary for the purposes of the audit, and shall when required furnish to him and them all vouchers and information requisite for that purpose, and shall afford to him and them all facilities for the proper execution of his or their duty.

(6) The licensee shall ensure that any report made by the auditor, or such portion thereof as the Commission may direct, shall be appended to the annual statement of accounts of the licensee.

22. Fair competition and restriction to horizontal or vertical integration

(1) The licensee shall:

- (a) not show undue preference to, or exercise unfair discrimination against, any person or other licensee, in respect of his undertaking;
- (b) not engage in any practice or enter into any arrangement that has the object or the likely effect of preventing, restricting or distorting competition in the generation, transmission, distribution or supply of electrical energy; and
- (c) comply with every directive issued by the Commission for the purpose of preventing any practice or arrangement that has the object or effect of preventing, restricting or distorting such competition.

(2) The licensee shall not directly or indirectly acquire shares or interest in another electric power undertaking within the Republic of Kenya without the prior written consent of the Commission, which consent shall not be unreasonably withheld,

23. Compliance with the Grid Code

(1) In planning, providing connection, operating and maintaining the transmission system, the licensee shall fully comply with the Grid Code.

(2) In case the licensee finds that it is, or will be, unable to comply with any provision of the Grid at any time, then he shall make such reasonable efforts as are required to remedy such non-compliance as soon as reasonably practicable and immediately notify the Commission.

(3) The Commission may, following consultation with the licensee and other licensees or users that may be affected, and for good cause shown, issue directives relieving the licensee of his obligations to comply with specific provisions of the Grid Code in respect of such parts of the licensee's transmission system and/or to such extent or duration as may be established in such directives.

24. Transmission system planning

(1) To develop and maintain system reliability and adequate transmission capacity for load growth, new generation entry and development of appropriate interconnections, the licensee shall plan, operate and maintain the transmission system, in accordance with the planning procedures, criteria and standards established in the Grid Code, and the Performance Standards and other reliability standards as the Commission may approve from time to time.

(2) In performing the functions specified in sub-condition (1), the licensee shall ensure adequate coordination with:

- (a) The System Operator, to take into consideration all applicable reliability standard or system constraint that may affect system operation and the economic dispatch
- (b) Affected users, to take into consideration their master plans, load growths, need for additional transmission capacity or connections to the transmission system.

(3) The licensee shall coordinate the system planning activities and prepare a least cost Master Plan.

(4) Each year and following the procedures established in the Grid Code, the licensee shall prepare and submit for Commission approval a Master Plan, for a period not less than the next ten (10) years, that complies with all applicable transmission planning criteria and performance requirements. The licensee may during the year submit to the Commission a revision to the approved Master Plan in order that the information set out in the plan shall continue to be accurate in all material aspects.

(5) The licensee shall furnish to other licensees and users, in such manner and at such times as may be reasonably required, any information requested by other licensees or Users in order to ensure the co-ordinated and efficient development of the electric system and efficient decisions on new generation location.

25. Transmission expansion and maintenance

(1) The licensee shall be responsible for, as necessary, the expansion and upgrade of the transmission system.

(2) Subject to approval by the Commission of the Master Plan, the licensee shall ensure that the approved transmission expansions and reinforcements are built on time and in an economic and safe manner, minimising environmental impacts.

(3) The licensee shall be responsible for adequate maintenance of its transmission system. The licensee shall ensure that no facility required for transmission services is abandoned, totally or partially, or does not have adequate maintenance.

26. Distribution Code

(1) The licensee shall fully implement and comply with the Distribution Code.

(2) The licensee shall keep under continuous review the implementation of the Distribution Code in his area of supply and propose to the Distribution Code Review Panel any amendments the licensee considers necessary, pursuant to the Distribution Code review process set out in the Distribution Code.

(3) The licensee shall ensure that he is at all times represented on the Distribution Code Review Panel by suitably qualified representatives pursuant to the provisions of the Distribution Code.

(4) The licensee shall make a copy of the Distribution Code, as revised from time to time, available for inspection by members of the public resident in his area of supply at each of his offices during normal working hours; and provide at a reasonable fee a copy of the Distribution Code, as revised from time to time, to any person residing in his area of supply who requests it.

(5) The Commission may, following consultation with the licensee and for good cause shown, issue directions relieving the licensee of his obligations to comply with specific provisions of the Distribution Code in respect of such parts of the licensee's distribution system and/or to such extent or duration as may be established in such directions.

27. Performance standards and quality of supply and service

(1) The licensee shall conduct his undertaking in the manner which achieves performance standards and quality of supply and service levels to which he is subject, as may be established or approved by the Commission, or any other applicable standard established in Codes or Regulations issued under the Act.

(2) The licensee shall prepare a report, within ninety (90) days after this licence or permit becomes effective, indicating the minimum performance standards and quality of supply and service levels as well as his plans to meet them as stipulated in sub-condition (1) hereof.

(3) The licensee shall submit from time to time, as provided for in the performance standards or in Commission monitoring procedures, the information required to enable the Commission monitor his compliance with the Performance Standards and quality of supply and service levels.

(4) The licensee shall not be in breach of his obligations under this licence or permit if he has failed to meet the Performance Standards or any other standard established in Codes directly due to Force Majeure, provided that the licensee has used reasonable efforts, to the extent reasonably possible, to comply with the Performance Standards or any other applicable operating standard established in Codes, as the case may be.

28. Demand forecast

(1) The licensee shall submit to the Commission results of studies of demand forecasts for his area of supply as required in the Tariff Methodology.

(2) The licensee shall inform the Commission of any demand forecast submitted to the System Operator or other licensee for the purposes of assisting the latter with their long term planning.

29. Connection and use of transmission system

(1) The licensee shall have the right to connect to and use the transmission system in accordance with the Grid Code and the Connection Agreements agreed between the licensee and the Transmission licensee and the System Operator.

(2) In order to connect and use the transmission system, the licensee shall enter into a Connection Agreement in each connection point in accordance with the Grid Code and in such standard form as the Commission shall approve and as the Transmission licensee may amend from time to time, provided that any amendment shall require the approval of the Commission. If, after a period which appears to the Commission to be reasonable for the purpose, the licensee has failed to enter into the required Connection Agreement, the Commission shall, on the application of the Transmission licensee and the licensee, settle any terms of the agreement in dispute as appears to be reasonable to the Commission.

(3) For the connection and use of the transmission system, the licensee shall pay to the Transmission licensee the applicable tariff.

(4) Metering at the transmission connection points for the supply to the licensee or the energy exchanged with another licensee shall be undertaken through metering systems as specified in the Metering Code and such meters shall be certified in accordance with the procedures specified in the Metering Code and any applicable directive of the Commission.

(5) The licensee shall comply with all applicable procedures regarding maintenance and accuracy of the meters specified in sub-condition (4), as established in the Metering Code. The licensee shall take all reasonable steps to prevent tampering with or damage of such meters.

30. Connection and use of the distribution system

(1) The licensee shall not unduly discriminate between consumers or undertakings of the same category in offering terms and conditions for connecting or upgrading connection to or use of the distribution system.

(2) Subject to other Conditions in this licence or permit, on the application of the owner or occupier of any premises within the licensee's area of supply or an undertaking desiring to connect or upgrade an existing connection to the distribution system of the licensee, and who is not in arrears of any amount due to the licensee in relation to licensee's distribution and supply business, the licensee shall;

- (a) offer to provide connection or to provide modifications to an existing connection of the premises or undertaking to his distribution system; and
- (b) where the terms offered by the licensee are accepted by the applicant and on payment to the licensee of the relevant Connection Charges and compliance with the requirements specified by the licensee in that regard pursuant to the Distribution Code, the licensee shall provide the connection or the modification of the connection to the licensee's distribution system to those premises or undertaking, including the laying of any required distribution mains, in accordance with the terms offered.

(3) The application form, terms and procedures shall be in accordance with the timeframes, connection conditions and procedures established in the Distribution Code.

(4) The cost payable for a connection to the distribution system of the licensee shall be determined in accordance with the applicable Connection Charges.

(5) The agreement to connect an undertaking shall also include, when applicable, conditions for the use of the distribution system of the licensee.

(6) The licensee shall not be obliged to provide a connection in circumstances where:

- (a) to do so would involve a breach of a technical, reliability or safety standard issued by the Commission, the Grid Code or the Distribution Code or the Act or this licence or permit; or
- (b) connecting the undertaking or consumer who has made the application endangers the security and reliability of the distribution service.

(7) Where the licensee refuses to connect an applicant, the licensee shall inform without delay the applicant and Commission providing the reasons for such refusal.

31. Planning, operation and maintenance of the distribution system

(1) The licensee shall plan, as necessary expand or upgrade, maintain and operate the licensee's distribution system so as to ensure that, subject to the availability of adequate generating and transmission capacity, the distribution system is capable of providing consumers with a safe, reliable and efficient supply of electrical energy. In particular, the licensee shall plan, develop and operate the licensee's distribution system in accordance with the standards established in the Grid Code and the Distribution Code, and the Performance Standards established from time to time by Commission.

(2) The licensee shall keep a register of assets which constitute his distribution system, which must include the physical description of the distribution system and the location of equipment.

32. System losses

The licensee shall achieve an efficient level of system losses (due to technical or any other reason) on his own system. In complying with this Condition, the licensee may have standard levels of system losses established by the Commission as one aspect of the minimum Performance Standards.

33. Interruption of supply

(1) In case the licensee is undertaking any operation, maintenance, replacement, restoration or any other activity that may lead to interruption of supply to a specific area or areas, he shall, no later than two days prior to the date of the interruption of supply, advise through appropriate means, all consumers of the areas to be affected, the date and time when the supply is planned to be interrupted and the period within which it will be restored.

(2) The licensee shall not unduly discriminate against or unduly prefer any one individual or any category of consumers in favour of or as against any other individual or any other category of consumers in preparing and implementing curtailment and restoration plans when scheduling maintenance or other Demand Control measures, and shall endeavour that, as far as practicable and reasonable, the consumers are treated equitably in such Demand Control measures and plans, provided that exemptions may apply to vital and priority consumers.

(3) The licensee shall inform and send to the Commission copies of any Demand Control guiding principle, demand reduction plan or demand restoration plan to be agreed by the licensee with the System Operator, in accordance to the Grid Code.

34. Handling of complaints

(1) The licensee shall comply with applicable provisions relating to the resolution of complaints and disputes as may be prescribed by the Commission or that may be enacted under the Act from time to time, and in particular:-

- (a) implement procedures, approved by the Commission, to receive, process and respond to complaints relating to the quality of supply and service;
- (b) maintain a record of information about the identity of the complainant, type of malfunction or complaint, the location, in case of interruptions the outage time and the time taken to connect or reconnect the complainant, and all such matters established in the Distribution Code or in the Performance Standards; and

- (c) submit to the Commission reports about malfunctions, interruptions, problems in quality of supply and service and consumers' complaints in the form and manner approved by the Commission.

(2) The licensee shall, whenever requested to do so by the Commission, review the complaint resolution procedures, with a view to effect improvements.

(3) The licensee shall make available free to his consumers a current copy of the applicable complaints resolution procedures, as from time to time revised, at all his office premises during normal working hours.

35. Compliance with regulations, decisions and orders of the Commission

(1) The licensee shall fully comply with the rules, codes, standards, guidelines, directives, decisions or orders issued by the Commission in the discharge of its functions under the Act.

(2) The licensee shall comply with all applicable provisions of the Grid Code in respect of all his undertakings.

(3) At the written request of the Commission, the licensee shall participate to the extent specified by the Commission in the development and/or review of any rules, codes, standards and guidelines to be prescribed or prescribed by the Commission under the Act.

36. Review of Commission Decisions

(1) The licensee shall have the right to apply to the Commission for review of its decisions in relation to revocation or amendment of this licence or permit or any other decision that affects the licensee's undertaking or its rights under this licence or permit.

(2) If requested by the licensee in the prescribed manner, the Commission may review its decisions that affect the licensee's undertaking or its rights under this licence or permit, including its decision in relation to revocation or amendment of this licence or permit.

37. Adherence to the terms of the Licence or Permit and Penalties

(1) Where the Commission is satisfied that the licensee has contravened any of the conditions of this licence or permit, the Commission may issue an order requiring the licensee to take specific actions or to refrain from taking specific actions in order to rectify the contravention.

(2) Prior to issuing such order, the Commission shall inform the licensee of its intention to issue the order and the grounds upon which the order will be issued and provide the licensee an opportunity to make a representation in accordance with the procedure, including time period, specified by the Commission in a directive.

(3) Without limiting any other right or remedy available to the Commission under the Act, the Commission may specify in the order a penalty for each day the licensee is in default of compliance. The penalty specified by the Commission shall not exceed the limits (if any) for such penalties set by the Act or other applicable legislation. If the licensee fails to make payment on any amount of penalty to the Rural Electrification Authority, interest shall accrue at the rate established by the Laws of Kenya.

38. Revocation of Licence or Permit

(1) Subject to section 36 of the Act, the Commission may at any time revoke this licence or permit if:

- (a) The undertaking or the execution of the works related thereto has not commenced at the expiry of twenty four months from the date on which this licence or permit was granted, except where the Commission is satisfied that this occurred as a result of events beyond the reasonable control of the licensee in which case the Commission shall substitute such period as it in its sole discretion considers reasonable in all the circumstances) or at the expiry of any extended period which the Commission may allow;
- (b) The Commission is satisfied that the licensee has wilfully or negligently failed to operate in accordance with the terms and conditions of this licence or permit or the provisions of the Act or any regulations thereunder;
- (c) The licensee at any time after the commencement of this licence or permit makes representation to the Commission that the undertaking cannot be carried on with profit, and ought to be abandoned, and, upon inquiry the Commission is satisfied that the representation is true;
- (d) The licensee agrees in writing with the Commission that this licence or permit should be revoked;
- (e) Any amount (unless this is being contested in good faith by the licensee with recourse to the appropriate administrative and judicial procedures) payable by the licensee under any of the conditions or Regulations prescribed under the Act is unpaid 30 days after it has become due and remains unpaid for a period of 30 days after the Commission has given the licensee notice that the payment is overdue;
- (f) The licensee is unable to pay its debts (unless this is being contested in good faith by the licensee with recourse to all appropriate judicial procedures and measures) or has any voluntary arrangement proposed in relation to it or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Commission);
- (g) The licensee fails to comply with a final order of the Commission issued under the Act and such failure is not rectified to the satisfaction of the Commission within 60 days after the Commission has given notice of such failure to the licensee,

Provided that no such notice shall be given by the Commission before the expiration of the period within which an appeal under section 89 of the Act may be made to the Tribunal;

- (h) The licensee ceases to carry on the undertaking authorized by this licence or permit;
- (i) The licensee goes into liquidation or makes arrangement with its creditors' or a receiver/manager is appointed over the whole or any material part of the licensee's assets or undertaking (other than by the Lenders);
- (j) The licensee passes any resolution for winding up other than a resolution previously approved in writing by the Commission;
- (k) The licensee becomes subject to an order for winding up by a court of competent jurisdiction;

- (l) It is established that the licensee submitted information the licensee knew or had reason to know to be false when making its application for this licence or permit, and
- (m) The licensee purchases or acquires the undertaking of, or associates itself with, any public or local authority, company, person or body of persons generating or transmitting or distributing electrical energy under any licence or permit without the authorization of the Commission.

This Licence or Permit was granted at Nairobi this day of 20.....

IN WITNESS WHEREOF the Common Seal of the)

Energy Regulatory Commission was hereto affixed)

pursuant to the authority of the Commission given)

on the day of20.....)

In the presence of)

Title and Name)

DIRECTOR GENERAL)

And)

Title and Name)

COMMISSION SECRETARY)

Made on the 4th April, 2012.

KIRAITU MURUNGI,
Minister for Energy.