



## **CONSULTATION ON THE PROPOSED AMENDMENT TO THE ELECTRICITY (APPLICATION FOR PERMIT, LICENCE AND TARIFF REVIEW) REGULATIONS, 2007**

### ***Under Section 119 (1) of the Electricity Act, 1999***

Pursuant to Section 119 (1) of the Electricity Act, 1999 (the 'Act'), the Electricity Regulatory Authority (ERA) enacted the Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007 (the 'Regulations') to regulate the Generation, Transmission, Distribution and Utilization of the Electric System.

ERA is in the process of reviewing the Regulations with the objective of improving efficiency in the processing of Applications for Permits, Licences and Tariff reviews under the Act.

ERA is, therefore, calling upon the public for written comments, observations or opinions to the proposed amendments to the Regulations.

The proposed amendments can be are attached below.

All representations or objections should be submitted by email to **[era.registry@era.go.ug](mailto:era.registry@era.go.ug)** or through the ERA Website at **<https://www.era.go.ug/index.php/correspondence-submission>** .

**Dated 26<sup>th</sup> May 2021**  
**ENG. Ziria Tibalwa Waako**  
**CHIEF EXECUTIVE OFFICER**



**CALL FOR COMMENTS ON PROPOSED AMENDMENTS TO THE  
ELECTRICITY (APPLICATION FOR PERMIT, LICENCE AND TARIFF REVIEW)  
REGULATIONS, 2007**

## **1. BACKGROUND**

The Electricity Regulatory Authority (ERA) is a Statutory Body established under Section 4 of the Electricity Act, Chapter 145 of the Laws of Uganda ("the Act"), with the major objective of regulating the generation, transmission, distribution, sale, export and import of electrical energy in Uganda.

Pursuant to Section 119 (1) of the Electricity Act, 1999, the Authority has the mandate to make regulations relating to the generation, transmission, distribution and utilization of the electric system (by statutory instrument).

The Electricity (Application for Permit, Licence and Tariff Review) Regulations were enacted on the 28<sup>th</sup> day of December, 2007.

## **2. OBJECT/JUSTIFICATION OF THE AMENDMENT**

The Electricity (Application for Permit, Licence and Tariff Review) Regulations ("the Regulations") were enacted by the Authority to give full effect to the Electricity Act pursuant to Section 119(2) (e) of the Act. However, the Authority has since passed a number of Policies in a bid to improve efficiency and reliability of power supply in the Electricity sub-Sector.

In addition, in response to the dynamic nature of the Electricity sub-Sector, the Authority has over time developed practices in line with the Policies passed, which practices the Authority is desirous of incorporating in the Regulations to ensure consistency, openness, objectivity and fairness in the determination of applications under the Act.

Further to the above, a number of provisions have since become obsolete with the changing trends, while others, as a result of typographic errors, require harmonization with the provisions of the Act.

The Authority receives incomplete applications, which practice occasions time lags, disadvantaging licensees and intending developers. In order to improve efficiency, therefore, in processing and disposing of applications under the Act, the Authority has established the need to allocate more realistic timelines to the procedures and processes in the Regulations.

The objectives for review of the current Regulations are as follows: -

- a) To streamline Policies passed by the Authority by operationalizing them in the Regulations. These Policies include:
  - (i) The Electricity (Licensing Policies), 2020;
  - (ii) Policy on Licensing of Grid Connected Solar and Wind Projects (Regulatory Notice No.1 of 2020);
  - (iii) Policy on Allocation of Hydro Power Sites for Development, Regulatory Notice ERA/003/2015;
  - (iv) Policy on Licensing of Thermal Power Projects; and,
  - (v) Local Content Development Policy.
- b) To harmonize current practices with the provisions of the Law;
- c) To promote fairness openness and objectivity in the determination of applications under the Act;
- d) To get developers' insight on the existing regulations and practicality thereof; and,
- e) To improve efficiency in the Electricity sub-Sector.

### **3. DOCUMENTS REVIEWED**

In the process of review of the Regulations, reference was made to the following documents:

- (a) The Electricity Act, 1999;
- (b) The Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007;
- (c) The Electricity (Tariff Code) Regulations, 2007;
- (d) The Electricity Licensing Policies, 2020; and,
- (e) The Electricity (Licence Fees) (Amendment) Regulations, 2014.

#### **4. SUMMARY OF PROPOSED AMENDMENTS TO THE ELECTRICITY (APPLICATION FOR PERMIT, LICENCE AND TARIFF REVIEW) REGULATIONS, 2007**

##### **4.1. Part I- General Provisions**

**4.1.1.** It is proposed that under Regulation 2, the following terms be defined as follows:

“Application” be defined to mean an application for a licence, permit or transfer of a licence or permit, renewal or modification of a license or permit under the Act, and references to an application in reference to a permit or licence shall be construed accordingly.

“Prudent Operating Practice” be defined to mean any of the practices, methods and acts which, in the exercise of reasonable judgment in the light of the facts known at the time that a decision was made, could reasonably have been expected to accomplish the desired result at the lower reasonable cost, consistent with licensing and regulatory considerations, environmental considerations, reliability, safety and expedition;

“Transfer” be defined to mean a transfer of a licence under Section 46 of the Act.

## **4.2. PART II – Licensing Procedure**

### **4.2.1. Notice of Intended Application**

- (a) Regulation 3(1) be amended to provide for submission of a Notice of Intended Application in an electronic format through an online portal together with one paper copy, delivered or sent by person or prepaid post to the Authority at its principle office.

This is to ensure compliance with the Public Health (Control of Covid -19) Rules, 2020 issued by the Ministry of Health in response to the Covid-19 Pandemic. In addition, the Authority is in the process of implementing the Registry Management System under which applicants will be required to submit applications electronically.

- (b) Regulation 3(8) be introduced to provide for payment of a non-refundable application fee as prescribed by the authority after certifying that the application is complete in all respects. This is to create certainty and fairness in the disposal of applications.
- (c) Regulation 3(9) be introduced to provide clarity on what amounts to a complete application, that is, where the documents submitted have been assessed and found complete, and the applicant has submitted proof of payment of the non-refundable fee in Regulation 3 (8).

- (d) Regulation 4(2) (ii) be introduced to provide for publication of the notice informing members of the public that the notice may be inspected on the Authority's website. The objective of this is to ensure compliance with the Ministry of Health Guidelines, and the Public Health (Control of Covid -19) Rules, 2020 issued by the Ministry of Health.
- (e) Regulation 5(2)(a) be amended to provide for a permit period of eighteen months, subject to renewal, in line with the Policy on Allocation of Hydro Power sites for Development, Regulatory Notice No. ERA/003/2015.

#### **4.2.2. Extension of Permit**

The Authority receives recurrent Permit extension applications which disadvantages other permit holders. The Authority is therefore desirous of establishing a maximum validity period for a permit holder to streamline the process with the Policy on Allocation of Hydro Projects, and to encourage progress and completion of electricity projects.

The following amendments are therefore proposed:

- (a) Regulation 6(1) be amended to provide for a maximum period of permit duration of twenty-four (24) months in line with the Policy on Allocation of Hydro Power sites for Development, Regulatory Notice No. ERA/003/2015.
- (b) Regulation 6(2) be introduced to provide for a form for application for permit extension to ensure certainty, uniformity and fairness in determining permit extension applications.

- (c) Regulation 6(5) to 6(7) be introduced to provide for a completeness check by the Authority and payment of the permit extension fee. This is necessary to ensure completeness of applications and fairness in the determination of an application for permit extension.

#### **4.2.3. Transfer of Permit:**

It is proposed to introduce Regulation 7 to expressly prohibit transfer of permits, in line with the Electricity (Licensing Policies), 2020.

#### **4.2.4. Application for Licence**

- (a) It is proposed that Regulation 8(1) be amended to provide for online application in line with the Public Health (Control of Covid -19) Rules, 2020 issued by the Ministry of Health. In addition, the Authority is in the process of implementing the RIMS system which will require submission of applications electronically.
- (b) The Authority has been receiving applications for Licences from intending developers of Bagasse Co-Generation Plants. These applications are unique in the sense that the facilities are already in place and therefore conducting of feasibility Studies prior to Licensing is not practical. It is therefore proposed that Regulation 8(3), (4) and (5) be introduced to provide for completeness of applications relating to Bagasse Co-generation plants to ensure completeness of submissions, payment of Licence application fees to determine completeness and fairness in determining applications for licences under the Act.



#### **4.2.5. Publication of application for licence**

Regulation 8 be amended as follows:

- (a) Under Regulation 9(1) it is proposed that the period within which the Authority is required to cause a notice of the licence application to be published be amended from forty to forty-five days after receipt, to align it to Section 33 of the Act.
- (b) Regulation 9(2) (c) be amended to provide for commercial confidentiality in respect of information submitted by the Applicant in line with the Data Protection Act, 2020.
- (c) Regulation 9(2)(d) be amended to align the period within which affected parties, local authorities and public agencies may submit representations after publication, to that in the Act. The Act provides for 'not less than thirty days' whereas according to the Regulations representations should be received 'within thirty days'.
- (d) Regulation 9(3), (4) and (5) be introduced to provide a procedure for the Authority to deal with external comments and representations to create uniformity.

#### **4.2.6. Award of additional Licence**

It is proposed to introduce Regulation 13 to provide clarity and uniformity in issuance of additional licences to a licence holder to streamline the provisions in the Regulations with the position in the Electricity (Licensing Policies) 2020 and to ensure fairness and objectivity in accordance with Section 11 (1) of the Act.

#### **4.2.7. Transfer of Licence**

It is proposed that Regulation 14(2) (c) and (7) be amended to provide for a transfer fee to align the regulations with Section 46(3) of the Act which provides for a transfer fee to be paid on the approval of the Transfer. The Authority is therefore required to provide for a transfer fee as the Electricity (Licence Fees) (Amendment) Regulations, 2003 only provide for a transfer application fee.

#### **4.2.8. Modification of Licence**

The Authority has been receiving incomplete applications for modification of Licence, which results in delays and unfairness to other licensees.

In order to create uniformity, fairness and objectivity it is therefore proposed that the procedure for licence modification under Sections 43 and 44 of the Act is streamlined with the current practice. The procedure for licence modification under Section 44 as it is in the Act, does not provide for a completeness check by the Authority on receipt, request for additional information to form a complete application and clarification on what constitutes a complete application. This creates inconsistency in processing of an application for licence modification and consequent unfair treatment of some licensee.

#### **4.2.9. Schedules**

It is proposed that the following forms be introduced in the schedules:

- (i) Form A be amended to read 'Form 'A1''.
- (ii) Form A2 for Permit Renewal be introduced.

### **5. Confidentiality and Non-Disclosure**

- (a) For purposes of this call for comments, the term “Confidential Information” shall collectively refer to all non-public information or material disclosed or provided by members of the public, whether written, orally or by electronic recording, in response to the Call for Comments.
- (b) Confidential Information shall not include information or material that:
  - (i) Is publicly available or becomes publicly available through no action or fault of the recipient party;
  - (ii) Was already in the Authority’s possession or known to the Authority prior to being disclosed or provided to the Authority by or on behalf of the other party, provided, that the source of such information or material was not bound by a contractual, legal or fiduciary obligation of confidentiality to the non-disclosing party or any other party with respect thereto;
  - (iii) Was or is obtained by the Authority from a third party, provided, that such third party was not bound by a contractual, legal or fiduciary obligation of confidentiality to the non-disclosing party or any other party with respect to such information or material; or,
  - (iv) Is independently developed by the Authority without reference to the Confidential Information.
- (c) The Authority shall keep strictly confidential any non-public information submitted to it in response to the call for comments, except to such officers, employees, authorized agents and representatives and consultants to whom

disclosure is necessary in connection with the proposed amendments to the Regulations.

## 6. Process of Consultation

The table below sets the proposed consultation process for amendment of The Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007.

**Table: Consultation Time table**

<b>S/N</b>	<b>Activity</b>	<b>Timeline/date</b>
1.	Internal consultation on the proposed amendment (Technical, Legal and Economic Regulation Departments).	19 <sup>th</sup> April 2021
2.	Presentation to ERA Management.	21 <sup>st</sup> April 2021
3.	Publication of Call for Comments.	10 <sup>th</sup> May 2021
4.	Review and incorporation of comments from Management.	3 days from date of receipt of comments
5.	Call for comments from stakeholders (licensees, consumers and other interested parties).	30 days
6.	Workshop to consider comments from external stakeholders.	14 days from deadline set for receipt of comments
7.	Meeting with Solicitor General.	7 <sup>th</sup> -11 <sup>th</sup> June 2021
8.	Presentation to Technical Committee.	17 <sup>th</sup> June 2021
9.	Presentation to the Authority for approval.	25 <sup>th</sup> June 2021
10.	Send the proposed amendments to Solicitor General for enactment.	3 days



## ANNEX:

### PROPOSED AMENDMENTS TO THE ELECTRICITY (APPLICATION FOR PERMIT, LICENCE AND TARIFF REVIEW) REGULATIONS, 2007

The following are the proposed amendments to the Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007

**Table 1: Proposed amendments to the Electricity (Application for Permit, Licence and Tariff Review) Regulations, 2007**

No.	provision	Proposed amendment	Comments/ Rationale
1	Citation, No.1 (Title)	Be changed to 2021.	The Regulations shall be enacted in 2021.
2.	Reg.2 definitions "Application"	The word "Application" be defined.	
3.	Reg. 2 definitions "Prudent Utility Practice"	"Prudent Operating Practice" means any of the practices, methods and acts which, in the exercise of reasonable judgment in the light of the facts known at the time that a decision was made, could reasonably have been expected to accomplish the desired result at the lower reasonable cost, consistent with licensing and regulatory considerations, environmental considerations, reliability, safety and expedition.	The word "Prudent Utility Practice" needs to be defined.
4.	Reg. 2 definitions "Transfer"	"Transfer" means a transfer of a licence under Section 46 of the Act.	The word "Transfer" be defined.

No.	provision	Proposed amendment	Comments/ Rationale
5.	Reg. 3(2)	"Sub regulation (1)" shall not apply to Co-generation projects.	The Authority has been receiving applications for Licences in respect of Co-generation projects without going through the Permitting stage. This is because Co-generation plants already have existing facilities at the time of applying for the Licence. The Authority is therefore desirous of exempting them from applying for a feasibility permit. They could be required to submit a feasibility study report on application for a licence.
6.	Regulation 3(2)	A notice of intended application under sub regulation (1) shall be submitted in an electronic format through an online portal together with one paper copy, delivered or sent by person or prepaid post to the Authority at its principle office.	The Authority is desirous of streamlining the procedure for application for a feasibility study permit in order to comply with the Public Health (Control of Covid -19) Rules, 2020 issued by the Ministry of Health issued by the Ministry of Health. In addition, ERA is in the process of developing a Registry Information Management System which will require lodging of

No.	provision	Proposed amendment	Comments/ Rationale
			applications under the Act online.
7.	Regulation 3 (8)	Where the Notice of Intended Application is complete, the Applicant will be advised to pay a non-refundable application fee as prescribed by the Authority.	The Authority receives a number of applications for feasibility study permits without proof of payment of the application fee. This occasions delays in processing of applications.
8.	Regulation 3(9)	An application shall only be considered complete if the documents submitted have been assessed and found complete, and the Applicant has submitted proof of payment of the non-refundable fee in Regulation 3 (8).	The Authority is desirous of establishing uniformity in the processing of applications under the Act in order to ensure fairness, openness and objectivity in the exercise of its functions pursuant to Section 11 of the Act. It is therefore proposed to define what constitutes a complete application under the Act.
9.	Regulation 4(2)(ii)	The notice published under sub regulation (1) shall inform members of the public that the notice may be inspected on the Authority's website.	There is need to provide an option for inspecting NIAs on the Website.
10.	Regulation 5(2)(a)	A permit issued under sub regulation (1) shall:-  (a) Be valid for a period of eighteen (18) months and subject to review	There is need to specify the validity period of a permit to be in line with the Policy on Allocation of Hydro Power Projects.



No.	provision	Proposed amendment	Comments/ Rationale
		at intervals specified in the permit.	
11.	Regulation 6	<p>Extension of Permit</p> <p>(1) The authority may extend the validity of a permit on such terms and conditions as it may determine, provided that a permit shall not exceed twenty-four (24) months.</p> <p>(2) In exceptional circumstances, the authority may extend a permit for a longer period, where in the Authority's opinion, the reasons for the delay are attributed to a third party or occasioned by factors outside the permit holder's control.</p>	<p>The Authority receives recurrent Permit extension applications which disadvantages other permit holders. The Authority is therefore desirous of establishing a maximum validity period for a permit holder to streamline the process and encourage progress and completion of electricity projects.</p> <p>The Authority should be vested with power to extend a permit beyond the validity period in exceptional circumstances as per the Licensing Policies, 2020.</p>
13.	Regulation 6(4) to (7)	<p>(1) The application for renewal shall be in the form prescribed in schedule A2 and accompanied by a statement of justification for the renewal of the permit.</p> <p>(2) The Authority shall ascertain completeness of the</p>	Having proposed a streamlined process for Permit Renewal, the Authority is desirous of developing a standardized form of application for Permit Renewal.

No.	provision	Proposed amendment	Comments/ Rationale
		<p>application upon submission by an Applicant.</p> <p>(3) Where the Authority considers it necessary for the Applicant to submit missing or additional information in respect of the application the Authority shall, within thirty days after submission of the application, notify the applicant to submit the missing or additional information within a period specified in the notice.</p> <p>(4) Where the information in sub Regulation (5) has been submitted to the satisfaction of the Authority, the applicant shall be issued an invoice and thereafter provide proof of payment of the prescribed fees.</p>	

No.	provision	Proposed amendment	Comments/ Rationale
		(5) Upon receipt of proof of payment, the Authority shall receive the application and confirm in writing to the applicant that the application is complete in all aspects.	
15.	Regulation 7	<p>Transfer of Permit</p> <p>(1) A holder of a permit shall not transfer or assign the permit during or after the expiry of the permit term.</p> <p>(2) Where a permit holder transfers or assigns a permit, the Authority shall give a licensee a forty-five days' notice to show cause why the permit should not be revoked.</p> <p>(3) The notice in sub regulation (2) shall be published in the gazette and in a newspaper of wide circulation in the area where the permit holder operates.</p>	<p>A permit for conducting feasibility studies gives the permit holder exclusivity over the area in respect of which the permit is issued.</p> <p>The Authority is therefore desirous of prohibiting transfer of the Licence to prevent hoarding in project development.</p>

No.	provision	Proposed amendment	Comments/ Rationale
		<p>(4) A notice under sub regulation (2) shall set out:</p> <p>(a) The reasons for revocation of the permit; and,</p> <p>(b) The period not being less than twenty-eight days from the date of issuing the notice within which the representations or objections may be made by the permit holder.</p> <p>(5) A decision made by the Authority to revoke a permit after considering all representations and objections received under subregulation (4)(b) and other relevant factors may be appealed by the holder of the revoked permit to the tribunal within thirty days after</p>	

No.	provision	Proposed amendment	Comments/ Rationale
		<p>receipt of the decision of the Authority.</p> <p>(6) The Authority shall not issue an additional permit to a permit holder except where the issuance of an additional permit will promote efficiency and fair competition, and provided the permit holder has fulfilled all its permit obligations at the time of application for the permit.</p>	
16.	Regulation 8(1)(i)	An application for a licence under the Act shall be submitted to the Authority and shall contain a valid feasibility studies permit, for a project other than a Co-generation project;	The Authority has been receiving applications for Licences from intending developers of Bagasse Co-generation Plants. These applications are unique in the sense that the facilities are already in place and therefore conducting of feasibility Studies prior to Licensing is not practical. In order to streamline the process, therefore, the Authority is desirous of exempting applicants for licences to operate Co-

No.	provision	Proposed amendment	Comments/ Rationale
			generation plants from submitting a valid feasibility study permit on application for a licence.
17.	Regulation 8(3),(4) and (5)	<p>(1) The Authority shall ascertain completeness of the application upon submission by an applicant.</p> <p>Where the Authority considers it necessary for the applicant to submit missing or additional information in respect of the application, the Authority shall, within thirty days after submission of the application, notify the applicant to submit the missing or additional information within a period specified in the notice.</p> <p>(2) Where the information in Regulation 8(1) has been submitted to the satisfaction of the Authority, the applicant shall be issued an invoice and thereafter provide proof of payment of the prescribed fees.</p>	<p>The Authority has been receiving incomplete applications for Licences. It now seeks to provide for a completeness check by the Authority, issuance of an invoice after ascertaining completeness and confirmation by the Authority that the application is complete in all respects.</p>

No.	provision	Proposed amendment	Comments/ Rationale
		(3) Upon receipt of proof of payment, the authority shall receive the application and confirm in writing to the applicant that the application is complete in all aspects.	
19.	Regulation 9(1)	The Authority shall, within forty-five days after receipt of a complete application for a licence, cause a notice of the application to be published in the Gazette and in at least one national newspaper of wide circulation in Uganda.	The Act provides for 45 days whereas the Regulations provide for 40 days within which a licence should be published after receipt. The Authority therefore proposes to align the period of the Regulations to that in the Act.
20.	Regulation 9(2)(c)	The notice published under subregulation (1) shall inform members of the public that the application may, within the limits of commercial confidentiality as the Authority may approve, be inspected at the offices of the Authority or at any other place that the Authority may determine;	In order to comply with the Data Protection Act, 2020 and Section 117 of the Electricity Act in respect of public documents, the Authority desires to include a provision for confidentiality of applicants' information submitted to the Authority.
21.	Regulation 9(2)(d)	...invite directly affected parties, local authorities and public agencies in the area affected by the project to submit in writing, any objection and comments on	

No.	provision	Proposed amendment	Comments/ Rationale
		the project within a specified time, being not less than thirty days after publication of the notice.	
22.	Regulation 9(3),(4) and (5)	<p>(3) The affected parties shall submit comments in writing and deliver them to the principle address of the Authority or by such other means as the Authority may prescribe.</p> <p>(1)The Authority shall confirm in writing, receipt of the comments received under subregulation (2).</p> <p>(2)The Authority shall forward to the intended applicant, the comments from the affected parties and affected public agencies.</p> <p>(3)The applicant shall respond to the comments of the affected parties and project affected agencies within such period as the Authority may prescribe.</p>	
23.	Regulation 13.	<p>Award of additional licence</p> <p>(1)The Authority may issue an additional licence to a licensee where:</p>	In order to provide clarity and uniformity in issuance of additional licences to a licensee, the Authority is desirous of streamlining the



No.	provision	Proposed amendment	Comments/ Rationale
		<p>(a)The licensee has fulfilled all its permit and licence obligations at the time of application for the licence;</p> <p>(b)Implementation of the licenced project has commenced, financial close has been achieved and overall construction has reached at least 70% completion;</p> <p>(c)The licensee demonstrates to the satisfaction of the Authority that it possesses sufficient legal, financial and technical capacity to undertake feasibility studies or construction of more than one project concurrently;</p> <p>(d)The Authority is satisfied that the award of an additional permit is in the public interest and will promote efficiency</p>	<p>provisions in the Regulations with the position in the Electricity (Licensing Policies), 2020 and to ensure fairness and objectivity in accordance with Section 11 (1) of the Act.</p>

No.	provision	Proposed amendment	Comments/ Rationale
		<p>and fair competition; and,</p> <p>(e) The Authority is satisfied that the award of an additional permit or licence will address the energy needs of the country.</p>	
24.	Regulation 14(2)(c) and (7)	(4) Where the Authority approves a transfer or assignment of licence, the Authority shall issue the licensee with an invoice for payment of the prescribed transfer fee.	<p>The Electricity Act provides for a transfer fee paid on the approval of the transfer. On the other hand, the Electricity (Licence Fees) (Amendment) Regulations, 2014 provide for a transfer application fee.</p> <p>The Authority is therefore desirous of providing for a transfer fee in addition to a transfer application fee. This is in order to harmonize the provision in the Regulation with that in the Act.</p>
25.	Regulation 16 & 17	Modification: (Section 43 was imported into the Regulation)	<p>The Authority is desirous of streamlining the procedure for licence modification.</p> <p>The Authority has been receiving incomplete applications for modification of Licences, which results in</p>

No.	provision	Proposed amendment	Comments/ Rationale
			<p>delays and unfairness to other licensees.</p> <p>It is therefore proposed to provide for a completeness check, request for additional information and clarification on what constitutes a complete application.</p>
26.	Schedule: Form A1 and Form A2	Schedule A2	The Authority is desirous of introducing Schedule A2 to provide for a form for application for permit renewal in order to minimise information inadequacy and delays in processing.