

CHAPTER 73:02
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20 of 2004

G.N. 37/2007

An Act to establish an Energy Regulatory Authority to regulate the energy sector, to define the functions and powers of the Energy Regulatory Authority, to provide for licensing of energy undertakings, and for matters connected therewith and incidental thereto

[28TH DECEMBER, 2007]

PART I

PRELIMINARY

[Ch7302s1]1. Short title

This Act may be cited as the Energy Regulation Act.

[Ch7302s2]2. Interpretation

In this Act, unless the context otherwise requires—

“Authority” means the Malawi Energy Regulatory Authority established under section 3;

“coal” means coal as defined in the Energy Laws;

“customer” means a person purchasing energy;

“consumer” means a person consuming energy;

“electricity undertaking” means electricity undertaking as defined in the Electricity Act;

“energy” means such sources of renewable and non-renewable energy as defined in this Act;

“Energy Laws” means this Act and any other written law under which the Authority exercises any function;

“energy undertaking” means any undertaking selling energy or commercial activities related thereto, whether public or private as defined in the Energy Laws; Cap. 73:01

“licence” means a licence granted under Part III;

“licensee” bears a corresponding meaning;

“liquid fuels and gas” means liquid fuels and gas as defined in Energy Laws;

“member” means a member of the Authority and includes the Chairperson or Vice-Chairperson;

“non-renewable energy” means those sources of energy available to mankind arising from natural processes in the interaction between the sun and the earth’s surface but not regularly replenished and these include uranium and fossil fuels e.g. coal, peat, crude oil, natural gas;

“Public Appointments Committee” means the Public Appointments Committee established under section 56 (7) of the Constitution;

“renewable energy” means those sources of energy available to mankind arising from natural processes in the interaction between the sun and the earth’s surface and regularly replenished and these include the sun as the primary renewable energy resource and the secondary renewable energy resources that derive from the sun including wind energy, hydro, ocean thermal, ocean wave, ocean tidal and electricity from photo-voltaic effects, biomass, geothermal, etc.;

“rural electrification” means rural electrification as defined in the Rural Electrification Act; Cap. 73:03

“Rural Electrification Fund” means the fund set up under the Rural Electrification Act; Cap. 73:03

“solar, wind, biogas” means solar, wind, biogas as defined in the Energy Laws;

PART II

ESTABLISHMENT OF THE ENERGY REGULATORY AUTHORITY: CONSTITUTION, FUNCTIONS, POWER AND DUTIES

[Ch7302s3]3. Establishment of the Authority

There is hereby established an Authority known as the Malawi Energy Regulatory Authority (in this Act otherwise referred to as the “Authority”) which shall be a body corporate by that name with perpetual succession and a common seal and capable of suing and being sued in its corporate name and capable of acquiring and disposing of any moveable or immovable property and performing such acts and things as bodies corporate may by law do or perform and have power to perform such functions and exercise such powers as are conferred by this Act and the Energy Laws.

[Ch7302s4]4. Constitution of the Authority

(1) The Authority shall comprise—

(a) a Chairperson, a Vice-Chairperson and three other members;

- (b) the Principal Secretary responsible for Energy Affairs as ex officio member;
- (c) the Director of Energy Affairs; and
- (d) the Chief Executive of the Authority as ex officio member so long as he or she remains in the post of Chief Executive.

(2) Members of the Authority shall be persons who have adequate knowledge and experience in any one or more of the following functional areas—

- (a) energy supply and demand, including the end use consumption of energy;
- (b) commercial and business practices and procedures;
- (c) financial and funding aspects of the energy sector;
- (d) energy tariffs, pricing or charges;
- (e) energy planning and project development;
- (f) energy technology and standards or renewable energy technologies;
- (g) environmental issues; or
- (h) legal matters.

(3) Candidates for appointment as members of the Authority shall be selected on the basis of their knowledge and experience of national, regional and international issues relating to the supply of energy in Malawi.

(4) The overall composition of the Authority shall as far as possible reflect a balance of knowledge and experience relevant to the different types of energy supply regulated by the Authority and the distinct industries involved in the energy sector.

(5) Any person who—

- (a) is a Member of Parliament;
- (b) is a Minister or Deputy Minister;
- (c) is a holder of a licence;
- (d) is an employee of a licensee;
- (e) is a director of a company holding a licence under this Act;
- (f) holds five per cent or more shares in a company holding a licence under this Act;
- (g) has, in the last seven years, been convicted of an offence under this Act, or an offence involving fraud or dishonesty by a competent court in Malawi or elsewhere; or
- (h) is in a position where there is a material conflict of interest between the interests of the member as member of the Authority and the business interest of that member,

shall be disqualified from being appointed as a member of the Authority.

[Ch7302s5]5. Appointment of members of the Authority

(1) The President shall appoint members of the Authority and each appointment shall be subject to confirmation by The Public Appointments Committee.

(2) The first appointment of members of the Authority as provided for in subsection (1) shall be made within twenty-eight days of the coming into force of this Act.

(3) The names of all members of the Authority as first constituted and every change of membership of the Authority shall be published in the Gazette.

(4) In appointing members of the Authority under subsection (1), the President shall have regard to the need for continuity of service on the Authority so that at least half

of the members of the Authority appointed thereunder shall be reappointed for the next term of office.

[Ch7302s6]6. Chairperson of the Authority

The President shall appoint one of the members of the Authority as Chairperson and another member as Vice-Chairperson.

[Ch7302s7]7. Tenure of office of members

(1) A member of the Authority, other than an ex officio member, shall hold office for a period of three years and shall be eligible for reappointment:

Provided that no member may be reappointed for more than two consecutive terms.

(2) The office of a member of the Authority shall become vacant—

- (a) if he or she resigns;
- (b) upon his or her death;
- (c) if he or she becomes bankrupt;
- (d) if he or she knowingly fails to declare a conflict of interest relating to any matter under consideration by the Authority;
- (e) if he or she is absent, without the consent of the Chairperson or without valid excuse, from three consecutive meetings of the Authority of which he or she has had notice;
- (f) upon the expiry of the term of his or her appointment;
- (g) if he or she becomes, by reason of mental or physical infirmity, incapable of performing his or her duties as a member; or
- (h) if any circumstances arise that, if he or she were not a member, would cause that member to be disqualified for appointment as a member.

[Ch7302s8]8. Removal from office and vacancy

(1) A member of the Authority shall not be removed from office except for reasons of incompetence or misconduct and only after due inquiry and subject to the approval of the Public Appointments Committee.

(2) A vacancy in the Authority shall be filled by the appointment of another member in accordance with this Act, and the member so appointed shall hold office for the unexpired period of the term of office of his or her predecessor.

[Ch7302s9]9. Powers and functions

(1) The Authority shall have power to regulate the activities of the energy industry in accordance with this Act and the Energy Laws and, without limitation to the generality of the foregoing, shall carry out the following functions—

- (a) receive and process licence applications for energy undertakings;
- (b) grant, revoke or amend licences granted under this Act and Energy Laws;
- (c) approve tariffs, and prices of energy sales and services;
- (d) monitor and enforce compliance by licensees with licences granted under this Act and Energy Laws;
- (e) develop and enforce performance and safety standards for energy exploitation, production transportation and distribution;
- (f) prescribe and collect fees, charges, levies or rates under this Act and Energy Laws;
- (g) arbitrate commercial disputes under this Act and Energy Laws;

(h) recommend reforms to this Act and Energy Laws as the Authority may deem desirable;

(i) resolve or mediate consumer complaints against licensees; and

(j) do all such things as are necessary or incidental or conducive to the better carrying out of the functions of the Authority provided for in this Act and Energy Laws.

(2) In exercising its powers and functions under this Act and the Energy Laws, the Authority shall be independent of interference or direction of any other person or authority, and shall—

(a) promote the interests of consumers of energy with respect to energy prices and charges and the continuity and quality of energy supply;

(b) monitor the efficiency and performance of energy undertakings, having regard to the purposes for which they were established;

(c) in conjunction with other relevant agencies, monitor the levels and structures of competition within the energy sector in order that competition in and accessibility to the energy sector in Malawi is promoted;

(d) facilitate increasing access to energy supplies;

(e) promote energy efficiency and energy savings;

(f) promote consumer awareness and education;

(g) promote the integrity and sustainability of energy undertakings and seek to ensure that energy undertakings, whilst providing efficient service, are able to finance the carrying on of the activities which they are licensed or authorized to carry on;

(h) in conjunction with other relevant agencies, formulate measures to minimize the environmental impact of the exploitation, production, transportation, storage, supply and use of energy and enforce such measures by the inclusion of appropriate conditions to licences held by energy undertakings;

(i) promote the exploitation of renewable energy resources; and

(j) take all such measures as are necessary to fulfill the above purposes through regulations to be made under this Act or the Energy Laws.

(3) The Authority shall, in undertaking its regulatory tasks, regulate in a manner that is transparent, cost effective and fair.

(4) The Authority may advise the Government on matters affecting the energy sector generally and energy undertakings specifically.

[Ch7302s10]10. Minister to Gazette policy

(1) Whenever the Minister intends to revise the policy with regard to the energy sector, he or she shall prepare a draft thereof and invite comments from licensees and other stakeholders, and he or she shall take those comments into account before issuing the new policy.

(2) Any policy issued under subsection (1) shall be in writing and shall be published in the Gazette and in such other manner as the Minister may determine.

[Ch7302s11]11. Remuneration of members

(1) A member of the Authority shall be paid such remuneration or allowances as the Minister of Finance may approve on the recommendation of the Authority:

Provided that such remuneration or allowances shall be set at levels that are comparable to those offered to similar professionals on the open market in Malawi.

(2) Members shall be paid out of the funds of the Authority.

[Ch7302s12]12. Meetings of the Authority

(1) The members of the Authority shall meet at such times and places and in the manner as the Chairperson may from time to time determine provided that the Authority shall meet at least once every quarter.

(2) The Chairperson of the Authority may at any time convene an extraordinary meeting of the Authority to be held at a time and place and in the manner determined by him or her and shall, upon a written request of at least two other members of the Authority, convene an extraordinary meeting to be held within two weeks after the date of such request.

(3) The Chairperson of the Authority or, in the absence of the Chairperson, the Vice-Chairperson of the Authority shall preside over any meeting of the Authority, and in the absence of both the Chairperson and Vice-Chairperson, the members present shall elect one of their number to preside at the meeting.

(4) The Authority may publish in the Gazette the procedure to be followed at meetings of the Authority.

(5) In the absence of a published procedure under subsection (4), the person presiding at such a meeting of the Authority shall determine the procedure to be followed thereat.

(6) The quorum for a meeting of the Authority shall be a majority of all its members.

(7) The decision of a majority of the members of the Authority present at a meeting thereof shall constitute a decision of the Authority, and in the event of an equality of votes on any matter the person presiding at a meeting has a casting vote in addition to his or her deliberative vote.

(8) No member of the Authority, except ex officio members, shall attend the meeting of the Authority by representation.

(9) Other officers of the Authority as the Chief Executive may designate, shall attend meetings of the Authority and of any committee of the Authority and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting may, for good cause, require such other officers to withdraw from such meeting.

(10) No decision taken by the Authority or act performed under it shall be invalid only by reason of a vacancy on the Authority or of the fact that any person not entitled to sit as a member of the Authority sat at such a meeting at the time the decision was taken or the act was authorized.

(11) The Authority may, at its discretion, allow members of the public or licensees to attend any of its meetings.

(12) If the Authority takes a decision in any manner other than at a formal meeting, such decision shall come into effect immediately but shall be reduced to writing and submitted for ratification at the first formal meeting of the Authority following such decision.

(13) The Authority shall cause a record of its proceedings to be kept.

[Ch7302s13]13. Duties and responsibilities of members

(1) Any member of the Authority shall—

(a) act in a justifiable and transparent manner whenever the exercise of his or her discretion is required;

(b) at all times act in the interests of the Authority and not in his or her sectoral interest;

(c) act independently of any outside influence or instruction; and

(d) act in a manner that is required of any holder of a public office.

(2) A member of the Authority having any interest, directly or indirectly, in any matter under discussion by the Authority shall as soon as possible after the relevant facts have come under his or her knowledge, disclose to the Authority the facts of his or her interest and nature thereof.

(3) A disclosure under subsection (2) shall be recorded in the minutes of the Authority and, after the disclosure, the member—

(a) shall not take part nor be present in any deliberation or decision of the Authority; and

(b) shall be disregarded for the purpose of constituting a quorum of the Authority.

(4) Any member of the Authority who fails to disclose his or her interest as provided under subsection (1) shall be guilty of an offence and liable on conviction to a fine of K500,000 and to imprisonment for five years.

(5) No act or proceedings of the Authority shall be invalidated on the grounds only that any member of the Authority has contravened the provisions of this section. [Ch7302s14]14. Just administrative action

(1) Any decision of the Authority affecting the rights of another person shall—

(a) be within the powers of the Authority as set out in this Act and Energy Laws;

(b) be taken within a procedurally fair process; and

(c) be reasonable.

(2) Any person adversely affected by a decision of the Authority shall on request be furnished with written reasons for the decision.

[Ch7302s15]15. Committees of the Authority

(1) The Authority may appoint committees consisting of as many members of the Authority and employees of the Authority as may be deemed necessary to perform such functions or exercise such powers of the Authority as the authority may perform or exercise under this Act, and Energy Laws and may at any time dissolve or reconstitute such committees, and the chairperson of any such committee shall be a member of the Authority but so however that the Authority is not divested of any function or power conferred upon a committee under this subsection.

(2) Any decision of a committee performing a function or exercising a power of the Authority shall be tabled at a meeting of the Authority and may be withdrawn or amended by the Authority or referred back to such committee and shall, until it has been so withdrawn or amended, be deemed to be a decision of the Authority.

[Ch7302s16]16. Advisory Committees and customer-consumer fora

(1) The Authority may appoint committees consisting of as many members of the Authority, employees of the Authority and other persons as may be deemed necessary to advise the Authority in general or on a particular matter.

(2) The Authority may establish customer-consumer fora consisting of as many of the members of the Authority, employees of the Authority and other persons as may be deemed necessary to represent the interests of consumers or consumers of energy in

relation to consumer or consumer information, education, energy pricing and dispute resolution.

[Ch7302s17]17. Members or employees not to be engaged in licensed activity

(1) A member or employee of the Authority shall not seek employment with any licensee for a period of two years after leaving the position as member or employee of the Authority.

(2) A member or employee of the Authority, as the case may be, shall not, after leaving the membership or employment of the Authority act as an agent for or on behalf of a licensee in any matter before the Authority that was under consideration by the Authority during the term of office of that member or during the employment of the employee with the Authority.

[Ch7302s18]18. Chief Executive of the Authority

The Authority shall appoint a Chief Executive to be known by such title as the Authority may deem fit, who shall be the chief executive officer of the Authority and responsible for the administrative control of, and supervision over the work and staff of the Authority.

[Ch7302s19]19. Other staff of the Authority

(1) The Authority shall establish its own Secretariat and may appoint such staff, subordinate to the Chief Executive, as the Authority deems necessary.

(2) The Authority may delegate to the Chief Executive the appointment of staff of such ranks as the Authority may specify.

(3) The Authority may pay to persons in its employ, or provide them with, such remuneration, pension and employment benefits as the Authority may, after having obtained such professional advice as it may deem fit, consider as being competitive in the employment market in Malawi.

[Ch7302s20]20. Disclosure of interest

(1) The Chief Executive shall disclose to the Authority any interest he or she has, whether in a private or professional capacity, in any matter that is under consideration by the Authority and shall not attend any meeting of the Authority or of any committee of the Authority while any question touching such matter is being discussed.

(2) Every employee of the Authority or any consultant, adviser or sub-contractor to the Authority shall disclose to the Chief Executive any interest he or she has, whether in a private or professional capacity, in any matter that is under consideration by the Authority, and the Chief Executive shall take such decision as he or she considers appropriate in each case and submit a report thereon to the Authority.

[Ch7302s21]21. Hiring of services

The Authority may, subject to such conditions as the Authority may determine contract with any person to provide goods or supply services as may be necessary to perform the work connected with the powers, functions and duties of the Authority.

[Ch7302s22]22. Delegation of powers and Authority

(1) The Authority may delegate any power or function assigned to it under this Act and Energy Laws to the Chairperson or any member of the Authority or to any employee of the Authority to facilitate the day to day operation of the Authority.

(2) The Chairperson of the Authority may, with the approval of the Authority, delegate any power or function assigned to him or her under this Act and Energy Laws or delegated to him or her under subsection (1) to any member of the Authority.

PART III
FINANCIAL PROVISIONS

[Ch7302s23]23. Funds of the Authority

The funds of the Authority shall consist of—

- (a) all fees, charges, energy regulation levies, dues or rates imposed under this Act and Energy Laws;
- (b) one-half of all fines imposed by a competent court for the contravention of the provisions of this Act and Energy Laws or by-laws made by the Authority;
- (c) revenue accruing to the Authority from the Government or other body or person, whether as a grant-in-aid or otherwise;
- (d) all such monies as are, from time to time, appropriated to the Authority by Parliament; and
- (e) any other income authorized under this Act and Energy Laws or income recognized as such by accounting standards and practices.

[Ch7302s24]24. Energy regulation levy

(1) For the purposes of the levies referred to in section 23, the Authority may by notice in the Gazette impose an energy regulation levy on energy sales to be paid by licensees.

(2) A notice under subsection (1)—

- (a) shall state the amount of the levies or the basis or method of calculation or determination of the amounts;
- (b) shall specify the date on which or periods within which the levies are payable and the manner of payment; and
- (c) may stipulate that a licensee becomes liable for payment of interest on any arrear payments of the levy and specify the rate of interest and manner of calculation thereof.

[Ch7302s25]25. Rural electrification levy

(1) In order to promote and fund rural electrification, every licensee shall pay to the Authority a rural electrification levy which levy shall be part of the tariffs or prices of energy payable by energy customers.

(2) The rural electrification levy referred to in subsection (1) shall be 4.5 per cent of retail energy sales.

(3) Every licensee shall pay the levy referred to in subsection (1) to the Authority within forty-five days from the date of sale or billing for the energy as the case may be, whichever shall occur first.

(4) The Authority shall pay the levy referred to in subsection (1) to the Rural Electrification Fund within seven days of receipt of the same from a licensee.

(5) If a licensee or the Authority, as the case may be, fails to remit the levy referred to in subsection (1) within the periods specified in subsections (3) and (4) interest on the levy at the rate of 2 per cent above the bank lending rate shall be chargeable and payable to the Rural Electrification Fund.

(6) The rural electrification levy shall be used for the purposes prescribed under the Rural Electrification Act. Cap. 73:03

[Ch7302s26]26. Books of accounts

(1) The Authority shall cause to be kept proper books of accounts and other records relating to its accounts.

(2) The Authority shall, as soon as possible after the end of each financial year, cause to be prepared a statement of the cash-flow and income and expenditure of the Authority for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.

(3) The accounts of the Authority shall—

(a) be audited annually by independent public auditors appointed by the Authority; and

(b) be examined by the Auditor General before being presented to Parliament in accordance with this Act.

(4) The financial year of the Authority shall be the period of twelve months commencing on 1st July of each year and ending on 30th June of the following year:

Provided that the first financial year of the Authority may be a period shorter or longer than twelve months as the Authority may determine, but in any case not longer than eighteen months.

[Ch7302s27]27. Annual report

(1) The Authority shall as soon as practicable, but not later than six months after the expiry of the financial year, submit to Parliament, through the Minister, a report concerning its activities during that financial year.

(2) The annual report referred to in subsection (1) shall include—

(a) an audited balance sheet and income statement, including any notes thereon and documents annexed thereto whereby relevant information is provided;

(b) the report of the examination of the accounts referred to in section 26 (3);

(c) information regarding licences granted, renewed, amended, suspended, cancelled or withdrawn;

(d) information regarding the amount of rural electrification levies collected and paid to the Rural Electrification Fund;

(e) a report regarding the execution of the business plan of the Authority;

(f) a report of the future strategic plans of the Authority;

(g) a status report on the performance of the energy sector and energy undertakings; and

(h) such other information as the Authority may, from time to time, deem necessary.

(3) The Authority shall, after submission of the annual report to Parliament in accordance with subsection (1), cause a summary of the report to be published in such manner as the Authority shall deem appropriate or as Parliament may direct.

PART IV

REGULATION OF THE ENERGY SECTOR

[Ch7302s28]28. Activities to be carried out under licence

(1) No person may establish, operate, carry on or be involved in any manner in an energy undertaking in Malawi, without a licence issued by the Authority.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

(3) For the purposes of this section the Authority has the power—

(a) to determine whether any person is carrying on or involved in any energy undertaking; and

(b) to order any person not holding a licence and who is obliged to apply for and hold a licence under this Act or Energy Laws to cease carrying on or being involved in any energy undertaking.

[Ch7302s29]29. Application for and issuing of licence

Any person obliged to hold a licence under this Act or Energy Laws shall apply to the Authority for a licence in the prescribed form in accordance with the procedure and subject to payment of fees laid down in this Act or Energy Laws.

[Ch7302s30]30. Tariffs or prices of energy

A licensee shall not charge a customer any other tariff, price or charge more than that forming part of the conditions of his or her licence or revision thereof and as approved by the Authority.

[Ch7302s31]31. Transfer of licences

No licence and no rights or privileges thereunder shall be assigned or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Authority, but so however that such consent shall not be unreasonably withheld.

PART V

RESOLUTION OF DISPUTES

[Ch7302s32]32. Authority may arbitrate

The Authority shall, if requested thereto by a party to a dispute, act as arbitrator in disputes between licensees or between a licensee and its customers or consumers relating to—

- (a) the right to energy supply;
- (b) the duty to supply energy;
- (c) the tariffs, process or charges at which energy is supplied;
- (d) delays in or refusal to supply energy; and
- (e) the quality of energy supply and the provision of services in connexion therewith.

[Ch7302s33]33. Authority may act as mediator

The Authority may act as mediator in any other matter in respect of which a licensee, customer, or consumer requests the Authority to act as such.

[Ch7302s34]34. Authority may appoint another arbitrator

The Authority may, on approval of the parties involved, appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a person so appointed is deemed to be an action or decision of the Authority.

[Ch7302s35]35. Procedure and fees for mediation and arbitration

The Authority shall by notice published in the Gazette prescribe the procedure to be followed and mediation and arbitration fees to be paid in mediating and arbitrating disputes.

[Ch7302s36]36. Decision of the Authority is final

The decision of the Authority in arbitrating a dispute, including a decision as to costs, shall be final and binding on the disputing parties, subject only to the right of appeal to the High Court.

PART VI

INSPECTIONS, ACCIDENTS, INQUIRIES AND INVESTIGATIONS

[Ch7302s37]37. Inquiries and formal investigations

(1) The Authority may, at its own instance or on receipt of a complaint or enquiry relating to the supply of energy, appoint a person to make enquiries in respect thereof and report thereon to the Authority.

(2) On receipt of a report under subsection (1), the Authority may—

(a) issue such licensing conditions, guidelines, rules or directives as it is empowered under this Act; or

(b) institute a formal investigation.

(3) The Authority shall, on receipt of a complaint regarding unlawful conduct by a licensee, institute a formal investigation in respect of that complaint.

(4) Upon instituting a formal investigation under subsection (2) or (3)—

(a) the Authority may appoint a person to chair the investigation and as many persons as may be necessary to assist with the investigation; and

(b) the person appointed under subparagraph (a) and the persons assisting him or her may summon witnesses and conduct the investigation in accordance with the rules made by the Authority by order published in the Gazette.

(5) On completion of an investigation under subsection (4), the person chairing the investigation shall submit his or her written report thereon to the Authority.

(6) On receipt of the report under subsection (5), the Authority—

(a) may refer it to the Attorney General for his or her consideration;

(b) if a licensee is involved, may take action in accordance with this Act or

Energy Laws,

and the Authority shall give a copy of the report to a concerned consumer or affected person who requests for it.

[Ch7302s38]38. Licensee to report accidents

(1) Every licensee shall send to the Authority notice of any accident of such a kind as to have caused, or likely to have caused, loss of life or serious personal injury which occurs in any part of such licensee's works or equipment, together with notice of any loss of life or serious personal injury occasioned by any such accident, within twenty-one days of such accident.

(2) Nothing contained in subsection (1) shall absolve a licensee from the duty of complying with the provisions of any other written law relating to the reporting of accidents.

[Ch7302s39]39. Entry and inspection of premises

(1) The Authority, or any person authorized thereto in writing by the Authority may—

(a) at any time enter upon the premises of a licensee and inspect any plant, machinery, books of accounts and other documents found thereat for the purpose of ascertaining whether or not the provisions of this Act, the Energy Laws or other written law or the conditions of any licence are being complied with, or for the purpose of any inspection which is incidental to or connected with the carrying out of the duties of the licensee; and

(b) call upon any licensee to furnish to the Authority such periodical or other returns in such form and such particulars as the Authority may, from time to time, prescribe by notice in the Gazette.

(2) The Authority may require that the accuracy of the returns and particulars be verified on oath by the licensee.

(3) A person authorized by the Authority to carry out an inspection or call for a return shall on request by a licensee show his or her authorization.

(4) A person who intentionally alters, destroys or otherwise suppresses a document or information required of him or her or under subsection (1) shall be guilty of an offence.

PART VII

OFFENCES AND PENALTIES

[Ch7302s40]40. Offences

(1) Any person who carries on in any manner any activity for the supply of energy in contravention of this Act, or fails to carry out or to comply with any order or decision of the Authority made or given under this Act or otherwise contravenes the provisions of this Act, or Energy Laws shall be guilty of an offence.

(2) Without prejudice to the right of a licensee to recover for any illegal consumption of energy, including costs associated with such recovery, a customer or any other person who—

- (a) illegally abstracts energy;
 - (b) disturbs or tampers with any meter or other energy measuring instrument or apparatus;
 - (c) denies access to premises for inspections by authorized personnel of the licensee or the Authority;
 - (d) damages or vandalizes any energy installation equipment or apparatus,
- shall be guilty of an offence.

(3) Any transmitter who denies access on his or her system to a licensee shall be guilty of an offence.

[Ch7302s41]41. Penalties

Any person who is guilty of an offence under this Act for which no penalty is provided shall be liable to a fine of K5,000,000 and to imprisonment for ten years.

PART VIII

MISCELLANEOUS PROVISIONS

[Ch7302s42]42. Service of notice

Any notice or other document required or authorized to be given, delivered or served under this Act may be given, delivered or served—

- (a) by delivering it to the person to whom it is to be given or delivered or on whom it is to be served;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it in a prepaid registered letter addressed to that person at his or her usual or last known place of abode or postal address;
- (d) in the case of a company, by delivering it to the secretary or clerk thereof at its registered or numbered office or by sending it in a prepaid registered letter addressed to the secretary or clerk of the company at that office; or
- (e) if it is not practicable after reasonable enquiry to ascertain the name or address of a person to whom it should be given or delivered or on whom it should be served, as being a person having an interest in land, being the person to whom the description of the person having that interest in the premises (naming those premises) to which it relates, or by delivering it to some person on the premises or, if there is no

person on the premises to whom it can be addressed, by affixing a true copy of it to some conspicuous part of the premises.

[Ch7302s43]43. Right of appeal to the High Court

(1) Any person aggrieved by the decision or action of the Authority under this Act may appeal to the High Court within three months from the date of the decision or action of the Authority.

(2) The Chief Justice may make such rules as he or she considers proper in relation to the procedure on the hearing of appeals under subsection (1), including the appointment and remuneration of assessors and regulating the costs of the appeal.

[Ch7302s44]44. Obligation of secrecy

Except for any of the purposes of this Act or the Energy Laws or for the purpose of any civil or criminal proceedings under any written law or where otherwise authorized by the Authority, no member of the Authority or a committee of the Authority or any officer, servant or agent of the Authority or any person attending any meeting of the Authority or a committee of the Authority, whether during his or her tenure of office or during his or her employment or for a period of five years thereafter, shall disclose any information which has been obtained by him or her in the course of his or her duties and which is not published in pursuance of this Act or the Energy Laws.

[Ch7302s45]45. By-laws

The Authority may make by-laws to give effect to any of the provisions of this Act and without prejudice to the generality of the foregoing, the Authority may make by-laws—

- (a) for securing that the supply and use of energy is regular, safe and efficient;
- (b) prioritizing of fuels and technologies for energy supply;
- (c) for bulk stockholdings;
- (d) for protecting the public in so far as practicable from any personal injury, fire or other dangers arising from the use of energy;
- (e) prescribing anything, including fees, required to be prescribed under this Act prohibiting, controlling or restricting the importation, disposal, sale of defective or dangerous goods or fittings used in the supply of energy;
- (f) for the testing of meters and the adjustment of accounts where meters are found to be defective; and
- (g) providing for matters incidental to and connected with the matters mentioned in the preceding paragraphs of this section.

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G.N. 5/2009

ENERGY REGULATION BY-LAWS

under s. 45

PART I

PRELIMINARY

1. Citation

These By-laws may be cited as the Energy Regulation By-laws.

2. Interpretation

In these By-laws, unless the context otherwise requires—

“applicant” means with respect to any licensee, a person or legal entity that has applied for service from a licensee;

“arbitrator” has the meaning given in by-law 88;

“auditor” means a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act; Cap. 53:06

“claimant” has the meaning given in by-law 89;

“customer” means with respect to any licensee, a person or legal entity that purchases energy from that licensee;

“demand” has the meaning given in by-law 89;

“licensee” means a person or persons or legal entity licensed by the Authority to supply or sell energy;

“licensed activity” means an activity for which an energy licence is required under the Energy Laws;

“liquid fuels” has the meaning ascribed to the words in the Liquid Fuels and Gas (Production and Supply) Act; Cap. 50:03

“LPG” means Liquefied Petroleum Gas;

“respondent” has the meaning given in by-law 89;

“retailing”, for liquid fuels and gas includes sales of liquid fuels and gas by holders of retail licences in bulk to end users;

“ring-fence” means the keeping of separate accounting records in respect of a licensed activity so that revenue and cost, assets and liabilities, reserves and provisions of, or reasonably attributed to, the licensed activity are separately identified in the books of the licensee from those of any other activity, business or operations of the licensee;

“Roster of Arbitrators” has the meaning given in by-law 88.

PART II

ENERGY REGULATION LEVY

Division 1—Regulation Levy System

3. The amount of Levy

Every licensee under the Energy Laws shall pay the Energy Regulation Levy specified in the First Schedule hereto.

4. Levy to be charged on basic income

The Energy Regulation Levy referred to in by-law 3 shall be charged on the basic income derived from licensed energy activity or undertaking and not from any other income of the licensee.

5. Period of paying levy

(1) Every licensee shall pay the Energy Regulation Levy to the Authority within forty-five days from the date of sale of or billing for energy, as the case may be.

(2) Failure to collect or difficulty in collecting the monies from customers shall not exonerate the licensee of his obligation to pay the Levy to the Authority within the time specified in paragraph (1).

6. Interest on delayed payment of levy

If a licensee fails to remit the amount of the Levy within the time specified in by-law 5, interest at the rate per annum equivalent to commercial bank lending rate shall be paid on the delayed payment and such interest shall accrue on a daily basis.

7. Liquid fuels wholesalers to collect levy from retailers at source

Every holder of a wholesale liquid fuels licence shall be responsible for collecting from the retailers the Energy Regulation Levy and paying the Levy to the Authority and the holder of a wholesale liquid fuel licence shall include the Levy in the sale price of liquid fuels sold to the retailers.

Division 2—Billing and Ring-Fence Accounting

8. Bills to clearly show levy amount

A licensee charging the levies shall—

(a) distinguish the different levies in its billing from the basic energy tariffs of prices it charges;

- (b) indicate the levies in its billing in a transparent and easily understandable manner;
- (c) indicate the date of the bill on each bill;
- (d) exclude, from the bills when billing a customer the levy paid by the licensee as part of energy acquisition costs; and
- (e) subject to by-law 5, recover such levies from customers and pay them over to the Authority in accordance with these By-laws.

9. Ring-fence accounting

(1) Every licensee shall ring-fence every licensed activity in accordance with this by-law.

(2) In order to give effect to paragraph (1), a licensee shall in respect of any licensed activity—

- (a) keep, or cause to be kept, ring-fenced accounting records; and
- (b) prepare, in a consistently uniform manner, in respect of each financial year of the licensee, financial statements comprising—
 - (i) an income statement;
 - (ii) a balance sheet;
 - (iii) a cash-flow statement;
 - (iv) an asset register; and
 - (v) a statement showing the amounts paid as energy regulation levy.

(3) The financial statements referred to in paragraph (2) (b) shall be accompanied by notes showing separately for each licensed activity and in appropriate detail, the amounts of any revenue, cost, asset, liability, reserve or provision which has been either charged from or to any other activity, business or operations of the licensee, whether licensed or not, together with a description of that charge.

(4) A licensee shall submit to the Authority, not later than six months or such longer period as the Authority may determine after the end of the licensee's financial year, a report by its auditor stating whether, in the auditor's opinion, the financial statements referred to in paragraph 2 (b) have been prepared in accordance with these By-laws to give a true and fair reflection of the financial affairs of the licensed activity and the amount of levy paid by the licensee.

(5) A licensee shall submit to the Authority management accounts within three months at the end of each quarter.

(6) The Authority may subject any financial statements or management accounts submitted to it to independent audit and the cost of such audit shall be borne by the licensee.

PART III

THE RURAL ELECTRIFICATION LEVY

Division 1—The Rural Electrification Levy

10. The Rural Electrification Levy

(1) Every retail energy licensee shall pay the Rural Electrification Levy specified under section 25 of the Act in accordance with the provisions thereunder and these By-laws.

(2) Failure to collect or difficulty in collecting the monies from customers shall not exonerate the licensee of his obligation to pay the Levy to the Authority within the period specified in the Act.

11. Levy to be charged on basic income

The Rural Electrification Levy referred to in by-law 10 shall be charged on the basic income derived from retail energy sales and not from any other income of the licensee.

12. Liquid fuels wholesalers

Every holder of a wholesale liquid fuels licence, shall be responsible for collecting from retailers the Rural Electrification Levy and paying the Levy to the Authority and the holder of wholesale liquid fuel licence shall include the Levy in the sale price of liquid fuels sold to retailers.

13. Bills to clearly show levy amount

A licensee charging the levies, other than retail liquid fuels licensees, shall—

(a) distinguish the different levies in its billing from the basic energy tariffs or prices it charges;

(b) indicate the levies in its billing, in a transparent and easily understandable manner; and

(c) indicate the date of the bill on each bill.

Division 2—Ring-Fence Accounting

14. Ring-fence accounting

(1) Every licensee shall ring-fence every licensed activity in accordance with this by-law.

(2) In order to give effect to paragraph (1), a licensee shall in respect of any licensed activity—

(a) keep, or cause to be kept, ring-fenced accounting records; and

(b) prepare, in a consistently uniform manner, in respect of each financial year of the licensee, financial statements comprising—

(i) an income statement;

(ii) a balance sheet;

(iii) a cash-flow statement;

(iv) an asset register; and

(v) a statement showing the amounts paid as rural electrification levy.

(3) The financial statements referred to in paragraph (2) (b) shall be accompanied by notes showing separately for each licensed activity and in appropriate detail, the amounts of any revenue, cost, asset, liability, reserve or provision which has been either charged from or to any other activity, business or operations of the licensee, whether licensed or not, together with a description of that charge.

(4) A licensee shall submit to the Authority, not later than six months or such longer period as the Authority may determine after the end of the licensee's financial year, a report by its auditor stating whether, in the auditor's opinion, the financial statements referred to in paragraph (2) (b) have been prepared in accordance with these By-laws and give a true and fair reflection of the financial affairs of the licensed activity and the amount of Levy paid by the licensee.

(5) A licensee shall submit to the Authority quarterly management accounts within three months at the end of each quarter.

(6) A licensee who holds more than one type of licence in the chain of supply of energy shall clearly show the income derived from retail sale of energy for purposes of

the Rural Electrification Levy, otherwise it shall be assumed that its total income is derived from retail sale of energy.

(7) The Authority may subject any financial statements or management accounts submitted to it to independent audit and the cost of such audit shall be borne by the licensee.

PART IV

COAL SUPPLY

Division 1—Licences

15. Licence for coal supply activities

No person shall carry on the business of importing, exporting, transporting, storage or selling of coal without a licence issued to him by the Authority.

16. Application for a licence

(1) Any person who wishes to carry on the business of importing, exporting, transporting, storage or selling of coal shall apply to the Authority for a licence in Form ECS I contained in Part I in the Second Schedule hereto.

(2) There shall be only one type of licence covering any type of activity dealing with coal supply:

Provided that an applicant may apply for licence for one or more coal supply activity.

(3) Every licence issued by the Authority shall be in the form prescribed in Part II in the Second Schedule hereto and shall be valid on the conditions and for the period provided therein.

(4) Every licence issued under these Regulations shall have the following details—

- (a) name and type of the licence;
- (b) name and particulars of the licensee;
- (c) commencement and expiry date;
- (d) emblem or logo of the Authority;
- (e) designated signature of the Authority;
- (f) any such security features as the Authority may determine; and
- (g) the common seal of the Authority.

17. Application and licence Fees

(1) No application for licence under these By-laws shall be considered by the Authority unless the applicant has paid the application fees prescribed in Part I of the Third Schedule hereto.

(2) Upon the grant of a licence and upon the annual renewal thereof, an applicant shall pay the licence fee or the renewal fee, as the case may be, specified in Part I of the Third Schedule hereto.

18. Information to be supplied by applicants

An applicant shall, for every application, furnish to the Authority the following—

- (a) the information specified in Form ECS I contained in the Second Schedule hereto; and
- (b) a copy of the schedule of prices of the different types or grades of coal or charges for licensed activities it intends to charge consumers.

19. Grant or denial of application

(1) The Authority shall consider each application under these By-laws and determine if the application meets the criteria specifically set out under this Part and if the Authority is satisfied that the applicant has met all the requirements hereunder, it may issue the licence to the applicant.

(2) Where the Authority determines that the applicant does not meet all the requirements, the Authority shall refuse to grant the licence.

20. Communication of the Authority's decision

Once the Authority determines the outcome of any application for licence, the Authority shall communicate its decision in writing to the applicant within thirty days from the date a decision was made.

21. Refusal to be accompanied by reasons

Where the Authority refuses to grant the licence, it shall give reasons in writing for such refusal to the applicant.

22. Right of appeal

Any applicant whose application for licence has been refused may appeal against the decision in accordance with the Act.

23. Duration and renewal of licence

(1) Any licence issued under this Part shall be valid for a period of twelve months and may be renewed for a similar period after the expiration of the period.

(2) An application for renewal of a licence shall be made in a similar manner used when making the initial application.

Division 2—Prices and Charges

24. Licensees to charge only approved prices

(1) No person shall sell or provide coal supply services to any other person at a price or charge that is higher than the maximum selling prices or charges approved by the Authority.

(2) The Authority may review maximum prices and charges for coal supply licensed activities any time that circumstances necessitate such review, on its own initiative or on the application of a licensee.

(3) Once the Authority has set the new maximum prices or charges it shall communicate the new prices or charges to all licensees.

25. Factors determining prices

(1) In determining the maximum prices and charges for coal supply licensed activities, the Authority shall take into account the following factors—

- (a) the acquisition costs of coal;
- (b) the cost of transportation and distribution to the place of use;
- (c) the weighted cost of storage;
- (d) the cost of goods in transit, insurance and other transit expenses;
- (e) Government taxes and levies on the sale of the product;
- (f) the weighted cost of labour; and
- (g) the licensee's approved mark-up.

(2) The Authority, in its discretion, or at the instance of a licensee may take into account other factors as the Authority may deem necessary.

26. Authority may obtain independent quotations

The Authority may obtain independent quotations for prices of all types or grades of coal or charges for coal supply activities for purposes of determining the appropriate prices and charges.

27. Renewal application to be accompanied by new prices

Each licensee applying for renewal of licence shall submit to the Authority the approved maximum prices and charges which the licensee is authorized to charge.

Division 3—Standards and Code of Practice

28. Standard specification Cap. 51:02

Every licensee shall comply with and adhere to the Malawi Standards as promulgated under the Malawi Bureau of Standards Act in respect of coal.

29. Compliance with Environment Management Act

Every licensee shall comply with and adhere to the Environment Management Act. Cap. 60:02

30. Authority to monitor standards

The Authority may through its members, officers or other authorities carry out inspections on the premises or operations of the licensee or on the premises of the customer at the place of use to verify or monitor compliance with the above standards, or Energy Laws or these By-laws.

Division 4—Coal Transportation and Storage

31. Prohibition against storage of coal

No person shall keep or cause to be kept any coal in excess of two tonnes on any premises other than in an approved storage area.

32. Conditions for management and control of storage area

The following conditions shall apply to all storage areas in which coal is stored—

(a) every person managing or employed in or in connection with the storage area shall abstain from any act or acts whatsoever which may cause fire and shall take all reasonable and necessary steps to prevent any other person from so doing;

(b) no fire or naked light shall be permitted in a storage area or within sixteen metres thereof; and

(c) all grass, bushes and shrub within sixteen meters near a storage area shall be cut short to the satisfaction of the Authority and no cultivation shall be permitted within sixteen metres from the boundaries of any storage area.

33. Prohibition against soldering

No person shall carry out or permit the carrying out of any soldering work within the storage area except in a workshop specifically constructed for that purpose.

34. Coal storage in accommodation

No person shall store any type of coal of a quantity of more than half tonne within any building, which or part of which, is used as accommodation or as a place of habitual public resort.

35. Reports of accidents

All accidents arising out of the storage of coal to which these By-laws apply involving fire, shall be reported immediately in writing by the licensee of the storage area to the Authority, any nearest police and fire station.

36. Inspections by the Authority

Any member or authorized officer of the Authority may, at all reasonable times of the day, enter and inspect any premises in respect of which a licence has been granted

under or by virtue of these By-laws for purposes of monitoring compliance with these By-laws or the Energy Laws.

37. Coal transportation Cap. 60:02

Every licensee involved in the transportation of coal shall comply with the provisions of the Environment Management Act in respect of pollution of the environment during transportation of coal as well as storage and supply thereof.

38. Licensee to provide information to applicants and customers

A licensee shall, upon the request of an applicant or a customer, provide to the applicant or customer such reasonable information and assistance as may be necessary so that the applicant or customer has sufficient information regarding the service provided by the licensee.

39. Copies of agreements to be sent to the Authority

Every licensee shall within one month of the execution of any coal Sale and Purchase Agreement, provide to the Authority a copy of the Sale and Purchase Agreement.

40. Registration of coal importers for own use

(1) Every person who wishes to import coal for own use shall register with the Authority and give the necessary details contained in Form ECS 3 in the Fourth Schedule hereto.

(2) Whenever there is a change in the particulars provided under paragraph (1), the registered importer of coal for own use shall immediately advise the Authority of the new particulars.

(3) Every registered importer of coal for own use shall pay a registration fee and annual renewal registration fee prescribed in Part I of the Third Schedule hereto.

(4) Renewal of registration for importation of coal for own use shall be due on the 1st day of January each year.

41. Mining of coal for own use

(1) Every person who wishes to mine coal for own use shall register with the Authority and give the necessary details contained in Form ECS 4 in the Fourth Schedule hereto.

(2) Whenever there is a change in the particulars provided under paragraph (1), the registered miner of coal for own use shall immediately advise the Authority of the new particulars.

(3) Every registered miner of coal for own use shall pay a registration fee and annual renewal registration fee prescribed in Part 1 of the Third Schedule hereto.

(4) Renewal of registration for mining coal for own use shall be due on the 1st day of January each year.

PART V

RENEWABLE ENERGY TECHNOLOGIES

Division 1—Licences

42. Licences for renewable energy technologies activities

No person shall carry on the business of importing, selling, installation and maintenance of renewable energy technologies without a licence issued to him by the Authority.

43. Licence applications and fees

(1) Any person who wishes to carry on the business of importing, selling, installation, or maintenance of renewable energy technologies shall apply to the Authority for a licence in Form ERET I contained in the Fifth Schedule hereto.

(2) The Authority shall issue only one type of licence covering any type of activity dealing with renewable energy technologies:

Provided that an applicant may apply for a licence for a specific activity.

(3) Every licence issued by the Authority shall be in the form prescribed in the Fifth Schedule hereto and shall be valid on the conditions and for the period provided therein.

(4) Every licence issued under these By-laws shall have the following details—

- (a) name and type of the licence;
- (b) name and particulars of the licensee;
- (c) commencement and expiry date;
- (d) emblem or logo of the Authority;
- (e) designated signature of the Authority;
- (f) any such security features as the Authority may determine; and
- (g) the common seal of the Authority.

(5) No application for a licence under these By-laws shall be considered by the Authority unless the applicant has paid the application fees specified in Part II of the Third Schedule hereto.

(6) Upon the grant of the licence and annual renewal thereof, an applicant shall pay the licence fee specified in Part II of the Third Schedule.

44. Installations permit under Electricity Act

The Authority shall not issue a licence to an applicant for renewable energy technologies unless the Authority has granted to the applicant an electrical installations permit issued under the Electricity By-laws. Cap. 73:01 Sub. Leg.

45. Information to be supplied by applicants

Every application for a licence under this Part shall be accompanied by the following—

- (a) the information specified in Form ERET I;
- (b) a copy of the Electrical Installations Permit issued to the applicant under the Electricity By-laws; Cap. 73:01, Sub. Leg.
- (c) a Schedule of charges for each type of renewable energy technologies equipment to be supplied by him in the next twelve months; and
- (d) a Schedule of the maintenance charges, where applicable, for all types of maintenance for renewable energy technologies it intends to charge customers in the next twelve months.

46. Grant or denial of application

(1) The Authority shall consider each application under this Part and determine if the application meets the criteria specifically set out under this Part and if the Authority is satisfied that the applicant has met all the requirements hereunder, it may issue the licence to the applicant.

(2) Where the Authority determines that the applicant does not meet all the requirements, the Authority shall refuse to grant the licence.

47. Communication of the Authority's decision

(1) Once the Authority determines the outcome of any application for licence, it shall communicate its decision in writing to the applicant within thirty days from the date any such decision is made.

(2) Where the Authority refuses to grant the licence, it shall give reasons in writing for such refusal to the applicant.

48. Right of appeal

Any applicant whose application for licence has been refused may appeal against the decision in accordance with the Act.

49. Duration and renewal of licence

(1) Any licence issued under this Part shall be valid for twelve months and may be renewed for a similar period after the expiration of the period.

(2) An application for renewal of a licence shall be made in a similar manner used when making the initial application.

Division 2—Prices and Charges

50. Licensees to charge only approved prices

(1) No person shall sell or provide maintenance services for renewable energy technologies to any other person at a price or maintenance charge that is higher than the maximum selling prices or maintenance charges approved by the Authority.

(2) The Authority may review maximum prices and maintenance charges for renewable energy technologies once a year unless there are special extenuating circumstances necessitating an earlier review.

51. Factors determining prices

(1) In determining the prices and maintenance charges for renewable energy technologies, the Authority shall take into account the following factors—

- (a) the Free on Board (FOB) cost of the equipment and associated service spares, tools and materials;
- (b) the cost of transportation and distribution to the place of use;
- (c) the weighted cost of storage;
- (d) the cost of goods in transit, insurance and other transit expenses;
- (e) Government taxes and levies on the sale of the product;
- (f) the weighted cost of labour; and
- (g) the licensee's approved mark-up.

(2) The Authority, in its discretion or at the instance of a licensee, may take into account other factors as the Authority may deem necessary.

52. Licensees to propose prices annually

In order to help determine the prices and charges applicable in the following year, at the time each applicant is applying for renewal of licence, each licensee shall present to the Authority a schedule of prices and charges for all types of renewable energy technologies equipment and maintenance charges it proposes to charge consumers or purchasers during the next twelve months.

53. Authority may obtain independent quotation

In addition to proposals by licensees in by-law 52 above, the Authority may also obtain independent quotations for prices of all types of renewable energy technologies equipment for purposes of determining the appropriate prices and charges for the next twelve months.

54. Renewed licence to be accompanied by new prices

The renewal of licence for each licensee shall be accompanied by the approved maximum prices and charges which that licensee is authorized to charge during the next twelve months.

Division 3—Standards, Code of Practice and Inspections

55. Standard specification and code of practice

(1) Every licensee shall comply with and adhere to the standard specifications for renewable energy technologies approved by the Authority.

(2) Every licensee shall comply with and adhere to the standard code of practice for renewable energy technologies approved by the Authority.

56. Electrical installation permits

Every licensee shall comply with and adhere to the applicable provisions in the Electricity By-laws under the Electricity Act in respect of authorized persons or licensees to carry out installations and maintenance of renewable energy technologies installations. Cap. 73:01, Sub. Leg

57. Inspections by the Authority

The Authority may, through its members, officers or authorized agents, carry out inspections on the premises or operations of the licensee or on the premises of the customer to verify or monitor compliance with the above standards and code of practice or the Electricity By-laws and shall have power to order rectification of non-compliance thereof. Cap. 73:01, Sub. Leg.

Division 4—Purchase, Sale and Service Agreements

58. The Authority to approve purchase agreements

Every licensee selling and installing renewable energy technologies equipment shall enter into a sale and purchase agreement with the purchaser and the terms of such agreement shall be subject to the approval of the Authority.

59. Terms in purchase agreements

Every sale and purchase agreement shall contain the following terms and conditions—

(a) that the contractor shall fully and faithfully provide all labour, plant, and materials and complete the works and deliver, install, test and commission at buyer's premises the renewable energy technologies equipment, including instructions on location, in operating the system in accordance with the specifications of the contract;

(b) that the contractor shall give the buyer the following documents—

(i) commissioning certificate;

(ii) operation manual for the system;

(iii) service contract, signed by both contractor and buyer;

(iv) warranty guarantee or certificate, including warranty transfer

agreement transferring the manufacturer's product guarantee to the buyer, where applicable;

(c) that if the contractor fails to complete the works within the period specified in the contract, including any extension of time that may be granted, the contractor shall pay the buyer zero point one per cent (0.1%) of the contract price each day of delay up to a maximum of ten per cent (10%) of the contract price as liquidated damages;

(d) that the buyer shall give the licensee free access to his premises to the extent necessary for the licensee to install, test and commission the renewable energy technology system described in the contract; and

(e) that the buyer shall reasonably prepare his premises for the installation, and shall attend personally or by duly appointed representative the installation in order to discuss with the licensee's installation crew the exact location of the equipment.

60. Licensees to sign service agreements with buyers

(1) Every licensee selling and installing renewable energy technologies equipment shall enter into a service agreement with the purchaser.

(2) The Authority shall approve the terms of the agreement referred to in paragraph (1).

61. Obligations of licensees in service agreements

The following licensee's obligations shall be specified in every service agreement, that the licensee shall—

(a) perform the maintenance services with reasonable care and skill;

(b) perform any associated services within a reasonable time after being requested by the buyer; and

(c) use parts that are of merchantable quality and reasonably fit for their purpose.

62. Obligations of buyers in service agreements

The following buyer's obligations shall be specified in every service agreement that the buyer shall—

(a) grant the licensee such access to the premises as the licensee shall from time to time reasonably require in order to discharge its obligations hereunder;

(b) make available at the premises such facilities as the licensee shall reasonably require in order to discharge its obligations hereunder, including adequate work space and storage;

(c) take all reasonable precautions to protect the health and safety of the licensee's employees agents and sub-contractors while on the buyer's site;

(d) make available all the documentation and other information necessary for the licensee to diagnose any fault in the equipment; and

(e) the licensee shall have a free and unencumbered title to any replaced parts for the equipment replaced during service.

Division 5—Customer Information and Reports

63. Service agreements

(1) The Authority shall prescribe a standard service agreement in the form set out in the Sixth Schedule hereto.

(2) Licensees and buyers shall enter into a service agreement for the duration of the warranty period.

64. Licensees to provide information to applicants and customers

A licensee shall upon the request of an applicant or a customer provide to such applicant or customer such reasonable information and assistance as may be necessary to enable the applicant or customer become informed about the service provided by the licensee and to apply to receive such service from such licensee.

65. Copies of agreements to be sent to the Authority

Every licensee shall within one (1) month of the execution of the equipment sale and purchase agreement and service agreement provide to the Authority a copy of such equipment sale and purchase agreement and service agreement.

PART VI

GENERATION OF ELECTRICITY FOR OWN USE

66. Registration and annual renewal fees for private owner

(1) Every private owner with generation capacity of above 20kVA shall register with the Authority details of his private generation and associated works giving details required under sections A and C only in Form EPOU 1 in the Seventh Schedule hereto:

Provided that only those registered by the Authority shall be permitted to generate electricity for own use.

(2) Whenever there is a change in the particulars provided under paragraph (1), the private owner shall immediately advise the Authority of the new particulars.

(3) Every private owner shall pay a registration fee and annual renewal of registration fee prescribed in the Third Schedule hereto.

(4) Renewal of registration of private generation shall be due on the 1st day of January every year.

(5) Every person who currently owns generation facilities for own use shall register with the Authority within six months from the date of these By-laws.

(6) Every Registration Certificate issued by the Authority shall be in Form EPOU 2 prescribed in the Seventh Schedule hereto and shall be valid on the conditions and for the period provided therein.

(7) Every Registration Certificate issued under these By-laws shall have the following details—

- (a) name and type of the Registration Certificate;
- (b) name and particulars of the Registered Private Generator;
- (c) commencement and expiry date;
- (d) emblem or logo of the Authority;
- (e) designated signature of the Authority;
- (f) any such security features as the Authority may determine; and
- (g) the common seal of the Authority.

PART VII

MEDIATION

Division 1—Application

67. Application of this Part

This Part shall apply to all disputes arising between any licensee and any customer or applicant of that licensee.

Division 2—Commencement of Mediation and Appointment of Mediators

68. Initiation of mediation

(1) Any licensee, customer or applicant may initiate mediation under this Part by filing with the Authority a submission to mediation or a written request for mediation pursuant to the procedures contained under this Part, together with the non-refundable fee specified in Part III of the Third Schedule hereto.

(2) Such initiation of mediation under by-law 68 (1) shall be done within six months from the date on which the last act or omission giving rise to the dispute occurred or failed to occur:

Provided that the Authority may on good cause allow the initiation of mediation more than six months from the date on which the last act or omission giving the rise to the dispute occurred or failed to occur as the case may be.

69. Requests for mediation

(1) A request for mediation shall contain a brief statement of the nature of the dispute, the names, addresses and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation.

(2) The party initiating the mediation shall simultaneously file two copies of the request with the Authority and one copy with every other party to the dispute.

70. Appointment of the mediator

(1) Upon receipt of a request for mediation, the Authority shall appoint a qualified mediator to deal with the matter.

(2) Unless the parties agree otherwise or the Authority determines otherwise, a single mediator shall be appointed who may be a member of the Authority or an independent person.

71. Qualifications of the mediator

(1) No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the results of the mediation.

(2) Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties and upon receipt of such information, the Authority shall either replace the mediator or immediately communicate the information to the parties for their comments.

(3) In the event that the parties disagree as to whether the mediator shall serve, the Authority shall appoint another mediator.

(4) The Authority may appoint another mediator if the appointed mediator is unable to serve promptly.

72. Vacancies

If any mediator is unwilling or unable to serve, the Authority shall appoint another mediator, unless the parties agree otherwise.

Division 3—Conduct of Mediation and Authority of Mediator

73. Representation

(1) Any party may be represented by any person of the party's choice.

(2) The name and address of the person shall be communicated in writing to the Authority and to all parties.

74. Date, time and place of mediation

(1) The mediator shall determine the date and the time of each mediation session.

(2) The mediation shall be held at the appropriate office of the Authority, or at any other convenient location agreed upon by the mediator and the parties.

75. Identification of matters in dispute

(1) At least five days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting out each party's position regarding the issues that need to be resolved and at the discretion of the mediator, such memoranda may be mutually exchanged by the parties.

(2) At the first session, the parties will be expected to produce all information reasonable required for the mediator to understand the issues presented.

(3) The mediator may require any party to supplement such information or provide other documentary and other evidence.

76. Authority of the mediator

(1) The mediator shall not impose a settlement on the parties but shall attempt to help them reach a satisfactory resolution of their dispute.

(2) The mediator may conduct joint and separate meetings with the parties and make oral and written recommendations for settlement.

(3) Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute:

Provided that the parties agree and shall be responsible for expenses of obtaining such advice.

(4) Arrangements for obtaining expert advice shall be made by the mediator or the parties, as the mediator shall determine.

(5) The mediator may end the mediation whenever, in the opinion of the mediator, further efforts at mediation would not result into the resolution of the dispute between the parties.

77. Confidentiality of proceeding

(1) Mediation sessions shall not be open to the public and only the parties and their representatives may attend mediation sessions.

(2) Other persons may attend the mediation only with the permission of the parties and with the consent of the mediator.

78. Confidentiality of information

(1) Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be disclosed to any other person by the mediator.

(2) The mediator shall treat all records, reports or other documents received by him while serving in that capacity with confidentiality.

(3) The mediator shall not be compelled to disclose the information referred to in paragraph (2) or to testify in regard to the mediation in any adversary proceedings or at any judicial forum.

(4) The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial or other proceeding—

(a) views expressed or suggestions made by another party with respect to possible settlement of the dispute;

(b) admissions made by another party in the course of the mediation proceedings;

(c) proposals made or views expressed by the mediator; or

(d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

79. No stenographic record

There shall be no stenographic record of the mediation process except for the signed mediation settlement agreement.

80. Settlement agreement

(1) When it appears to the mediator that there exist elements of a settlement which may be acceptable to the parties, the mediator shall formulate the terms of a possible settlement and submit them to the parties for their consideration, and after receiving the observations of the parties, the mediator may finalize the terms of a possible settlement

taking into account the observations and submit them to the parties as it appears to him expedient.

(2) If the parties reach a settlement to the dispute—

(a) the mediator shall immediately thereafter draw up a settlement agreement in conjunction with the parties; and

(b) the parties shall sign the settlement agreement in the presence of each other, and the mediator shall also sign the settlement agreement in the presence of the parties.

(3) The mediator shall furnish a copy of the signed settlement agreement to each of the parties.

(4) When the parties sign the settlement agreement, the settlement agreement shall be binding on the parties and any persons claiming under them.

Division 4—Miscellaneous Provisions

81. Termination of mediation

Mediation proceedings shall be terminated—

(a) by the execution of a settlement agreement by the parties;

(b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or

(c) by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

82. Exclusion of liability

(1) The Authority or a mediator shall not be compelled to be a party or witness in any judicial proceedings because of their involvement in any mediation proceedings under this Part.

(2) Neither the Authority nor any mediator shall be liable to any party for any act or omission in connection with any mediation proceedings conducted under this Part.

83. Interpretation and application of procedures

(1) The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities.

(2) All other procedures shall be interpreted and applied by the Authority.

84. Fees and expenses

(1) The expenses of witnesses for either side shall be paid by the party producing such witnesses.

(2) All other expenses of the mediation, including required travel and other expenses of the mediator and representatives of the Authority, and the expenses of any expert advice or witnesses produced at the direct request of the mediator and agreed to by the parties shall be borne equally by the parties unless they otherwise agree.

(3) The fees payable to the mediator shall be borne by the parties equally unless they otherwise agree and such fees shall be as specified in Part IV of the Third Schedule hereto.

85. Use of forms

The parties shall use the forms specified in the Eighth Schedule hereto or any other forms approved or promulgated by the Authority.

PART VIII

ARBITRATION

Division 1—Application

86. Application of this Part

This Part shall apply to all disputes arising between any licensee and any customer or applicant of that licensee.

Division 2—Arbitrators and Commencement of Arbitration

87. The Authority and delegation of duties

(1) The powers and duties of the Authority with respect to the arbitration of disputes between licensees and their customers or applicants are prescribed under this Part and the Act and may be carried out by representatives of the Authority as it may direct.

(2) The Authority may in its discretion, assign the administration of arbitration to any of its members or officers.

88. Roster of Arbitrators

(1) The Authority shall establish and maintain a roster of arbitrators (the “Roster of Arbitrators”) and shall appoint arbitrators from the Roster of Arbitrators when there is need.

(2) Under this Part, members of the Authority may be included on the Roster of Arbitrators.

(3) For the purposes of this Part “arbitrator” means the person appointed to consider and deal with a particular matter, whether composed of one or more arbitrators.

(4) The Roster of Arbitrators shall contain fee rate, in front of the name of each arbitrator.

89. Initiation of arbitration

(1) Any licensee, customer or applicant may initiate an arbitration process under this Part in the following manner—

(a) the initiating party (the “claimant”) shall give to the other party (the “respondent”) written notice of its intention to arbitrate (the “demand”) within six months from the date on which the last act or omission giving rise to the dispute occurred or failed to occur, as the case may be:

Provided that the Authority may on good cause allow the initiation of arbitration more than six months from the date on which the last act or omission giving rise to the dispute occurred or failed to occur, as the case may be.

(b) The demand shall contain a statement setting out the nature of the dispute, the names and addresses of all parties involved, the amount in question, if any, the remedy being sought, and the venue of hearing being requested;

(c) the claimant shall file at the office of the Authority two copies of the demand, together with the application fee, as prescribed in Part IV of the Third Schedule hereto; and

(d) the Authority shall acknowledge receipt of the demand after the demand is filed with the Authority.

(2)—(a) A respondent may file a response to the claim in duplicate, with the Authority within fifteen days after the acknowledgment of demand is sent by the Authority to the respondent;

(b) the respondent shall, at the time of filing the response, send a copy of the response to the claimant;

(c) if the respondent wishes to file a counter claim, the counterclaim shall contain a statement setting out the nature of the counterclaim, the amount in question, if any, and

the remedy being sought and the respondent shall forward to the Authority with the counterclaim and the appropriate fee specified in Part IV of the Third Schedule hereto.

(3) If no response or counterclaim is filed within the specified time, the respondent shall thereby be deemed to deny the claim and arbitration process shall proceed.

(4) When filing a demand, response or counterclaim pursuant to this by-law, a party shall sufficiently describe the demand, response or counterclaim as the case may be, so that the circumstances of the dispute are clear to the arbitrator.

90. Changes of claim

(1) If a party, after filing a matter desires to make any new or different demand, response or counterclaim, as the case may be, it shall be made in writing and filed with the Authority.

(2) The party wishing to make the change shall provide a copy containing the changes to the other party, who shall have fifteen (15) days from the date of such transmission within which to file a response in respect of the changes with the Authority.

(3) However, after the appointment of an arbitrator, no new or different issue may be submitted to the Authority except with the arbitrator's consent.

91. Jurisdiction

(1) The arbitrator shall have the power to rule on the question regarding his own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

(2) A party may object to the jurisdiction of the arbitrator or to the arbitrality of a demand or counterclaim no later than the filing of the response to the demand or counterclaim, as the case may be, that gives rise to the objection.

(3) The arbitrator may rule on the objection as a preliminary matter or as part of the final award.

92. Mediation

(1) At any stage of the proceedings, the parties may agree to conduct a mediation conference in accordance with the provisions under Part VI on Mediation in order to facilitate a settlement.

(2) The mediator shall not be the same person as the arbitrator dealing with the matter.

(3) Where the parties to a pending arbitration agree to mediate under the mediation provisions, no additional application fee is required to initiate the mediation.

93. Administrative conference

(1) At the request of any party or upon the Authority's own initiative, the Authority may conduct an administrative conference, in person or by telephone, with the parties or their representatives.

(2) The conference may address such issues as arbitrator selection, potential mediation of the dispute, potential exchange of information, venue of arbitration, a timetable for the hearings, payment of deposit fees for arbitrator and any other administrative matters.

94. The venue

(1) The parties may mutually agree on the venue where the arbitration is to be held.

(2) Where any party requests that the hearing be held at a specific place and the other party files no objection thereto within fifteen days after notice of the request has been sent to it by the Authority, the venue shall be the one requested.

(3) Where the other party objects to the venue requested by the party, the Authority shall determine the venue, and the Authority's decision on the matter shall be final and binding.

95. Appointment from Roster of Arbitrators

(1) An arbitrator shall be appointed in the following manner—

(a) immediately after the filing of the demand, response or counterclaim, as the case may be, or upon the expiration of the time within which a response is supposed to be filed, whichever occurs last, the Authority shall send simultaneously to each party to the dispute an identical list of six, unless the Authority decides that a different number is appropriate, names of persons chosen from the Roster of Arbitrators together with their fee rate.

(2) The parties shall choose an arbitrator from the submitted list and to advise the Authority of their choice.

(3) Where the parties are unable to agree upon an arbitrator—

(a) each party to the dispute shall have seven days from the transmittal date during which to strike off the names objected to, and number the remaining names in order of preference and return the list to the Authority;

(b) if a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party; and

(c) from among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, as far as it is possible, the Authority shall invite the acceptance of an arbitrator to serve.

(4) Where acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Authority shall appoint an arbitrator from among other members of the Roster of Arbitrators without submitting the new list to the parties.

(5) Unless the parties otherwise agree, where there are two or more claimants or two or more respondents, the Authority may appoint all the arbitrators.

96. Number of arbitrators

All disputes shall be heard and determined by one arbitrator, unless the Authority, in its discretion, directs that three arbitrators be appointed.

97. Disclosure

(1) Any person appointed or to be appointed as an arbitrator shall disclose to the Authority any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.

(2) The obligation to disclose shall remain in effect throughout the arbitration.

(3) Upon receipt of such information from the arbitrator or another source, the Authority shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(4) In order to encourage disclosure by arbitrators, disclosure of information under this By-law shall not be construed as an indication that the arbitrator considers that the disclosed circumstances is likely to affect impartiality or independence.

98. Disqualification of arbitrator

(1) An arbitrator shall be impartial, independent and diligent in the performance of his duties and shall also carry out his duties in good faith.

(2) An arbitrator shall be disqualified for—

(a) partiality or lack of independence;

(b) inability or refusal to perform his duties with diligence and in good faith;

or

(c) any grounds for disqualification provided for under any written applicable law.

(3) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the Authority shall determine whether the arbitrator should be disqualified under the grounds set out above and shall inform the parties of its decision which decision shall be binding.

99. Communication with arbitrator

Any party or any person acting on behalf of a party, shall not communicate with an arbitrator or a prospective arbitrator concerning the arbitration without the knowledge of the other party.

100. Vacancies

(1) If for any reason, an arbitrator is unable to perform his duties and, the Authority is satisfied that this is the case, the Authority shall terminate the services of the arbitrator.

(2) The Authority shall replace the arbitrator in accordance with the provisions of this Part.

(3) Where a vacancy occurs in a panel of arbitrators after the hearing of a matter has commenced, the remaining arbitrator or arbitrators may continue with hearing the matter unless the parties otherwise agree.

(4) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its discretion whether it is necessary to repeat all or part of any prior hearings.

Division 3—Conduct of Arbitration Proceedings

101. Preliminary hearing

(1) At the request of any party or at the discretion of the arbitrator or the Authority, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties or their representatives.

(2) During the preliminary hearing, the parties and the arbitrator shall discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters.

102. Exchange of information

(1) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct—

(a) the production of documents and other information; and

(b) the identification of any witness to be called.

(2) The arbitrator may resolve any disputes concerning the exchange of information.

103. Date, time and place of hearing

(1) The arbitrator shall set the date, time and place for each hearing.

(2) The parties shall respond to the notice of hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date and adhere to the established hearing schedule.

(3) The Authority shall send a notice of hearing to the parties at least ten (10) days prior to the date of hearing, unless otherwise agreed by the parties.

104. Confidentiality of hearing

(1) Arbitration sessions shall not be open to the public and only the parties and their representatives may attend arbitration sessions.

(2) Other persons may attend the arbitration only with the permission of the parties and with the consent of the arbitrator.

105. Representation

(1) Any party may be represented by a legal practitioner or other authorized representative.

(2) A party intending to be represented shall notify the other party and the Authority of the name and address of the representative at least three days prior to the date set for the hearing at which the representative will first appear.

(3) Where such a representative initiates arbitration or responds for a party, notice of representations is deemed to have been given.

106. Oaths

(1) Each arbitrator shall, before the commencement of the arbitration proceedings take an oath.

(2) The arbitrator may require witnesses to testify under oath administered by any duly qualified person.

107. Stenographic record

(1) Where a party wants a stenographic record, he shall make arrangements directly with a stenographer and notify the other parties of the arrangements at least three days before the date of hearing.

(2) The requesting party shall pay the cost of the record.

(3) Where the parties agree, or the arbitrator determines that the stenographic record be the official record of the proceedings, the record shall be provided to the arbitrator and made available to the other parties for inspection, at a date, time and place determined by the arbitrator.

108. Interpreters and language of proceedings

Where a party requires an interpreter, he shall make all arrangements directly with the interpreter and shall be responsible of the costs of the service, otherwise all proceedings shall be conducted in English.

109. Postponement

The arbitrator may postpone any hearing upon—

(a) mutual agreement of the parties;

(b) the request of a party for good cause shown; or

(c) the arbitrator's own initiative.

110. Arbitration in the absence of a party or representative

(1) Arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement:

Provided however that an award shall not be made against a party solely on the grounds of the absence of the party.

(2) Where a party is absent during arbitration under the circumstances referred to in paragraph (1), the arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award and the arbitrator shall make a decision on the merits of the case.

111. Conduct of proceedings

(1) A claimant shall present evidence to support its demand and a respondent shall then present evidence to support its response or counterclaim, as the case may be.

(2) Witnesses for each party shall answer questions from the arbitrator and the other party.

(3) The arbitrator may vary this procedure:

Provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(4) The arbitrator in the exercise of his discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, order the separation of issues and direct the parties to focus their presentations on issues which could dispose of all or part of the matter.

(5) The parties may agree to waive oral hearings in any case.

112. Evidence

(1) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary for understanding and determination of the dispute.

(2) Conformity to legal rules of evidence shall not be necessary in the arbitration.

(3) All evidence shall be taken in the presence of all the arbitrators and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

(4) The arbitrators shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(5) An arbitrator shall take into account applicable legal principles of legal privilege such as those involving the confidentiality of communication between a lawyer and client.

(6) An arbitrator shall have the power to subpoena witnesses and order production of documents and the arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

113. Evidence by affidavit, filing of documents or other evidence

(1) An arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give the evidence only such weight as the arbitrator deems fit after taking into consideration any objection made to its admission.

(2) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the Authority for transmission to the arbitrator.

(3) All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

114. Inspection or investigation

(1) Where an arbitrator deems it necessary to conduct an inspection or investigation in connection with the arbitration, he shall direct the Authority to advise the parties accordingly.

(2) The arbitrator shall set the date and time and the Authority shall notify the parties when the inspection or investigation, as the case may be, shall be conducted.

(3) Any party may be present at such an inspection or investigation.

(4) Where one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

115. Interim measures

(1) An arbitrator may determine whatever interim measures he deems necessary.

(2) Such interim measures may be in the form of an interim award, and the arbitrator may require security for the costs of such measures.

(3) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

116. Closing of hearing

(1) Before the conclusion of an arbitration, an arbitrator shall specifically inquire from all parties whether they have any further evidence or proof to offer or witnesses to be heard.

(2) Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed, however where briefs or submissions are to be filed, the hearing shall be declared closed on the final date set by the arbitrator for the receipt of briefs or submissions.

(3) If documents are to be filed as provided under by-law 113 and the date set for their receipt is later than that set for the receipt of briefs or submissions, the later date shall be the closing date of the hearing.

(4) The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing.

117. Reopening of hearing

(1) The hearing may be reopened on an arbitrator's initiative, or upon an application of a party, at anytime before an award is made.

(2) If reopening the hearing would prevent the making of an award within the specific time agreed by the parties, the matter may not be reopened unless the parties agree on an extension of time.

(3) Where no specific date is fixed, the arbitrator may reopen the hearing and shall make an award within thirty days from the day the reopened hearing was closed.

118. Waiver of objection

Any party who proceeds with the arbitration after the knowledge that any provision or requirement under these By-laws has not been complied with and who fails to object in writing shall be deemed to have waived the right to object.

119. Extension of time

(1) The parties may modify any period of time by mutual agreement.

(2) The Authority or the arbitrator may, for good cause, extend any period of time established under this Part except the time for making an award and the Authority shall notify the parties of any extension.

120. Service of notice

(1) Any papers, notices or process necessary or proper for the initiation or continuation of an arbitration under this Part or any court action in connexion therewith or for the entry of judgment on any award made under this Part may be served on a party by mail addressed to the party or its representative at the last known address or by personal service.

(2) Unless otherwise instructed by the Authority or by the arbitrator, any documents submitted by any party to the Authority or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

Division 4—Awards and Follow up Judicial Process

121. Majority decision

Where a panel consists of more than one arbitrator, unless required by any written law or by the arbitration agreement, the decision of the arbitrators shall be that of the majority.

122. Time of award

An award shall be made promptly by an arbitrator and unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing or if oral hearings have been waived from the date of the Authority's transmittal of the final statements, submissions, briefs and proofs to the arbitrator.

123. Form of award

(1) Any award shall be in writing and signed by the majority of the arbitrators.

(2) An arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

124. Scope of work

(1) An arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including specific performance of a contract.

(2) In addition to a final award, the arbitrator may make other decisions, including interim, or partial orders and awards.

(3) In any interim or partial award, the arbitrator may assess and apportion the fees, expenses and compensation related to such award as the arbitrator determines is appropriate.

(4) In the final award, an arbitrator shall assess the fees, expenses and compensation provided in by-laws 131, 132 and 133 and the arbitrator may apportion such fees, expenses and compensation among the parties in such amounts as the arbitrator determines is appropriate.

(5) The award of an arbitrator may include—

(a) interest at such rate and from such date as the arbitrator may deem appropriate; and

(b) an award of legal practitioner's fees if the parties have requested such an award or it is authorized by law or their arbitration agreement.

125. Consent award

(1) Where the parties settle their dispute during the course of the arbitration and if the parties so request, an arbitrator may set forth the terms of the settlement in the “consent award”.

(2) A consent award shall include an allocation of arbitration costs, including application fees and expenses as well as arbitrator fees and expenses.

126. Delivery of award to parties

Parties to the arbitration shall accept as notice and delivery of an award where the award or a true copy thereof is sent through the mail addressed to the parties or their representatives to their last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

127. Correction of an award

(1) Within twenty days after the transmittal of an award, any party, upon notice to the other parties, may request an arbitrator through the Authority to correct any clerical, typo-graphical, or computational errors in the award.

(2) While the arbitrator is making the corrections, he shall not re-determine the merits of any claim already decided and the other parties shall have ten days to respond to the request for corrections.

128. Release of documents for judicial proceedings

The Authority shall, upon the written request of a party, furnish to the party, at the party’s expense, certified copies of any papers in the Authority’s possession that may be required in judicial proceedings relating to the arbitration.

129. Applications to court and exclusion of liability

(1) No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party’s right to arbitrate.

(2) The Authority or an arbitrator shall not be compelled to be a party or a witness in any judicial proceedings because of their involvement in any arbitration proceedings under this Part.

(3) Parties to an arbitration under this Part shall be deemed to have consented that an arbitration award may be filed in any court of competent jurisdiction.

(4) Parties to an arbitration under this Part shall be deemed to have consented that neither the Authority nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under this Part.

Division 5—Fees and Expenses

130. Application of fees

A claimant or a respondent in any matter shall pay the application fees prescribed in Part IV of the Third Schedule hereto.

131. Expenses

(1) The expenses of witnesses for either side shall be paid by the party producing such witnesses.

(2) All other expenses of the arbitration, including required travel and other expenses of an arbitrator, representatives of the Authority and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless the parties otherwise agree or unless the arbitrator in an award assesses such expenses or any part thereof against any specific party or parties.

132. Neutral arbitrator's fees

(1) Any person appointed from the Roster of Arbitrators, other than a member of the Authority, shall be paid the fees specified in the Arbitrator's Roster for that particular arbitrator.

(2) Where there is disagreement concerning the rate of fees, an appropriate rate shall be determined by the Authority together with the arbitrator and the parties shall be informed accordingly.

(3) Any arrangement for the fees, including payment of such fees shall be made through the Authority and not directly between the parties and the arbitrator.

133. Arbitration fees for member of Authority

Where a member of the Authority acts as an arbitrator, the arbitration fees payable shall be those spelt out in Part V of the Third Schedule hereto:

Provided that the non-refundable application fees shall be K20,000.

134. Deposit

The Authority may require the parties to deposit in advance of any hearing such sums of money as it deems necessary to cover the expenses of the arbitration, including the arbitrator's fee, and the Authority shall account to the parties on how the money was spent and return any balance to the parties at the conclusion of the matter.

135. Suspension for non-payment

(1) If arbitrator's fees or other expenses have not been paid in full by the parties, the Authority shall inform the parties so that one party may advance the required payment.

(2) If the payments are not made, the arbitrator may order the suspension or termination of the proceedings, or if no arbitrator has yet been appointed, the Authority may suspend the proceedings.

Division 6—Miscellaneous Provisions

136. Interpretation and application of this Part

(1) An arbitrator shall interpret and apply the provisions under this Part insofar as they relate to the arbitrator's powers and duties.

(2) Where there is more than one arbitrator and a difference arises among them concerning the meaning or application of the provisions under this Part, the arbitrators shall decide the matter by amajority vote.

(3) Where the issue is still not resolved, the arbitrators or a party may refer the question to the Authority for final decision.

(4) All other rules in respect to arbitration shall be interpreted and applied by the Authority.

PART IX

LICENSEES TO SUPPLY INFORMATION

137. Provision of information

Every holder of a licence under these By-laws shall provide information to the Authority about any licensed activity it deals with including any information on amounts, prices, specifications in the manner prescribed by the Authority.

PART X

OFFENCES AND PENALTIES

138. Offences and penalties

A person who contravenes any provision of these By-laws commits an offence and on conviction, shall be liable to a fine of K2,000 and to imprisonment for a term of six months.

FIRST SCHEDULE by-law 3

ENERGY REGULATION (LEVY PAYABLE BY ENERGY LICENCE HOLDER UNDER THE ENERGY LAWS)

(1) Levies on Electricity Sales:

One per centum (1%) of basic income on electricity sales.

(2) Levies of Liquid Fuels:

(i) Fossil Fuels—

Matter Levy Payable

- (a) Diesel 37 tambala per litre;
- (b) Petrol 41 tambala per litre;
- (c) Paraffin 29 tambala per litre;
- (d) Aviation fuel 50 tambala per litre
- (e) Jet-A1 50 tambala per litre;
- (f) Bitumen 50 tambala per kilogram;
- (g) Other organic compounds, pure or blended, which are derived from the refining or processing of crude oils or mixtures of crude oils, or refined from plant organic materials 50 tambala per litre.

(i) Bio-Fuels—

Matter Levy Payable

- (a) Ethanol 50 tambala per litre;
- (b) Bio-Diesel 50 tambala per litre; and
- (c) Any other product categorized as a bio-fuel 50 tambala per litre.

(3) Levies of Gas:

Matter Levy Payable

- (a) LPG 50 tambala per kilogram;
- (b) AV-GAS 50 tambala per litre;
- (c) Methane 50 tambala per kilogram;
- (d) Ethane 50 tambala per kilogram;
- (e) Butane 50 tambala per kilogram;
- (f) Propane 50 tambala per kilogram; and
- (g) Other similar gases or mixtures of the gases whether in gaseous or liquefied state 50 tambala per kilogram.

(4) Levies of Solid Fuels:

Matter Levy Payable

- (a) Coal 50 tambala per kilogram;
- (b) Peat 50 tambala per kilogram; and
- (c) Other 50 tambala per kilogram.

(5) Levies of Lubricants:

Matter Levy Payable

Lubricants 50 tambala per litre.

(6) Other products or by-products of crude oil processing having a Flash Point lower than 120°C, determined in a Pen sky-Martens closed test apparatus 50 tambala per litre.

SECOND SCHEDULE by-law 16
PART I
REPUBLIC OF MALAWI
ENERGY REGULATION ACT
(CAP. 73:02)
ENERGY REGULATION BY-LAWS
APPLICATION FOR LICENCE
SECTION A
PARTICULARS OF APPLICANT
FORM ECS 1

- A.1 Full names of applicant:
- A.2 Address of applicant, or in the case of a body corporate, the registered office:
.....
- A.3 Telephone number of applicant:
Fax number:
- A.4 E-mail address:
- A.5 Details of the Contact Person:
(a) Full Name:
.....
(b) Telephone number:
.....
(c) Fax number:
.....
(d) E-mail address:
.....
- A.6 Legal personality of applicant:
- A.7 If the applicant is a company provide the following details—
(a) full names of shareholders and their holding percentages;
(b) full names and occupation of Directors;
(c) Certificate of Incorporation;
(d) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE AND PURPOSE OF LICENCE

- B.1 Desired date from which the licence (if granted) is to take effect:
.....
- B.2 Purpose of licence:
- B.3 Type of application (issue, transfer, amendment or renewal):

SECTION C

PARTICULARS OF ANY LONG-TERM ARRANGEMENTS WITH ENERGY SUPPLIERS

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

G.2 Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority.

SECTION H

PRICES AND CHARGES

Provide a schedule of the proposed prices and charges.

SECTION I

ADDITIONAL INFORMATION

Provide any other relevant information which the applicant wishes to include with this application.

PART II

REPUBLIC OF MALAWI

ENERGY REGULATION ACT

(CAP.73:02)

ENERGY REGULATION BY-LAWS

FORM ECS 2

LICENCE FOR COAL SUPPLY by-law 16

[No.....]

This Licence is hereby granted to:

.....

of (physical address):

for the importing/exporting/transporting/storage/selling of coal subject to the conditions prescribed by the Energy Regulation By-laws, 2009, made under the Energy Regulations Act (Cap. 73:02).

This Licence shall expire on the day of next following the date of issue hereof, and may be renewed on application being made for this purpose.

Issued this day of....., 20

.....
for Malawi Energy Regulatory Authority

This Licence is issued subject to the Energy Regulation By-laws of which the Licensee admits cognizance.

THIRD SCHEDULE by-laws 16, 40 and 41

FEES

PART I

FEES PAYABLE UNDER PART IV FOR THE COAL SUPPLY

K t

1. On application for a licence or renewal thereof—
 - (a) Wholesale Licence 200,000 00
 - (b) Distribution Licence 50,000 00
 - (c) Retailing Licence 20,000 00
 - (d) Storage Licence 50,000 00
 - (e) Transportation Licence 50,000 00
 - (f) Exportation Licence 50,000 00
 - (g) Importation Licence 200,000 00

2. On application for registration for importation and mining of coal for own use or renewal thereof—
 - (a) importation for own use 30,000 00
 - (b) mining for own use 30,000 00
3. On issue of licence:

Applicable to all types of licences considered under Part I of this Third Schedule
5,000 00

PART II

FEES PAYABLE UNDER PART V FOR RENEWABLE TECHNOLOGIES by-law 43

1. On application for Renewable Energy Technologies Licence 50,000 00
2. On issue of Renewable Energy Technologies Licence 50,000 00
3. Annual renewal fees for Renewable Energy Technologies Licence 50,000 00

PART III

REGISTRATION FEES FOR PRIVATE GENERATION by-law 66

CAT. I Less than 20kVA Nil (Free)

CAT. II Standby Private Generation 20kVA or above MK100/kVA with MK 3,000 as a minimum

CAT. III Base Load Private Generation 20kVA or above MK150/kVA

PART IV

FEES PAYABLE UNDER PART VII FOR MEDIATION by-laws 68 and 84

1. Non-refundable fee for initiating mediation 4,000 00
2. Mediator's Fees—

Fees Payable
(a) value of subject matter:
(i) where the value exceeds K50,000 but does not exceed K100,000
5 per cent, subject to a minimum of K5,000
(ii) where the value exceeds K 100,000 but does not exceeds K500,000
3 per cent, subject to minimum of K10,000
(iii) where the value exceeds K500,000 but does not exceed
K1,000,000 2 per cent, subject to minimum of K15,000
(iv) where the value exceeds K 1,000,000 and above 1 per cent,
subject to a minimum of K20,000 and maximum of K100,000
(b) where the value of the matter has not been determined, the rate of fees shall be K2,000 per hour subject to a minimum of K5,000 and a maximum of K100,000.

PART V

FEES PAYABLE UNDER PART VIII FOR ARBITRATION by-laws 84, 130 and 133

1. Non-refundable fee for initiating arbitration K20,000
2. Arbitrator's Fees—
 - Fee Payable
 - (a) value of subject matter:
 - (i) where the value exceeds K50,000 but does not exceed K100,000
5 per cent, subject to a minimum of K5,000
 - (ii) where the value exceeds K 100,000 but does not exceed K500,000
3 per cent, subject to a minimum of K10,000
 - (iii) where the value exceeds K500,000 but does not exceed K1,000,000
2 per cent, subject to a minimum of K15,000
 - (iv) where the value exceeds K1,000,000 and above 1 per cent,
subject to a minimum of K20,000 and maximum of K100,000
 - (b) where the value of the matter has not been determined, the rate of fees shall be K2,500 per hour subject to a minimum of K5,000 and a maximum of K100,000.

FOURTH SCHEDULE by-law 40

REPUBLIC OF MALAWI

ENERGY REGULATION ACT

(CAP. 73:02)

ENERGY REGULATION BY-LAWS

REGISTRATION FORM FOR COAL IMPORTATION FOR OWN USE

FORM ECS 3

SECTION A

PARTICULARS OF APPLICANT

- A.1 Full Name of Applicant:
- A.2 Address of Applicant, or in the case of a body corporate, the registered office:
- A.3 Telephone Number of Applicant:
- A.4 Fax Number:
- A.5 E-mail Address:
- A.6 Details of Contact Person:
 - Full Name:
 - Telephone Number:
 - Fax Number:.....
 - E-mail Address:
- A.7 Legal Form of Applicant (specify—company, partnership, individual, cooperative):
- A.8 If the applicant is a company provide the following details:
 - (a) full names of shareholders and their holding percentages;
 - (b) full names and occupation of Directors;

- (c) Certificate of Incorporation;
- (d) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF REGISTRATION

- B.1 Desired date from which the registration (if granted) is to take effect:
.....
.....
- B.2 Duration of the registration from commencement date:
- B.3 Purpose for registration:
- B.4 Type of application (issue, transfer, amendment or renewal):
.....
.....

SECTION C

INFORMATION ON HUMAN RESOURCES

- (a) submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualification and number of years of experience in similar jobs; and
- (b) provide curriculum vitae of top management personnel of the applicant.

SECTION D

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the Coal Importation business.

SECTION E

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the Coal Importation business on natural resources and environment and mitigation measures proposed.

Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority

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SECTION F

ADDITIONAL INFORMATION

Please provide any other relevant information which the applicant wishes to include with this application:

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(CAP. 73:02)

ENERGY REGULATION BY-LAWS

REGISTRATION FORM FOR COAL MINING FOR OWN USE by-law 41

FORM ECS 4

SECTION A

PARTICULARS OF APPLICANT

A.1 Full Name of Applicant:

A.2 Address of Applicant, or in the case of a body corporate, the registered office:
.....
.....

A.3 Telephone Number of Applicant:

A.4 Fax Number:

A.5 E-mail Address:

A.6 Details of Contact Person:
Full Name:
Telephone Number:
Fax Number:
E-mail Address:

A.7 Legal Form of applicant (specify—company, partnership, individual, cooperative):
.....

A.8 If the applicant is a company provide the following—
(a) full names of shareholders and their holding percentages;
(b) full names and occupation of Directors;
(c) Certificate of Incorporation;
(d) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE, PURPOSE AND DURATION OF REGISTRATION

B.1 Desired date from which the registration (if granted) is to take effect:
.....

B.2 Duration of the registration from commencement date:

B.3 Purpose for registration:

B.4 Type of application (issue, transfer, amendment or renewal):
.....

SECTION C

INFORMATION ON HUMAN RESOURCES

(a) submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.

(b) provide curriculum vitae of top management personnel of the applicant.

SECTION D

PERMITS FROM OTHER GOVERNMENT DEPARTMENTS OR REGULATORY AUTHORITIES

Submit copies of permits or approvals issued by public or local authority or other regulatory agencies necessary for the operation of the Coal Mining business.

SECTION E

ENVIRONMENTAL CONSIDERATION

Provide a brief description of the likely negative impact of the Coal Mining business on natural resources and environment and mitigation measures proposed.

Provide a copy of the approved environmental mitigation plan (if any) by the relevant authority.

SECTION F

ADDITIONAL INFORMATION

Please provide any other relevant information which the applicant wishes to include with this application:

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.....
.....

**FIFTH SCHEDULE by-law 43
REPUBLIC OF MALAWI
ENERGY REGULATION ACT
(CAP. 73:02)
ENERGY REGULATION BY-LAWS
APPLICATION FORM FOR LICENCE FOR RENEWABLE ENERGY
TECHNOLOGIES ACTIVITIES
FORM ERET 1**

SECTION A

PARTICULARS OF APPLICANT

- A.1 Full names of applicant:
- A.2 Address of applicant, or in the case of a body corporate, the registered office:
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.....
- A.3 Telephone Number of Applicant:
- A.4 Fax Number:
- A.5 E-mail Address:
- A.6 Details of Contact Person:
Full Name:
Telephone Number:
Fax Number:
E-mail Address:
- A.7 Legal personality of applicant:
- A.8 If the applicant is a company provide the following details—
 - (a) full names of shareholders and their holding percentages;
 - (b) full names and occupation of Directors;
 - (c) Certificate of Incorporation;
 - (d) Memorandum and Articles of Association.

SECTION B

COMMENCEMENT DATE AND PURPOSE OF LICENCE

- B.1 Desired date from which the licence (if granted) is to take effect:
.....
- B.2 Purpose of licence:

B.3 Type of application (issue, transfer, amendment or renewal):

.....
SECTION C

PARTICULARS OF EQUIPMENT

Give details of the types of equipment likely to be supplied in the next one year:

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SECTION D

PARTICULARS OF ANY LONG-TERM ARRANGEMENTS WITH EQUIPMENT SUPPLIERS

Provide details of any long-term arrangements with equipment suppliers as to type of equipment, FOB prices, delivery times, etc.

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SECTION E

FINANCIAL INFORMATION

E. Income Statement:

Provide statements and annual forecasts of sales, revenues and costs. Attach copies of the current or budgeted balance sheet, rate of return, profit and loss account and source and application of funds for current and next two years. Indicate major cost items such as staff costs, equipment acquisition costs, transportation costs, etc.

SECTION F

INFORMATION ON HUMAN RESOURCES

- F.1 Submit details of the number of staff and employees and their categories and grades in the service of or to be recruited by the applicant, showing their qualifications and number of years of experience in similar jobs.
- F.2 Provide curriculum vitae of top management personnel of the applicant.
- F.3 Provide a list of all personnel certified by the Malawi Bureau of Standards and also all those certified as installations persons under the Electricity (Installations Permits) Regulations.

SECTION H

PRICES AND CHARGES

Provide a schedule of the proposed prices and charges for all types of equipment.

SECTION I

ADDITIONAL INFORMATION

Provide any other relevant information which the applicant wishes to include with this application:

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This application for licence shall not be considered by the Authority unless the applicant shall have paid the prescribed application fees.

REPUBLIC OF MALAWI
ENERGY REGULATION ACT
(CAP. 73:02)
ENERGY REGULATION BY-LAWS
FORM ERET2
LICENCE FOR RENEWABLE ENERGY ACTIVITIES by-law 43

[No.]
This Licence is hereby granted to:
of (physical address):
for the importation/selling/installation/maintenance of renewable energy technologies subject to the conditions prescribed by the Energy Regulation By-laws made under, the Act (Cap. 73:02).

This Licence shall expire on the day of next following the date of issue hereof, and may be renewed on application being made for this purpose. Issued this day of, 20

.....
for Malawi Energy Regulatory Authority
This Licence is issued subject to the Energy Regulation By-laws, 2009. of which the Licensee admits cognizance.

SIXTH SCHEDULE by-law 63
REPUBLIC OF MALAWI
ENERGY REGULATION ACT
(CAP. 73:02)
ENERGY REGULATION BY-LAWS
SERVICE AGREEMENT UNDER RENEWABLE ENERGY TECHNOLOGIES
THIS SERVICE AGREEMENT is made the day of, 20.....

Between of (hereinafter referred to as “the Owner”) of the one part and, (hereinafter referred to as “the Contractor”) of the other part:

WHEREAS by an agreement made theday of, 20.....

Between the (hereinafter referred to as the “Buyer”) and the Contractor, the Contractor sold to the Buyer the Renewable Energy Technology Equipment, more fully described in the Schedule attached hereto:

WHEREAS the signing of Hand Over and User Agreement will pass the title in the Renewable Energy Technology Equipment to the Buyer;

WHEREAS it is a condition of the said Purchase Agreement that the Contractor and the Buyer shall execute this Service Agreement for the service and maintenance of the said Renewable Energy Technology Equipment;

NOW THEREFORE the Parties to this Agreement hereby agree that:

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires—

“additional charges” means the charges to be calculated by the Contractor on a time and material basis at its then prevailing rates in respect of the provision of Exempted Services pursuant to clause 6.3;

“commencement date” means the date set out in the Schedule hereto upon which this Agreement shall commence;

“excepted services” means those services referred to in clause 6 which do not fall within the Maintenance Services;

“Government” means the Department of Energy Affairs or its authorized representative;

“initial period” means the period of twelve months from the commencement date;

“maintenance charges” means the aggregate annual charges for the Maintenance Service calculated in accordance with clause 3.1 below and set out in the Schedule hereto;

“maintenance services” means the provision of preventative maintenance, curative maintenance and other services as defined in clause 4;

“monitoring engineer” means the Authority or its Agents or other body authorized by the Malawi Government;

“place of use” means that part of the Buyer’s premises at the Site where the Renewable Energy Technology is installed and operated;

“renewable energy technology equipment” means the items of Renewable Energy Technology Equipment identified by type and serial number in the Schedule hereto; and

“site” means the Buyer’s address specified in the Schedule hereto.

2. CONTRACTOR’S UNDERTAKING

2.1 In consideration of the payment by the Buyer from time to time of the maintenance charges in accordance with the provisions of clause 3, the Contractor undertakes to provide the Maintenance Services in respect of the Renewable Energy Technology Equipment upon the terms and conditions of this Agreement.

3. MAINTENANCE CHARGES

3.1 The annual maintenance charges at the date hereof in respect of each item of Renewable Energy Technology Equipment shall be as set out in the Schedule. The aggregate of such annual maintenance charges shall constitute the maintenance charges for the purposes of this Agreement.

3.2 The Contractor shall not be entitled to vary the maintenance charges during the period of twelve months commencing on the commencement date.

Thereafter the Contractor shall be entitled to vary the maintenance charges not more than once in every successive period of twelve months upon giving not less than ten days prior written notice of increase to the Buyer.

3.3 Upon receipt of a notice of increase in Maintenance Charges in accordance with clause 3.2 above, the Buyer shall be entitled to terminate this agreement in accordance with clause 12.

3.4 The maintenance charges shall cover two scheduled semi-annual visits to the plant and shall include the cost of travel, accommodation and subsistence expenses of the Contractor (including the cost of time spent travelling) incurred in the provision of the maintenance services plus Contractor's fees and the cost of spare parts replaced due to normal wear and tear during the warranty period of each such component.

3.5 The service visits shall comprise a comprehensive inspection, and eventual repairs and adjustments of components as deemed necessary to secure continued trouble free operation.

3.6 The maintenance charges shall not include the cost of any exempted services.

3.7 The maintenance charges shall be levied by the Contractor immediately after delivery of services.

3.8 Maintenance charges shall be payable by the Buyer. The Contractor shall send his invoices to the Buyer.

3.9 During renewed period as in clause 10, maintenance charges shall include the cost of spare parts replaced due to normal wear and tear only during the subsistence of the warranty period for the particular component.

4. MAINTENANCE SERVICE

4.1 Maintenance services shall comprise the provision by the Contractor of "preventive maintenance" and "curative maintenance" in respect of the Renewable Energy Technology Equipment at the place of use.

4.2 Preventive maintenance shall comprise—

(a) the routine inspection and testing (by attendance on site) by the Contractor of each item of Renewable Energy Technology Equipment in accordance with the Contractor's recommendations thereof; and

(b) the carrying out by the Contractor of such repairs replacement of parts worn out due to normal wear and tear, cleaning, and adjustment to each item of Renewable Energy Technology Equipment as the Contractor shall deem necessary as a result of the said inspection and testing.

4.3 Curative maintenance shall comprise—

(a) upon receipt of a request from the Buyer, the inspection, testing and diagnosis (by attendance on site) by the Contractor of any fault reported in an item of Renewable Energy Technology Equipment; and

(b) the earning out by the Contractor of such repairs, replacement of parts, cleaning and adjustment as the Contractor shall deem necessary to remedy the fault.

5. TIMES FOR MAINTENANCE SERVICES

5.1 Curative maintenance shall be provided upon a request by the Buyer to the Contractor. The Contractor shall use its reasonable endeavors to carry out the curative maintenance within seven days of receipt of such request.

5.2 Preventative maintenance shall be provided by the Contractor at least once every six months.

5.3 If the Contractor persistently fails to carry out curative maintenance within the stipulated seven days, the Government may issue a written warning to the Contractor.

6. EXEMPT SERVICES

6.1 The maintenance services shall not include the correction of any fault due to—

(a) the Buyer's neglect or misuse of the Renewable Energy Technology Equipment or his failure to operate the Renewable Energy Technology Equipment in accordance with the Contractor's operation manual or for the purposes for which it was designed;

(b) the alteration, modification or maintenance of the Renewable Energy Technology Equipment by any party other than the Contractor without the Contractor's prior consent;

(c) any accident or disaster affecting the Renewable Energy Technology Equipment including fire, flood, water, wind, lightning, vandalism or burglary; or

(d) the Buyer's failure, inability or refusal to afford the Contractor's personnel proper access to the Renewable Energy Technology Equipment;

6.2 Maintenance services shall also not include additions to the Renewable Energy Technology Equipment.

6.3 The Contractor shall upon request by the Buyer provide all or any of the exempt services referred to in Clauses 6.1 and 6.2 above but shall be entitled to charge for the same by levying additional charges in the manner described in Clause 6.5.

6.4 Without prejudice to the Clause 6.3 above, the Contractor shall be entitled to levy additional charges in the manner described in Clause 6.5 below if maintenance services are provided in circumstances where any reasonable operator of the Renewable Energy Technology Equipment would have judged the Buyer's request to have been unnecessary.

6.5 Additional charges shall be levied by the Contractor by delivering an invoice to the Buyer soon after earning out exempt services and the Buyer shall pay the same within three days from the date of receipt of the invoice.

6.6 All exempt services shall be carried out after getting prior approval from the Buyer.

7. BUYER'S OBLIGATIONS

7.1 The Buyer undertakes to the Contractor throughout the term of this Agreement—

(a) to grant the Contractor such access to the place of use as the Contractor shall from time to time reasonably require in order to discharge its obligations hereunder;

(b) to make available the place of use such facilities as the Contractor shall reasonably require in order to discharge its obligations hereunder, including adequate work space and storage;

(c) to take all reasonable precautions to protect the health and safety of the Contractor's employees, agents and sub-contractors while on the Buyer's site; and

(d) to make available the Renewable Energy Technology Equipment and supply all documentation and other information necessary for the Contractor to diagnose any fault in the Renewable Energy Technology Equipment.

8. CONTRACTOR'S WARRANTY

8.1 The Contractor warrants and undertakes to the Buyer—

(a) to perform a the maintenance services and any exempt services with reasonable care and skill;

(b) to perform any exempt services within a reasonable time after being requested by the Buyer;

(c) that he shall have a free and unencumbered title to any replacement parts for the equipment supplied hereunder; and

(d) that the Buyer will enjoy quiet possession of any such replacement parts and that the same will be of merchantable quality and reasonably fit for their purpose.

8.2 The Contractor does not warrant that the maintenance services (or any additional services) will cause the Renewable Energy Technology Equipment to operate without interruption or error.

9. REPLACEMENT OE PARTS

9.1 The Contractor shall supply new replacement parts in the performance of its duties hereunder.

9.2 Any parts of the Renewable Energy Technology Equipment replaced by the Contractor pursuant to clause 9.1 above ("replaced parts") shall upon replacement become the property of the Contractor and the Buyer warrants that either it shall have a fee and unencumbered title to such Replaced Parts and/or that he shall have obtained all necessary consents and authorities to part with possession and give good title to the Replaced Parts.

9.3 This Agreement shall not hinder transfer of manufacturers warranty.

10. DURATION OF AGREEMENT

(a) this Service Agreement shall commence on the commencement date and shall continue until the expiry of the initial period during which period either party shall not terminate the Agreement; and

(b) after the expiry of the initial period, this Agreement may be renewed by mutual agreement of the Parties. However if three months before the expiry date of the initial period or renewed period, the Contractor sends a quotation to the Buyer in respect of maintenance charges for the proposed renewed period and the duration thereof and if the Buyer accepts the quotation, this Service Agreement and all the conditions herein shall be deemed to have been renewed automatically:

Provided that if no duration is specified in the quotation, this Service Agreement shall be deemed to have been renewed for a period of twelve months.

11. MAINTENANCE REPORTS

11.1 The Contractor shall upon carrying out any maintenance work on the Renewable Energy Technology Equipment, prepare a maintenance report and deliver the same to the Buyer.

11.2 The said maintenance reports shall describe in detail the inspection, testing, repairs, the parts replaced, additions and other maintenance work done.

11.3 The Monitoring Engineer may earn out inspection and testing of the Solar Equipment to counter check or verify the finding in the maintenance report.

12. TERMINATION

12.1 Subject to clause 10.1 of this Service Agreement, this Service Agreement may be terminated—

(a) by the Buyer upon giving not less than ninety days written notice to the Contractor at any time after the expiry of the Initial Period;

(b) forthwith by the Contractor if the Buyer fails to pay the maintenance charges or any additional charges due hereunder within thirty days of the due date thereof; or

(c) forthwith by either party if the other commits any material breach of any term of this Agreement (other than one falling within (b) above) and which (in the case of breach capable of being remedied) shall not have been remedied within thirty days of a written request by the other party to remedy the same.

12.2 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

13. INVALIDITY AND SEVERABILITY

If any court or administrative body of competent jurisdiction shall find any provision of this Service Agreement to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Service Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

14. SUCCESSORS

This Service Agreement shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

15. ASSIGNMENT

Neither party shall be entitled to assign this Service Agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.

16. APPLICABLE LAW AND PLACE OF ARBITRATION

This Service Agreement shall be governed by and construed in accordance with the Laws of Malawi and the parties hereto agree to submit to the jurisdiction of Malawi Courts and venue of arbitration shall be Blantyre, Malawi.

IN WITNESS WHEREOF the authorized representatives of the parties hereto have signed this Service Agreement on the day and year first above written.

Signed: for Buyer for Contractor

.....
(Name) (Name)

.....
(Witness) (Witness)

SEVENTH SCHEDULE by-law 66
REPUBLIC OF MALAWI
ENERGY REGULATION ACT
(CAP. 73:02)
ENERGY REGULATION BY-LAWS
FORM EPOU 1
REGISTRATION FORM FOR PRIVATE ELECTRICITY GENERATION
SECTION A
PARTICULARS OF APPLICANT

A.1 Full name of Applicant:

A.2 Address of Applicant, or in the case of a body corporate, the registered office:
.....
.....

A.3 Telephone Number of Applicant:

A.4 Fax Number:

A.5 E-mail Address:

A.6 Details of Contact Person:
Full Name:
Telephone Number:
Fax Number:
E-mail Address:

A.7 Legal Form of applicant (specify—company, partnership, individual, cooperative):
.....

(A separate application is required in respect of every installation).

SECTION B
INSTALLATION

(a) Total capacity to be installed for the purpose of this licence, Kilowatts comprising the following units—

Capacity of Units	Prime Mover Hydro, Steam, Diesel	If Steam (Wood or coal fired)
Voltage	A.C. or D.C. Phase and Frequency	Age Date of Installation

(b) Indication of capital investment in generating plant (book value).

(c) Undertakings Distribution System (if any) (Voltages, length of lines or cables, number and capacity of substations):

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

**SECTION C
OPERATION**

(The information given here will be affected by whether the undertaking is connected to the utility, distribution system or not)—

- (a) normal maximum total electrical load:
Kw
- (b) proportion derived from own plant:
Kw
- (c) proportion derived from Electricity Supply Corporation of Malawi:
Kw
- (d) total energy derived from plant for year ending 31st December, 20
Kw

**SECTION D
STAND-BY PURPOSES**

(Defined as “purpose” of generating electricity for a consumer’s own use or business when by reason of technical failure, or for any other reason the utility is for the time being unable to provide an adequate supply of electricity to that consumer”). If the generating plant is not normally in use, all supplies being taken from the utility, the following information is required—

- (a) time taken to bring plant into commission;
- (b) is the plant capable of supplying the full load to the undertaking? If not, the proportion should be stated.

**SECTION E
BASE LOAD GENERATION**

(Defined as “purpose of generating electricity continuously to subsidise electricity from a registered electric utility e.g. ESCOM”).

Is the plant going to be used for base load generation? Yes/No:

.....
.....

**SECTION F
FUTURE PROGRAMME**

(a) Is an increase in electrical load expected within the next three years? If so, state extent.

(b) Will this increased load be met from—

- (i) existing installation;
- (ii) the installation of additional plant (if approved);
- (iii) an increased demand for supply from the electrical utility.

SECTION G

GENERAL

Any further information relevant to the application should be stated hereunder—

.....

Signed by, for and on behalf of the Applicant:

Dated:

SECTION H

LICENCE FEES

- CAT. I Less than 20kVA Nil (Free);
- CAT. II Stand-by Private Generation 20kVA or above MK100/kVA with MK3,000 as a minimum;
- CAT. II Base Load Private Generation 20kVA or above MK150/kVA.

SECTION I

OTHER

1. Application by:.....

 with regard to the Licence No.:
 issued to:
 dated:

to—

- (a) increase the rated capacity of the undertaking; Strike out
- where inapplicable.
- (b) otherwise amend the licence;
- (d) cancel the licence;
- (e) substitute another licence or licences thereof.

2. Reasons for the application:

3. Signed: Dated:

(CAP. 73:02)

ENERGY REGULATION BY-LAWS

FORM EPOU 2

REGISTRATION CERTIFICATE FOR PRIVATE ELECTRICITY GENERATION by-law 66

Issued to:

of: (hereinafter called the “private generator”).

1. Granting of Certificate of Registration:

The Malawi Energy Regulatory Authority (the “Authority”) in exercise of the powers conferred by by-law 66 of the Energy Regulation By-laws hereby issue this Certificate of Registration to: for the generation of electricity.

2. Duration of Registration Certificate:

This Certificate of Registration shall be valid for one year (or less than one year up to 31st December in the case of initial registration in the middle of the calendar year) and shall be renewed by 1st January of each year and shall continue for a period of one year unless revoked or modified in accordance with the provisions of the Energy Regulation By-laws.

3. Collection of Information:

The Authority shall be entitled to collect such information from the registered private generator, as it deems necessary.

4. Inspection:

The Authority is empowered to perform inspections of the equipment of the registered private generator and the Authority or any person authorized by it in writing may enter the premises of the registered private generator and inspect any other plant and machinery which form part of the generation equipment under this Registration Certificate.

5. Prohibition of Transfer of Registration Certificate:

This Registration Certificate is not transferable without the approval of the Authority.

6. This Registration Certificate is granted under the authority of the Energy Regulation By-laws.

7. For other private generation registration requirements (See behind certificate).

The Common Seal of the Malawi Energy Regulatory Authority was hereunto affixed.

This day of, 20.....

.....

Chief Executive Officer

Other private generation registration requirements (Reverse of Certificate)

- 7.1 Map of the location of the Service Area;
- 7.2 Prime Mover;
- 7.3 Total capacity installed for the purpose of this Licence (kVA);
- 7.4 Service and supply conditions;
- 7.5 Installation Permit under the Electricity By-laws.

This Registration Certificate is issued subject to the Registered Private Generator adhering to the relevant requirements under the Electricity By-laws.

EIGHTH SCHEDULE
REPUBLIC OF MALAWI
ENERGY REGULATION ACT
(CAP. 73:02)
REQUEST FOR MEDIATION FORM
FORM EMR 1
HEADED

IN THE MATTER OF THE ENERGY REGULATION ACT
WHEREAS differences have arisen and are still subsisting Between.....

.....
(AB) of:

Address:

.....
.....

..

Telephone Number:

.....

E-mail Address:

.....

And

(CD) of:

Address:

.....

Telephone Number:

.....

E-Mail Address:

.....

Brief Statement of the nature of differences:

.....

..

..

.....

..

NOW I/WE,* the said AB/CD do hereby agree to refer the said matters for settlement by a mediator appointed by the Authority.

AND I/WE* the said AB/CD hereby appoint the following to be my/our* representative in the said mediation:

Name of Representative:

.....

Address:

.....

Telephone Number:

.....

E-Mail Address:

.....
Dated the day of ,
20.....

.....
AB/CD
ENERGY REGULATION ACT
(CAP. 73:02)
MEDIATION SETTLEMENT AGREEMENT FORM
FORM EMR 2
HEADED
IN THE MATTER OF THE ENERGY REGULATION ACT
BETWEEN

AB

And

CD

WHEREAS the parties have agreed following mediation by the Malawi Energy
Regulatory Authority through (XY), in the matter
described in Form EMR 1.

The parties having duly considered the matters summarized by the (XY)
and submitted to us.

WE hereby certify that the said terms which are detailed below are agreed:

1. That:
2. That:

AND, WE, AB and CD. hereby agree to be bound by this Agreement upon signature.

Dated this day of , 20.....

.....
AB

.....
CD

.....
XY

[Chap7303]