

THE ENERGY ACT, 2006

(No 12 of 2006)

THE ENERGY (COMPLAINTS AND DISPUTES RESOLUTION) REGULATIONS, 2010

ARRANGEMENT OF REGULATIONS

<i>Regulation</i>	<i>Page</i>
1. Citation .....	2
2. Application.....	2
3. Interpretation .....	2
4. Complaints and disputes to which these regulations apply .....	3
5. Complaints handling procedures of licensees and permit holders.....	3
6. Reports to the Commission on handling of complaints.....	3
7. Declaration of a dispute and reference to the Commission .....	3
8. Authority to represent .....	4
9. Filing a dispute .....	4
10. Information to be provided by plaintiff.....	5
11. Filing of reply, opposition, objections, etc.....	5
12. Acknowledgement of a dispute or reply.....	5
13. Request for further information.....	5
14. Withdrawal of dispute .....	6
15. Database of Experts .....	6
16. Dispute resolution by experts .....	6
17. Limitation of Liability .....	7
18. Register of disputes.....	7
19. Offences and penalties.....	7
20. Offences by corporate bodies.....	8
21. Process map for complaints and disputes resolution.....	8
22. Appeals .....	8
23. Revocation .....	8
FIRST SCHEDULE .....	9
SECOND SCHEDULE.....	10
THIRD SCHEDULE .....	11
FOURH SCHEDULE .....	14
FIFTH SCHEDULE.....	15

## THE ENERGY ACT, 2006

(No 12 of 2006)

IN EXERCISE of the powers conferred on him by Sections 63 and 110 of the Energy Act, 2006, and of all other powers enabling him in that behalf, the Minister for Energy hereby makes the following Regulations:-

### THE ENERGY (COMPLAINTS AND DISPUTES RESOLUTION) REGULATIONS, 2010

- Citation** 1. These Regulations may be cited as the Energy (Complaints and Disputes Resolution) Regulations, 2010.
- Application** 2. These Regulations shall apply to any person who has a complaint or a dispute regarding any matter regulated under the Act, or any licence, permit, contract, code, conduct, practice or operation of any party thereunder.
- Interpretation** 3. (1) In these Regulations, unless the context otherwise requires-
- “Act” means the Energy Act, 2006, and includes any order, regulations or rules made under any Act;
- “Commission” means the Energy Regulatory Commission established under section 119 of the Act;
- “complaint” includes a dissatisfaction with the service rendered by, or a practice of, any person carrying out any undertaking or activity pursuant to a licence, permit or registration issued or granted by the Commission or under the Act;
- “complainant” means any person affected by a respondent’s undertaking, activity or practice regulated under the Act;
- “day” means calendar day;
- “dispute” is deemed to exist where, the parties acting in good faith have failed to reach an amicable resolution of a complaint and after all due efforts have been made;
- “licensee” means a public or local authority, company, person or body of persons to whom a licence or permit is granted;
- “mediation” means a without-prejudice non-binding process in which an independent neutral third party, referred to as a mediator, assists parties to settle their dispute;
- “plaintiff” means any person referring a dispute to the Commission for determination;
- “respondent” means any person against whom another person has a complaint or a dispute relating to a matter regulated under the Act;

“website” of the Commission means [www.erc.go.ke](http://www.erc.go.ke).

(2) In these Regulations, unless the context otherwise requires-

(a) words importing the singular include the plural and vice versa, and

(b) words importing a gender include any gender.

Complaints and disputes to which these regulations apply

4. These regulations shall apply to complaints and disputes in the following areas:-

(a) billing, damages, disconnection, health and safety, electrical installations, interruptions, licensee practices and procedures, metering, new connections and extensions, reconnections, quality of service, quality of supply, tariffs, way leaves, easements or rights-of-way in relation to the generation, transmission, distribution, supply and use of electrical energy.

(b) damages, adulteration and under-dispensing of products, licensee practices and procedures, health and safety in relation to the importation, refining, exportation, wholesale, retail, storage or transportation of petroleum products, and

(c) any other activity and/or matter regulated under the Act.

Complaints handling procedures of licensees and permit holders

5. (1) Every person carrying out any undertaking or activity under the Act shall have procedures approved by the Commission for dealing with complaints relating to his undertaking or activity.

(2) The procedures contemplated in sub-regulation (1) shall conform to the guidelines detailed in the [First Schedule](#).

Reports to the Commission on handling of complaints

6. Every person carrying out any undertaking or activity under a licence or permit issued or granted under the Act shall submit reports to the Commission regarding the complaints received and dealt with in Form S-1 as set out in the [Second Schedule](#).

Declaration of a dispute and reference to the Commission

7. (1) In the event that any complaint is not resolved to the satisfaction of the complainant even after exhausting the complaints handling procedures contemplated in Regulation 5, the parties may declare a dispute, and both or any one of them may refer it to the Commission for recourse.

(2) Reference of the dispute to the Commission shall be in form S-1 as set out in the [Third Schedule](#).

(3) Where a dispute has been referred to the Commission, the Commission shall help the parties to negotiate and agree on a settlement of their dispute within thirty days from the date of such reference.

(4) Where the dispute-

(a) is resolved through mediation in accordance with sub-regulation (3), the parties shall file their settlement agreement with the Commission within five days, and the agreement shall be final and binding on both parties.

(b) is not resolved through mediation in accordance with sub-regulation (3), the procedures detailed in regulations 8 to 16 shall apply.

**Authority to represent**

8. (1) A person may authorise an advocate to represent him and to act and plead on his behalf before the Commission.

(2) The person may also appear himself or may authorise any of his employees or agents to appear before the Commission and to act and plead on his behalf.

(3) Authorisation shall be in form S-2 as set out in the [Third Schedule](#).

(4) For the purposes of this Regulation and Regulation 13, the Commission includes the experts contemplated in Regulation 15.

**Filing a dispute**

9. (1) A person desiring to file a dispute with the Commission ("the plaintiff") shall:-

(a) inform the respondent of his intention to so file the dispute, and,

(b) furnish to the respondent copies of all pleadings and supporting documents filed with the Commission.

(2) The plaintiff shall file four copies of the dispute before the Commission and each copy shall be typewritten, photocopied or printed neatly and legibly on one side of white paper and every page shall be consecutively numbered.

(3) The Commission may accept disputes filed with a computer disk or through electronic media on such terms and conditions as the Commission may specify.

(4) The contents of the dispute shall be divided appropriately into separate paragraphs, which shall be numbered serially.

(5) The dispute shall be accompanied by such documents, supporting data and statements as the Commission may specify.

Information to be provided by plaintiff

10. Four copies of the following information shall be included in the dispute:

- (a) plaintiff's address;
- (b) plaintiff's or respondent's account number (where applicable);
- (c) copies of relevant correspondence between the plaintiff and respondent,
- (d) reasons, from the plaintiff's viewpoint, why the complaint was not resolved, and
- (e) evidence of service of the pleadings to the respondent.

Filing of reply, opposition, objections, etc

11. (1) The manner, process, timeframes and number of copies prescribed for the filing of a dispute and provision of additional information by the plaintiff in regulations 9 and 10 shall apply, *mutatis mutandis*, to the filing of the reply, rejoinder or additional information by the respondent.

(2) The respondent shall file with the Commission a reply and the documents relied upon within fourteen (14) days from the date of service of a copy of the dispute to him by the plaintiff.

(3) In the reply filed, the respondent shall specifically admit, deny or explain the facts stated in the dispute and may also state such additional facts as he considers necessary for the just decision of the dispute.

(4) Where the respondent states that additional facts may be necessary for the just decision of the dispute, the Commission may allow the plaintiff to file a rejoinder to the reply filed by the respondent.

Acknowledgement of a dispute or reply

12. The Commission shall acknowledge to the plaintiff or to the respondent receipt of the pleadings and may seek further information from either party or both parties within 7 days from the date of such receipt:

Provided that in either case, the Commission shall forward copies of the acknowledgement and request for further information to the subject respondent or plaintiff for information and comments or rejoinder.

Request for further information

13. (1) The Commission may seek further information from the plaintiff or respondent at any time.

(2) The party submitting further information to the Commission shall furnish copies of the information to the other party.

(3) The party from whom further information is sought under subsection (1) above shall respond within 30 days from the date of such request, failing which, in the case of the plaintiff, the dispute shall be deemed to have been withdrawn, and in the case of the respondent, the Commission shall give such orders against the respondent as it may deem fit.

(4) If the Commission is satisfied that there is sufficient information on the dispute, the dispute shall be determined in accordance with the processes set out in Regulations 15 to 18.

**Withdrawal of dispute**

14. The plaintiff may, at any time before the Commission takes action, withdraw the dispute by notice in writing to the Commission.

Provided that the plaintiff shall forward a copy of the notice of withdrawal of the dispute to the respondent.

**Database of Experts**

15. The Commission shall identify and maintain a database of persons who are skilled in alternative dispute resolution techniques and who are experts in various fields relevant to energy matters, from among whom the Commission may from time to time select an expert or constitute a Dispute Resolution Panel on such terms and conditions as the Commission may determine, to assist it in the resolution of disputes.

**Dispute resolution by experts**

16. (1) The Commission shall refer the dispute filed with it to an expert or to a Dispute Resolution Panel, appointed from among persons in the database maintained pursuant to Regulation 15 in the manner described in sub-regulation (2).

(2) Depending on the complexity of the dispute as determined by the Commission, appointment of the Expert or constitution of the Dispute Resolution Panel shall be done in the following manner:

(a) if one expert is required, the parties shall appoint one expert acceptable to both of them, but if they fail to agree, the Commission shall appoint the expert,

(b) if a Dispute Resolution Panel is required, each party shall appoint one expert, and the two experts so appointed shall appoint a third expert who shall be the chairperson of the panel.

(3) The costs of the dispute resolution process shall, unless the Commission decides otherwise, be borne equally by the parties.

(4) The Expert or Dispute Resolution Panel and the parties shall:-

(a) agree on the manner, process and place of conduct of the dispute resolution, and

(b) use their best endeavours to conclude the dispute resolution within thirty days from the date of commencement of the process process.

(5) Where the Expert or Dispute Resolution Panel resolves a dispute, he or they shall, within fifteen days from the end of the dispute resolution process, communicate in writing to the Commission details of the resolution of the dispute, including records of all the proceedings and a summary of the determinations or proposed decision.

(6) The Commission shall review the communication detailing the resolution of the dispute, including records of proceedings and summary of the determinations and proposed decision with the Expert or Dispute Resolution Panel and agree on the final decision which shall be adopted as a decision of the Commission within fifteen days from the date of submission of the communication.

(7) The Commission shall-

(a) communicate the decision in writing to both parties within thirty days from the end of the dispute resolution process, and the decision shall be binding on both parties;

(b) publish a summary of the decision in the Kenya Gazette.

(8) Records of every proceedings, except those parts which, for reasons specified by the Commission upon advise by the Expert or Dispute Resolution Panel, are confidential or privileged or otherwise not to be disclosed to any person, shall be open to inspection after conclusion of the dispute resolution, subject to such person complying with such terms as the Commission may prescribe from time to time, in regard to place and manner of inspection and payment of fees.

**Limitation of Liability**

17. To the extent permitted by law, the Commission, the mediators or experts, shall not be liable for any loss or damage suffered or incurred by a party to a dispute or any other person as a consequence of any act or omission of the Commission, the mediators or experts which was done in good faith.

**Register of disputes**

18. (1) The Commission shall file all correspondence regarding every dispute and the decisions and settlements thereof, together with the dates, in the Commission's register of disputes.

**Offences and penalties**

19. (1) Any person who-

(a) fails to submit to the Commission for approval procedures for dealing with complaints relating to his undertaking or activity;

(b) fails to submit to the Commission reports required by

Regulation 6;

(c) willfully gives false or misleading information in relation to a complaint or dispute, and

(d) fails to comply with a mediation agreement or an order, direction or decision by the Commission

commits an offence and shall upon conviction be liable to a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding three months or both.

(2) Any person who contravenes or fails to comply with any of these Regulations or who fails to comply with any prohibition or order of the Commission under any of these Regulations, where no specific punishment is prescribed under sub-regulation (1) hereof, commits an offence and shall upon conviction be liable to a fine not exceeding one hundred thousand shillings or a term of imprisonment not exceeding three months or both.

**Offences by corporate bodies**

20. Where any offence under these Regulations committed by a company, co-operative society or other corporate body is proved to have been committed with the consent or connivance of, or to have been facilitated by any director, chairman, manager, secretary or other officer thereof, he, as well as the company, co-operative society or other corporate body commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings or a term of imprisonment not exceeding three months or both.

**Process map for complaints and disputes resolution**

21. The process map for the resolution of complaints and disputes is illustrated in the [Fifth Schedule](#).

**Appeals**

22. Any party aggrieved by a decision or order of the Commission may, within thirty days from the date of the order or decision appeal to the Energy Tribunal established under Section 107 of the Act.

**Revocation**

23. The Electric Power (Complaints and Dispute Resolution) Rules, 2006 are revoked.

## FIRST SCHEDULE

### GUIDELINES FOR COMPLAINTS HANDLING PROCEDURES

(Regulation 5)

1. Procedures for dealing with complaints relating to any undertaking or activity performed pursuant to a licence or permit under the Act shall explain:-
  - (1) how other persons can gain access to the procedures;
  - (2) how the procedures work;
  - (3) the timeframes within which the procedures may be carried out;
  - (4) the complainant's right to access the Commission if dissatisfied with the respondent's decision or the way it has been reached; and
  - (5) any other matter of relevant importance;
2. Every person carrying out any undertaking or activity pursuant to a licence or permit under the Act shall:
  - (1) promptly, fully, and fairly deal with every complaint with the objective of ensuring satisfaction of the complainant, and
  - (2) ensure that their staff, representatives, agents, sales people or independent contractors are aware of the approved procedures and their obligations under them.
3. In the event that any complaint is not resolved to the complainant's satisfaction, person carrying out any undertaking or activity pursuant to a licence or permit shall inform the complainant of their right to have their complaint referred to the Commission as a dispute between the two parties.
4. In preparing the procedures contemplated in paragraph 1, the guiding principles are that those procedures shall to the extent possible:-
  - (1) be simple, quick and inexpensive;
  - (2) preserve or enhance the relationship between the parties;
  - (3) take account of the skills and knowledge that are required for the relevant procedures;
  - (4) observe the rules of natural justice;
  - (5) place emphasis on conflict avoidance; and
  - (6) encourage resolution of complaints without formal legal representation or reliance on legal procedures.

**SECOND SCHEDULE**

**Form S-1 – REPORTING OF COMPLAINTS RECEIVED AND PROCESSED**

(Regulation 6)

From

**Name and Address of Person Reporting**

To the

**Energy Regulatory Commission**

**Nairobi, Kenya**

Monthly/Quarterly/Annual\* Report of Complaints Received and Processed up to period ending (insert date)

(\* Choose applicable reporting period)

<b>Number of Complaints</b>	<b>Licence No</b>	<b>Licence No</b>
1. Brought forward from previous reporting period		
2. Received during reporting period		
3. Total (Line 1 + Line 2)		
4. Resolved during reporting period		
5. Declared Disputes		
6. Processed (Line 4 + Line 5)		
7. Carried forward to next reporting period (Line 3 - Line 6)		


Signed by

**Name of Person Reporting**

**THIRD SCHEDULE**

**Form S-2 - REFERENCE OF DISPUTE TO THE COMMISSION FOR MEDIATION**

(Regulation 7)

		
<b>ERC DISPUTE NUMBER</b>		
<b>1.</b>	<b>Names of the Parties to the Dispute</b>	<b>Represented by (Optional)</b>
<b>2.</b>	We, the above named, declare that we have failed to agree on the issues listed herebelow and request intervention of the Commission to assist us resolve our dispute by Mediation.	

### **3. Rules Governing the Mediation**

Each party ("Party") hereby agrees to submit the above dispute for nonbinding mediation ("Mediation") to the Energy Regulatory Commission, (the "Commission"). The Commission shall designate one of its staff who shall be the Mediator.

### **4. Confidentiality Agreement**

(1) Mediation is a facilitated negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the Mediation, including those made in pre-Mediation and post-Mediation submissions to the Mediator (collectively, "Mediation Communication") by any Party, witness and/or the Mediator,

(a) shall be considered confidential and privileged settlement communications that may only be disclosed to persons associated with the Parties;

(b) shall be deemed inadmissible and may not be used for any purpose, in any dispute resolution process, arbitration, judicial, administrative or regulatory proceedings;

and

(c) may not be disclosed to non-participants in the Mediation (including any expert, hearing officer or court);

(2) The Parties shall not subpoena or otherwise seek to compel any of the participants, including any Party, the Mediator, an employee of the Commission or any other person who participated in the Mediation, to testify about, respond to any request to admit, or respond to any discovery request regarding any Mediation Communication or any other aspect of the Mediation.

(3) The Mediator will be disqualified as a witness, consultant or expert for any Party in connection with any matter relating whatsoever to this dispute or the Mediation. The Mediator will treat any Mediation Communication as confidential and will refrain from disclosing any Mediation Communication except to the Parties.

### **5. Effect of a Settlement Agreement**

Notwithstanding anything to the contrary in this Agreement, an executed written settlement agreement shall be considered binding upon the Parties and may be enforced by any Party to the settlement agreement, and provided further that information disclosed to or known by a Party through a source other than the Mediation, or that is otherwise discoverable or admissible, shall not be rendered confidential, privileged, inadmissible, or not discoverable solely as a result of its use in the Mediation.

## 6. Pre-Mediation Submission

- (1) The Parties agree that a submission of each Party's understanding of the facts and theory of liability and damages ("Submissions") presented to the Mediator prior to the Mediation would facilitate the Mediator's ability to conduct a more expeditious and effective Mediation.
- (2) The Submission should be delivered to the Mediator and may be exchanged between the Parties not less than 14 (fourteen) days prior to the Mediation. If a Party deems a Submission to be confidential and to be read by the Mediator only, that Party must indicate as such in the Submission. The Submission may include the following (to the extent applicable):
  - (a) Statement of facts, including a description of the injury and a list of special damages and expenses incurred and expected to be incurred;
  - (b) Theory of liability and damages and authorities in support thereof;
  - (c) Summary of opinion witnesses (including "expert witnesses") and non-opinion fact witnesses;
  - (d) Status of the case, and if in suit, expected trial date;
  - (e) Last demand and offer, if any;
  - (f) Photographs;
  - (g) Police reports;
  - (h) Any other document not specifically referenced by any of the foregoing provisions that would assist the Mediator in understanding any claim and/or defence.

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Signature & Designation of Plaintiff and/or Respondent

Address for correspondence

**FOURH SCHEDULE**

**Form S-3 – AUTHORITY FOR REPRESENTATION BEFORE THE COMMISSION**

(Regulation 9)

Before the

**Energy Regulatory Commission**

**Nairobi, Kenya**

Dispute NO.....

IN THE MATTER OF:

..... Plaintiff(s)

V/s

..... Respondent(s)

**Memo of Authorization**

I, ....., practising/working as

....., having been authorized by

..... (Furnish the particulars of the person authorizing), hereby

enter appearance on behalf of ..... and undertake to plead and act for

him/it in all matters in the aforesaid dispute.

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Signature & Designation

Address for correspondence

# FIFTH SCHEDULE

## PROCESS MAP FOR RESOLUTION OF DISPUTES AND COMPLAINTS

