

THE UNITED REPUBLIC OF TANZANIA

Supplement No. 74

11th June, 2021

SUBSIDIARY LEGISLATION

To The Gazette Of The United Republic Of Tanzania No 74 Vol. 102 Dated 11th June, 2021
Printed By The Government Printer, Dodoma By Order Of Government

GOVERNMENT NOTICE No. 420 Published On. 11/6/2021

THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY
ACT,
(CAP. 414)

RULES

(Made under section 40(1))

THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY (FEES AND LEVIES
COLLECTION PROCEDURE) RULES, 2021

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THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY (FEES AND LEVIES
COLLECTION PROCEDURE) RULES, 2021

PART I
PRELIMINARY PROVISIONS

- Citation 1. These Rules may be cited as the Energy and Water Utilities Regulatory Authority (Fees and Levies Collection Procedure) Rules, 2021.
- Application 2. These Rules shall govern the collection of fees prescribed by the Authority payable by any person to the Authority and the regulatory levy payable to the Authority by regulated suppliers pursuant to section 43 of the Act.
- Interpre- 3. In these Rules, unless the context otherwise
tation requires-
- Cap. 414 “Act” means the Energy and Water Utilities Regulatory Authority Act;
 “Authority” means the Energy and Water Utilities Regulatory Authority established under the provisions of the Act;
 “consumer installation” means an installation, including any pump, storage tank and piping licensed by the Authority to be used for such purpose;
 “due date” means thirty days after receipt of the demand note;
 “gross operating revenue” means revenue (net of VAT), as recorded in the books of accounts of a regulated supplier, excluding-
- (a) subventions, donations and grants; and

(b) other income not related to the regulated services;

“IPP” means an independent power producer;

“licence” means the authorisation issued by the Authority to a regulated supplier to conduct a regulated service;

“off taker” means a purchaser of electricity in power sale agreement;

“petroleum product” means motor spirit premium, gas oil, kerosene, Jet-A1, Aviation Gas (AvGas), fuel oils, liquefied petroleum gas, propane, butane, biofuel, lubricating oils, and bitumen but shall not include natural gas;

“retail outlet” means any place from where a petroleum product is sold or offered for sale to a customer for a retail sale;

“retail sale” means the sale of a petroleum product at a retail outlet;

“regulated sector” means electricity, petroleum, natural gas, and water and sanitation;

“regulated services” means any services supplied or offered for supply in a regulated sector and includes services which the Authority declares to be such service under section 40 of the Act;

“regulated supplier” means any person engaging in activities in, or in connection with, a regulated sector and includes any person whom the Authority declares under section 40 of the Act to be such supplier; and

“Tribunal” means the Fair Competition Tribunal established under the provisions of the Competition Act.

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PART II FEES COLLECTION PROCEDURE

Obligation
to pay fee

4.-(1) Any person who-

(a) offer to supply or conduct a regulated service; or

(b) is entitled to receive any service from the Authority,

shall pay the fees as prescribed by the Authority from time to time.

(2) Failure or refusal to pay a fee prescribed in subrule (1), may lead to denial of regulatory services by the Authority, suspension or cancellation of a licence pursuant to the rules prescribed by the Authority.

PART III
LEVY COLLECTION PROCEDURE IN REGULATED
SECTORS OTHER THAN THE PETROLEUM SECTOR

Levy
collection in
electricity,
natural gas
and water
and
sanitation
sectors

5.-(1) All regulated suppliers in the electricity, natural gas and water and sanitation sectors shall pay to the Authority the annual levy of one percent of their gross operating revenues.

(2) Notwithstanding the provisions of subrule (1), the levy shall be collected from-

(a) the off-taker, in the electricity sector and where there is an arrangement of a power sale between an off-taker and IPP; and

(b) the purchaser, in the water sector and where there is an arrangement of bulk purchase.

(3) The payment of levy prescribed under subrule (1) shall be made not later than thirty days after receipt of a demand note.

(4) The levy to be collected under subrule (1) shall only be computed in respect of revenues derived from a regulated good or service and shall not include revenues from other sources.

Reconcilia-
tion of
accounts

6.-(1) If a regulated supplier has not yet determined the turnover for the most recently completed quarter, it shall make a reasonable estimate of the quarterly turnover for calculation and payment of levies, subject to reconciliation upon submission of the annual audited accounts.

(2) A regulated supplier shall file a reconciliation statement based on the audited account not later than thirty days after receipt of the same.

(3) Any under payment of annual levy made evident as a result of filing of the reconciliation statement by the regulated supplier shall be paid to the Authority not later than thirty days after the filing of such reconciliation

statement.

(4) In the event that a regulated supplier overpays an annual levy to the Authority, the Authority shall credit the account of the regulated supplier for the following quarter.

Exemption

7.-(1) The Authority may, subject to criteria prescribed under subrule (2), exempt any regulated supplier from the requirement of paying levy, part thereof or any accrued interest thereon.

(2) The criteria to be considered by the Authority under subrule (1) shall include the following:

- (a) the impact of levy to the price of regulated service or goods in relation to affordability of the service or goods to consumers; and
- (b) Government policies and directives.

PART IV LEVY COLLECTION PROCEDURE IN THE PETROLEUM SECTOR

Levy
collection
procedure in
petroleum
sector

8.-(1) The provisions of this Part shall apply to regulated suppliers in the petroleum sector only.

(2) All regulated suppliers shall pay to the Authority the levy as shall be determined from time to time.

(3) The Authority shall, in determining the levy under subrule (2), consider the following:

- (a) inflation;
- (b) level of operations of the Authority; and
- (c) Government policies and directives;

Provided that, the levy so determined shall not exceed one percent of the gross operating revenue of the regulated supplier.

(4) The Authority shall, after prescribing the levy under subrule (2), notify regulated suppliers in writing about the said prescribed levy.

(5) Notwithstanding the provisions of subrules (2) and (3), the provisions of this Part shall not be applicable to a regulated supplier dealing with liquefied petroleum gas, operating a retail outlet or a consumer installation facility.

(6) A regulated supplier who-
(a) localizes petroleum products;
(b) downgrades a petroleum product; or
(c) blends lubricants,
shall notify the Authority not later than seven days after the end of the month.

(7) The Authority shall, upon being notified pursuant to subrule (6), raise a demand note to a regulated supplier and such demand note shall be settled within thirty days of receipt of the demand note.

PART V GENERAL PROVISIONS

Mode of
payment

9. The payment prescribed in rules 4, 5 and 8 shall be made to the Authority upon demand by way of-
(a) bank deposit;
(b) direct transfer to the Authority's bank account as it shall be directed by the Authority; or
(c) any other payment method as shall be prescribed by the Authority.

Obligation to
supply
information

10. A regulated supplier shall-
(a) keep complete and accurate records and data related to its regulated services pursuant to terms and conditions of a licence and the rules published by the Authority; and
(b) as the Authority may require and pursuant to the Authority's directions, promptly deliver to the Authority documents, records or information related to its regulated services.

Notices and
correspon-
dences

11.-(1) Any correspondence or notice to be given under these Rules shall be in writing and shall be deemed to have been properly served to the Authority or a regulated supplier if hand-delivered or sent by registered mail, courier services or transmitted by facsimile to the address as it shall be specified by the Authority from time to time.

(2) Any notice given under the provisions of subrule (1) shall be deemed to have been duly served and received-

- (a) at the actual time of delivery, if delivered personally;
- (b) ten working days subsequent to the date of postage, if sent by registered mail with return receipt; and
- (c) at the time of receipt, if transmitted by facsimile where there is confirmation of uninterrupted transmission by a transmission report and provided that the original of the notice is delivered personally or sent by registered mail as soon as practicable.

Penalties for
non-payment
of levy

12.-(1) In the event that a regulatory levy remains unpaid after the due date, the Authority shall charge interest at the rate of two percent compounded monthly on the outstanding amount.

(2) In the event that a regulatory levy remains outstanding three months after the due date, the Authority may-

- (a) issue a notice to a regulated supplier to show cause why proceedings to enforce the collection of the debt should not be made;
- (b) for a regulated supplier in the petroleum sector, suspend or revoke a licence of the defaulting supplier;
- (c) for a regulated supplier in the other sectors-
 - (i) suspend or revoke the licence; or
 - (ii) in case of public-owned utilities, and where all efforts to recover such levy has proven futile, recommend to respective Minister for change of management of the defaulting supplier as provided in the Act and sector legislation as appropriate; or
- (d) commence the legal process to recover the outstanding amount, and the process shall be the same as a process of recovering a civil debt.

Appeal

13. Any person who is disputing the amount of levy payable under rules 5(1) or 7(2) or aggrieved by the

decision of the Authority under rule 12, may appeal to the Tribunal.

Offence

14.-(1) Any person who contravenes the provisions of rule 10 commits an offence and shall on conviction be liable to a fine of three million shillings, or imprisonment for a term of five years or both.

(2) Where a regulated supplier charged with an offence under the Act and these Rules is a body corporate, any person who, at the time of commission of such offence was acting as a director, a manager or officer of such body corporate, may be charged jointly in the same proceedings with the body corporate.

(3) A regulated supplier who employs an agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such persons in so far as the actions or omissions concern the generation activity.

Revocation
and savings
GN. Nos.
157 of 2006,
68 of 2007
and 193 of
2010

15.-(1) The Energy and Water Utilities Regulatory (Payment of Annual Levy) (Commencement) Rules, 2006, Energy and Water Utilities Regulatory (Payment of Annual Levy) (Commencement of Application in Petroleum Sector), Rules, 2007 and Energy and Water Utilities Regulatory (Fees and Levies Collection Procedure) Rules, 2010 are hereby revoked.

(2) Notwithstanding the revocation under subrule (1), all orders, exemptions or directives made or issued or deemed to have been made or issued under those Rules shall be deemed to have been made under these Rules, and shall remain in force until revoked or otherwise expire or cease to have effect.

Dodoma
1st June, 2021

GODFREY H. CHIBULUNJE
Director General