



Rules on Initiation of Power Procurement and Review of Power Purchase Agreements

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Overview of this Presentation

- Background on statutory powers and purpose of the Rules
- Description of what the Rules apply to
- Summary of stakeholder consultation process followed
- Detailed description of the three main parts of the Rules
 - Part II: Review of the Initiation of Procurement
 - Part III: Review of Power Purchase Agreements
 - Part IV: Review of Emergency Procurements
- Each detailed description covers 5 areas:
 - Overview of the relevant rules (1)
 - When the relevant rules apply (2)
 - The information that TANESCO needs to submit (3)
 - The criteria for making regulatory decisions (4)
 - The consequences and timeframes for regulatory decisions (5)
- Next steps

Two Regulatory Roles in Power Procurement



PLANNING



PROCUREMENT



REVIEW

Initiation of
Procurement

“The Authority shall have powers to- ... (d) **approve initiation of the procurement** of new electricity supply installations” (Electricity Act 2008, Section 5)

Review of
PPA

“The costs incurred by a licensee arising from its obligations pursuant to a **power purchase agreement** (PPA) may only influence a licensee’s regulated tariffs if the Authority deems that the **costs were prudently incurred**” (Electricity Act 2008, Section 25(4))

Purpose of the Rules

- Overall objective to ensure that efficient projects are not held back by unclear or complicated processes for making regulatory decisions, while ensuring that consumers' interests are protected

This objective is achieved by:

- Providing clarity for buyers and sellers on how EWURA will carry out its legal responsibilities
 - Regulatory pre-commitment v flexibility
- Ensuring that parties know **when** the regulator should be involved and **the criteria** that need to be met to receive project approval
- Promoting transparency, consistency and predictability in regulatory decisions

Which Power Procurements are Regulated by the Rules?

The Rules have broad application:

- **Buyer:** all PPAs entered into by a distribution licensee that serves captive customers (i.e. households, commercial users)
- **Size:** > 10 MW
- **Type of generation:** PPAs for all generation types (thermal, renewables)
- **Location:** all PPAs that involve impacts on Tanzanian consumers, including cross border electricity trades
- **Timeframe:** PPAs of any duration (including emergency PPAs). This may be amended in the future to exclude day ahead or spot market trades with the emergence of the East African Power Pool

Which Power Procurements are NOT Regulated by the Rules?

Type of power project	Reason for exemption
SPPs	Small power producers are already regulated by other EWURA guidelines
PPAs where the buyer is an “eligible customer”	Eligible customers can safeguard their own interests through direct negotiations with the supplier
Existing PPAs	Retrospective Rules would create uncertainty for investors by changing regulatory treatment after contract execution
Transmission projects	Raise a different set of concerns than generation projects involving an independent power producer

Stakeholder Input into Rules

Stakeholders have been involved throughout the process of developing the Rules:

- **July 2011 field trip:** EWURA led a delegation of 12 Tanzanian electricity sector stakeholders to Nairobi (TANESCO, PPP units, PPRA, CTI)
- **December 2011 workshop:** EWURA held a workshop to discuss how to coordinate government involvement in power procurement in Tanzania
- **February 2012 consultation:** EWURA held a stakeholder meeting to explain and debate the substance of the proposed Rules (followed by consultation period in March 2012)



Concerns Raised by Stakeholders

Stakeholders are generally supportive of the Rules. One project developer said:

“The concept of providing such Guidelines for public consideration is extremely insightful and helps sector participants to see a clear and well-reasoned template for the consideration of power projects. We thank you for your effort and for the clarity it offers to us as we proceed in the development of our Project and other projects in the future.”

Three substantive concerns were raised on the draft rules

Stakeholder Concerns	Resolution in Rules
Need to include timeframes for regulatory review	Timeframes included for all regulatory decisions
Need to ensure compatibility with PPP Law and Regulations	Rules are drafted with explicit reference to PPP Law. Further work ongoing to coordinate decision-making in practice
Competitive bidding may not always result in prudently incurred costs	If competitive bidding has taken place, EWURA will still be able to review the PPA

Review of the Initiation of Procurement (1)

OVERVIEW OF PART II

- Rules 4-10
- Purpose of this early stage review:
 - To give EWURA early visibility of possible power purchases and ensure information is shared with EWURA
 - To ensure that the projects procured by TANESCO are needed and are consistent with the Power Sector Master Plan



Review of the Initiation of Procurement (2)

APPLICATION OF PART II

- Rule will apply once project preparation is complete [Rule 4(4)]
- For **competitive procurements**, the application is required before advertising a tender opportunity
- For **unsolicited proposals**, the application is required before negotiating a PPA



Review of the Initiation of Procurement (3)

INFORMATION REQUIREMENTS UNDER PART II

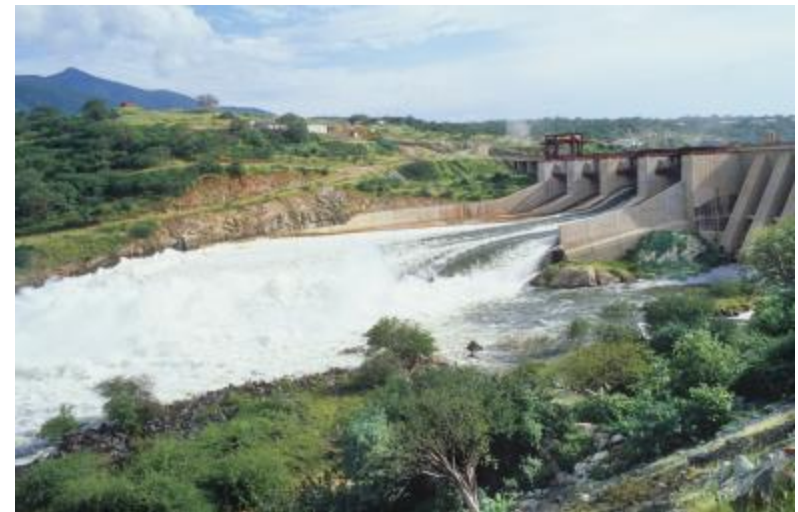
TANESCO is required to submit:

- A basic project description (size, location, technology)
- A summary of the **project rationale**, explaining
 - ✓ The need for the project,
 - ✓ The benefits expected from the project, and
 - ✓ How the project will meet projected demand and fits with the Power System Master Plan
- A summary of the proposed **procurement process**, including
 - ✓ ICB or single source negotiation?
- **Relevant project information** prepared to date (feasibility studies etc)

Review of the Initiation of Procurement (4)

CRITERIA FOR MAKING DECISIONS UNDER PART II

- Evaluation [Rule 6] will confirm that:
 - The project is “needed” (fits with plan or is better than projects in the plan)
 - Early risks have been identified
- Designed to be a relatively low hurdle:
 - Encourages TANESCO to share information with EWURA
 - Is proportionate to the early stage of project development (EWURA will review the PPA later in the process)



Review of the Initiation of Procurement (5)

CONSEQUENCES OF DECISIONS UNDER PART II

- **Result.** TANESCO is permitted to run a procurement process / negotiate a PPA, and pass costs of the **process** into tariffs [Rule 8(1)]
- **Timeframe.** EWURA will make a decision within 30 working days [Rule 5(4)]
- **Penalties.** Rule 7 specifies a monetary penalty and ability for EWURA to decline to pass-through the costs of procurements run without approval



Review of PPAs for Cost Pass-through (1)

OVERVIEW OF PART III

- Rules 11-19
- Common regulatory power (e.g. found in Kenya, Nigeria, elsewhere)
- Purpose:
 - To provide an incentive for TANESCO to ensure value for money when contracting for new power supply
 - To ensure that electricity customers only pay for the reasonable costs of electricity supply (not the purchasing mistakes made by the utility)



Review of PPAs for Cost Pass-through (2)

APPLICATION OF PART III

- **When?** Once TANESCO has negotiated a power purchase agreement with the project developer and both parties have agreed on the terms of the contract [Rule 11(3)]



Review of PPAs for Cost Pass-through (3a)

INFORMATION REQUIREMENTS UNDER PART III

TANESCO is required to submit [Rule 11(3)]:

- The PPA and any related agreements needed to understand the agreement
- A description of the procurement process with supporting evidence (Request for expressions of interest and requests for proposals, tender documents, bid evaluation reports, negotiation minutes)
- A disclosure of the names of any person(s) who were paid a commission, gratuity or fee in relation to the procurement process or execution of the agreement.
- A summary of the key terms of the agreement, and how major risks have been allocated
- A disclosure of ownership interests in the project.

Review of PPAs for Cost Pass-through (3b)

INFORMATION REQUIREMENTS UNDER PART III

Register of commissions, fees, and gratuities (First Schedule)

<u>Date when benefit was given or received</u>	<u>Name of person who gave the benefit, and name of his employer</u>	<u>Name of person who received the benefit, and name of his employer</u>	<u>State the nature of the benefit (e.g. cash, meal, political donation)</u>	<u>What was the approximate value of the benefit?</u>	<u>Why was the benefit given?</u>	<u>Who, within the company, authorised the giving or receiving of the benefit? State his position</u>	<u>Name and signature of person making this report</u>	<u>Date when this report was made.</u>

Review of PPAs for Cost Pass-through (3c)

INFORMATION REQUIREMENTS UNDER PART III

Register of risk allocation (Second Schedule)

Description of Risk	Party Allocated Risk	Rationale for Allocation	Allocation Mechanism (Contract reference)
A. GOVERNMENT, POLICY AND REGULATORY RISKS			
A1. Permits and approvals: Risk that required approvals (for example, environmental permits, water use rights, generation licence) may not be obtained or obtained subject to conditions that increase costs	[TANESCO / IPP / Government / other]		
D1. Inputs and fuel supply: Risk that required inputs (such as fuel) cost more than anticipated, are of inadequate quality or are unavailable in required quantities			
E1. Transmission access: Risk that seller is not provided access to networks required to deliver power as per contract conditions			
F1. Demand risk: The risk that the demand for a service or the use of a facility will vary from forecast levels, generating less revenue from users than expected			

* Extract only. Table contains a total of 28 risks

Review of PPAs for Cost Pass-through (4)

CRITERIA FOR MAKING DECISIONS UNDER PART III

- EWURA's approach to the review depends whether PPA results from:
 - **A competitive tendering process.** Focus first on checking that the procurement process safeguards outcomes for consumers [Rule 13(1)]. If tendering was not competitive or costs do not appear prudent, then EWURA can also review the detailed risks and costs of the PPA
 - **An unsolicited proposal.** Focus on ensuring that the risks and costs of the PPA are prudent (primarily through benchmarking) [Rule 14]

Characteristics of a competitive process [Rule 13]:

- No bidder is unreasonably favoured
- All bidders have access to the same information and opportunities
- The wording of the tender documents encourages competition, clearly stating the criteria for selection
- The number of parties that submit bids provides confidence that resulting contract terms are reasonable (i.e. more than one bidder competes for the contract)
- All tenders are evaluated on a common basis, in line with evaluation criteria

Review of PPAs for Cost Pass-through (5)

CONSEQUENCES OF DECISIONS UNDER PART III

- **Result.**
 - TANESCO is permitted to reflect the costs of approved power purchases in tariffs [Rule 16(1)]
 - Any PPA executed in contravention of the Rules (i.e. without approval) is void [Rule 11(2)]
- **Timeframe.** EWURA will make a decision within 90 days [Rules 12 & 15]
- **Penalties.** Financial penalty [Rule 19]



Review of Emergency Power Procurements (1)

OVERVIEW OF PART IV

- Rules 20-34
- Purpose:
 - Need **timely** procurement and approvals process to avoid black-outs. Economic cost of blackouts is generally much higher than cost of emergency power
 - However, emergency PPAs with “rental” generation will be **more expensive** than long-term PPAs: regulatory review can help to ensure these higher costs are “prudently incurred”



Review of Emergency Power Procurements (2)

APPLICATION OF PART IV

Emergency power situations occur when there is an immediate, unforeseen shortfall in electricity capacity that is expected to last for a few months

“...The Minister shall **exercise emergency powers** and co-ordinate emergency responses in close **co-ordination with the Authority** and a licensee”

(Electricity Act, Section 4(2))



Review of Emergency Power Procurements (3)

INFORMATION REQUIREMENTS UNDER PART IV

- A brief summary of the **project rationale**, explaining why the project size, location and duration is needed to overcome the emergency power situation [Rule 21(1)(b)]
- A brief summary of the **procurement process and timeframe** [Rule 21(1)(c)]:
 - TANESCO can choose to follow a standardised process (on a standardised timeframe) that has been pre-approved by EWURA, or
 - TANESCO must explain their intended non-standard process and timeframe (to allow EWURA to plan to make staff available for conducting the review)

Review of Emergency Power Procurements (4)

CRITERIA FOR MAKING DECISIONS UNDER PART IV

- Initiation of procurement approved if appropriate to solve the emergency [Rule 21(3)].
- EWURA's approach to the review of PPA depends whether PPA results from:
 - **A standardised bidding process.** Includes standardised tender documents, PPA, and pre-specified evaluation criteria [Rule 27(2)]. Focus on ensuring standardised process was followed [Rule 26(2)(g)]
 - **A non-standardised process.** Focus on ensuring that the risks and costs of the PPA are prudent (primarily through benchmarking) [Rule 28(2)]
- Option to grant provisional approval of PPA in emergency:
 - Gives flexibility for TANESCO to contract for rental supply when information may not be available to fulfil regulatory criteria
 - May create an ability for TANESCO to use provisional approvals to defer or bypass appropriate regulatory scrutiny of emergency purchases.

Review of Emergency Power Procurements (5)

CONSEQUENCES OF DECISIONS UNDER PART IV

- **Result.** TANESCO is permitted to reflect the costs of approved power purchases in tariffs [Rule 27(1)]
- **Timeframe.** EWURA will make a decision within 7 days for a standardised procurement, and 14 days for a non-standardised procurement [Rule 29]
- **Penalties.** Financial penalty and inability to pass-through costs into tariffs [Rule 24]



Next Steps

- The ELECTRICITY (PROCUREMENT OF POWER PROJECTS AND APPROVAL OF POWER PURCHASE AGREEMENTS) RULES, 2012 will be finalised incorporating any feedback from this meeting
- The Board of EWURA will then consider the Rules and approve them for stakeholder consultation
- A stakeholder consultation period will be announced (further information on the dates for submissions will be provided in due course)
- A final version of the Rules will be put to the Board for approval
- The Rules will be gazetted and will enter into force