DIRECTIVE C/DIR.1/06/13 ON THE ORGANIZATION OF THE REGIONAL ELECTRICITY MARKET

THE COUNCIL OF MINISTERS,

MINDFUL of Articles 10, 11 and 12 of the ECOWAS Treaty, as amended establishing the Council of Ministers and defining its composition and functions;

MINDFUL of Articles 28, and 55 of the said ECOWAS Treaty relating to the promotion, cooperation, integration and development of energy projects and energy sectors of the Member States of the Community within the framework of creating a customs union and an economic and monetary union;

MINDFUL of Protocol A/P.1/7/91 as amended, relating to the Court of Justice of the Community;

MINDFUL of Protocol A/P2/8/94 as amended, relating to the Parliament of the Community;

MINDFUL of Protocol A/P4/1/03 hereinafter referred to as the “ECOWAS Energy Protocol”, establishing the legal framework to promote long term cooperation in the ECOWAS energy sector based on complementarities and mutual benefit with a view to achieving increased investment in the energy sector and increased energy trade in the West African sub region;

MINDFUL of the Supplementary Act A/SA.2/01/08 establishing the ECOWAS Regional Electricity Regulatory Authority (ERERA);
MINDFUL of Regulation C/REG.27/12/07 as amended, concerning the Composition, Organization, Functions and Operations of the ECOWAS Regional Electricity Regulatory Authority (ERERA);

MINDFUL of Decision A/DEC.5/12/99 relating to the establishment of a West African Power Pool (WAPP);

CONSIDERING the fact that currently, because of the structural differences in national electricity sector within ECOWAS Member States, there are different structures for the regulation of the electricity sector;

ACKNOWLEDGING the need to set up a regional regulatory body with the principal objective of developing an attractive investment climate for investors and for the development of cross-border trade within the ECOWAS electricity sector;

CONVINCED that regional electricity regulation and open access to regional transmission network are imperative for the efficient operation and monitoring of cross-border electricity trade and constitute a necessary condition for the development of the regional electricity market;

NOTING that the regional electricity market must be developed gradually to enable national electricity sectors adapt in a gradual and rational manner the current diversity in the way they are organized;

DESIRING to promote a regional approach to cross-border electricity trade and to ensure the harmonization of institutions and rules within ECOWAS, with a view to organizing the regional electricity market and creating favorable conditions for the development of investment and capacity within the member States of ECOWAS;

UPON THE RECOMMENDATION of the Tenth Meeting of Ministers of Energy of the Member States of ECOWAS, held in Yamoussoukro, Côte d'Ivoire on 24th May 2013;

ADOPTS:

Article 1: Definitions
For the purposes of this directive, the under-listed definitions are applicable:
CROSS-BORDER ELECTRICITY TRADE AGREEMENT
Agreement made, within the framework of the regional electricity market, between a seller and a buyer, for the delivery of electricity, using a Transmission Network and cross-border interconnection by which the seller is committed to transfer the volume of electricity agreed to the buyer within the prescribed interval or intervals and at an agreed price;

CROSS BORDER INTERCONNECTION
The lines that connect two or more national transmission networks and connecting the power systems of at least two ECOWAS Member States, including metering equipment placed on the Regional Transmission Network nodes located in each of the participating Member States.

ELECTRICITY EXPORT
Sale or supply agreement for electricity to a State other than that in which electricity is produced and whose delivery requires the use of a Cross-Border interconnection;

ELECTRICITY IMPORT
Purchase agreement of electricity from a State other than that in which the electricity is produced and whose delivery requires the use of a cross-border interconnection;

ELECTRICITY SECTOR
All the activities of generation, transmission, import, export, distribution and marketing of electricity, as well as all the stakeholders involved in these activities in any given Member State or through ECOWAS, including national and regional institutions, utilities and consumers;

ERERA
ECOWAS Regional Electricity Regulatory Authority - the body mandated to regulate the regional electricity market, as defined by Regulation C/REG.27/12/07 on the Composition, Organization, Functions, and Operations of the ECOWAS Regional Electricity Regulatory Authority;

REGIONAL ELECTRICITY MARKET
All cross-border electricity trading and related services made through the regional interconnected transmission networks within the ECOWAS sub-region;
REGIONAL MARKET RULES
Rules made by competent authorities of ECOWAS governing the regional electricity market;

REGIONAL TRANSMISSION NETWORK
All lines and transmission substations duly declared by WAPP as constituting the Regional Transmission Network; These lines include specially regional interconnections, regional lines owned by Specific Purpose Companies of the WAPP and lines of national systems being part of the Regional Transmission System.

THIRD STATE
Any State other than the Member States of ECOWAS.

TRANSMISSION NETWORK
All high voltage lines and related equipment for the transmission of electricity, which facilitate delivery to eligible customers or to distributors, in the context of cross-border electricity exchanges;

TRANSMISSION OPERATOR
The company responsible for maintaining the assets of the transmission network, operating and conducting Transmission System.

WAPP
West African Power Pool, a specialized institution of ECOWAS established by Decision A/DEC.20/01/06 of January 12, 2006, by the Conference of Heads of State and Governments, with a responsibility to develop electricity infrastructure and establish a unified electricity market.

Article 2: Objective
The aim of this Directive is to provide the general principles to govern the Regional Electricity Market within the framework of the ECOWAS Energy Protocol.

Article 3: Scope
This Directive relates to the general organization and operation of the regional electricity market principles specified below:

(1) Regional Market Design and Market Phases;
(2) Open Access to the Regional Transmission Network and access by Eligible Customers;

(3) Harmonization of cross-border contractual arrangements relating to:

(a) Cross-border electricity trade between a buyer and a seller within ECOWAS Member States, for import and export of electricity.

(b) Access, interconnection and use of the Regional Transmission Network.

**Article 4: Market Design**

In line with the principles of the ECOWAS Energy Protocol, the development and establishment of the regional electricity markets shall evolve according to the WAPP Market Design approved by ERERA.

**Article 5: Conditions Precedent for evolution of Market Design**

ERERA shall in consultation with stakeholders determine the conditions precedent for the evolution of the market from one phase to the next. Member States shall be duly notified of these conditions to allow for the adaption of national markets and regulatory frameworks required to give effect to the realization of the regional market.

**Article 6: Tariff methodology**

The cross border transmission of electricity tariffs are settled according to a methodology published by ERERA in accordance with its procedures after consultation of the stakeholders.

**Article 7: Regional Transmission Network Open Access**

(1) In accordance with Article 7 of the Energy Protocol which provides for freedom of transit (open access) for electric power, Member States are obliged to ensure the development and implementation of the legal and operational framework to give effect to this principle.

(2) Accordingly, Member States shall ensure that the following conditions deemed necessary for open access to the regional
transmission network are met within the period specified by this directive:

(a) Generation, transmission and distribution functions are at least functionally and financially independent allowing for separation of costs.

(b) The existing Electricity Acts and relevant Regulations of Member States must be adapted to provide for open access to regional transmission network. Conditions of eligibility for major consumers shall be defined by Regulation.

(c) The licensing conditions and procedures for new Independent Power Provider (IPP) should be made simpler and more attractive.

(3) ERERA shall specify by way of Regulation specific conditions for third party access to the Regional Transmission Network after due consultations with Stakeholders.

Article 8: Harmonization of Contracts

(1) Model bi-lateral Contracts

(a) ERERA shall provide stakeholders in the Regional Market, model long-term and medium term bi-lateral contracts after consultation with key stakeholders. The Model Agreements shall serve as the basic framework that shall guide contracting parties. The parties to the contract shall however be at liberty to negotiate the specific terms of their agreement.

(b) Where parties fail to reach an agreement on specific clauses of their Agreement, the relevant clause of the Model Agreement shall be adopted by the parties.

(2) Connection and Use of Network Agreements

(a) WAPP shall in consultation with the transmission system operators of Member States develop a standard Connection and Use of Network Agreement for access to the Regional Transmission Network.

(b) ERERA shall approve the standard connection and Use of Network Agreement after consultation with the national regulatory authorities.
(3) Approval

(a) All such Contracts entered into between parties shall be submitted to ERERA for approval for such Agreements to be effective.
(b) ERERA shall within a period of sixty (60) calendar days take a decision on the contracts submitted for approval. After this period, any other act notwithstanding, without any decision of ERERA, the contract is deemed approved.
(c) ERERA may, following the review of the contacts make recommendations for the deletion, modification or addition of one or more terms of the contract.
(d) Parties within the Regional Electricity Market are required to inform ERERA of any contract, agreement or protocol in force on cross-border exchanges in electricity. Parties are also required to notify ERERA of any proposed contract for cross-border electricity exchanges.

Article 9: Sanctions

(1) All cross-border electricity trade agreements in violation of the Rules of the Regional Market and the provisions of this Directive shall be void.

(2) Failure by the Regional Market participants to respect the provisions of this Directive shall result in penalties in line with Regulation C/REG.27/12/07, adopted by the ECOWAS Council of Ministers on December 15, 2007, which are applicable in accordance with the terms and conditions specified by Article 30 of the Regulation, without prejudice to the remedies indicated particularly in Article 31 thereof.

Article 10: Strengthening of National Regulatory Authorities

(1) In order to ensure the smooth operation of the regional market, Member States are mandated to establish an independent regulatory authority where none exists.

(2) The powers of the national regulators shall be expanded to include market monitoring and tariffs setting.

(3) To protect the independence of the regulatory authority, Member States shall in particular provide the regulatory authority with legal personality, budgetary autonomy and adequate human and financial resources to carry out its duties.
(4) The national regulatory authorities shall give full support to ERERA for the implementation of the provisions of this Directive by ensuring the efficient functioning of their national markets and the regional market to promote effective competition.

Article 11: Obligations of Member States

(1) Member States shall take all measures necessary to comply with this Directive and bring into force the laws, regulations and administrative provisions required to give effect to this Directive not later than twenty-four (24) months after the directive comes into force.

(2) Member States are required to remove or adapt any legislative or regulatory provision barring the application of this Directive, particularly to do with ERERA's powers as provided by Supplementary Act A-SA.2/01/08 adopted by the Conference of Heads of State and Governments and Regulation C/REG.27/12/07 adopted by the Council of Ministers of ECOWAS.

(3) Any legislation or Regulation of Member States in relation to the application of this Directive should include a specific reference or a copy annexed thereto in the official publication.

(4) Member States shall notify ERERA of the provisions or measures taken to comply with this Directive.

Article 12: Challenges in implementation

(1) Member States shall notify ERERA of any challenges encountered in the implementation of this Directive.

(2) ERERA shall submit these challenges to the next session of the Council of Ministers.

Article 13: Publication

This Directive shall be published in the Official Journal of the Community within thirty (30) days from the date of its signature by the Council of Ministers.

It shall also be published by each Member State in its Official Journal within the same period.
Article 14: Transitional period

Cross-Border electricity trade agreements which are effective on the date of publication of this Directive, as well as contracts in transition or associated with it, shall continue to be in effect until the end of the term originally agreed by the parties.

However, in the event of any review of such contracts, the parties shall endeavor to comply with the provisions of this Directive.

DONE AT ABIDJAN THIS 21ST DAY OF JUNE 2013

H.E. CHARLES KOFFI DIBY
CHAIRMAN
FOR COUNCIL