

ANNEX I

(draft) Enforcement rules

1. Application of rules

- 1.1. This chapter establishes the rules and procedures under which ERECA initiates investigations and imposes sanctions for breach of the regional electricity market regulation.
- 1.2. Any regional electricity market participant, the System and Market Operator, any transmission system operator or transmission service providers in ECOWAS member states as well as any entity obliged to comply with the regional electricity market regulation, may be subject to an investigation for breach of the regional electricity market regulation.
- 1.3. Any entity investigated shall be entitled to defend their case before a decision is adopted and the provisions of these rules shall ensure fair and efficient proceedings.
- 1.4. The investigation and enforcement proceedings will be guided by principles of objectivity, fairness and justice, giving consideration to the rights and obligations of the parties.
- 1.5. The imposition of a sanction does not exempt the offender to comply with its obligations arising from the implementation of the regional electricity market regulation.
- 1.6. Any ERECA decision imposing one or more sanctions as a result of the enforcement proceedings may be appealed at the ECOWAS Court of Justice according to ECOWAS Regulation 27/12/07.
- 1.7. ERECA shall impose the sanctions for any breach or violation to community regulation on cross-border pooling and for any breach of regional electricity market regulation. ERECA may apply any of the following sanctions:
 - a) A fine; and/or
 - b) Suspend or revoke the defaulting operator's operating licence or authorisation.
- 1.8. The rules and levels of the sanctions that ERECA may apply are specified by an ECOWAS Council of Ministers' regulation.
- 1.9. Sanctions applied by ERECA are subject to the requirements established in ECOWAS Regulation 27/12/07 and shall:
 - a) be proportional to the gravity of the breach, extent of the economic damage, the situation of the party concerned or the group to which the party belongs, and the possible repetition of prohibited practices;
 - b) be determined for each party and justified;
 - c) the magnitude of the fine shall depend on the benefit derived from the violation, and provisions contained in licences and authorisations;
 - d) any monetary penalty shall not exceed 1% of the perpetrator of the violation's annual revenue.

2. Definitions

In these rules, unless the context requires otherwise:

- **Entity** means any local, national or regional, public or private, organisation, institution, authority or body, including any public administration agency;
- **Complainant** means the person or entity that reports a breach of regional electricity market regulation by another person or entity;
- **Investigator** means a person to whom the Regulatory Council of ERETA appoints and delegates powers to investigate, on behalf of the Authority, allegations of breaches of the regional electricity market regulation. The investigator may be a member of the ERETA staff or of the ERETA Regulatory Council;
- **Person** means any physical or legal person, private or public;
- **Respondent** means any person or entity that may be investigated by this enforcement proceeding for breach of regional electricity market regulation.

3. Scope of proceedings

The scope of the enforcement proceeding is to investigate and sanction any possible breach of obligations established in ECOWAS regional electricity market regulation.

4. Initiation of enforcement proceedings

- 4.1. The enforcement proceedings may be initiated by ERETA itself or at the request of the System and Market Operator, or a market participant or other persons and entities;
- 4.2. Any regional electricity market participant, the System and Market Operator, any transmission system operator or transmission service providers in ECOWAS member states as well as any entity or person having a legitimate interest in the enforcement of regional electricity market regulation may report a breach of regional electricity market regulation to ERETA.
- 4.3. Any report of a breach of regional electricity market regulation shall be submitted to ERETA in writing, stating names of the parties, identities and addresses, identifying the breach of regulation, the subject of the request, nature and facts of the case and any other information related to the case.
- 4.4. Upon receipt of a request by any party to initiate an enforcement proceeding, the ERETA Regulatory Council shall convene a meeting to determine if the possible breach of regional electricity market regulation must be investigated and the enforcement proceedings to be initiated.
- 4.5. The Authority may decline to initiate an investigation on any report of an alleged breach if:
 - a) the report relates to a matter which is not related to a breach of regional electricity market regulation; or
 - b) the Authority considers that the report fails to establish a *prima facie* case for the alleged breach.

- 4.6. If the Regulatory Council decides not to initiate investigations, the complainant shall be notified of the decision and justification shall be given.
- 4.7. Any alleged breach of the Market Rules or Operation Manual reported by the System and Market Operator shall be investigated and subject to this enforcement proceeding.
- 4.8. If the Regulatory Council decides that a reported breach should be investigated it shall initiate the investigation and shall lay a formal complaint to the respondent containing at least:
 - a) a description of the events that may lead to the commission of one or more offences;
 - b) evidence supporting the complaint;
 - c) a description of the sanctions to which the breach may lead, the period of time to formally respond to the formal complaint;
 - d) any other information that may be necessary;
 - e) time limits to respond in writing to the accusations and articles mentioned in the formal complaint, as well as the manner in which to submit their statement of defence.
- 4.9. The concerned respondent or entities and the national regulatory authority of the country of the respondent shall all be notified of the formal complaint.

5. Initiation of enforcement proceeding

- 5.1. The Regulatory Council may appoint an investigator at any time and delegate specific powers to conduct the investigations.
- 5.2. The respondent shall be notified of the formal complaint that they have allegedly breached the regional electricity market regulation, and the national regulatory authority of the country of the respondent will be informed.
- 5.3. The market participant or entity that is alleged to have breached a regional electricity market regulation (the respondent) shall communicate their statement of defence in writing within ten (10) working days from the date of notification of the formal complaint.
- 5.4. The statement of defence shall reply to the statements and arguments given in the formal complaint, detail their own arguments, the facts of the case, and shall be accompanied by all documents and any other available evidence relied upon by the respondent, or make references to them.
- 5.5. If the respondent fully accepts the charges indicated in the formal complaint, ERECA shall immediately, by a resolution duly justified, decide on the imposition of the sanction, taking particular account of this fact in mitigation of responsibility.
- 5.6. If the respondent does not respond to the formal complaint, this fact will be taken as serious evidence against them.
- 5.7. ERECA may decide to publicise the information about the matter under investigation, including the content of the notice given under that regulation.
- 5.8. Any regional market participant may notify the investigator within 10 working days of the investigation being published, that they have been affected by the matter being investigated and may request to become party to the investigation.
- 5.9. The System and Market Operator, or the person or the regional market participant that reported the breach of regional electricity market regulation to ERECA shall also be party to

the enforcement proceeding.

- 5.10. Any new claim submitted by any party to EREDA after notification of the formal complaint, shall be forwarded to the respondent, who shall have ten (10) working days to submit further written statements of defence and additional evidence.

6. Representation and experts

- 6.1. The respondent and every party involved in this enforcement proceeding are entitled to:
- a) be represented or assisted by persons of their choice. The names and addresses of such persons shall be informed in writing to any other party and to EREDA.
 - b) Provide written submissions and evidence on the alleged breach of regional electricity market regulations under investigation.
 - c) Provide any kind of evidence, statement, document, studies, or any other kind of information or document considered as necessary to support their position and arguments.
 - d) Appoint any kind of experts who might assist them and/or support their position and arguments.
- 6.2. The respondent and every party involved in this enforcement proceeding shall pay the fees and expenses for the experts and persons appointed by them to assist them in this proceeding.

7. Investigation and enforcement proceedings

- 7.1. EREDA shall fix a period of time during which all evidence shall be produced and hearings shall be held, which shall be communicated to all parties in writing. If EREDA considers it necessary, this period of time may be extended and that extension shall be communicated to the respondent and any other party involved.
- 7.2. EREDA may request the respondent or any other party concerned to produce documents, studies, exhibits or other evidence within a period of time that will be informed to them.
- 7.3. EREDA or any investigator appointed to investigate an alleged breach must conduct an investigation of the facts surrounding the alleged breach during the same period of time.
- 7.4. The respondent shall be responsible for proving the facts relied on to support their defence or claim.
- 7.5. EREDA or the investigator shall investigate the alleged breach and may appoint any external auditor or technical expert who may give advice or assistance related to the investigation. Any auditor, expert or person thus appointed shall be free of conflicts of interest in carrying out the investigation.
- 7.6. EREDA may request any information related to the investigations from any physical or legal person, or from the national authority of an ECOWAS Member State, or from any ECOWAS institutions.

8. Confidentiality

- 8.1. The Regulatory Council of ERETA and the investigator must ensure that all persons, experts and auditors appointed to assist with the investigation shall treat all information provided or disclosed to them as confidential, except to the extent that disclosure:
- a) is required to enable the Authority or an investigator or other person to carry out their obligations and duties under the regional electricity market regulations, the ECOWAS Energy Protocol or this proceeding; or
 - b) is otherwise compelled by law.

9. Interim measures:

- 9.1. The Regulatory Council may adopt precautionary measures in order to prevent damage and ensure operations in the regional electricity market and compliance with Regional Regulations.
- 9.2. In this regard, ERETA may adopt and enforce any necessary injunction or measure to conserve or safeguard operations and sanction breaches of regional electricity market regulation.
- 9.3. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, ERETA may for example and without limitation decide to: (a) Maintain or restore the status quo pending the final decision of the proceeding; (b) Provide a means of preserving assets out of which a subsequent award may be satisfied; (c) Preserve evidence that may be relevant and material to the resolution of the proceeding.
- 9.4. The adoption of an interim measure shall be justified.

10. Hearings

- 10.1. ERETA must hold a hearing on the complaint if any party makes such a request in writing; or if it considers that a hearing is necessary to give ERETA, the System and Market Operator, the investigated party or any industry participant the opportunity to be heard. In that case, the hearing shall be held as soon as practicable, and the date and time for the hearing shall be notified to all parties at least ten (10) working days in advance;
- 10.2. Hearings must be in public, unless ERETA decides otherwise.
- 10.3. If ERETA considers that a hearing should be held in private, it must notify all other parties of their decision and the grounds for that decision.
- 10.4. At a hearing on a formal complaint, the respondent, ERETA and any other party involved in the enforcement proceeding:
- a) is entitled to be present at the hearing; and
 - b) is entitled to be represented; and
 - c) must be given a reasonable opportunity to make written and oral representations; and
 - d) is entitled to call witnesses and to cross-examine any witness called against them; and

e) is entitled to have any other person present to give evidence.

11. Decision of ERERA

- 11.1. When the evidence offered by the respondent, any other party and ERERA has been produced and the hearings held, ERERA shall declare the hearings closed, and shall communicate this to the parties.
- 11.2. Within ten (10) working days of the closure of the hearings, the ERERA Regulatory Council will adopt a final Decision on the alleged breach of regional electricity market regulation investigated pursuant to this proceeding, stating all reasons that legally justify that decision.
- 11.3. ERERA's Decision on the complaint shall be based only on the facts and arguments identified in the formal complaint.
- 11.4. The final Decision shall be notified to the respondent and to any other party involved in the enforcement proceeding.
- 11.5. If ERERA decides to impose a sanction, the Decision shall indicate the provision of the regional electricity market regulation breached by the respondent, the sanction imposed, the grounds for aggravation or mitigation of the sanction, and all legal provisions and reasons that justify the decision and the sanction.
- 11.6. ERERA shall also inform the respondent and any other party involved in this proceeding of their right to appeal the Decision made by ERERA.

12. Appeal

- 12.1. ERERA's final Decision is binding and enforceable on the parties.
- 12.2. ERERA's final Decision is final unless postponed or set aside by the ECOWAS Court of Justice.
- 12.3. The respondent and any other party involved in the enforcement proceeding may appeal the final Decision made by ERERA pursuant to the conditions established in article 31 of the ECOWAS Regulation of 27/12/07.

DISPUTE SETTLEMENT RULES

I. GENERAL RULES ON DISPUTES SETTLEMENT

1. Application

- 1.1. The Dispute Settlement proceedings provided for in these rules shall apply to any dispute related to the interpretation, implementation or application of the regional electricity market regulation, and to ECOWAS regulations on the operation and organisation of the regional power market.
- 1.2. Parties involved in a dispute settlement proceeding may be:
- a) two or more regional electricity market participants;
 - b) the System and Market Operator;
 - c) transmission system providers in ECOWAS member states;
 - d) transmission service providers in ECOWAS member states;
 - e) applicants for regional electricity market participants;
 - f) any person or entity obliged to comply with the regional electricity market regulation or with a legitimate interest in the application of the regional electricity market regulation.

2. ERERA's Role

ERERA does not itself conciliate or resolve disputes. It administers the resolution of disputes by conciliation and arbitration, in accordance with these Dispute Settlement Rules (the Rules).

3. Definitions

In these rules, unless the context requires otherwise:

“Claim” or “claims” includes any claim by any party against any other party.

“Claimant” means the party or parties initiating recourse to conciliation or arbitration, and includes one or more claimant.

“Entity” means any local, national or regional, public or private, organisation, institution, authority or body, including any agency of public administration.

“Regional Market Rules” means Regional Market Rules for West African Power Pool approved by Resolution of ERERA N° 5/2015.

“Respondent” means the party who is required to answer the claim, and includes one or more respondents.

“Party” includes one or more persons or entities, and “additional party” includes one or more additional party.

“Person” means any physical or legal person, private or public.

“The Rules” means these dispute settlement rules.

ANNEX II DISPUTE SETTLEMENT RULES

4. General Criteria and Application

- 4.1. The provisions of these rules shall ensure fair and efficient proceedings for the settlement of disputes.
- 4.2. Disputes related to the regional electricity market regulation shall be resolved through negotiation, conciliation and/or arbitration pursuant to the requirements established in these rules.
- 4.3. EREERA will be responsible for managing and implementing the conciliation and arbitral proceedings established by these rules.
- 4.4. The initiation of dispute settlement proceedings will not delay the execution of an order given by EREERA.

5. Negotiation

- 5.1. Negotiation is a private process between the disputing parties, and parties are encouraged to settle their disputes through negotiation.
- 5.2. Parties involved in a dispute are not obliged to initiate a negotiation, unless the Regional Market Rules ruling the case requires otherwise.
- 5.3. If the regional electricity market regulation ruling the case does not obliged parties to initiate negotiations, parties may opt to submit the dispute to conciliation and/or arbitration.

6. Conciliation

- 6.1. The submission of a dispute to conciliation is not mandatory for the parties in the dispute.
- 6.2. The parties may submit such a dispute to the conciliation proceeding established in these rules provided that all parties of the dispute explicitly agree on that submission.

7. Arbitration

- 7.1. The arbitral proceeding shall apply to any dispute that:
 - a) was not submitted to negotiation or conciliation; or
 - b) could not be amicably settled by the parties concerned in the negotiation or conciliation proceedings, or
 - c) when one party in a dispute requires the application of arbitration to settle such dispute.
- 7.2. Arbitration of disputes related to the interpretation or application of the Regional Market Rules shall be submitted prior to negotiation and shall comply with the concerned negotiation requirements between the parties established in article 40.4. of the Regional Market Rules for West African Power Pool approved by Resolution of EREERA N° 5/2015.

ANNEX II DISPUTE SETTLEMENT RULES

- 7.3. When one of the parties of a dispute requires the application of the arbitral proceeding established by these rules, the remaining parties in the dispute are obliged to participate in the arbitral proceeding.

8. Initiation of dispute resolution proceedings

- 8.1. Upon receipt of a request by any party to initiate a dispute settlement proceeding by conciliation or arbitration, the Regulatory Council of ERETA shall convene a meeting to determine the applicable proceeding to be applied.
- 8.2. If the Regulatory Council of ERETA considers that the dispute submitted is related to a breach of regional electricity market regulation, ERETA will initiate an Enforcement Proceeding.
- 8.3. If the ERETA Regulatory Council considers that the dispute submitted is not related to a breach of regional electricity market regulation and complies with the requirements established in these Dispute Settlement Rules, it will initiate the conciliation or arbitral proceedings as it may correspond.
- 8.4. If the ERETA Regulatory Council considers that the requirements for initiating dispute resolution proceedings are not complied with, the case will be dismissed.
- 8.5. Any ERETA Regulatory Council decision adopted pursuant to this article shall state reasons for justification.

9. Witten notification and communications; Time limits

- 9.1. Any notice, proposal or communication shall be deemed to have been made on the day it was received by the party itself or by its representative.
- 9.2. Any notice, proposal or communication shall be transmitted in writing by any means established by ERETA
- 9.3. For the purpose of calculating a period of time under these Rules, such a period shall begin on the working day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-working days occurring during the running of the period of time are included in calculating the period.

II. CONCILIATION

1. Requirements

- 1.1. The party filing the complaint in the dispute (the claimant) that requests the initiation of a conciliation proceeding by the EREERA shall:
 - a) Submit a written request for conciliation to EREERA.
 - b) Send a written invitation to conciliate the dispute under these proceedings to EREERA and to the other party against whom the claim is presented (the respondent), identifying the subject of dispute.
- 1.2. The request of conciliation submitted to EREERA and the written invitation sent to the respondent shall specify: the disputing parties, a summary explaining the basic facts and the rules of the regional electricity market regulation involved in the dispute, the basis of the complaint, the proposed solution and the basis of this solution and other documentation on which the applicant may substantiate their claim.
- 1.3. The respondent is not obliged to accept the invitation to conciliation.
- 1.4. If the respondent accepts to submit the dispute to conciliation, they shall submit a written response within ten (10) working days of receipt of the invitation of the applicant. This response shall be sent to the applicant and to EREERA.
- 1.5. If the respondent rejects the invitation, or if they do not reply within the time mentioned in previous paragraph, EREERA shall dismiss the request of conciliation. In this case, the claimant may request EREERA to submit the dispute to the arbitral proceeding established in section III of these rules.
- 1.6. The response from the respondent shall specify the same information required in the written request of conciliation by the claimant including: a concise answer to the claims, complaints or allegations, any proposed solution to all arguments and claims against the claimant, and any other documentation that the respondent intends to use to support his case.

2. Appointment of conciliator

- 2.1. EREERA shall appoint one conciliator and respond no later than ten (10) working days of the receipt of the response sent by the respondent.
- 2.2. The conciliator appointed by EREERA shall be a member of the Registry of Conciliators.
- 2.3. The conciliator shall be impartial and independent of the parties in dispute.
- 2.4. The Registry of Conciliators will consist of a list of persons previously selected by EREERA to act as conciliator due to their qualifications to act in this kind of dispute resolution proceeding. Members of that Registry will be selected in accordance with a proceeding and criteria adopted by EREERA.

ANNEX II DISPUTE SETTLEMENT RULES

- 2.5. Once the conciliator is appointed, ERERA will inform the parties of the name and address of the conciliator.

3. Commencement of conciliation proceedings

- 3.1. Upon his appointment, the conciliator shall request each party to submit a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of their statement to the other party.
- 3.2. At any stage of the conciliation proceeding, the conciliator may also request any of the parties to submit any additional information as they deem appropriate, including written statements of their positions, the facts and arguments, and any other documents and other evidence that may be considered as appropriate.
- 3.3. Any additional information sent to the conciliator shall be sent to the other party in the dispute.
- 3.4. The parties will cooperate with the conciliator and will comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

4. Role of conciliator

- 4.1 The conciliator assists the parties in settling the dispute, trying to enable them to reach a mutually satisfactory agreement.
- 4.1. The conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to the rights and obligations of the parties, the circumstances related to the dispute, including any previous business practices and relationship between the parties.

5. Conciliation meetings

- 5.1. The conciliator shall fix the date, time and place for the opening session of conciliation within ten (10) working days of notification of his/her appointment.
- 5.2. The conciliator will schedule the number of conciliation meetings that are considered appropriate in order to assist the parties in resolving the dispute.
- 5.3. Conciliation meetings will take place at the ERERA headquarters or elsewhere agreed by the parties.
- 5.4. Conciliation meetings sessions will be private and no written records will be made.
- 5.5. The participation of parties not involved in the dispute shall not be permitted without the consent of all parties and of the conciliator.

ANNEX II DISPUTE SETTLEMENT RULES

- 5.6. All information submitted during conciliation sessions will be classified as confidential unless the disputing parties expressly agree otherwise.

6. Replacement of conciliator

- 6.1. If a conciliator dies, resigns or otherwise becomes unable to act as conciliator in a dispute, EREERA shall designate another member of the Register of conciliators, who will continue with the conciliation.
- 6.2. The terms of the proceedings are suspended until a new conciliator is appointed.

7. Representation and assistance

- 7.1. The parties may be represented or assisted by persons of their choice. The names and addresses of such persons shall be informed in writing to the other party involved and to the conciliator.
- 7.2. The parties in the dispute may appoint representatives with the capacity to make binding decisions on their behalf.

8. Confidentiality

- 8.1. Confidential information disclosed within sessions shall not be disclosed by the conciliator or used in a subsequent arbitration.
- 8.2. The conciliator may ask the System and Market Operator for any information related to the dispute, which will be provided subject to confidentiality requirements.

9. Communication between conciliator and the parties

- 9.1. The conciliator may communicate with the parties orally or in writing, and may meet or communicate with the parties together or with each of them separately.

10. Suggestion of settlements of dispute

- 10.1. The conciliator may make proposals for a settlement of the dispute at any stage of the conciliation proceedings.
- 10.2. Each party may also, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for a settlement of the dispute.

11. Settlement agreement

- 11.1. If the dispute is resolved through conciliation, the conciliator shall prepare the settlement agreement in writing, which shall be signed by all parties.
- 11.2. The signed settlement agreement must be approved by ERERA.

12. Termination of conciliation proceedings

- 12.1. The conciliation proceedings are terminated:
 - a) by the adoption of a settlement agreement, signed by the parties and approved by ERERA, on the date of the approval by ERERA;
 - b) By written declaration by the conciliator, after consulting the parties, that additional efforts will not result in a settlement of the dispute, on the date of the written declaration;
 - c) By written declaration of one of the parties informing of its decision to conclude the conciliation, on the date of the declaration. That written declaration shall be informed to the other party and to the conciliator;
 - d) By written declaration by both parties deciding the conclusion of the conciliation, on the date of the declaration. That written declaration shall be informed to the conciliator.

13. Costs of conciliation

- 13.1 Upon termination of the conciliation, the conciliator fixes the costs of the conciliation proceeding including, among others:
 - a) The fee for the conciliator, which shall be reasonable;
 - b) The travel and other expenses for the conciliator;
 - c) The costs of any expert advice.
- 13.2. The parties in the dispute will bear their own expenses incurred in conciliation sessions.
- 13.3. The costs thereof including the fees for the conciliator are borne equally by the parties concerned.

III. ARBITRATION

1. Notice of arbitration

- 1.1. A party wishing to have recourse to arbitration shall communicate a notice of arbitration to ERERA and to the respondent.
- 1.2. The date on which the request is received by ERERA shall be deemed to be the date of commencement of the arbitration.
- 1.3. The notice of arbitration shall contain the following:
 - d) A demand that the dispute be referred to arbitration;
 - e) Indication of whether the dispute was submitted for negotiation and/or conciliation and the date on which negotiation and/or conciliation were terminated;
 - f) The names in full, address and contact details of the parties concerned;
 - g) Identification of any agreement or legal document in relation to which the dispute arises;
 - h) A brief description of the claim;
 - i) The relief or remedy sought;
 - j) A proposal concerning the language and place of arbitration.
- 1.4. The language of arbitration may be English, French and/or Portuguese .

2. Response to the notice of arbitration

- 2.1. Within fifteen (15) working days of the receipt of the notice of arbitration, the respondent shall communicate its response to the notice of arbitration to the claimant and to ERERA.
- 2.2. The response to the notice of arbitration shall contain the following:
 - a) The name in full, address and contact details of each respondent;
 - b) A response to the information set forth in the notice of arbitration;
 - c) A proposal concerning the language and place of arbitration.

3. Representation and assistance

- 3.1. The parties may be represented or assisted by persons of their choice. The other party and the arbitrator shall be informed in writing of the names and addresses of such persons.
- 3.2. The parties in the dispute may appoint a representative for the arbitration process with the capacity to make binding decisions on their behalf.

4. Designation and appointment of arbitrators

- 4.1. The dispute shall be settled by a panel of three (3) arbitrators.

ANNEX II DISPUTE SETTLEMENT RULES

- 4.2. Within ten (10) working days of the receipt of the response to the notice of arbitration, ERERA requests the parties to appoint the arbitrators.
- 4.3. Each party in the dispute shall appoint one arbitrator in the notice of arbitration.
- 4.4. If there are multiple parties as claimant or as respondent, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
- 4.5. The two arbitrators appointed by the parties shall choose the third arbitrator who will act as President of the arbitration panel.
- 4.6. The arbitrators shall be members of the Registry of Arbitrators.
- 4.7. The Registry of Arbitrators will consist of a list of persons previously selected by ERERA to act as arbitrator due to their qualifications to act in this kind of dispute resolution proceeding. Members of that Registry will be selected in accordance with a proceeding and criteria adopted by ERERA.
- 4.8. All arbitrators shall be impartial and independent of the parties involved in the arbitration.
- 4.9. Persons approached as possible arbitrators shall disclose in writing to ERERA any facts or circumstances which might give rise to reasonable doubts as to his or her independence or impartiality.
- 4.10. Persons appointed as arbitrators shall sign a statement of acceptance, availability, impartiality and independence.
- 4.11. Once the arbitrators are appointed, ERERA shall inform the parties of the name and address of all arbitrators.

5. Challenge of arbitrators

- 5.1. Any arbitrator may be challenged if there are circumstances that give rise to reasonable or justifiable doubts as to the arbitrator's impartiality or independence.
- 5.2. The party who intends to challenge an arbitrator shall send notice of its challenge within ten (10) working days after it has been notified of the appointment of that arbitrator, or within fifteen (15) working days after the circumstances likely to justify the challenge of that arbitrator became known to that party.
- 5.3. The notice of challenge shall be justified.
- 5.4. ERERA shall communicate the notice of challenge to all other parties and to the arbitrator.
- 5.5. Within fifteen (15) working days from the challenge of an arbitrator, ERERA shall communicate their decision on the challenge to the parties concerned and to the arbitrator.

6. Replacement of arbitrator

ANNEX II DISPUTE SETTLEMENT RULES

- 6.1. If ERERA decides that the arbitrator shall be replaced, or if the challenged arbitrator withdraws, then a substitute arbitrator shall be chosen or appointed.
- 6.2. If the challenged arbitrator was appointed by one party, that party shall appoint the substitute arbitrator.
- 6.3. If the challenged arbitrator was appointed by both arbitrators chosen by the parties, those arbitrators shall choose the substitute arbitrator.
- 6.4. If during the arbitral proceeding one arbitrator dies, resigns, is challenged or otherwise becomes unable to act as arbitrator to a dispute, a substitute arbitrator shall be appointed pursuant to the procedures provided in paragraphs 6.2 and 6.3 of this article. In this case, the terms of the proceedings are suspended until a new arbitrator is appointed.
- 6.5. If an arbitrator is replaced during the arbitral proceedings, the substitute arbitrator shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitration panel decides otherwise.

7. Initiation of arbitral proceedings

- 7.1. After its constitution and as soon as practicable, the arbitration panel shall:
 - a) communicate a provisional timetable of the arbitration in writing to the parties; and
 - b) Request the claimant to communicate its statement of claim in writing to the respondent and to each of the arbitrators within fifteen (15) working days.
- 7.2. After consulting with the parties, the arbitration panel may adopt further procedural measures or modify the procedural timetable.

8. Place and language of arbitration

- 8.1. If the parties did not agree on the language of arbitration, the arbitration panel shall, promptly after its appointment, determine the language or languages to be used in the proceedings.
- 8.2. If the parties did not agree on the place of arbitration, the arbitration panel shall, promptly after its appointment, determine the place of arbitration.
- 8.3. The arbitration panel may, after consultation with the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.
- 8.4. The arbitration panel may deliberate at any location it considers appropriate.

9. Statement of claim

- 9.1. The statement of claim shall contain:
 - a) The names in full, address and contact details of the parties;
 - b) A statement of facts supporting the claim;
 - c) An identification of the points on issue;

ANNEX II DISPUTE SETTLEMENT RULES

- d) The provisions of the agreement or legal document in relation to which the dispute arises;
- e) The legal grounds or arguments supporting the claim.
- f) The relief or remedy sought.

9.2. The statement of claim shall also contain:

- a) A copy of the contract or other legal document in relation to which the dispute arises;
- b) All documents and other evidence relied upon by the claimant, or references to them.

10. Statement of defence

10.1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within fifteen (15) working days of being notified of the statement of claim.

10.2. The statement of defence shall contain:

- a) The names in full, address and contact details of the parties;
- b) A statement of facts supporting the defence;
- c) An identification of the points at issue;
- d) The provisions of the agreement or legal document in relation to which the dispute arises;
- e) The legal grounds or arguments supporting the defence;
- f) The relief or remedy sought.

10.3. The statement of defence shall also contain:

- a) A copy of the contract or other legal document in relation to which the dispute arises;
- b) All documents and other evidence relied upon by the respondent, or references to them.

11. Interim measures

11.1. The arbitration panel may, at the request of a party, decide that an interim measure needs to be adopted. In that case, the arbitration panel shall request ERERA to adopt such interim measure stating the reasons why.

11.2. The ERERA Regulatory Council analyses the request and decides on the adoption of a precautionary measure when it considers that necessary to prevent damage and ensure operations in the regional electricity market and compliance with regional electricity market regulation.

11.3. ERERA may adopt and enforce any necessary injunction or measure to conserve or safeguard and sanction breaches of regional electricity market regulation.

11.4. An interim measure is any temporary measure by which, at any time prior to the issuance of the award, ERERA may decide, for example and without limitation, to: (a) Maintain or restore the status quo pending the final decision of the proceeding; (b) Provide a means of preserving assets out of which a subsequent award may be satisfied; (c) Preserve evidence that may be relevant and material to the resolution of the proceedings.

11.5. The decision of ERERA adopting an interim measure shall state reasons.

12. Evidence

- 12.1. Every party shall be responsible for proving the facts relied on to support its claim or defence.
- 12.2. Parties may present witnesses and experts.
- 12.3. Unless otherwise directed by the arbitration panel, parties may present statements by witnesses and experts in writing and signed by them.
- 12.4. The arbitration panel may decide to hear witnesses, experts appointed by the parties, or any other person in oral hearings, in the presence of the parties, or in their absence provided that they have been duly summoned.
- 12.5. At any time of the proceedings, the arbitration panel may summon any party to provide additional evidence within the period that the arbitration panel considers appropriate.
- 12.6. At any time of the proceedings the arbitration panel may request specific information from the System and Market Operator or any other entity of ECOWAS or ECOWAS member countries.

13. Hearings

- 13.1. The arbitration panel shall hold a hearing if any party requests, in writing, or if it considers that a hearing is necessary.
- 13.2. The hearing shall be held as soon as practical; and the date, time and place of any oral hearing shall be notified to all parties at least twenty (20) working days in advance.
- 13.3. At a hearing, all parties:
 - a) are entitled to be present; and
 - b) are entitled to be represented; and
 - c) must be given a reasonable opportunity to make written and oral representations; and
 - d) are entitled to call witnesses and to cross-examine any witness or expert called against it; and
 - e) are entitled to call witnesses and to cross-examine any expert appointed by the arbitration panel; and
 - f) are entitled to have any other person present to give evidence.

14. Experts

- 14.1. At any time of the proceedings and after having consulted with the parties, the arbitration panel may appoint one or more independent experts to report to them, in writing, on the specific issues determined by the arbitration panel. The arbitration panel will define the terms of reference.
- 14.2. Before accepting appointment, the expert shall submit, to the arbitration panel and to the parties concerned, a description of his or her qualifications and a statement of his or her impartiality and independence.

ANNEX II DISPUTE SETTLEMENT RULES

- 14.3. Within fifteen (15) working days, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections.
- 14.4. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the party becomes aware of the reasons for objecting to the expert after the appointment has been made.
- 14.5. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents, installations or goods that he or she may require of them.
- 14.6. The arbitration panel shall communicate a copy of the expert's report to the parties involved, who shall be given the opportunity to express, in writing, their opinion on the report.
- 14.7. Parties are entitled to examine any document on which the expert has relied in his or her report.
- 14.8. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present experts in order to testify on the points at issue.

15. Default

- 15.1. If a party fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
- 15.2. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award based on the evidence before it.

16. Closure of proceedings

- 16.1. The arbitration panel shall consider the proceedings closed when:
 - a) the hearings have been held, and
 - b) the reports of experts appointed by the parties or by the arbitration panel have been submitted, and
 - c) the period of time given to the parties to submit any objection to the report of any expert has elapsed; and
 - d) the parties have no further proof to offer or submit.
- 16.2. The arbitration panel shall inform the parties of the closure of the proceedings and shall adopt the award as soon as practicable.

17. Decisions

The award and any other decision made by the arbitration panel shall be adopted by the majority of the arbitrators.

ANNEX II DISPUTE SETTLEMENT RULES

18. Award

- 18.1. The award shall be made in writing and shall state the reasons upon which it is based.
- 18.2. The award shall be signed by all the arbitrators of the panel and shall indicate the date of its adoption.
- 18.3. The award shall be communicated to the parties and to EREERA.
- 18.4. EREERA shall formally approve the award of the arbitration panel as an EREERA Decision by way of a resolution.
- 18.5. If the award of the arbitration panel concludes that a party to the dispute breached regional electricity market regulation, EREERA shall decide and adopt the corresponding sanctions.

19. Settlement agreement

- 19.1. If before the award is made, all parties agree on a settlement agreement, which is in writing and signed by all parties, the arbitration panel shall issue an order for the termination of the arbitral proceeding and shall communicate it to EREERA.
- 19.2. The settlement agreement must be approved by EREERA.

20. Appeal

- 20.1. The Decision of EREERA approving the award is binding and enforceable on the parties.
- 20.2. The Decision of EREERA is final unless postponed or set aside by the ECOWAS Court of Justice.
- 20.3. Within fifteen (15) working days of the communication of the Decision of EREERA approving the award, the parties may appeal the Decision of EREERA pursuant to the conditions established in article 31 of the ECOWAS Regulation of 27/12/07.

21. Costs of arbitration

- 21.1. The parties in the dispute will bear their own expenses incurred in arbitration proceedings and hearings, which shall include:
 - a) The fees for the legal advisors and experts appointed by the parties;
 - b) The travel expenses and any other costs incurred by the legal advisors, experts and witnesses appointed by the parties.
- 21.2. Upon termination of the arbitration, the arbitration panel fixes the costs of arbitration including:
 - a) The fee for each arbitrator, which shall be reasonable and shall take into account the requirements established in article 22;
 - b) The reasonable travel expenses and any other costs incurred by the arbitrators;
 - c) The reasonable costs of any expert advice appointed by the arbitration panel.

22. Fees and expenses for arbitrators

- 22.1. The fee for each arbitrator shall be reasonable and shall take into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstance.
- 22.2. Promptly after its constitution, the arbitration panel shall inform the parties as to how it proposes to determine the fees and expenses, and rates that shall be applied. Parties may require a review of the proposal within fifteen (15) working days from the date of receipt of that proposal.
- 22.3. ERERA shall adopt the rules for the determination of expenses and fees for arbitrators and/or for experts appointed by the arbitration panel and the arbitrators shall calculate the costs of arbitration pursuant to those rules.

23. Allocation of costs

The costs of arbitration fixed by the arbitration panel shall be borne equally by the parties, unless the arbitration panel or the settlement agreement adopted pursuant to article 19 decides otherwise.