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LEGAL NOTICE NO. 34 OF 2010

Lesotho Electricity Authority (Resolution of Disputes) Rules, 2010

Pursuant to sections 34 and 35 of the Lesotho Electricity Authority Act, 2002,
I,

ZOLA TSOTSI

Chairman of the Board of the Authority, make the following Rules:

Citation and commencement

1. These Rules may be cited as the Lesotho Electricity Authority (Resolution of Disputes) Rules, 2010 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these Rules, unless the context requires otherwise -

“Act” means the Lesotho Electricity Authority Act, 2002¹;

“authorised electricity operator” means any person who is authorised to generate, transmit, distribute or supply electricity under the terms of a licence granted in terms of section 50, or an exemption granted in terms of section 48 of the Act;

“the Authority” means the Lesotho Electricity established pursuant to section 3 of the Act;

“Board” means the Board of the Authority appointed pursuant to the Act;

“Chairman” means the Chairman of the Board of the Authority appointed under the Act;

“Chief Executive” means the Chief Executive of the Authority appointed under the Act;

“customer” means any person supplied or requiring to be supplied with electricity at any premises in Lesotho but shall not include an authorised electricity operator in his capacity as such;

“court” means a court of competent jurisdiction;

“exemption” means an exemption from the requirement to hold a licence issued by the Authority in terms of section 48 of the Act;

“licensee” means the holder of a licence granted or deemed to be granted in terms of section 50 of the Act;

“person” means any individual, partnership, joint venture, association, trust, company or corporation;

“pleadings” means written admissions and demands of the parties;

“proceedings” means the processes of examination and adjudication of a dispute in terms of section 105 of the Act;

Representations to the Authority

3. (1) In terms of section 105 of the Act, the Authority has the power to adjudicate disputes and complaints arising between licensed operators or between licensed operators and customers.

(2) A person may make a representation, orally or in writing, to the Authority and the person shall be responsible for the truth, accuracy and completeness of information furnished.

(3) Where information furnished is found to be no longer substantially accurate and sufficiently complete, a person making the representation shall, within 30 days, unless good reason permits otherwise, furnish such additional or corrected information to the Authority.

(4) By affixing a signature to a written pleading or paper filed with the Authority or by making any oral representation in accordance with subrule (2), the signatory or orator attests that the contents of all statements, pleadings or papers are not misleading, and are true and accurate to the best of their knowledge.

Customer dispute referrals

4 (1) A customer shall first raise a complaint against a licensee with the licensee himself and shall give the licensee an opportunity to resolve the complaint before a referral to the Authority is made.

(2) A licensee shall use all reasonable endeavours to resolve the customer's complaint to the customer's satisfaction subject to the provisions of his license and the Act.

(3) Where, in a customer's opinion, a complaint raised by a customer directly against a licensee has not been resolved satisfactorily by the licensee, the customer may refer the matter under dispute to the Authority by notice, in writing, and shall agree to be bound by the Authority's determination of the dispute.

(4) A customer who refers a matter under dispute pursuant to subrule (3) shall submit the following particulars to the Authority:

- (a) the name, address and telephone number of the customer;
 - (b) the name of the licensee against which the complaint is made; and
 - (c) an explanation of the subject of the customer's complaint against the licensee.
- (5) Particulars submitted in terms of subrule (4) may include -
- (a) a copy of all correspondence between the customer and the licensee, demonstrating that all efforts to resolve the matter between the customer and the licensee have been fully exhausted;
 - (b) a statement indicating whether a hearing is requested, and, if so, the basis for such request;
 - (c) the specific relief or compensation sought; or

- (d) any other information which the customer considers pertinent to the referral of the complaint to the Authority.

(6) The Authority shall notify a licensee, who is the subject of a referral, that a dispute has been referred for the Authority's adjudication in terms of subrule (1) and copy to the licensee the communication received from the customer in respect of such referral.

(7) The Authority may request -

- (a) any data from the licensee against whom a complaint has been made, which the Authority reasonably believes is necessary for it to adjudicate the dispute; and
- (b) a licensee's written response to the specific points raised by the customer in its referral.

(8) A licensee shall submit its full response to the Authority on the referral within 30 days of the date of the notification in terms of sub-Rule (6) or such other period as the Authority may agree.

Licensee's response

5. A licensee's written response to the Authority shall -

- (a) state whether the licensee is in agreement with the allegations made by the customer, and if not provide a basis for its disagreement;
- (b) indicate whether a hearing is required and if so, submit a request for such hearing, together with the basis for such request; and
- (c) if requested by the Authority, send a copy of its response to the customer.

Hearings

6. (1) If it appears to the Authority that a hearing may assist it in forming a determination as to the resolution of a dispute, the Authority may, at its discretion -

- (a) order that a hearing be held for all matters relating to the dispute; and
- (b) order that parties to a dispute file additional statements or other supplementary documents.

(2) A hearing conducted in terms of subrule (1) shall be done in accordance with the provisions of Rule 26.

Investigation

7. (1) The Authority may, prior to adjudicating a dispute between a customer and a licensee -

- (a) investigate matters raised in the customer's dispute referral in any manner allowed by the Act including permitting evidence to be considered, summoning and examining witnesses, and ordering the production of any books or documents or objects as it may deem necessary; and
- (b) expedite the treatment of any dispute in order to address emergency matters affecting the safety or health of a customer including but not limited to the customer's access to power supplies.

(2) A claim, defence or requested remedy including damages, shall be pleaded fully.

(3) Either party to a dispute shall have the right to legal representation at his own cost in which case any legal arguments submitted by either party to the dispute shall be supported by appropriate judicial, legislative, or regulatory authority.

(4) Specific reference shall be made to any licence provision or tariff provision relied on in support of complaint or defence and copies of relevant portions of tariffs and licences that are referred to or relied on in a complaint or answer shall be attached to the complaint, answer or other pleadings in which they are referenced.

(5) A joint statement of stipulated facts, disputed facts and key legal issues shall also be filed in the records if each party to the action is represented by counsel, or if the Authority so orders.

(6) Unless specifically ordered by the Authority, no pleadings, statements or discovery in addition to those contemplated in sub-rules (1), (2), (3), (4) and (5) are allowed in a customer dispute proceeding.

Determination of dispute

8. (1) The Authority may, after investigating a complaint -
- (a) consider a matter to be closed where it appears to the Authority that there are clear indications from the licensee's response, or from communication received from the customer that the matter has been resolved and forward to the parties involved, a final notification indicating that the matter is resolved and closed together with a statement outlining the basis for such conclusion.
 - (b) consider a matter to be closed where it appears to the Authority that the complaint is unjustified or frivolous, and forward to the parties involved, a final notification indicating that the matter is closed together with a statement outlining the basis for the Authority's conclusion;
 - (c) where it appears to it that the matter has not been resolved, forward to the parties involved, its binding determination outlining the Authority's adjudication of the dispute and such determination.
- (2) A written record of dispute proceedings in terms of subrule (1)

shall consist of the following -

- (a) the substance of a customer's complaint against a licensee;
- (b) the response of a licensee against which a customer's complaint was filed; and
- (c) a copy of the Authority's determination setting out the resolution of the dispute.

Disputes between authorised electricity operators

9. (1) Where a complaint raised by an authorised electricity operator directly against another authorised electricity operator has not been resolved to the complainant's satisfaction, the complainant may refer the matter under dispute to the Authority, by notice in writing, and agree to be bound by the Authority's determination of the dispute.

(2) A complaint arising under the terms of subrule (1) shall be submitted to the Authority in the following manner:

- (a) a brief statement of any issues to which there is agreement;
- (b) a clear and concise statement of the issues that are disputed and require the Authority's action;
- (c) the job designation of the complainant; and
- (d) a statement of reason in support of the complaint.

(3) The following particulars shall be stated on the written complaint:

- (a) the name, address and telephone number of the complainant;
- (b) the name of the defaulting party against which the complaint is made;

- (c) a statement explaining how such defaulting party did or omitted to do anything in violation of the Act or of its licence, exemption or filed tariff or of any code, rules or regulations established for the governance of the electricity sector of Lesotho;
 - (d) a letter signed by the complainant indicating that the complainant has attempted to resolve the matter with the defaulting party but such efforts have been unsuccessful, together with the copies of letters between the parties indicating such efforts, and any other supporting documentation including factual and legal support for its position and affidavits;
 - (e) a statement indicating whether a hearing is requested, and the basis for such request, and where the complainant requests that the hearing be closed to the public, the statement shall contain a statement setting out the basis for such request;
 - (f) a statement indicating whether expedited treatment is requested, and the basis on which such treatment is requested, together with documentation showing the harm that is to result if expedited treatment is not granted; and
 - (g) the specific relief sought.
- (5) The opposing party has, unless the Authority agrees otherwise, thirty days to respond to the application and its response shall include -
- (a) an indication of the job designation of the opposing party;
 - (b) a statement of reasons in opposing the complaint; and
 - (c) any statutory or regulatory justification that may exist for action.
- (6) Notwithstanding the provisions of subrules (2) and (3), the par-

ties may reach an agreement and withdraw the dispute by submitting the negotiated agreement to the Authority for its approval.

Request for confidentiality

10. (1) A document filed at the Authority by a party in any proceeding shall be placed in the public record unless the party filing the document asserts a claim of confidentiality referred to in subrule (2), at the time of filing.

(2) Any party's participation in a proceeding before the Authority may request that information contained in a document filed by that party, at the Authority, be considered confidential and not to be disclosed to the public.

(3) Information considered confidential pursuant to subrule (2) is presumed confidential at the time of filing and after receipt of a claim of confidentiality.

(4) A claim of confidentiality may be -

- (a) made only by a party to whom the confidential information belongs; and
- (b) requested for any information relating to:
 - (i) intellectual property;
 - (ii) proprietary information, including information pertaining to financial capacity or business plans of any person; or
 - (iii) any other matter reasonably justifying confidentiality, as provided by common law or statute.

(5) Any information claimed to be confidential shall be -

- (a) accompanied by a concise statement indicating the type of information and why the information is confidential; and

- (b) included in a separately sealed envelope, marked with the filing date, file number, title of the proceedings, the name of the party to whom the information belongs and the signature of the person who requested confidential treatment.

(6) In each filing containing a request for confidential treatment of information, an abridged version of the filing shall be placed in the public record of the proceeding, indicating that the said document contains confidential information and is not available for public viewing until such time as the request has been determined in terms of Rule 12.

Burden of proof of confidentiality

11. (1) The burden of proof shall rest with the party seeking confidential treatment.

(2) The presumption shall be that all information may be made public unless the party seeking confidential treatment is able to demonstrate that his commercial or other interests are likely to be materially and adversely affected by public disclosure.

(3) Where the Authority proposes to deny the confidential designation of information, it shall notify the party claiming confidential treatment in writing that the purported confidential information is to be publicly disclosed.

(4) Unless the Authority otherwise directs, a party claiming confidentiality has ten days to file a reply.

(5) A person desiring public disclosure of information in respect of which there has been a claim of confidentiality may file with the Authority -

- (a) a request for public disclosure of the information explaining the reasons why the disclosure of the information is in the public interest; and
- (b) any documentary support of the reasons why such information is to be publicly disclosed.

(6) If the party claiming confidentiality replies to the request for public disclosure, the Authority shall serve a copy of the reply on the party requesting public disclosure.

Decision of Authority on confidentiality

12. (1) In determining whether or not to grant confidential treatment to a party, the Authority -

- (a) shall take into account the wider public interest and the balance of its duties under the Act; and
- (b) may also take into account the extent to which a lack of competition in the provision of services in connection with regulated activities reduces the likelihood of any material and adverse effect on the commercial interests of the party seeking confidential treatment.

(2) The Authority may, after receipt for confidential treatment in terms of Rule 12 -

- (a) dispose of a claim for confidentiality on the basis of the documentation filed; or
- (b) if it considers the following procedures to be appropriate -
 - (i) refer the matter for hearing under Rule 26;
 - (ii) require depositions or examinations to be taken before a person appointed to take evidence under Rule 22.

(3) Where the Authority is of the opinion that there is a specific direct harm which is likely to result from the public disclosure and which justifies a claim for confidentiality, the Authority may order -

- (a) that the document not be placed on the public record;
- (b) limited disclosure of the document, or that the docu-

ment be disclosed to a selected number of particular persons;

- (c) disclosure of an abridged version of the confidential information; or
- (d) that the document be disclosed to parties at a hearing to be conducted in camera.

(4) A decision of the Authority to treat information as confidential has no binding effect on any other Government agency.

(5) The staff of the Authority may not, in the absence of prior written approval of the Board, provide assurance against disclosure of confidential information to other government agencies.

Non-disclosure agreement

13. If the Authority orders limited disclosure in terms of Rule 12(3)(b), a person who is the originator of the information may, subject to Authority approval, require each party who is granted access to the information to sign a non-disclosure agreement which may -

- (a) prevent the disclosure of the information to any person regardless of status not immediately involved in the proceeding;
- (b) prevent copies of the information being produced;
- (c) ensure the return of the information to the person who is the originator of the information immediately upon conclusion of the proceeding;
- (d) prevent the information from being destroyed at the conclusion of the proceeding;
- (e) ensure that the information be used only for the purpose of resolving the proceeding at hand and more especially not for competitive business purposes; and

- (f) ensure that improper disclosure or use by a part or person may result in such civil liabilities or sanctions as may be agreed upon by the parties in the nondisclosure agreement.

Timelines of filings

14. Pleadings, application, requests and other papers or documents required to be filed by a particular date shall be received for filing at the Authority's headquarters within the time limits, if any, for filing, during the Authority's normal office hours.

Reckoning of time

15. (1) Unless otherwise stated, sections 49, 50, 51 and 52 of the Interpretation Act, 1977², shall be invoked to calculate the amount of time within which persons or entities wishing to file papers in response to deadlines established by the Authority shall file those papers.

(2) On any day when an emergency situation occurs and the Authority office closes early and does not reopen on that day, the Authority shall treat that day as though it were a public holiday under section 49 of the Interpretation Act.

(3) If a filing period is less than seven days, intermediate public holidays, Saturdays and Sundays may not be counted in determining the filing date.

(4) If the document is served by mail, additional three days excluding public holidays may be allowed for all parties serving a response to such document.

Filing periods of pleadings

16. Pleadings shall be filed in the case of -

- (a) oppositions to any motion, petition or request, ten days after the original pleadings has been filed;
- (b) replies within seven days after the time for filing oppo-

sitions has expired;

- (c) Additional pleadings, at such time as the Authority may stipulate;
- (d) Oppositions to a request for stay of any authority order or to a request for other temporary relief seven days after the request for stay is filed;
- (e) Any reply to the opposition, by the person who filed the request for stay or other temporary relief, seven days after the time for filing oppositions has expired.

Extension of time

17. (1) The Authority may grant requests for extension of time if reasonable extenuating circumstances are shown.

- (2) A request for an extension of time may be made by -
 - (a) filing the request, stating the reasonable extenuating circumstances, with the Authority at least seven days or as soon as practicable before the filing deadline; and
 - (b) notifying the other parties and the Authority that a request for extension of time has been or is being filed.

Specifications for pleading and papers filed with the Authority

18. Papers filed with the Authority shall -
- (a) have a signature of the person who is filing the papers;
 - (b) be collated, consecutively numbered at the bottom of each page and suitably secured or bound;
 - (c) be written in English or Sesotho; and
 - (d) be filed with an original and three copies that are permanently legible.

Verification of signatures

19. Where the authenticity of a signature on any document filed with the Authority is in question, the Authority may require a person who filed such document to authenticate the signature -

- (a) by the signature and seal of office of a notary public or commissioner of oaths;
- (b) in a manner prescribed in the rules of the High Court of Lesotho for the authentication documents executed outside Lesotho to permit their being produced or lodged in public office in Lesotho; or
- (c) in any other manner which, to the satisfaction of the Authority, demonstrate that the signature was made by the person purporting to have signed the document.

Legal representation

20. All parties and witnesses participating in proceedings before the Authority may be represented by counsel of their choice.

Proof of service

21. (1) Unless otherwise indicated, all parties making filings in any proceedings before the Authority shall serve copies of those filings on all other parties to the proceeding included on the list prepared for that proceeding by the Authority and such services shall be made in writing.

- (2) Proof of service contemplated in subrule (1) -
 - (a) shall be noted on the last page of the filing;
 - (b) shall show the date and manner of service; and
 - (c) may be by written acknowledgement of service, certificate of the person effecting the service, or other proof satisfactory to the Authority.

(3) In the event that proof of service is omitted in pleadings or documents filed at the Authority, and such pleadings or documents generally require proof of service or where the counsel for a party is omitted, it will be presumed that proper service had not taken place on other parties or on all counsel, unless the contrary is proved.

(4) The manner in which service shall be executed if a party is represented by -

(a) an attorney is by serving a copy of the document or pleadings on the attorney, unless service upon the party is ordered by the Authority; or

(b) more than one attorney, serving a copy of the document or pleadings on each attorney, provided that no more than two attorneys may be designated for purposes of service.

(5) Parties who intervene in proceedings are responsible for reviewing the official service list in that file to determine the identity of parties to ensure that pleadings and other papers are properly served on all parties to the proceedings

Depositions

22. (1) A deposition upon oral examination or on written questions is subjected to the same terms and conditions applied in the Magistrates Court of Lesotho.

(2) Additional information may be taken into account to the extent permitted by the rules of the Magistrate Courts of the Kingdom of Lesotho.

Subpoenas

23. (1) A subpoena -

(a) may be served in any part of Lesotho;

(b) may be issued in blank and completed by the attorney or party on whose behalf it is issued; and

- (c) shall contain the names of any number of persons required to appear before the Authority.

Joint pre-hearing statement

24. (1) The Authority may, prior to the pre-hearing conference contemplated in Rule 25, instruct the parties to submit a joint pre-hearing statement signed by both parties or their counsel.

- (2) A joint pre-hearing statement shall contain -
 - (a) a statement regarding the identity of the parties and significant persons involved in the case;
 - (b) a statement of the facts in dispute;
 - (c) a statement of applicable statutes, rules and judicial case law that is applicable to the case; and
 - (d) any other matters considered relevant by the Authority.

Pre-hearing conference

25. (1) The Authority may, prior to a hearing stipulated in Rule 26, instruct the parties to participate in a pre-hearing conference by notifying the parties, in writing, at least ten days before the proposed pre-hearing conference, of the date scheduled for such conference together with an indication of the issues to be discussed.

- (2) The issues contemplated in sub-rule (1) may comprise -
 - (a) the necessity or desirability of simplification, clarification, amplification or limitation of the issues;
 - (b) the admission of facts and the authenticity of documents, and the possibility of reaching consensus on facts in dispute;
 - (c) the procedure and approximate duration of the hearing;

- (d) the limitation of the number of witnesses;
- (e) the necessity or desirability of amending pleadings and offers of settlement or proposals of adjustment;
- (f) the date for the formal hearing; and
- (g) any other matter as may be necessary to expedite the conduct of the hearing.

Convening of hearing

26. (1) The Authority may convene a hearing to investigate or adjudicate any matter over which it has jurisdiction pursuant to the Act.

(2) Any matter, including formal applications, requests and petitions, may be adjudicated on written record, and such written record shall comprise all pleadings, affidavits, exhibits and other documentation that is a part of the official record of the proceedings.

(3) Subject to sub-Rule (4), a notice of hearing containing -

- (a) a statement of the reasons for the Authority's action;
- (b) a statement of the matters of fact and law involved, and the issues upon which the matter will be heard;
- (c) a statement of the time, place and nature of the hearing;
- (d) a statement of the legal authority and jurisdiction under which the hearing is to be held; and
- (e) any other statements the Authority may deem relevant,

shall be issued by the Authority.

(4) Except for hearings scheduled on an expedited basis, a hearing may not be scheduled on less than sixty days' notice, unless it is a postponement or continuation of a previously scheduled hearing.

(5) A hearing is followed by an order based on the facts presented at the proceedings and on any written record contemplated in sub-rule (2).

(6) If a decision rests on official notice of a material fact not appearing in the record, a party shall be afforded a reasonable opportunity to prove the contrary.

(7) Continuance of any hearing and extension of time for making any filing or perform any act required or allowed to be done within a specified time may be granted by the Authority or by the expert examiner named by the Authority in terms of Rule 27 if good cause is shown, unless the time for performance or filing is limited by statute.

(8) Witnesses at a hearing are examined orally or verbally on oath unless otherwise provided by these Rules.

(9) The Authority may, at any time, order that -

- (a) any particular facts be proved by affidavits;
- (b) an affidavit of any witness be read at a hearing on such conditions as the Authority may consider reasonable; and
- (c) any witness be examined before one or more members of the Authority's Board or an expert examiner appointed by the Board in accordance with Rule 27.

(10) The Authority shall, immediately upon convening the hearing, enter on the record a statement reciting all actions taken at the pre-hearing conference contemplated in Rule 25 and incorporate into the record all of the stipulations and agreements of the parties which are approved by the Authority and any special rules which the Authority considers necessary to govern the course of the hearing.

(11) The Authority may, after the finalisation of the hearing, instruct each party to file proposed findings of fact and conclusions of law or a proposed order.

(12) The Authority shall issue an order when the hearing is

finalised.

Expert examination

27. (1) An expert examiner named by the Authority and authorised by the laws of Lesotho to administer oaths may assist the Authority in conducting examinations of witnesses and any witness shall appear before the expert examiner when so ordered by the Authority.

(2) Any evidence adduced by an expert examiner shall be confined to the subject matter in question and an objection to the admissions of such evidence shall be noted and dealt with by the Authority at a hearing on the matter.

(3) Subject to sub-Rule (4), all examinations and witness testimonies which are returned to the Authority and certified under the hand of the expert examination are in good faith proof of the facts stated testimonies.

(4) The Authority may, for the purpose of clarification, permit the introduction of relevant expert memorandum or report as evidence in chief which -

- (a) testify as to the witness's qualifications to draw the conclusions contained in the memorandum or report; and
- (b) confirm that the memorandum or report was prepared under the witness's direction and control and is accurate to the best of the witness's knowledge and belief.

Intervention

28. (1) An interested person may make representations in a hearing by -

- (a) filing with the Authority, on or before the date prescribed for the hearing, a letter of intervention stating -
 - (i) the intervener's interest in the matter;
 - (ii) the intervener's views regarding the subject

matter of the hearing;

(iii) any relevant information that may be useful in explaining or supporting those views; and

(b) serving a copy of the letter of intervention on all parties in the proceeding.

(2) The Authority may rule that the intervention made in terms of sub-Rule (1) be disregarded and shall give his reasons for this, in writing, to all parties in the proceeding.

Consolidation

29. The Authority may, upon motion and to promote the proper and expeditious dispatch of business, consolidate, for hearing or otherwise -

(a) any cases which involve the same applicant or involve substantially the same issues; or

(b) any application which presents conflicting or mutually exclusive claims.

Withdrawal of papers

30. (1) A party may file a request for the dismissal or withdrawal of any application, request or pleadings.

(2) The granting of a request to dismiss or withdraw an application, request or pleadings does not necessarily authorise the removal of such application or pleadings from the Authority's official public record.

Ex parte presentations

31. (1) An ex parte presentation may not be made to the Authority except for the circumstances provided for in sub-Rule (2).

(2) An ex parte presentation may be allowed by the Authority if a party files, within 24 hours after presentation of his case to the Authority, a statement containing -

- (a) the proceeding number;
- (b) the issue discussed;
- (c) a list of names of persons present at the meeting on behalf of the Authority and the party making the presentation; and
- (d) a copy of any written presentation made at the meeting.

(3) The Authority shall maintain a list of ex parte presentations that is open to public inspection.

Final Adjudications

32. (1) A decision of the Authority shall, in any proceedings under these rules, be final and binding on the parties notwithstanding the right of any party to seek recourse under Schedule 2 of the Act where a final order issued by the Authority subsequent to these proceedings is refuted.

(2) A decision of the Authority and a summary of proceedings under these rules shall be entered in the Public Register so that a person who is likely to be affected may have access.

**ZOLA TSOTSI
CHAIRMAN OF THE BOARD OF THE AUTHORITY**

NOTE

- 1. Act No. 12 of 2002
- 2. Act No. 19 of 1997