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STATUTORY INSTRUMENTS

2020 No. 76.

THE ELECTRICITY (APPROVAL AND VERIFICATION OF
INVESTMENTS) REGULATIONS, 2020

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STATUTORY INSTRUMENTS

2020 No. 76.

The Electricity (Approval and Verification of Investments) Regulations, 2020

*(Under sections 10(o) and 119 (2) (e) of the Electricity Act, 1999,
Cap. 145)*

IN EXERCISE of the powers conferred upon the Electricity Regulatory Authority by sections 10(o) and 119 (2)(e) of the Electricity Act, 1999, these Regulations are made this 19th day of May, 2020.

PART I—PRELIMINARY

1. Title

These Regulations may be cited as the Electricity (Approval and Verification of Investments) Regulations, 2020.

2. Application

These Regulations apply to the approval and verification of investments of licensees by the authority.

3. Purpose of Regulations

The purpose of these Regulations is—

- (a) to prescribe the processes, principles and standards for the approval and verification of investments in the electricity supply industry;
- (b) to prescribe the requirements for approval of investment plans and completed investments; and
- (c) to prescribe the stages of the investment planning and verification process.

4. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Electricity Act, 1999, Cap. 145;

“asset owner” means a legal or natural person that is licensed under the Act;

“authority” means the Electricity Regulatory Authority established under section 4 of the Act;

“construct” means to construct, re-construct, relocate, enlarge or extend;

“distribution network” means the distribution plant and equipment operated at the distribution voltage equal to or less than 33Kv and used for conveying electricity and includes any structures, equipment or other things used for that purpose;

“emergency investment” means investment aimed at maintaining continuity of supply to a maximum number of customers where supply is interrupted due to equipment failure or system faults as a result of natural elements;

“extension of network” means additional installation of a distribution or transmission network;

“goodwill” means the value of an asset owned that is intangible but has a quantifiable prudent value in a business;

“investment costs” means costs for distribution and transmission of electricity defined as the total direct and indirect costs of the complete distribution and transmission network;

“investment” means the construction, expansion, reinforcements, installation, upgrade or extension of a network asset;

- “licensee” means the holder of a licence issued under the Act;
- “life cycle costing” means a process that determines the sum of all costs associated with an asset or part of an asset including acquisition, installation, operation, maintenance, refurbishment and disposal cost;
- “network asset” means electrical plant and equipment used for conveying of electricity at voltages of 11 kilo volts or above including electrical lines, circuits, transformers and substations;
- “non-network assets” means non electrical plant and equipment that are used for the day to day operational and maintenance activities of the distribution and transmission network;
- “prudent utility practices” means any of the practices, methods and acts, which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made including the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, reasonably could have been expected to accomplish the desired result consistent with reliability, safety, good business practice and expediency;
- “rate base” means the value of property from which a licensee is permitted to earn a specified rate of return, in accordance with the Act, these Regulations and the licence;
- “repairs and maintenance” means all actions which have the objective of retaining or restoring a network asset in or to a state in which it can perform its required function;
- “tariff year” means the period, in a designated number of years or months, for which the approved tariffs shall apply;

“transmission network” means the transmission plant and equipment operated at the transmission voltage over and above 33Kv and used for the movement or delivery of electricity;

“replacement” means replacement of network assets;

“return on investment” means returns earned on investments in the transmission and distribution network comprising of electric lines, cables, transformer substations and other plant, equipment and facilities operating in transmission and distribution plant and equipment as defined in the Act and the Electricity (Primary Grid Code) Regulations, 2003;

“tribunal” means the Electricity Disputes Tribunal established under Part XIII of the Act;

“SCADA” means Supervisory Control and Data Acquisition;

“security” means security of supply of electricity and technical safety;

“upgrade” means a planned activity intended toward the improvement of network quality, value, capability and reliability, while extending its life in an economical manner and it excludes activities under operations and maintenance;

“wayleaves” means a right of way required by a licensee for purposes of construction of an electricity distribution or transmission infrastructure.

5. Principles and considerations for approval and verification of investments

(1) A licensee shall not undertake any investment without the approval of the authority.

(2) The following principles shall guide investments under these Regulations—

- (a) investments shall be reasonable, non-discriminatory and shall promote the security and reliability of supply and continuity of supply of electrical energy;
- (b) sequencing of investments shall be technically and financially feasible and sustainable;
- (c) investment plans shall be consistent with existing Government policy and the regulatory framework;
- (d) a complete investment shall deliver value for money to the customers; and
- (e) increase in the rate base shall improve the condition of the network or power plant.

(3) The authority shall, in approving and verifying investments in subregulation (1) take into account, the principles prescribed in subregulation (2).

(4) The authority shall in approving and verifying investments in subregulation (1) take into account, the following considerations—

- (a) the impact of the investment on the retail tariff structure and terms of service;
- (b) the impact of the cost of funding on the investment and the retail tariff;
- (c) the source of funding, including, grants, concessional funding and the impact on the retail tariff;

- (d) the benefit to be derived by customers from the completed investment; and
- (e) the public and private interests affected by the investments.

PART II—INVESTMENT PLANS

6. Requirements and content of investment plan

(1) Every licensee shall prepare and submit to the authority for approval, a five year investment plan in respect of the investments it proposes to undertake, six months from the date of commencement of these Regulations.

(2) A licensee shall prepare and submit to the authority for approval, an annual investment plan, consistent with the five year investment plan referred to in subregulation (1).

(3) The annual investment plan referred to in subregulation (2) shall be submitted to the authority ninety days before the end of each calendar year.

(4) The investment plans referred to in subregulations (1) and (2) shall contain, where applicable, sufficient detail to enable effective monitoring by the authority, including—

- (a) the current status of the network or power plant;
- (b) a description of challenges and opportunities associated with the network or power plant as currently configured;
- (c) the expansion or reinforcement plan of transmission or distribution network;
- (d) the expected time of completion of the investment;
- (e) the expected benefit to the customer to be derived from the investment and estimated timeline of the benefit;
- (f) the estimated loss reduction in percentage and the estimated timeline in months for the loss reduction;

- (g) the quality of supply improvements to be achieved by the proposed investments and the estimated timelines;
- (h) projected network growth, coverage and access to electricity;
- (i) the financing plan and capital expenditure required to implement the proposed investments;
- (j) an indication of sources of funding, including, shareholders equity, debt, retained earnings, grants or concessional financing;
- (k) the estimated operation and maintenance expenses relating to implementation of the proposed investment;
- (l) the expected environmental impacts and proposed mitigation measures;
- (m) the categorization and function of the investment;
- (n) the justification of technical mode of implementation and financial sequencing of the investment;
- (o) information relating to consultations with any affected licensees;
- (p) the transmission and distribution network plans, taking into account the additional anticipated generation capacity;
- (q) the prevailing standard cost database developed by a licensee and submitted to the authority and the asset owner twice a year;
- (r) the impact of the investment on private and public interests, including licensees under the Act; and
- (s) any matters that the licensee considers relevant to support its application.

(5) The licensee shall categorize assets in the investment plan as follows—

- (a) distribution network investments, including—
 - (i) overhead and underground electricity power lines, associated infrastructure and way leaves; and

- (ii) electricity substations and associated infrastructure;
- (b) distribution non- network assets, including—
 - (i) tools and equipment;
 - (ii) office buildings;
 - (iii) motor vehicles and trucks;
 - (iv) assets procured for operational purposes or first time additions and replacement after lifetime;
 - (v) replacement of assets that have not lived their useful life;
 - (vi) computers and office equipment;
 - (vii) furniture;
 - (viii) stationary;
 - (ix) communication facilities;
 - (x) safety wear;
 - (xi) closed-circuit television (CCTV) equipment;
 - (xii) fire-fighting equipment; and
 - (xiii) specialized equipment;
- (c) generation investments, including—
 - (i) generators;
 - (ii) switchgear;
 - (iii) transformers;
 - (iv) cables;
 - (v) protection equipment;
 - (vi) auxiliary supply;
 - (vii) building and civil works;

- (viii) closed-circuit television (CCTV);
 - (ix) metering equipment;
 - (x) network management system, including, control center, work management center, supervisory control and data acquisition (SCADA); and
- (d) transmission assets connected to the national grid, including—
- (i) substations;
 - (ii) communication equipment, tools and equipment;
 - (iii) SCADA systems; and
 - (iv) project generation assets such as plant refurbishment.

(6) The licensee shall submit to the authority the investment plans under this regulation in hard copy or electronic form as may be required by the authority.

(7) Where a licensee proposes to undertake investments pursuant to a concession agreement, the investment plan shall be submitted to the authority and the asset owner.

(8) The asset owner shall submit to the authority a written consent to the investment plan within fourteen days from the date of receipt of the copy of the investment plan.

(9) Where the asset owner does not respond within the time prescribed in subregulation (8), the authority shall determine the application for approval of investment plan.

(10) Where the asset owner refuses to give consent to the investment plan, the asset owner shall make representations in writing to the authority.

(11) An investment plan shall be accompanied by an environment and social impact assessment certificate issued in accordance with the National Environment Act, 2019, where applicable.

(12) Where a resettlement action plan is required to achieve the required investment, the investment plan shall include a preliminary resettlement action plan approved by the Ministry responsible for lands.

(13) Where a licensee fails to submit its investment plan within the time prescribed in these Regulations, the Authority may reject any investments undertaken by the licensee without approval and—

- (a) may not consider the investments for purposes of computing the retail tariff; or
- (b) may not include the investments in the rate base, where applicable.

(14) A licensee shall apply to the authority for approval of a change in the approved investment plan, where the change results into an increase in cost above ten percent of the approved cost.

(15) The authority shall on receipt of the application under subregulation (14), communicate its decision within forty five days from the date of receipt of the application.

PART III—APPROVAL OF INVESTMENTS

7. Approval of investment plans by authority

(1) The authority shall, upon receipt of an application for approval of investment plan under regulation 6 invite interested parties to make representations within the time specified in the notice of invitation.

(2) The authority shall consider all representations submitted to it under subregulation (1) and determine the application for approval of an investment plan within sixty days from the date of receipt of the application.

(3) Where the investment plan of the licensee is incomplete, the authority shall require the licensee to submit additional information within seven days from the date of receipt of the request.

(4) Where the licensee fails to provide additional information in subregulation (3), the authority shall determine the application on the basis of the available information.

(5) The authority shall communicate its decision to the licensee in writing stating the reasons for the decision.

8. Review of decision of authority

(1) Where a licensee is dissatisfied with the decision of the authority under regulation 7, the licensee may apply to the authority to review the decision within twenty one days from the date of receipt of the decision.

(2) The application for review under subregulation (1) shall set out the grounds upon which it is based and raising questions as to the accuracy of the decision of the authority including—

- (a) an error of fact;
- (b) change in circumstances; or
- (c) facts not previously brought to the attention of the authority that could not have been discovered by reasonable diligence at the time of processing the application.

(3) The authority shall consider an application for review under this regulation and make a decision within thirty days from the date of receipt of the application.

(4) The authority shall communicate its decision to the licensee in writing stating the reasons for its decision.

(5) Where the licensee is not satisfied with the decision of the authority in subregulation (4), the licensee may refer the matter to the tribunal.

Supplementary investment plan
The licensee may prepare and submit to the authority for
supplementary investment plan in respect of the investments
in the approved investment plan.

The authority shall, upon receipt of the supplementary
plan under subregulation (1), invite interested parties to
presentations within the time specified in the notice.

The authority shall consider all representations received
under subregulation (2) and determine the application for approval of
supplementary investment plan within thirty days from the date of
the application.

(4) Where the supplementary investment plan is incomplete, the
authority shall require the licensee to submit additional information
within seven days from the date of receipt of the request.

(5) Where the licensee fails to provide the additional information
under subregulation (4), the authority shall determine the application on
the basis of the information available.

(6) The authority shall communicate its decision in writing
stating the reasons for the decision.

10. Emergency investments

(1) The licensee may utilise a cost not exceeding ten percent
of the cost of the approved investment plan category referred to in
regulation 6 (5) to implement an emergency investment.

(2) The licensee shall notify the authority of the implementation
of the emergency investment referred to in subregulation (1) within
thirty days of implementation.

(3) Where the cost of an emergency investment exceeds ten
percent of the cost approved for an investment plan category, the
licensee shall seek approval of the authority prior to its implementation.

shall be approved
(5) In the case of assets operated as emergency investments shall be approved by the recommendation of the asset owner.

(6) The authority shall, before approving an investment referred to in subregulation (3) satisfy itself that the emergency investment is aimed at maintaining continuity of supply to a maximum number of customers where electric supply has been interrupted due to equipment failure or system faults as a result of natural elements.

11. Return on investment

(1) For the purposes of these Regulations, only approved and verified investments shall earn a return on investment as prescribed in the licence and these Regulations.

(2) The computation of the return on investment shall be in accordance with the formulae and principles set out in the licence.

(3) The non-network asset investments shall not earn a return on investment.

(4) For the avoidance of doubt, the approved and verified investments referred to in subregulation (1) shall not include—

- (a) depreciation and impairment charges;
- (b) assets held for future use and capital work in progress;
- (c) goodwill;
- (d) customer funded schemes;
- (e) borrowing costs;
- (f) overhead absorption costs; or

- (g) investments funded from sources including, grants, concessional loans, Government funds or customer's funds.

PART IV—MONITORING OF INVESTMENT PLANS

12. Monitoring of investment plans

(1) A licensee shall submit to the authority a progress report on implementation of the approved investment plan within six months of the approval of the plan.

(2) The progress report referred to in subregulation (1) shall be accompanied by the licensee's management accounts relating to the period of submission.

(3) The progress report referred to in subregulation (1) shall state the delays encountered in implementing the investment and the remedies or measures taken, or proposed to be taken to ensure that the project is completed on time.

PART V—VERIFICATION OF COMPLETED INVESTMENTS.

13. Verification of completed investments

The authority shall verify completed investments undertaken by a licensee for inclusion in the rate base or retail tariff, as appropriate.

14. Submission of completed investments

(1) A licensee shall submit to the authority an application for verification of completed investments within sixty days after the end of the tariff year.

(2) The application in subregulation (1) shall be accompanied by documents specified in the Schedule.

(3) A licensee shall, in addition to the documents referred to in subregulation (2), submit to the authority a reconciliation between the draft financial statements and the completed investments.

(4) The authority shall reject an application submitted contrary to this regulation and the licensee may resubmit the application for consideration in the subsequent tariff year.

(5) For the avoidance of doubt, the licensee shall include only the investments approved in the investment plan, in the application under subregulation (1).

(6) Where a licensee operates assets under concession arrangements, the licensee shall submit a copy of the application under subregulation (1) to the asset owner.

(7) The asset owner shall within seven days from date of receipt of the application in subregulation (6) provide its representations on the application to the authority, with a copy to the licensee.

(8) The application referred to in subregulation (1) shall specify the investments implemented using funds from third parties, including, grants, concessional loans, Government funds or customer funds.

Procedure for Verification of Investments

15. Procedures for verification of investments

(1) The authority shall, upon receipt of an application for verification of completed investments—

- (a) undertake a desk review of the application for purposes of verifying the procurement processes, contract awards, the project implementation and commissioning reports and any payments made against completed investments;
- (b) undertake a field verification audit on any completed investment identified by the authority, to verify existence, quality of works and completeness of the investment.

(2) A field verification audit referred to in subregulation (1)(b) may be—

- (a) conducted on a sample basis;
- (b) based on the risk assessment carried out during the desk verification; or
- (c) based on costs associated with the investment.

(3) For the purposes of verifying the procurement process referred to in subregulation (1)(a), the authority may audit the procurement process used by the licensee to determine—

- (a) compliance with best procurement practices;
- (b) competitiveness;
- (c) transparency;
- (d) fairness; and
- (e) value for money.

(4) Where the information submitted is incomplete, the authority shall require the licensee to submit additional information within seven days from the date of receipt of the request.

(5) Where the licensee fails to provide additional information in subregulation (4), the authority shall determine the application on the basis of the information available and communicate its decision in writing to the licensee.

16. Confidentiality

Information provided under these Regulations shall be handled in accordance with the Access to Information Act, 2005 and the Data Protection and Privacy Act, 2019.

PART VI—MISCELLANEOUS

17. Disposal of investments

(1) A licensee who wishes to dispose of an investment, shall seek the approval of the authority in writing.

(2) The application in subregulation (1) shall detail the investment or equipment and the associated salvage value.

(3) The application in subregulation (1) shall be submitted to the authority together with the annual investment plan.

(4) The application to dispose shall be for assets that are no longer of use to the electricity supply industry.

SCHEDULE

Regulation 14(2)

SUPPORTING DOCUMENTS FOR APPLICATION FOR APPROVAL OF COMPLETED INVESTMENTS

A licensee shall submit a summary showing the description or category of investments, the actual amount spent in Uganda shillings as follows—

1. PROCUREMENT DOCUMENTS

(1) **Market sourcing documents including—**

- (a) invitation to tender or the advert for the tender;
- (b) bid document or quotation;
- (c) shortlist of bidders;
- (d) scope of works; and
- (e) bills of quantities.

(2) **Evaluation documents including—**

- (a) signed minutes of the tender committee approving the investment;
- (b) evaluation methodology; and
- (c) declaration of impartiality and confidentiality.

(3) **Copies of signed contracts.**

2. RESETTLEMENT ACTION PLAN AND ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT REPORTS

- (a) certificate of Environmental and Social Impact Assessment from the National Environmental Management Authority;
- (b) Resettlement Action Plan clearance by the Ministry responsible for Lands;
- (c) Evidence of acquisition of land or way leaves consent; and
- (d) any unresolved complaints.

3. ENGINEERING DOCUMENTS

(1) **Initial documents including—**

- (a) reports showing the approved business case and justification;
 - (b) approved project scope;
 - (c) load flow studies; and
 - (d) status of the network or the generation plant.
- (2) Progress reports including—
- (a) statement of movement of materials from store to the field;
 - (b) implementation progress report;
 - (c) status reports, variance reports and exception reports;
 - (d) minutes of project progress meetings;
 - (e) report showing the percentage completion of the works and the level of funds disbursement; and
 - (f) where the project has experienced delays, reasons for the delays.
- (3) Turnkey projects including—
- (a) project needs analysis;
 - (b) project justification for turnkey;
 - (c) procurement process documents including, internal approvals, invitation to bid, bidder responses or proposals, technical and financial evaluation reports, negotiation reports, contracts; and
 - (d) project execution reports.
- (4) Commissioning report including commissioning tests undertaken.
- (5) Project completion report including—
- (a) the quantified state of the network prior to the investment;
 - (b) the current state of the network after implementation of the project;
 - (c) calculated and quantifiable direct benefits to be achieved and accruing to customers by the investments;

- (d) approval of report by the responsible officer of the licensee and signed by him or her;
- (e) as-built diagrams;
- (f) any defects reported.

4. FINANCIAL DOCUMENTS

- (1) Payment schedules including—
 - (a) payment vouchers paid out with supplier or contractor invoices; and
 - (b) any other necessary documents.
- (2) Draft financial statements including—
 - (a) audited financial statements indicating licensee' or opinion of its auditors on the adequacy of internal controls employed by the licensee relating to investments;
 - (b) the draft financial statements for the year whose investments are included complete with the notes, statement of comprehensive incomes, statement of financial position, the statement of changes in equity and cash flow statement.
- (3) Impairment schedule including—
 - (a) the detailed impairment costs per asset, location, feeder, cost, number of years, purchase value, accumulated depreciation, net book value, review insurance proceeds, if any; and
 - (b) the following processes may be undertaken to provide assurance that rate base impairment is properly recognised by the licensee—
 - (i) review of assets replacement schedule for causes;
 - (ii) examination of impairment values in the financial statement;
 - (iii) review of accident or emergency reports; and
 - (iv) review of insurance proceeds.
- (4) Source of funding for all completed investments.

- (5) Non network assets including—
- (a) the item description, items or categories, approved budget against the actual and an explanation for the variance;
 - (b) detailed accounting system extract showing the document reference number, invoice number, check payment number;
 - (c) evidence of ownership, for instance a log-book in the case of a motor vehicle;
 - (d) updated register.
- (6) Network assets including—
- (a) the item description, items or categories, approved budget against the actual and an explanation for the variance;
 - (b) the asset register and the asset movement schedule;
 - (c) list and location of impaired or disposed of assets;
 - (d) the invoices, payment vouchers and where necessary, journal vouchers;
 - (e) a list of all third party funded projects at completion;
 - (f) detailed excel extracts for the project;
 - (g) procurement file, including, initiation, approval minutes, solicitations, etc
 - (h) project file, including, implementation plan, progress report and closure report; and
 - (i) commissioning report.
- (7) New connection costs including—
- (a) a list of all new connection categories made during the year;
 - (b) a reconciliation of the new connections in the financial statements and the ones submitted to the authority where the two are different;
 - (c) the new connections made including the capital contributions made;
 - (d) detailed list of reconnections and disconnections from the previous year;
 - (e) the meter numbers assigned to the customers, a connection date, receipt amount and date of payment;

- (f) detailed list of customer funded connections;
 - (g) the standard cost of new connections; and
 - (h) a materials list of the items from stores used in the standard cost for a new connection.
- (8) A request for disposal of investments detailing the respective equipment and the associated salvage value for approval by the authority.
- (9) An asset register containing the following—
- (a) year of purchase;
 - (b) asset serial number;
 - (c) asset description;
 - (d) expected life of asset;
 - (e) asset location;
 - (f) depreciation cost charged;
 - (g) cost additions on asset; and
 - (h) year of disposal.

Cross Reference

Access to Information Act, 2005, Act No.6 of 2005

Data Protection and Privacy Act, 2019, Act No.9 of 2019

Electricity (Primary Grid Code) Regulations, 2003, S.I. No.24 of 2003

National Environment Act, 2019, Act No. 5 of 2019

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RICHARD SANTO APIRE
Chairperson, Electricity Regulatory Authority