

CONSTITUTION

OF THE

REGIONAL ELECTRICITY REGULATOR'S ASSOCIATION (RERA)

OF THE

SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC)

INDEX

	Page/s
CHAPTER 1 – GENERAL PROVISIONS	
1. Preamble	4-5
2. Article 1 : Definitions	6-7
3. Article 2 : Guiding Principles	7-8
4. Article 3 : Establishment	8
5. Article 4 : Objectives	9
6. Article 5 : Functions	9-11
7. Article 6 : Membership	11-12
CHAPTER 2 - MANAGEMENT	
8. Article 7 : Structure of RERA	13-16
9. Article 8 : Funding Arrangements	16-17
10. Article 9 : Meetings	17-19
11. Article 10 : Residual Powers	20
12. Article 11 : Sanctions	20

13.	Article 12 :	Seat of the Secretariat	20
14.	Article 13 :	Entry into Force	20
15.	Article 14 :	Depository	21
16.	Article 15 :	Dissolution of RERA	21
17.	Article 16 :	Indemnity	21
18.	Article 17 :	Amendments	21
19.	Article 18 :	Interpretation	22
20.	Article 19 :	Settlement of Disputes	22

PREAMBLE

WE, THE UNDERSIGNED, being the representatives duly authorised to sign this Constitution on behalf of our respective organizations;

IN PURSUANCE of the SADC Energy Ministers' agreement in principle to create a regional association of electricity regulators in terms of the SADC Protocol on Energy (1996), the SADC Energy Co-operation Policy and Strategy (1996), the SADC Energy Sector Action Plan (1997), the SADC Energy Activity Plan (2000) and in pursuit of the broader initiative of the African Energy Commission;

RECOGNISING –

- the need to co-operate in and promote the development of regulatory capacity building in the region;
- the increasing interconnections of the electricity systems between SADC countries and the continuous increase in regional electricity trading, driven by the benefits of economies of scale and shared resources;
- that the successful integration of electricity systems require clear frameworks to facilitate the development of harmonised market structures, systems operations and institutional arrangements; and
- the need for appropriate regional policies and strategies to promote infrastructure investment in the electricity supply industry across the region;

TAKING INTO CONSIDERATION the deliberations of the First and Second Southern African Conferences on Regional Regulatory Co-operation held in August 1998 in South Africa and March 2000 in Botswana and the endorsement of their outcomes by the SADC Energy Ministers in May 2000 in

Luanda, Angola, and a consultative workshop held in Namibia in October 2000 to consider the first draft of this Constitution;

DETERMINED to establish a consultative and collaborative body in order to play a fitting role in the development of the Electricity Supply Industries in the Southern African Development Community and beyond;

HEREBY ADOPT the following Constitution;

CHAPTER 1 – GENERAL PROVISIONS

ARTICLE 1 – DEFINITIONS

In this Constitution unless the context requires otherwise –

African Energy Commission

- means a body of African Ministers constituted under the Lagos Plan of Action (1980) of the Organisation of African Unity, and its successor in title under the African Union.

Annual General Meeting

- means the Plenary Meeting as described in Article 9.1.

Chairperson

- means the person elected in terms of Article 7.2

ESI

- means Electricity Supply Industry.

Executive Committee

- means the Committee established in terms of Article 7.3 .

Executive Secretary

- means the person appointed in terms of Article 7.5.

Member

- means the regulatory body which is a signatory to this document.

Plenary

- means the highest decision making authority of RERA established in terms of Article 7.2.

Portfolio Chairperson

- means the Member elected as Chairperson of a Portfolio Committee in terms of Article 7.4 .

Regulator

- means a body or person, appointed by a SADC Member country to regulate the electricity supply industry of that Member country.

RERA

- means the Regional Electricity Regulator's Association established in terms of this Constitution.

SADC

- means the Southern African Development Community.

Secretariat

- means the body appointed by the Executive Committee in terms of Article 7.5.

SAPP

- means the Southern African Power Pool.

ARTICLE 2 – GUIDING PRINCIPLES

For the purpose of implementing this Constitution the Members agree that:

- (i) the developments in the ESI across the SADC region are in line with broad international trends in which neighbouring countries agree to form integrated electricity markets;
- (ii) there are benefits arising from economies of scale and shared resources which are economic imperatives to pursue the

development of greater integration of the electricity systems in southern Africa;

- (iii) the successful regional integration of electricity systems requires clear frameworks to facilitate - cross-border transactions, regional systems operations, a system of tariffs for use of regional transmission infrastructure, as well as future investments in such infrastructure;
- (iv) the development of compatible regulatory frameworks is essential to harmonising and creating market structures that remove barriers to trade and attract investment in the ESI across the region; and
- (v) the long-term objective is to create a financially self-sustaining RERA as an institution responsible for the facilitation of regional electricity issues.

ARTICLE 3 – ESTABLISHMENT

- 3.1 RERA is hereby established in accordance with the terms of this Constitution.
- 3.2 RERA shall have legal personality with the capacity and power to enter into contracts, acquire, own or dispose of movable or immovable property and sue and be sued.
- 3.3 RERA shall, pursuant to Article 3.2 above, have such legal capacity in each member country as is necessary for the proper exercise of its administrative functions.

ARTICLE 4 – OBJECTIVES

The objectives of RERA fall into three broad categories, namely:

- (i) **Capacity Building and Information Sharing**
Facilitate electricity regulatory capacity-building among Members at both a national and regional level through information sharing and skills training;
- (ii) **Facilitation of ESI Policy, Legislation and Regulations**
Enhance the increasing integration of electricity systems and electricity trade in the southern African region and beyond through the facilitation of harmonized ESI policy, legislation and regulations for cross-border trading, focusing on terms and conditions for access to transmission capacity and cross-border tariffs.
- (iii) **Regional Regulatory Co-Operation**
Deliberate and make recommendations on issues affecting the economic efficiency of electricity interconnections and electricity trade among members on issues that fall outside national jurisdiction, and to exercise such powers as may be conferred on RERA through the SADC Energy Protocol.

ARTICLE 5 - FUNCTIONS

In order to achieve its objectives outlined in Article 4, the functions of RERA shall be to –

- (i) monitor and evaluate electricity regulatory practises among Members to determine regional training needs;

- (ii) develop, conduct or manage information and capacity-building programmes;
- (iii) promote and support the development of independent electricity regulators in Member countries where same are not presently established;
- (iv) source funding for the implementation of programmes and projects;
- (v) facilitate co-ordination in the development of the following key areas:
 - (a) regional regulatory policies, legislation and regulations;
 - (b) electricity market structures in the region;
- (vi) promote research and prepare position papers on key aspects of regional regulation, including but not limited to examination of policies, strategies and legislation in the ESI of the region in comparison with international trends and best practices;
- (vii) require members to provide information as may be reasonably required to facilitate the co-ordination of electricity trade and systems operations, in conjunction with the SAPP Co-ordination Center and national control centers;
- (viii) facilitate the management of an information database relating to the regional ESI and regional electricity trade, taking into account the confidentiality of commercially sensitive information;
- (ix) investigate and deliberate on issues referred to it by Members or emanating from any other source, relating to matters which impact on the development of integrated electricity supply systems in the southern African region;

- (x) promote where necessary the establishment of norms and standards for the ESI across the SADC region, including (but not limited to) environmental and safety regulations; and
- (xi) establish working relationships with other agencies that promote the regional development and co-ordination of electricity and energy related matters.

ARTICLE 6 – MEMBERSHIP

- 6.1 Membership is open to bodies responsible for regulating ESI in each country within SADC.
- 6.2 Membership is limited to each country being entitled to a single membership.
- 6.3 Each Member shall be represented by the Chief Executive Officer of its regulator duly mandated by the Member to make decisions on behalf of that Member at a RERA Meeting, unless a Member gives a written notice appointing another official to be its representative.
- 6.4 Every Member shall pay an annual subscription as determined at the Annual General Meeting.
- 6.5 Any Member with outstanding arrears of contributions for the previous two complete financial years shall be deprived of the right to participate in Meetings or to present candidates for any post in any of the organs of the RERA.
- 6.6 Members shall complete on an annual basis, a questionnaire, indicating the following:
 - (i) the country in which they operate as regulator; and

(ii) an updated survey of the ESI in their country and the mode of regulation which is being undertaken.

6.7 New membership will be permitted at any time by application to the Executive Committee, with notification thereof being circulated to all existing members. Membership will be approved by the Plenary at its meeting following the receipt of the application. Confirmation of membership status will be forwarded to the applicant within two months of approval at the Plenary Meeting, and upon payment of the new Member's assessed contribution.

6.8 Members are entitled to resign their membership from RERA by giving notice to the Chairperson, who shall notify the Plenary at its following meeting.

CHAPTER 2 – MANAGEMENT

ARTICLE 7 – STRUCTURE OF RERA

7.1 The organs of RERA shall be –

- (i) the Executive Committee;
- (ii) the Portfolio Committees;
- (iii) the Secretariat; and
- (iv) other subsidiary organs that may be established in accordance with the provisions of this Constitution.

7.2 **The Plenary**

- (i) There shall be a Plenary which shall be composed of all the Members of RERA.
- (ii) The Plenary shall elect a Chairperson for a term of two (2) years and may be re-elected to same office or another office;
- (iii) The Plenary is the highest decision making authority of RERA.

7.3 **The Executive Committee**

- (i) There shall be an Executive Committee, which shall be responsible for the conduct of the affairs of RERA and co-ordinating the Portfolio Committee Meetings, and ensuring that minutes are kept of such meetings by the Secretariat and circulated to members.
- (ii) The Chairperson, the three Portfolio Chairpersons and one other Member shall constitute the Executive Committee of RERA.

- (iii) The Portfolio Committee Chairpersons and one other Member shall be elected at the Annual General Meeting, from and by the Plenary.
- (iv) All officials are elected for a period of two (2) years and may be re-elected to same office or another office.
- (v) The meetings of the Executive Committee shall be chaired by the Chairperson or, in his absence, by a member appointed by the Executive Committee.

7.4 The Portfolio Committees

- (i) There shall be Portfolio Committees constituted by the three Portfolio Chairpersons which shall execute the objectives and functions of RERA as outlined more fully in Article 4, namely:
 - (a) Capacity Building and Information-Sharing
 - (b) Facilitation of ESI Policy, Legislation and Regulations;
and
 - (c) Regional Regulatory Co-operation.
- (ii) Members shall be entitled to membership of each of the Portfolio Committees.
- (iii) These Portfolio Committees may determine their own terms of reference and exercise such powers as the Plenary confers on them;
- (iv) On carrying out the functions assigned to them, in terms of Article 5 above, the Portfolio Committees shall submit written reports outlining provisional work programmes or recommendations, to be approved by the Plenary.

7.5 **The Secretariat**

- (i) The Secretariat shall consist of an Executive Secretary and other staff as may be determined by the Executive Committee.
- (ii) The Executive Secretary shall be appointed by the Executive Committee and shall be the Head of the Secretariat.
- (iii) The Executive Secretary reports to the Chairperson.
- (iv) The terms and conditions of employment of the Executive Secretary and other staff shall be determined by the Executive Committee and subject to Plenary approval.
- (v) Other staff and employees, if any, shall be appointed by the Executive Committee and the Executive Secretary in accordance with the terms and conditions approved by the Plenary.
- (vi) The duties of the Secretariat shall be to –
 - (a) Organise and arrange all Meetings of RERA, provided that all notices shall be issued by the Executive Secretary in consultation with the Chairperson; without in any way derogating from the generality of the aforesaid, the duties shall include the preparation and circulation of agenda to Members, preparation, receipt and distribution of papers and keeping the minutes of Meetings;
 - (b) Attend and provide logistical support to all Meetings of RERA;
 - (c) Collect and process statistical data on the ESI of the RERA Member countries;
 - (d) Prepare/collate position papers;

- (e) Obtain and circulate information that will facilitate the achievement of the objectives of RERA as may be directed by the Executive Committee;
 - (f) Provide administrative and technical support to the Portfolio Committees of RERA;
 - (g) Prepare the annual budget of RERA in accordance with Article 8.3;
 - (h) Collect and account for the funds of RERA, and to keep books of account; and
 - (i) Monitor the development of the objectives of RERA on a continuous basis;
 - (j) Such other duties as may be assigned to it
- (vii) RERA shall establish a set of rules for its operation which rules shall be ratified by the Plenary and published within a month of ratification and circulated to all members by the Secretariat.
- (viii) Each Portfolio Committee shall be responsible for establishing its own rules and guidelines which shall be ratified by the Plenary;
- (ix) Any amendments to any rules shall be circulated to all Members two months prior to the rule taking effect.

ARTICLE 8 – FUNDING ARRANGEMENTS

- 8.1 Members shall share the costs of the operation of RERA equitably as determined by the Plenary.
- 8.2 The financial year shall be determined by the Plenary.
- 8.3 The Secretariat shall, before every Annual General Meeting, prepare a budget showing the recurrent costs of RERA together with any

identified capital expenditure for the following financial year and the contribution contemplated to be raised from each Member for review by the Executive Committee. After reviewing such a budget the Executive Committee shall submit it to the Plenary of RERA for approval.

- 8.4 Each Member shall remit to the Secretariat its contribution for the current financial year in the manner prescribed by the Plenary.
- 8.5 The management of funds of RERA shall be in accordance with the rules set by the Plenary.
- 8.6 The financial resources of RERA may consist of:
- (i) Annual contributions by Members;
 - (ii) Special contributions by Members;
 - (iii) Other sources as may be approved by the Plenary, such as grant funding or donations.

ARTICLE 9 – MEETINGS

9.1 Annual General Meetings

- (i) RERA shall hold an Annual General Meeting once every year.
- (ii) The Annual General Meeting shall be held to review the annual report of the activities of RERA, the effectiveness of RERA, the audited accounts and the forecasted operating budget as well as the business plan submitted by the Executive Committee.
- (iii) Annual General Meetings shall be chaired by the Chairperson or, in his absence, by a Member appointed by the Executive Committee.

9.2 Special General Meetings

RERA may hold a Special General Meeting at the instance of the Chairperson, Executive Committee, or whenever requested by at least half of the Members. One month's notice shall be given for such a Meeting.

9.3 Portfolio Committee Meetings

The Portfolio Committees on Capacity Building, Facilitation of ESI Policy, Legislation and Regulations and Regional Electricity Regulatory Co-Operation shall meet at the instance of the Executive Committee, the Portfolio Chairpersons or when requested to do so, by at least half of the Plenary.

9.4 Venue of the Meetings

The venue of the Meetings shall be determined by a simple majority of Members at a Meeting, taking into consideration the principle of rotating Meetings among Member countries. In the absence of agreement by the majority of Members, the decision on the venue of a particular Meeting shall be made by the Executive Committee.

9.5 Expenses of Attending Meetings

- (i) The expenses of attending Annual General Meetings shall be borne by individual Members.
- (ii) The expenses of the Secretariat and Portfolio Committee Meetings shall be borne by RERA.

9.6 Assistance by Host Member

The Member in whose country a meeting is held shall provide such logistical assistance as may be determined by RERA from time to time.

9.7 Quorum

Subject to Articles 15.1 and 17.2, the quorum for any Meeting shall be a simple majority of RERA Members.

9.8 Voting

Unless specified otherwise in the Constitution –

- (i) Each Member shall have one vote at any Meeting;
- (ii) Subject to the other provisions of this Constitution, all decisions shall be taken by a simple majority of Members present. In the case of equal votes, the Chairperson shall be entitled to have both a deliberative and casting vote;
- (iii) Voting shall be conducted by secret ballot;

9.9 Observers

- (i) Observers may, with the consent of the Executive Committee, be invited to any RERA Meeting.
- (ii) Observers may be permitted to participate in discussions and/or deliberations but shall not have voting rights.

ARTICLE 10 – RESIDUAL POWERS

All powers not specifically provided for in this Constitution, shall be exercised by the Plenary.

ARTICLE 11 – SANCTIONS

- 11.1 Sanctions may be imposed against any Member that is in arrears with payment of its contributions for more than one year for reasons other than exceptional circumstances that gravely affect its ability to fulfil its financial commitments: provided that such circumstances are communicated to, and accepted by the Plenary.
- 11.2 The nature and extent of sanctions to be applied shall be determined at an Annual General Meeting on a case-by-case basis.
- 11.3 Article 11.1 above must be read together with Article 6.5.

ARTICLE 12 – SEAT OF THE SECRETARIAT

The Seat of the Secretariat shall be determined by the Plenary.

ARTICLE 13 – ENTRY INTO FORCE

- 13.1 This Constitution shall enter into force on the date when it is signed by at least four Members.
- 13.2 In the case of a Member admitted to membership under Article 6.4 of this Constitution, such membership shall come into force on the date of the approval of its application by a General Meeting, or by a resolution of Plenary.

ARTICLE 14 – DEPOSITORY

This Constitution shall be deposited with the Executive Secretary, who shall transmit certified signed copies to all Members.

ARTICLE 15 – DISSOLUTION OF RERA

RERA may be dissolved by a resolution taken at an Annual General Meeting by a three-quarters majority of Members. Such resolution shall determine the terms and conditions of dealing with the liabilities and the disposal of the assets of RERA.

ARTICLE 16 – INDEMNITY

Every officer, employee or agent of RERA shall be indemnified by RERA against any liability incurred in the *bona fide* exercise of their functions.

ARTICLE 17 – AMENDMENTS TO THE CONSTITUTION

17.1 This Constitution may be amended at the Annual General Meeting, provided that a notice for such amendment shall have been delivered to each Member three (3) months prior to the date of the Meeting.

17.2 An amendment shall be implemented if it is so resolved at the Annual General Meeting by a two-thirds majority of the Members.

ARTICLE 18 – INTERPRETATION

The decision of a Plenary Meeting shall be final in the interpretation of this Constitution.

ARTICLE 19 – SETTLEMENT OF DISPUTES

Any dispute arising from the application of this Constitution, which cannot be settled amicably, shall be referred to a Plenary Meeting.

STRUCTURE OF RERA

PLENARY

- composed of all Members
- chaired by an elected Chairperson for a two-year term
- highest decision making authority of RERA

EXECUTIVE COMMITTEE

- Chairperson of Plenary, Portfolio Committee Chairpersons & one other elected Member
- Appoint Secretariat and its staff subject Plenary approval
- Chairperson co-ordinates all Portfolio Committee and General Meetings

Capacity Building
Portfolio Committee

Facilitation
Portfolio Committee

Regulatory Co-
Operation
Portfolio Committee

SECRETARIAT

- Provide administrative and technical support to Plenary and the Portfolio Committees of RERA
- Prepare budget at the request of the Executive Committee for approval by Plenary