

*Statutory Instrument No. 11 of 2021*

**BOTSWANA ENERGY REGULATORY AUTHORITY ACT**  
(Cap. 74:11)

**BOTSWANA ENERGY REGULATORY AUTHORITY (COMPLAINTS  
SETTLEMENT PROCEDURE) REGULATIONS, 2021**  
(Published on 19th February, 2021)

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IN EXERCISE of the powers conferred on the Minister of Mineral Resources, Green Technology and Energy Security by section 74 (2) (c) of the Botswana Energy Regulatory Authority Act, the following Regulations are hereby made —

#### PART I — *Preliminary provisions*

- |                |   |
|----------------|---|
| Citation       | 1. These Regulations may be cited as the Botswana Energy Regulatory Authority (Complaints Settlement Procedure) Regulations, 2021.  |
| Interpretation | 2. In these Regulations, unless the context otherwise requires —<br>“authorised representative” means a person duly authorised by a complainant or a respondent, to represent him or her in the conduct of a complaint and includes an attorney or a principal officer; and<br>“code of practice on consumer protection” means a document prepared by a licensee and approved by the Authority, that sets out the procedure for receiving and settling a complaint. |
| Application    | 3. These Regulations shall govern the procedure related to the settlement of a complaint received by the Authority on the regulated sectors, and for other related matters.   |

#### PART II — *Complaint procedure*

- |                                       |  |
|---------------------------------------|--|
| Filing of complaint                   | 4. (1) A person may lodge with the Authority, a complaint against a licensee by completing Form A set out in Schedule 1, and the Authority shall acknowledge receipt of the complaint within two days of receipt of such complaint.<br>(2) Notwithstanding the provisions of subregulation (1), —<br>(a) an authorised representative may, on behalf of a consumer or customer, lodge a complaint with the Authority; or<br>(b) a group of persons may file with the Authority a complaint by completing Form A set out in Schedule 1, and such complaint shall be submitted with —<br>(i) a list of the complainants’ names and signatures or thumb prints, and<br>(ii) minutes of the meeting resolving the filing of the complaint.<br>(3) A complaint under subregulation (1) may be in any form of correspondence, electronic or otherwise.<br>(4) A complainant shall, before filing a complaint under subregulation (1), show by completing a questionnaire that he or she —<br>(a) has notified the Authority in writing of his or her intention to commence the internal dispute settlement process;<br>(b) has exhausted all the licensee’s internal dispute settlement procedure in terms of the licensee’s code of practice on consumer protection; and<br>(c) is dissatisfied by the outcome of the licensee’s internal dispute settlement procedure under paragraph (b). |
| Service of summons to present defence | 5. (1) The Authority shall within seven days after receipt of a complaint under regulation 4, summon the respondent in terms of Form B set out in Schedule 1 to present his or her defence.  |

(2) The summons in subregulation (1) shall be served on the respondent by way of —

- (a) personal delivery to the respondent or his or her representative, and the respondent or his or her representative shall acknowledge receipt by signing and returning the summons to the Authority within 14 days of receipt of such summons;
- (b) registered mail with return receipt; or
- (c) publication in two newspapers of wide circulation in Botswana where the Authority has received written proof stating that —
  - (i) the respondent is avoiding the service under paragraph (a), or
  - (ii) for any other reason the summons cannot be served in the ordinary way.

6. (1) A respondent shall within 14 days of receipt of the summons under regulation 5, present to the Authority a defence to the complaint which may include a counterclaim or claim for set-off.

Defence to  
complaint

(2) Where the respondent denies an allegation of fact in the complaint, he or she shall not do so evasively, but shall answer the point of substance.

(3) Where the respondent does not specifically or by necessary implication deny any allegation of fact in the complaint, the allegation shall be taken to be admitted by the respondent.

(4) The Authority may require any fact admitted under subregulation (3), to be proven otherwise than by such admission.

(5) Where a respondent fails to present a defence, the Authority shall deem the respondent to have waived his or her right to appear and participate in the proceedings, and the Authority shall proceed with the hearing *ex parte*.

(6) Notwithstanding the provisions of subregulation (5), the respondent may make an application showing sufficient cause why he or she has failed to participate in the proceedings upon showing cause for failure to make such a defence.

7. Upon receipt of a defence under regulation 6 (1) from the respondent, the complainant may prepare and submit to the Authority a reply within seven days, or such period as the Authority may determine after receipt of such defence.

Reply to  
defence

8. (1) Where a respondent makes a claim against a person who is not party to a complaint, for any —

Third party  
procedure

- (a) contribution or indemnity; or
  - (b) relief or remedy relating to the subject matter of the complaint and substantially the same, as a relief or remedy claimed by the complainant,
- the respondent may apply to the Authority to present a third party notice.

(2) An application under subregulation (1) shall be in writing and shall state the —

- (a) name and address of the third party;
- (b) nature of the claim made by the complainant;
- (c) stage which the proceedings in the complaint have reached; and
- (d) nature of the claim made by the applicant against the third party, and the relation of the respondent's claim to the complainant's claim against the applicant.

(3) Where —

- (a) an application under subregulation (1) is received;
  - (b) the Authority is satisfied that the respondent's claim against the third party is in respect of a matter referred to in subregulation (1); and
  - (c) having regard to all the circumstances of the complaint, it is reasonable and proper to grant leave to the respondent to present a third party notice,
- the Authority shall, upon such terms and conditions, grant leave to the respondent to present a third party notice.

- (4) A third party notice in Form C set out in Schedule 1, shall state the —
- (a) nature of the complainant's claim against the respondent;
  - (b) nature of the respondent's claim against the third party;
  - (c) relief claimed by the respondent against the third party;
  - (d) period within which the third party may present his or her defence; and
  - (e) consequences of failure by the third party to present his or her defence within such period.

(5) The Authority shall ensure that a copy of a third party notice presented to it is served to the third party in accordance with the procedure under regulation 5 (2).

(6) Where a third party notice has been served, the third party shall, where he or she disputes the claim, present his or her defence to the Authority within 14 days of service of the notice.

Direction

9. (1) Where a third party has presented a defence, the Authority may —
- (a) fix a date for the giving of directions; and
  - (b) on such date, if satisfied that there is a proper question to be heard as to the liability of the third party in respect of the claim made against him or her by the respondent,

order the question of such liability to be heard in such manner, at or after the hearing of the complaint, as the Authority may direct.

(2) Where the Authority is not satisfied under subregulation (1), the Authority may make such order as the nature of the complaint may require.

Award against third party in default

10. (1) Where a third party —
- (a) does not present his or her defence within the time specified under regulation 8 (6); or
  - (b) who has presented a defence does not appear on the date fixed for the giving of directions,

the respondent presenting a third party notice may apply *ex parte* to the Authority for an award against the third party, in respect of any contribution, indemnity or relief claimed in the notice.

(2) The Authority may, on application by the respondent in terms of subregulation (1), issue an award against the third party as the nature of the complaint may require, or as prescribed by the applicable laws.

Amendment to complaint and defence

11. (1) A party to the proceedings may upon providing sufficient cause, be allowed to amend a complaint, defence or reply, provided that the other party is afforded an opportunity to make a response not later than 14 days prior to the hearing.

(2) A party to the proceedings, upon being allowed to amend a complaint, defence or reply in terms of subregulation (1), shall amend such a complaint, defence or reply within seven days, or such a period that the Authority may determine.

### PART III — *Investigation and mediation procedure*

Investigation of complaint

12. (1) The Authority shall investigate a matter —
- (a) upon receipt of a defence under regulation 6 from the respondent;
  - (b) upon receipt of a reply under regulation 7 from the complainant; or
  - (c) where it comes to the attention of the Authority that the complainant has an interest in the matter to which the complaint relates, and the complaint is not frivolous or vexatious.

(2) Where the Authority finds the complainant's complaint to be frivolous or vexatious, the Authority may dismiss the complaint.

(3) Where it appears to the Authority at any time during or after the investigation that there exists a meritorious complaint, and the licensee has not considered the complaint or has not considered it adequately, the Authority may require the licensee to consider or reconsider the complaint within 14 days.

(4) The Authority may institute a mediation process, and an officer of the Authority or any other person nominated by the parties may act as a mediator.

(5) Where an amicable settlement has been reached, it shall be —

(a) written in terms of Form D set out in Schedule 1;

(b) signed by each party; and

(c) filed by the Authority for registration.

(6) The settlement reached under subregulation (5) shall upon being filed by the Authority, be deemed to be the award of the Authority.

(7) Each party shall furnish the Authority with information or documentation which the Authority may require in discharging its duty in accordance with the provisions of these Regulations.

(8) Any person who refuses to furnish the Authority with information or documentation under subregulation (7) commits an offence and is liable to a fine not exceeding —

(a) P30,000 or imprisonment for a term not exceeding five years, or to both, for a natural person; or

(b) 10% of annual turnover for a corporate body.

#### PART IV — *Hearing procedure*

13. (1) The complaint hearing proceedings by the Authority shall be *quasi-judicial* in nature.

Hearing  
procedure  
*quasi-judicial*

(2) The Authority shall issue a summons in Form E set out in Schedule 1 to each party to the proceedings.

(3) A party may appear in person or appoint an authorised representative to appear on behalf of the party at the hearing.

(4) The Authority may during the hearing require —

(a) any person to produce any information the Authority considers relevant; or

(b) the attendance of any person to give evidence and produce any document that may be in his or her custody.

(5) For the purposes of this regulation, "hearing" means all processes required for the Authority's determination and includes —

(a) oral and written submissions made by any party;

(b) evidence adduced by each party either oral or written; or

(c) discovery of documents.

(6) Where any matter of procedure has not been provided for under these Regulations, the Authority may during the hearing, regulate its own procedure.

14. (1) The Authority may make an order it deems fit where either party does not appear for a hearing, including dismissal of the complaint.

Non-appearance  
of party

(2) Where a respondent fails to appear when a complaint is called for hearing, and upon an application by a complainant, the Authority may issue an order for *ex parte* proof of the claim made by the complainant.

15. (1) A person who has sufficient interest in a complaint before the Authority may at any stage before the conclusion of the hearing, file an application to the Authority to intervene in the proceedings.

Application to  
intervene

- (2) An application to intervene shall state the —
- (a) title of the hearing to which the application relates;
  - (b) name, postal and physical address of the applicant;
  - (c) address for service;
  - (d) concise statement of the matter in issue affecting the applicant;
  - (e) party whose position the applicant intends to support; and
  - (f) grounds and documents in support of the application.
- (3) The Authority shall notify each party to the proceedings of the application under subregulation (1).
- (4) A party may file an objection to the application under subregulation (1) within seven days of receipt of the Authority's notice.
- (5) The Authority shall ascertain whether the applicant has sufficient interest in the complaint, and where the Authority is satisfied that the applicant has sufficient interest, the Authority shall grant the application on such terms and conditions as it may deem fit.
- (6) Where the application is granted, the applicant shall within seven days, file a statement of intervention stating the —
- (a) facts and arguments supporting the intervention;
  - (b) relief sought; and
  - (c) list of documents annexed and a copy of every document upon which the intervener relies.
- (7) A party to the proceedings may within seven days, separately or jointly, file with the Authority a reply to the statement of intervention.
- 16.** At the end of the hearing, the Authority shall —
- (a) impose a fine on any party;
  - (b) require a party to provide a product or service on specified terms and conditions;
  - (c) require a party to pay costs of the other party, a person appearing at the hearing or a person producing documents;
  - (d) dismiss a complaint;
  - (e) order the issue of a refund; or
  - (f) provide such other relief or remedy as may be deemed reasonable and necessary.
- 17.** A party aggrieved by the decision of the Authority under these Regulations, may within 30 days, appeal to the High Court.

Decision of  
Authority

Appeal

#### *PART IV — Limitation period*

Dismissal of  
proceedings  
instituted after  
period of  
limitation

**18.** (1) Subject to the provisions of these Regulations, a complaint under Schedule 2, which is instituted after the period of limitation has prescribed, shall be dismissed.

(2) Where after the institution of a complaint, a person is made a party either as a complainant, respondent or third party, the complaint shall as regards such person, be deemed to have been instituted on the date on which such person is made a party.

Accrual of  
cause of action

**19.** (1) Subject to the provisions of these Regulations, the right of action in respect of any proceedings shall accrue on the date on which the cause of action arises.

(2) The period of limitation referred to under regulation 18, in relation to any proceedings, shall commence from the date on which the right of action for such a proceeding accrues.

**20.** Where the proceedings are founded upon the same cause of action and in good faith, and the period of limitation set out in Schedule 2 for any complaint is computed, the time during which the complainant has brought civil proceedings against the respondent in a court which has no jurisdiction, shall be excluded.

Exclusion of time of proceedings in court without jurisdiction

**21. (1)** A complainant may make an application in writing to the Board, to request an extension of a period of limitation set out in Schedule 2.

Extension of period of limitation

**(2)** The Authority may, where it is of the opinion that in view of the application under subregulation (1), it is just and equitable to do so, extend the period of limitation in respect of any complaint, for a period not exceeding the period of limitation set out in Schedule 2 for such complaint.

#### **PART VI — General provisions**

**22. (1)** Where a party has been awarded costs and wishes to recover the costs, he or she shall lodge a bill of costs for taxation, and the Authority shall tax such bill accordingly.

Taxation for costs

**(2)** A party who has been awarded costs under subregulation (1), shall file with the Authority a bill of costs in writing and shall include copies of the relevant evidence such as payment vouchers, receipts, invoices or tickets.

**(3)** A party who is aggrieved by the decision of the Authority under subregulation (1), may seek redress from the Board in writing stating his or her case.

**23.** A party may make any other application to the Authority in writing, stating the reasons in support of the said application.

Other applications

SCHEDULE 1

Form A  
(Regulation 4 (1))

COMPLAINT FORM

1. Details of the Complainant:

Name: \_\_\_\_\_

Name of representative (where applicable): \_\_\_\_\_

Address: \_\_\_\_\_

Customer account number (where applicable): \_\_\_\_\_

Physical Address: \_\_\_\_\_

City/Town/Village: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Mobile telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

(2) Details of the Respondent:

Name: \_\_\_\_\_

Name of representative (where applicable): \_\_\_\_\_

Address: \_\_\_\_\_

Physical Address: \_\_\_\_\_

City/Town/Village: \_\_\_\_\_

Telephone: \_\_\_\_\_

Mobile telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

(3) Nature of the Complaint (a separate sheet may be used):

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(4) Relief sought:

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For the following tick the appropriate answer;

(5) Has the Complainant tried to resolve the complaint directly with the respondent?

Yes

No

If yes, explain steps taken and results:

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(6) Has the Complainant sought legal redress from any other institution?

Yes

No

If yes, provide the name of the institution and details of the redress sought (a separate sheet may be used):

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(7) Have the copies of all relevant documents been attached?

Yes

No

If yes, itemise the list: (a separate sheet may be used)

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(8) Any other relevant information:

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(9) I hereby declare that all the facts and information given in the application are correct and to the best of my knowledge.

Signature of the complainant/Principal Officer/representative of the complainant

Date \_\_\_\_\_  
Day                      Month                      Year

For Authority's use only
Date received: _____ File No. _____

Form B  
(Regulation 5 (1))

SUMMONS

Complaint Number.....

- 1. .... - COMPLAINANT
- 2. .... - RESPONDENT

**SUMMONS TO FILE A DEFENCE**

**TAKE NOTICE** that ..... (“the complainant”) of address .....  
..... has lodged a complaint against you at BERA (“the Authority”), details of  
which are attached herewith.

**PURSUANT** to regulation 5 of the Botswana Energy Regulatory Authority (Complaints  
Settlement Procedure) Regulations, you are required to submit to the Authority, within 14  
days from the date of this notice, a written reply to the complaint together with all relevant  
documents you will rely upon in support of your defence. A copy of the reply shall be served  
to the complainant.

**TAKE FURTHER NOTICE** that failure to submit a reply within the stipulated period will  
imply that you have waived your right to be heard and the Authority shall proceed to determine  
the matter in your absence.

**GIVEN** under seal of the Authority this..... day of ..... 20.....

.....  
**CHIEF EXECUTIVE OFFICER**

**COPY TO BE SERVED UPON:**

.....  
.....  
.....  
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**RECEIVED BY:**

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Form C  
(Regulation 8 (4))

THIRD PARTY NOTICE

Complaint Number.....

- 1. .... - COMPLAINANT
- 2. .... - RESPONDENT
- 3. .... - 3rd PARTY

**TO THE ABOVE-NAMED THIRD PARTY:**

**TAKE NOTICE** that the above-named complainant has commenced proceedings against the above-named respondent for the relief set out in a summons, a copy of which is herewith served on you.

The above-named respondent claims a contribution or indemnification (or such other grounds as may be sufficient to justify a third-party notice) on the grounds set forth in the annexure hereto. If you dispute those grounds or if you dispute the claim of the complainant against the respondent, you may give notice of your intention to defend within .....days. Such notice shall be in writing and filed with the Authority, and a copy thereof served on the above-named respondent at the address set out at the foot of this notice.

DATED at .....this .....day of .....20...

Address: .....

To: Complainant: .....  
Address: .....  
.....

And to: Authority: .....  
Address: .....  
.....

And to: Respondent: .....  
Address: .....  
.....

Form D  
(Regulation 12 (5))

SETTLEMENT

(This form shall be filled in by all the parties and each party shall retain one copy and the other copy shall be submitted to the Authority)

**1.0 DETAILS OF THE COMPLAINT**

1.1 Name of the complainant(s): .....

1.2 Name of the respondent(s): .....

1.3 Name of the third party (if any): .....

1.4 Name of the intervener (if any): .....

1.5 Complaint number: .....

1.6 Date of filing the complaint with BERA: .....

1.7 Nature of the complaint: .....

.....  
.....

**2.0 DETAILS OF THE MEDIATION MEETING**

2.1 Date(s) of the mediation meeting: .....

2.2 Place of the mediation meeting: .....

2.3 Names of the participants (*See the names and signature of the participants in the annex sheet*)

2.4 What are the terms and conditions of the settlement?

The parties hereto have agreed as follows;

.....  
.....  
.....  
.....

**3.0 VERIFICATION**

3.1 I, ....., being the complainant/complainant's representative hereby verify that all the information contained in this form is true and the same reflects what the parties hereto have agreed.

**Name:** ..... **Signature:** .....

**Date:** .....

3.2 I,....., being the respondent/principal officer hereby verify that all the information contained in this form is true and the same reflects what the parties hereto have agreed.

**Name:** ..... **Signature:** .....

**Date:** .....

3.3 I,....., being the third party/third party's representative hereby verify that all the information contained in this form is true and the same reflects what the parties hereto have agreed.

**Name:** ..... **Signature:** .....

**Date:** .....

3.4 I,....., being the intervener/intervener's representative hereby verify that all the information contained in this form is true and the same reflects what the parties hereto have agreed.

**Name:** ..... **Signature:** .....

**Date:** .....

3.5 I,....., being the mediator in this matter hereby verify that all the information contained in this form is true and the same reflects what the parties hereto have agreed.

**Name:** ..... **Signature:** .....

**Date:** .....

Form E  
(Regulation 13 (2))

SUMMONS TO APPEAR

Complaint Number: ..... / 20.....

- 1. .... - COMPLAINANT
- 2. .... - RESPONDENT

**NOTICE OF DATE OF HEARING**

**TAKE NOTICE** that the above complaint has been fixed for hearing on the ..... day of ..... 20.... at 1000 hours before the Authority.

**YOU ARE** hereby required to appear in person or by an authorised representative without fail, and submit to the other party and the Authority all evidence you intend to rely on in defending your case before ..... day of .....20..... You may also wish to bring witnesses if any.

**GIVEN** under the seal of the Authority this .....day of .....20....

.....  
**CHIEF EXECUTIVE OFFICER/SECRETARY TO THE BOARD**

**COPY TO BE SERVED UPON:**

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**RECEIVED BY:**

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**SCHEDULE 2**

*(Regulation 18 (1))*

**Period of limitation**

**PART I**

**COMPLAINTS**

	<b>NATURE OF COMPLAINT</b>	<b>PERIOD OF LIMITATION</b>
1	Unlawful disconnection of service	12 months
2	Improper billing	12 months
3	Failure or refusal to connect the service	12 months
4	Sale or supply of off-specification petroleum products	7 days
5	Sale or supply of petroleum product above the cap price	6 months
6	Poor quality of service	24 months
7	Seeking for relief/compensation for loss suffered	1 month
8	Others	12 months

**PART II**

**APPLICATIONS**

	<b>NATURE OF APPLICATION</b>	<b>PERIOD OF LIMITATION</b>
1	Application to set aside an <i>ex-parte</i> Order	30 days
2	Others	30 days

MADE this 4th day of February, 2021,

**LEFOKO MAXWELL MOAGI,**  
*Minister of Mineral Resources,*  
*Green Technology and Energy.*