

THE BOTSWANA ENERGY REGULATORY AUTHORITY ACT, 2016

REGULATIONS

(Made under section 74 (2) (c))

THE BOTSWANA ENERGY REGULATORY AUTHORITY (CONSUMER COMPLAINTS
SETTLEMENT PROCEDURE) REGULATIONS, 2018

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THE BOTSWANA ENERGY REGULATORY AUTHORITY ACT, 2016

REGULATIONS

(Made under section 74 (2) (c))

THE BOTSWANA ENERGY REGULATORY AUTHORITY (CONSUMER COMPLAINTS SETTLEMENT PROCEDURE) REGULATIONS, 2018

PART I
PRELIMINARY PROVISIONS

Citation **1.** These regulations may be cited as the Botswana Energy Regulatory Authority (Consumer Complaints Settlement Procedure) Regulations, 2018 and shall come into operation on the date of publication in the *Gazette*.

Application **2.** These regulations shall govern the procedure related to the settlement of consumer complaints received by the Authority in relation to the regulated sectors and for other related matters.

Interpretation **3.** In these regulations, unless the context otherwise requires:

“Act” means the Botswana Energy Regulatory Authority Act;

“authorized representative” means a person duly authorized by the complainant or the respondent to represent him in the conduct of the complaint;

“Authority” means the Botswana Energy Regulatory Authority established under Section 3 of the Act;

“Board” means the Board of Directors of the Authority established under Section 8 of the Act;

“Chief Executive Officer” means the chief executive officer of the Authority;

“complaint” means material facts of the matter or act complained by the complainant, in respect of the supply, possible supply or purported supply of regulated services and specifying the reliefs sought;

“complainant” means the person who has filed a complaint to the Authority pursuant to the provisions of these regulations;

“Customer Service Charter” means a document prepared by a regulated supplier and approved by the Authority setting out, *inter alia*, the procedure of receiving and settling complaints;

“Director” means the head of legal and licensing department of the Authority;

“Division” means the division of the Authority which comprises of officers responsible for attending complaints hearing with the composition of people specified in the First Schedule;

“local authority” means a headman, a chief or any local authority;

“regulated sector” means the energy sector;

“regulated sector legislation” means:

- Cap. 73:01 (a) the Electricity Supply (Amendment) Act;
- Cap. 66:01 (b) the Mines and Minerals Act;
- Cap. 67:01 (c) the Petroleum (Exploration and Production) Act;
- Cap. 74:01 (d) the Botswana Power Corporation Act;
- Cap. 43:08 (e) the Control of Goods, Prices and Other Charges Act; and
- (f) any other legislation that applies to, is used in or is relevant to the regulated sector;

“regulated services” means any goods or services supplied or offered for supply in the regulated sector;

“regulated supplier” means any person engaging in activities or in connection with a regulated sector;

“respondent” means any regulated supplier against whom a complaint is filed;

“unit” means a unit of the Authority designated to receive and follow up complaints lodged with the Authority and shall have the composition as prescribed in the Second Schedule.

PART II FILING OF A COMPLAINT

Filing of
complaints

4. - (1) Any person may file a complaint against a regulated supplier in respect of any matter connected with the regulated services by completing and filing with the Authority the complaint form prescribed in the Third Schedule.

(2) Notwithstanding the generality of sub-regulation (1), and for avoidance of

doubt:

- (a) an authorized representative may, on behalf of any consumer and/or customer, lodge a complaint to the Authority; and
- (b) any person, or a group of persons, may file to the Authority a representative complaint, provided that:
 - (i) a list of their names and signatures or thumb print are obtained and submitted to the Authority together with the complaint; and
 - (ii) minutes of the meeting resolving the filing of a representative complaint are obtained and submitted to the Authority together with the complaint.

(3) Without prejudice to the requirements of sub-regulation (1) above, a complaint may be in any other form of correspondence, electronic or otherwise, which shall, upon receipt by the Authority, be reduced into writing by the Unit.

Service of
summons to
present defence

5. - (1) The Authority shall, not later than seven days after receipt of a complaint in regulation 4, direct the respondent using the summons prescribed in the Fourth Schedule to present its defence.

(2) The summons in sub-regulation (1) shall be served on the respondent by:

- (a) personal delivery to the respondent or his representatives and the same shall acknowledge receipt by signing and returning the summons to the Authority; or
- (b) registered mail with return receipt; or
- (c) publication in two newspapers of wide circulation in Botswana where the Authority has determined that:
 - (i) there are reasons to believe that the respondent is keeping out of the way for the purpose of avoiding the service;
 - (ii) for any other reason the summons cannot be served in the ordinary way; or
 - (iii) there is proof in writing from the local authority that efforts to serve the respondent were taken and that such efforts have failed due to reasons given under sub paragraphs (i) and (ii).

Defence
complaint

6. - (1) The respondent shall, not later than twenty-one working days after receipt of the summons in regulation 5, present to the Authority a defence to the complaint which may include a counterclaim or claim for set-off.

(3) The respondent shall not in his defence, deny barely the grounds alleged by the complainant, but shall deal specifically with each allegation of fact.

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

(5) Every allegation of fact in the complaint, if not denied specifically or by necessary implication, or stated not to be admitted in the defence by the respondent, shall be taken to be admitted, provided that the Authority may at its discretion require any fact so admitted to be proved otherwise than by such admission.

(6) In the event a respondent fails to present a defence, it shall be deemed that the respondent has waived his right to appear and participate in the proceedings and the Division shall proceed with the hearing *ex-parte*, provided that, the respondent may be allowed to participate in the proceedings upon showing sufficient cause for failure to make such a defence.

Reply to defence 7. After receipt of the defence from the respondent as provided under regulation (5), the complainant may prepare and submit to the Authority a reply thereto within seven working days after receipt of such defence.

Third Party Procedure 8. – (1) Where in any complaint the respondent claims against any person not a party to a complaint (“the third party”):

- (a) any contribution or indemnity; or
- (b) any relief or remedy relating to or connected with 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 sub-regulation (1) shall be in writing and shall state:

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

(3) Upon receipt of an application under sub-regulation (1) and where the Authority is satisfied that the respondent’s claim against the third party is in respect of a matter referred to in paragraph (a) and (b) in that sub-regulation and that, 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) Every third party notice shall state:

- (a) the nature of the complainant’s claim against the respondent;
- (b) the nature of the respondent’s claim against the third party;

- (c) the reliefs claimed by the respondent against the third party;
- (d) the period within which the third party may present his defence; and
- (e) the consequences of the failure by the third party to present his defence within such period.

(5) The Authority shall cause to be served a copy of a third party notice presented to it on the third party in accordance with the procedure prescribed under regulation 5 (2) *mutatis mutandis*.

(6) Where a third party notice has been served on the third party, the third party shall, if he disputes the claim present its defence to the authority within twenty-one days of the service of the third party notice.

Directions

9. – (1) Where a third party has presented a defence, the Authority shall fix a date for the giving of directions and may on such date, if satisfied that there is a proper question to be tried as to the liability of the third party in respect of the claim made against him by the respondent, order the question of such liability to be tried in such manner, at or after the trial of the complaint, as the Authority may direct or, if the Authority is not so satisfied, make such order as the nature of the complaint may require.

Award against third party in default

10. – (1) Where a third party,

- (a) makes default in presenting his defence within the time allowed under regulation 8 (6); or
- (b) having presented a defence, makes a default in appearing 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 in terms of sub-regulation (1) , issue an award against the third party as the nature of the complaint may require.

Amendments to complaint and defence

11. – (1) Any party to the proceedings may, upon providing sufficient cause, be allowed to amend a complaint, a defence or a reply, as the case may be, provided the other party is afforded an opportunity to make a response thereto within a reasonable time prior to the hearing.

(2) Any party to the proceedings shall, upon being allowed to amend a complaint, defence or a reply as the case may be, amend such a complaint, defence or reply within the prescribed time as the Division may determine.

PART III INVESTIGATION AND MEDIATION PROCEDURES

Unit to
investigate
complaint

12. - (1) The Unit shall, upon receipt of a defence from the respondent under regulation 5 or a reply from the complainant, if any, or otherwise comes to the attention of the Unit that:

- (a) the complainant has an interest in the matter to which the complaint relates; and
- (b) the complaint is not frivolous or vexatious,

investigate the matter.

(2) Where it appears to the Unit at any time during or after the investigation that there exists a meritorious complaint and that the regulated supplier has not considered the same, or has not considered it adequately, pursuant to the Act, sector legislation or a customer service charter, the Authority may require the regulated supplier to consider or reconsider the complaint within fourteen days.

(3) The Unit shall, as part of investigation, attempt to resolve the complaint in an amicable manner within sixty days from the date of filing the complaint.

(4) During mediation in terms of sub-regulation (3) an officer of the Authority or any other person to be agreed by the parties, may act as a mediator.

(5) An amicable settlement reached shall be reduced into writing in a form prescribed in the Fifth Schedule and shall be signed by the parties who shall furnish a copy thereof to the Authority for registration.

(6) The settlement reached under sub-regulation (5) shall, upon registration by the Authority, be deemed to be the award of the Authority.

Referral to
Division

13. (1) If at any stage during the sixty days period prescribed under regulation 12 (3) it becomes clear that the parties cannot reach an amicable settlement, or if at the conclusion of the sixty days period no amicable solution has been reached, the Unit shall refer the matter to the Division for hearing.

(2) The Authority shall, not later than seven days after the complaint has been referred to the Division in terms of sub-regulation (1), notify the parties using a summons prescribed in the Sixth Schedule that a complaint has been referred to the Division for hearing.

(3) The notification described in sub-regulation (2) shall be effected by:

- (a) personal delivery to the parties or their representatives and the parties shall acknowledge receipt by signing and returning the notice to the Authority;
- (b) registered mail with return receipt; or
- (c)
 - (i)

- (ii)
- (iii)

PART III
HEARING PROCEDURE

Hearing procedure is quasi-judicial

14. - (1) The complaint hearing proceedings at BERA shall be *quasi-judicial* in nature.

(2) During hearing the parties may appear in person, by an attorney ??) or by its principal officer or an authorized representative.

(3) During hearing the Division may:

- (a) require any person to produce any information deemed relevant; and
- (b) require the attendance of any person to give evidence and produce any document that may be in his custody.

(4) The evidence tendered by parties during hearing shall be, either, under oath or affirmation. However the Division may receive and work on unsworn evidence.

(5) For the purpose of this regulation, “hearing” means all processes required for the Authority’s determination, including:

- (a) any attempt to resolve the complaint amicably;
- (b) oral and written submissions made by the parties;
- (c) adducing of evidence by the parties either oral or written; and
- (d) discovery of documents.

(6) Where these regulations are silent on any matter of procedure, the Division may regulate its own procedure during hearing.

Non-appearance of a party

15. – (1) Where neither party appears when the complaint is called for hearing, the Authority may make orders it deems fit..

(2) Where the complainant fails to appear when the complaint is called for hearing, the Authority may issue an order that the complaint be dismissed.

(3) 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 claims made by the complainant.

Adjournment

16. - (1) A party may, before or during hearing of a complaint apply to the Division for adjournment.

(2) An application for adjournment referred to in terms of sub-regulation (1)

may be made orally or in writing.

(3) The Division may accept the application for an adjournment if it is satisfied that the applicant has sufficient reasons for adjourning the hearing of the complaint.

(4) The Division may make determination on payment of costs of adjourning the case as it deems fit.

Application to
intervene

17. - (1) Any person who is interested 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.

(2) An application to intervene shall state:

- (a) the date the application is filed;
- (b) the number of the complaint;
- (c) the title of the hearing to which the application relates;
- (d) the name, postal and physical address of the intervener;
- (e) the address for service;
- (f) the concise statement of the matters in issue affecting the intervener;
- (g) the party whose position the intervener intends to support; and
- (h) the grounds and documents in support of the application.

(3) The Authority shall notify parties to the proceedings of the application and any party may file an objection within seven days upon receipt of notice of the application.

(4) The Division may ascertain whether the prospective intervener is directly affected by the outcome of the hearing and whether his interest in the outcome is established.

(5) Where the Division is satisfied that the intervener has sufficient interest it shall grant the application on such terms and conditions as it may deem fit.

(6) Where the application is granted the intervener shall, within seven days, file a statement of intervention containing:

- (a) succinct presentation of the facts and arguments supporting the intervention;
- (b) reliefs sought; and
- (c) list of documents annexed and a copy of every document upon which the intervener relies.

(7) The parties to the proceedings may, within seven days, file to the Authority a reply to the statement of intervention separately or jointly.

Decision of the

18. - (1) Upon receipt of findings and recommendations of the Division, the

Authority Authority shall consider the recommendations and issue one or more of the following Orders:

- (a) imposing to a guilty party a fine at the amount prescribed in the Act or sector legislation;
- (b) requiring a party to supply regulated services on specified terms and conditions;
- (c) requiring a party to pay costs of another party or of a person appearing at the hearing or producing documents;
- (d) dismissing a complaint;
- (e) requiring specific performance;
- (f) setting up an escrow account;
- (g) appointing trustees;
- (h) making refunds; or
- (i) providing such other relief as may be deemed reasonable and necessary.

Appeal **19.** Any party aggrieved by the decision of the Authority under Part III, may within thirty days after the delivery of the award appeal to the High Court subject to the provisions of the Act and/or any relevant regulated sector legislation.

PART IV LIMITATION PERIODS

Dismissal of proceedings instituted after period of limitation **20.** – (1) Subject to the provisions of these regulations, every proceeding described in the Seventh Schedule of these regulations and which is instituted after the period of limitation prescribed opposite thereto in the third column, shall be dismissed whether or not limitation has been set up as a defence.

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

Accrual of cause of action **21.** - (1) The period of limitation prescribed under these regulations in relation to any proceeding shall, subject to the provisions of these regulations, commence from the date on which the right of action for such proceedings accrues.

(2) Subject to the provisions of these regulations the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises.

(3) Where there is a continuing breach of contract or a continuing wrong independent of a contract a fresh period of limitation shall begin to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Exclusion of time of party's absence from Botswana

22. In computing the period of limitation prescribed for any complaint or application, the time during which the party has been absent from Botswana shall be excluded.

Exclusion of time of proceeding *bona fide* in court without jurisdiction

23. In computing the period of limitation prescribed for any complaint, the time during which the complainant has been prosecuting, with due diligence, another civil proceeding, in a court against the respondent, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in court which, from defect of jurisdiction or other cause of a like nature, is incompetent to entertain it.

Board may extend period of limitation

24. Where the Board is of the opinion that in view of the circumstances in any matter, it is just and equitable so to do, it may, by Order extend the period of limitation in respect of any complaint for a period not exceeding one-half of the period of limitation prescribed by these regulations for such complaint.

PART VI GENERAL PROVISIONS

Taxation for costs

25. – (1) Where any party has been awarded the costs and wishes to recover the costs which he has been awarded under these regulations, he shall lodge a bill of cost for taxation and the Director shall tax such bill accordingly.

(2) Without prejudice to the provisions of sub-regulation (1), the bill of costs shall be filed to the Authority by way of a letter, which shall include copies of the relevant evidence like payment vouchers, receipts, invoices and tickets.

(3) Any person who is aggrieved by the decision of the Director under sub-regulation (1) may seek redress by way of a reference to the Board.

Application

26. All applications to be made under these regulations shall be by way of a letter written to the Chief Executive Office stating the reasons in support of the said application.

General penalty

27. - (1) Any person who breaches any provisions of these regulations for which no specific penalty is prescribed shall be liable to a fine not exceeding P30,000 or imprisonment for term not exceeding five years or to both for a natural person or a fine not exceeding ten percent of annual turnover to corporate bodies.

(2) A licensee who employs an agent, clerk, servant or other person, shall be answerable and liable for any acts or omissions of such persons in so far as the actions or omissions concern the delivery or purported delivery of a regulated service.

Authority to supplement procedures

28. Where procedures are not provided for in these regulations, the Authority may do whatever is necessary and permitted by the Act and the relevant

regulated sector legislation to enable it to effectively and completely adjudicate on any matter before it.

FIRST SCHEDULE

(Made under Regulation 3)

DIVISION OF THE AUTHORITY

1. Director responsible for legal services in the Authority or his representative who shall be the chairperson;
2. Director of the relevant sector division of the Authority under which the complaint arose or his representative;
3. Director responsible for regulatory economics of the Authority or his representative; and
4. Legal officer of the Authority who shall be the secretary.

SECOND SCHEDULE

(Made under Regulation 3)

UNIT OF THE AUTHORITY

1. Customer Services Officer of the Authority;
2. Legal Officer of the Authority;
3. Officer of the Authority from the relevant sector division under which the complaint relates; and
4. Officer from the division responsible for regulatory economics, where the complaint is on rates or charges.

THIRD SCHEDULE

(Made under Regulation 4(1))

Form No. 100a

**THE BOTSWANA ENERGY REGULATORY AUTHORITY
(BERA)**

COMPLAINT FORM

(9) Details of the Complainant:

Name: _____

Name of Representative (where applicable): _____

Address: _____

Customer Account Number (where applicable): _____

Physical Address: _____

City: _____

Telephone: _____

Mobile Telephone: _____

E-mail: _____

(2) Details of the Respondent:

Name: _____

Address: _____

Physical Address _____

City: _____

Office Telephone: _____

Mobile Telephone: _____

E-mail: _____

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

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

Yes

No

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

(8) Any other relevant information:

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

**Signature of the
Complainant/Principal Officer of the Complainant**

Date _____
Day Month Year

For Authority's Use Only

Date Received: _____ File No: _____

FOURTH SCHEDULE

(Made Under Regulation 5 (1))

THE BOTSWANA ENERGY REGULATORY AUTHORITY

(BERA)

Complaint Number.....

- 1. - **COMPLAINT**
- 2. - **RESPONDENT**

SUMMONS TO FILE A DEFENCE

TAKE NOTICE that Mr./Ms/Dr.("the Complainant") of P.O. Box has lodged a complaint against you at BERA, details of which are attached herewith.

PURSUANT to Regulation 6 (6) of the Botswana Energy Regulatory Authority (Consumer Complaints Settlement Procedure) Regulations, GN. No..... You are required to submit to BERA, within twenty one (21) 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 defense. Copy of the reply should be served to the Complainant.

TAKE FURTHER NOTICE that failure to submit a reply within the stipulated period above will imply that you have waived your right to be heard and BERA shall proceed determining the matter in your absence as provided for in GN No.

GIVEN under seal of BERA this..... day of 20.....

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

COPY TO BE SERVED UPON:

-
-
-
-

FIFTH SCHEDULE

(Made under Regulation 11 (5))

Form No. 101a

**THE BOTSWANA ENERGY REGULATORY AUTHORITY
(BERA)**

SETTLEMENT FORM

(This form should 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 Number of the Complaint:

1.6 Date of Filing the Complaint to BERA:

1.7 Nature of the Complaint:

.....

.....

3.0 VERIFICATION

3.1 I,....., being the Complainant/ Complainant’s Representative (a donee, administrator, executor, administratrix or executrix) hereby verify that all the information contained in this form are 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 are 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 (a donee, administrator, executor, administratrix or executrix) hereby verify that all the information contained in this form are true and the same reflects what the parties hereto have agreed.

Name: **Signature:**

Date:

3.4 I,....., being the Intervener/ Intervener’s Representative (a donee, administrator, executor, administratrix or executrix) hereby verify that all the information contained in this form are 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 are true and the same reflects what the parties hereto have agreed.

Name: **Signature:**

Date:

SIXTH SCHEDULE

(Made Under Regulation 12 (2))

SUMMONS TO APPEAR

**IN THE DIVISION OF THE BOTSWANA ENERGY REGULATORY
AUTHORITY AT**

Complaint Number: / 20.....

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

NOTICE OF DATE OF HEARING

TAKE NOTICE that the above complaint has been fixed for hearing on theday of 20.... at 10:00 hours before the **BOTSWANA ENERGY REGULATORY AUTHORITY DIVISION**.

YOU ARE hereby required to appear in person or by an authorized representative without fail and submit to the other party and BERA all evidence you intend to rely on in defending your case before day of20..... You may also wish to bring witnesses if any.

GIVEN under the seal of BERA thisday of20....

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

COPY TO BE SERVED UPON

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

SEVENTH SCHEDULE

(Made Under Regulation 21 (1))

LIMITATION PERIODS

PART I
COMPLAINTS

S/N	NATURE OF COMPLAINT	PERIOD OF LIMITATION
1	Unlawful disconnection of service	twelve months
2	Improper Billing	twelve months
3	Failure or refusal to connect the service	twelve months
4	Sell or supply of Off Specification Petroleum Products	seven days
5	Sell or supply of Petroleum Product above the Cap Price	six months
6	Poor quality of service	twenty four months
7	Others	twelve months

PART II
APPLICATIONS

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

.....
....., 2018

XXXXX
Minister for Energy