ENERGY REGULATION BOARD

*We Safeguard Your Interests*

# GUIDELINES FOR THE REVIEW OF POWER PURCHASE AND SUPPLY AGREEMENTS

## OUR VISION

To be the benchmark of excellency in energy regulation in Africa by 2026.

## OUR MISSION

Efficiently regulate the energy sector and be responsive to stakeholder needs to achieve sustainable, reliable and quality energy products and services.

## OUR VALUE STATEMENT

ERB is guided by and adheres to the following core values; teamwork, integrity, predictability, innovation and transparency.

## 1.0 INTRODUCTION

The Energy Regulation Board (ERB) is a statutory body established to regulate the energy sector in Zambia. Among its core functions, the ERB is mandated to approve, determine, review, and regulate tariffs and charges, as well as review and approve Power Purchase Agreements (PPAs) and Power Supply Agreements (PSAs), among other responsibilities.

The review process for PPAs and PSAs entails a comprehensive assessment of the legal, technical, and economic provisions of each agreement submitted to the ERB for approval. These guidelines provide an overview of the minimum requirements for PPAs/PSAs and outline the review process undertaken by the ERB before a decision to approve or reject an agreement is made. They are intended to assist key stakeholders—such as government entities, utilities, investors, and parties to power agreements—in understanding the rationale behind the ERB's regulatory review process.

## 2. LEGAL MANDATE

The ERB's authority to regulate power agreements is grounded in Section 4 of the Energy Regulation Act No. 12 of 2019 and Section 3 of the Electricity Act No. 11 of 2019, which mandate the ERB to "approve, review and regulate power purchase agreements and power supply agreements."

In addition, Section 19(1) of the Electricity Act states:
"An enterprise that intends to enter into a power purchase agreement or power supply agreement for the local or export market shall submit the proposed power purchase agreement or power supply agreement to the Energy Regulation Board for approval."

## 3. OBJECTIVE OF THE PPA/PSA REVIEW

The primary objective of the ERB's regulatory review of PPAs and PSAs is to ensure that the terms of such agreements meet the minimum standards set out in the Electricity Act. The review also ensures compliance with the National Energy Policy, the Electricity Act, the Energy Regulation Act, and other relevant laws, regulations, and standards governing the Electricity Supply Industry (ESI).

In line with its statutory mandate to safeguard stakeholder interests, the ERB also assesses whether the agreements are non-discriminatory, competitive, and aligned with international best practices. Furthermore, the review process seeks to promote transparency, economic viability, and fairness among contracting parties, while ensuring full compliance with applicable regulatory requirements.

## 1. MINIMUM REQUIREMENTS

As per the provisions of Section 19 of the Electricity Act, a PPA/PSA submitted to the ERB for regulatory review and approval shall generally include terms relating to:

i. the quantity of the power supply;
ii. the technical conditions and quality of supply;
iii. the scheduling of supply receipts;
iv. the responsibility for supply and receipt;
v. the sanctions for breach of a contract;
vi. the payment terms or payment guarantees for the supply of electricity;
vii. the tariff and the tariff structure;
viii. the duration of the agreement;
ix. the review of the agreement; and
x. any other terms that the E may determine.

In addition to the requirements of Section 19 of the Electricity Act, a PPA or PSA submitted to the ERB for regulatory review must also comply with other applicable legal and regulatory frameworks governing the Electricity Supply Industry (ESI). These provisions establish the minimum terms that a PPA or PSA should include before submission to the ERB

### 1.1 GENERAL DOCUMENTATION REQUIRED

An enterprise that intends to apply for regulatory approval of a PPA/PSA is required to submit the following accompanying documentation:

i. A cover letter addressed to the Director-General;
ii. An initialled PPA/PSA by duly authorized representatives of the parties to indicate agreement;
iii. A financial model showing the tariff build up (for greenfield PPAs);
iv. Ministerial approval for cross border import or export of power; and
v. Proof of use of system, where applicable.

## 2. REVIEW OF PPAS

The ERB distinguishes between PPAs/PSAs involving private sector entities and those involving state-owned enterprises, such as ZESCO. Agreements involving state-owned enterprises typically require more detailed information, as they often have a direct impact on retail consumers—who generally have limited supplier options and reduced bargaining power—compared to agreements between private entities.

The specific components of the ERB's legal, technical, and economic review are outlined in the relevant sections of these guidelines.

It is important to note that the ERB does not participate in negotiating the terms of the agreements between contracting parties. Once a PPA or PSA has been fully negotiated and initialled by the parties, the applicant must formally submit the agreement to the ERB for review and approval prior to its execution.

## 2.1 LEGAL REVIEW

In conducting the legal review of the PPA and PSA the ERB considers whether the requirements presented in Table 1 are met.

***Table 1: Legal Requirements***

| No | Requirements | Description | Mandatory for Private Sector to Private Sector Agreements | Mandatory for Agreements involving Retail Consumers and State-Owned Enterprises |
|---|---|---|---|---|
| 1. | Contracting Parties | The names and addresses of the contracting parties should be clearly stated in the agreement. | ✓ | ✓ |
| 2. | Legal Status | The contracting parties should be legal persons at law. Parties are advised to produce Certificate of Incorporation or Registration from relevant authorities. | ✓ | ✓ |
| 3. | Initialled copy by both Parties | A hard copy of the proposed PPA or PSA with each page initialled by authorised representatives of both parties should be submitted. | ✓ | ✓ |
| 4. | Duration of Agreement | The tenure of the agreement should be clearly stated. | ✓ | ✓ |
| 5. | Renewal of Agreement | The agreement should state whether it may be renewed or not and the terms upon which it may be renewed. | | ✓ |
| 6. | Termination Provisions | The agreement should provide for equitable grounds for termination. | | ✓ |
| 7. | Dispute Resolution | The agreement should make provision for resolution of disputes. In line with best industry practices, a PPA/PSA submitted for regulatory review may include a dispute resolution clause specifying the mechanism for resolving disputes, including mediation, arbitration, or recourse to the courts of Zambia, as provided under applicable laws. Dispute resolution procedures should aim to promote efficiency and minimize disruption to electricity supply obligations." | ✓ | ✓ |
| 8. | Change in Laws/Force Majeure | The agreement should make provisions for parties' rights and obligations in the event of any force majeure event including any change in regulations or laws. | | ✓ |
| 9. | Sanctions for Breach of Contract; | The agreement should clearly state the sanctions and recourse available to parties in the event of breach of the agreement. | ✓ | ✓ |
| 10. | Applicable Law | The agreement should state which law will be applicable to the agreement. | ✓ | ✓ |
| 11. | Review of the Agreement | The terms upon which a review of the agreement shall be made should be provided for. | | ✓ |

## 3. ECONOMIC REVIEW

In conducting the economic review, the ERB will mainly focus on economic, commercial and financial provisions as outlined in Table 2.

***Table 2: Economic, Commercial and Financial Requirements***

| No | Requirements | Description | Mandatory for Private Sector to Private Sector Agreements | Mandatory for Agreements involving Retail Consumers and State Owned Enterprises |
|---|---|---|---|---|
| 1. | Tariff | The PPA or PSA should clearly state the tariff and any related charges including capacity charge and energy charge where applicable. | ✓ | ✓ |
| 2. | Financial Model (For Greenfield PPAs Only) | For new projects, excel based financial model showing the tariff build-up and the return on investment. The Financial model should include:<br>a. Contracted capacity in stated in MW/kW;<br>b. Charges – charges should be stated as either capacity or energy charge and or any other charge as agreed and the method of calculation applicable;<br>c. Tariffs and the assumptions;<br>d. Project NPV, IRR, Pay-back period; and<br>e. Interest cover ratio. | | ✓ |
| 3. | Escalation or indexation of tariffs | The escalation of tariffs should be stated in terms of:<br>i. Period;<br>ii. Escalation factor; and<br>iii. Reference or source for escalation factors. | | ✓ |
| 4. | Taxation | Applicable taxes should be stated and who bears the tax. | | ✓ |
| 5. | Billing and Payment Terms | The payment terms or payment guarantees for the supply of electricity should be stated. | | ✓ |
| 6. | Conditions and Long Stop Date | The PPA or PSA should specify the conditions precedent if any and the Long Stop Date. | | ✓ |

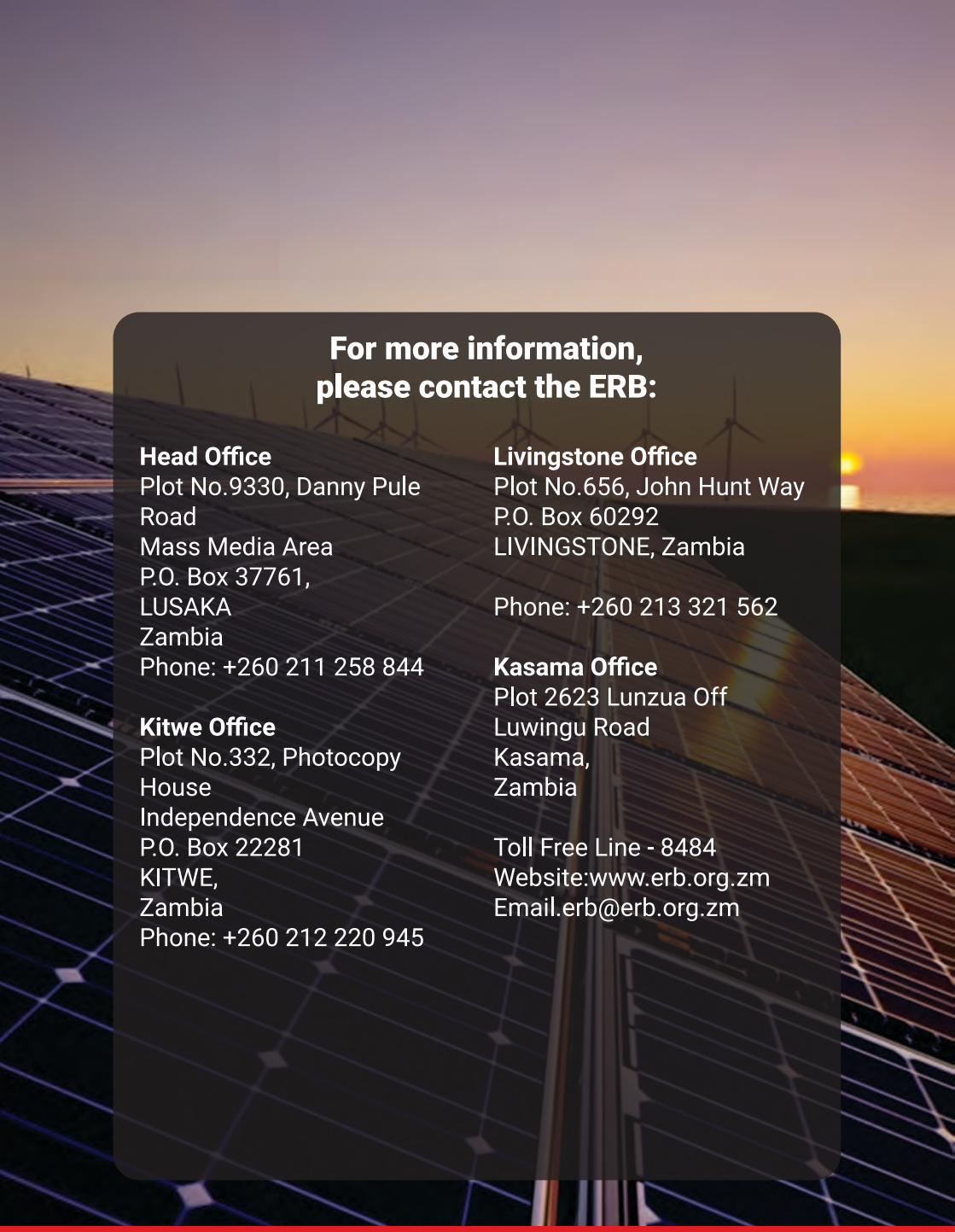
## 4. TECHNICAL REVIEW

The ERB undertakes regulatory review to ensure that the PPA or PSA adheres to the codes and standards in Zambia. The technical review of the PPA or PSA aims to ensure that the parties operate, maintain and develop an electricity system that is safe, reliable and efficient. The minimum technical requirements expected of an Agreement are detailed in Table 3.

***Table 3: Technical Review Requirements***

| No. | Requirements | Description | Mandatory for Private Sector to Private Sector Agreements | Mandatory for Agreements involving Retail Consumers and State-Owned Enterprises |
|---|---|---|---|---|
| 1. | Technology Proposed | The agreement should specify the technology and the primary energy source. | ✓ | ✓ |
| 2. | Capacity Contracted | The agreement should specify the contracted capacity of the power agreement and state whether it is Firm or Non-firm. The PPA/PSA should also cover priority of supply and curtailment requirements. | ✓ | ✓ |
| 3. | Power Quality Obligations | Where applicable, The PPA or PSA should specify the power quality obligations of the parties to install the Power Quality Recorder in accordance with the Grid Code requirements. Monitoring should be as provided for in the Power Quality and Reliability standards. | ✓ | ✓ |
| 4. | Compliance to Grid Code/Distribution Grid Code | Relevant clauses of the PPA/PSA should be compliant with provisions of the Zambian Grid Code and Distribution Code. | ✓ | ✓ |
| 5. | Metering Ownership and Responsibilities | The PPA or PSA should outline the requirements of the metering system at the delivery points in accordance with the Metering Standard. The Metering arrangements (ownership, access and responsibilities) should be aligned with the provisions of the Grid Code. | ✓ | ✓ |
| 6. | Dispatch and Electricity Flow | The agreement should specify the power flows and include a Maximum Demand Schedule and a Monthly Energy Requirement Schedule | ✓ | ✓ |
| 7. | Project Implementation Schedule (where applicable) | The agreement should indicate commencement and commissioning dates of the project. | | ✓ |
| 8. | Operation and Maintenance (Where applicable) | Specific Parties' responsibilities with regards to the operation and maintenance requirements should be detailed in the agreement. | | ✓ |

| No. | Requirements | Description | Mandatory for Private Sector to Private Sector Agreements | Mandatory for Agreements involving Retail Consumers and State-Owned Enterprises |
|---|---|---|---|---|
| 9. | Connection Points (where applicable) | The agreement should state the point of supply or delivery (Points of Common Coupling (PCC)) or provide a Single Line Diagram clearly showing PCC. | ✓ | ✓ |
| 10. | Technical Conditions/Specifications and Limits | The agreement should specify the technical specifications which should include power factor, voltage and frequency limits and variations. | ✓ | ✓ |
| 11. | Proof of approval for use of system (where applicable) | Where applicable, parties should demonstrate that they have obtained necessary approval from the TNSP or DNSP to evacuate the power from the supplier to the end customer. The Agreement itself may not contain a clause on proof of use of system, but the application for approval to ERB should be accompanied by proof of use of system. | ✓ | ✓ |



## For more information, please contact the ERB:


**Head Office**
Plot No.9330, Danny Pule Road
Mass Media Area
P.O. Box 37761,
LUSAKA
Zambia
Phone: +260 211 258 844

**Kitwe Office**
Plot No.332, Photocopy House
Independence Avenue
P.O. Box 22281
KITWE,
Zambia
Phone: +260 212 220 945

**Livingstone Office**
Plot No.656, John Hunt Way
P.O. Box 60292
LIVINGSTONE, Zambia

Phone: +260 213 321 562

**Kasama Office**
Plot 2623 Lunzua Off
Luwingu Road
Kasama,
Zambia

Toll Free Line - 8484
Website:www.erb.org.zm
Email.erb@erb.org.zm