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# ROAD MAP FOR OPERATIONALIZATION OF THE ENERGY REGULATORY AUTHORITY OF SWAZILAND

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## **1. BACKGROUND**

The Swaziland Ministry of Natural Resources and Energy wrote to the Regional Electricity Regulators Association (RERA) to ask for assistance in identifying experts who can help in drafting a roadmap to establish the Energy Regulatory Authority of Swaziland. They expected to require assistance in:

1. Initial regulatory staff training on the fundamentals of regulation, tariff setting and other regulatory processes;
2. Long-term regulatory staff training;
3. Preparing an energy regulatory work plan (Business Plan);
4. Preparing operational guidelines and by-laws;
5. Improving capacity and staff training in Government departments to be in harmony with the regulated environment; and
6. Information management.

RERA in turn made a formal request to the USAID Trade Hub to provide assistance to Swaziland to address the specific requests highlighted in the above paragraph. (This request for support is in the context of the Memorandum of Understanding (MoU) that RERA has with the US Government and the ad-hoc support provided to regulators by the USAID Trade Hub under the MoU and in accordance with the approved FY 2008 work plan for the USAID Trade Hub.

This report responds to the request to develop a high level road map for the establishment of the Energy Regulatory Authority of Swaziland (ERAS). The next phase will be to identify the regulatory expert(s) and staff needed and to proceed with developing a business plan, drawing up capacity building requirements and providing the necessary on the job training whilst coordinating external training and secondments to other regional regulatory institutions.

## **2. DEFINITIONS**

### **What is Regulation?**

Definition – Direct and indirect interference by or on behalf of government on the decisions or actions of sector enterprises (energy).

### **What is Regulatory Governance?**

Design of regulatory institutions and decision-making methodology/processes through policy, laws, decrees and regulations.

### **Status of Regulation in the region**

Ten out of the fourteen SADC countries have already established energy regulators. Two countries, Swaziland and Mauritius, are currently in the process of establishing regulators in 2008. Botswana and the Democratic Republic of Congo do not have regulators. Of the existing regulators, eight are registered members of the Regional Electricity Regulators Association (RERA). It is expected the others will follow suit soon.

## **3. CURRENT LEGAL ARRANGEMENTS**

The King of Swaziland approved three electricity industry acts which were Gazetted in January 2007. These were the following:

1. The Electricity Act, 2007- Defining players in the industry & providing for regulation of generation, transmission, distribution & supply of electricity;

2. The Energy Regulatory Authority Act, 2007- Providing the framework for setting up the energy regulator; and
3. The Swaziland Electricity Company Act, 2007- Incorporating the Swaziland Electricity Board as a company to which assets and personnel will be transferred and in which the private sector can invest.

The Ministry of Natural Resources and Energy will be responsible for Rural Electrification Strategy and Plan as defined in the Electricity Act 2007.

#### 4. ESTABLISHMENT OF THE ENERGY REGULATORY AUTHORITY OF SWAZILAND (ERAS)

According to the Energy Regulatory Act the Swaziland Energy Regulatory Authority will be established as:

1. A Public Enterprise Category B as contemplated in the Public Enterprises (Control and Monitoring) Act 1989;
2. A Body Corporate having perpetual succession; and
3. Organizational structure and administration shall be determined in accordance with internal regulations adopted by the Board of Directors.

#### 5. TYPES OF REGULATORY INSTITUTIONS

**Table 1: Types of regulatory institutions**

Characteristic	Weak Advisory	Strong Advisory	Executive Fully Functioned
Location	Inside or Outside Ministry	Inside or Outside Ministry	Outside Ministry
Budget	Within the Ministry Budget	Separate Protected Budget	Separate Protected Budget
Decision Making Authority	Confidential Advice to Minister, non-executive	Public Advice to Minister, non-executive	Full decision authority & accountability, executive
Minister's Policies Directives to Regulator	Given Confidentially or Publicly	Given Publicly	Given Publicly
Consultations with Affected Parties	Private and Public	Private and Public	Private and Public
Transparency of Decisions	Unwritten or written, Private	Public Written -decision -views of parties -rationales	Public Written -decision -views of parties -rationale

Table 1 above indicates the typical types of regulatory institutions based on the legislation approved in the country. The Energy Regulatory Authority of Swaziland is expected to be an executive fully functioned regulator and it is important to note that as it becomes operational its role and functions will evolve from a weak advisory institution to an executive fully functioned regulator once it has built its internal capacity.

## **6. ENERGY REGULATORY AUTHORITY OF SWAZILAND'S OBJECTIVES**

The objectives of the Energy Regulatory Authority of Swaziland are to:

1. Protect the interest of consumers in respect to prices, charges and quality of service provided by licensees;
2. Promote and maintain integrity and sustainability of regulated entities in the following:
  - a. Efficiency in service provision;
  - b. Ability to finance activities; and
  - c. Promote economic efficiency; and
3. Regulate in a manner that is fair and transparent.

## **7. ENERGY REGULATORY AUTHORITY OF SWAZILAND'S FUNCTIONS**

The functions of the Energy Regulatory Authority of Swaziland should be phased in over time. It will be a mistake to try and do too much too soon. There is need to develop capacity. The following will be the key functions:

1. Licensing of Industry players;
2. Tariff or price regulation;
3. Industry standards and operational codes;
4. Establish uniform system of accounts for licensees in same category and collect data on operations of licensees;
5. Consumer awareness and education;
6. Integrated Energy Planning- review energy production, distribution and transmission plans including investment plans for timely implementation;
7. Advise Minister and recommend reforms to Act and relevant sector laws; and
8. Structuring the regulator as independent and fully functional.

## **8. PHASES OF OPERATIONALIZATION**

### **Phase 1 - Specific Actions - Immediate Action – July to September 2008**

1. The Minister responsible for Energy (in this case the Minister of Natural Resources and Energy) to appoint an interim Board, including a representative of the Ministry of Finance. (This Board can be superseded over time if and when circumstances dictate);
2. Define the initial operational structure of the Regulatory Authority;
3. Appoint Human Resources Consultants who will work with the Board;
4. Appoint a caretaker Regulatory Advisor plus Administrator/Officer. The latter can be an officer from the Ministry of Finance or preferably from the Department of Energy with basic training on regulation for defined period with clear terms of reference. (See Annex 1 for definition of roles);
5. An initial budget allocation from Ministry of Finance is critical which should be given to the SERA as seeding capital; and
6. Define responsibilities of Chief Executive Officer and initiate recruitment of a suitable candidate. (Various options can be used – Head Hunting, secondment of senior government official as caretaker or advertise in local and international press through a recruitment agent).

### **Phase 2 - October to December 2008**

1. Advertise and hiring of:
  - a. Regulatory Advisor
  - b. Human Resources Consultant
  - c. Accounting services company or firm to assist in the monitoring of initial transactions and developing initial procedures
  - d. Chief Executive Officer

2. Establishment of Board committees e.g. HR and Audit, Licensing and Tariffs

### **Phase 3 - January 2009 onwards**

1. Develop Strategic plan with relevant structure for implementation of plan
2. Design and approval of an organizational structure
3. Recruitment and appointment of key staff
4. Development of Training Plan/ for staff- assistance of Regulatory Expert
5. Develop and adopt temporary license structures and conditions
  - a. Development of licensing framework - license application procedures forms etc
  - b. Development of *pro forma* licenses
  - c. Issuance of first round of conditional licenses
6. Design and adopt of Tariff Methodology (temporary)
  - a. Tariff methodology/
  - b. Tariff application /review/award /implementation
  - c. Incorporation of tariffs on licenses
7. Develop Customer handling Procedures
  - a. Complaints handling
  - b. Arbitration procedures
8. Develop Standards, Codes and Regulations
  - a. Identify relevant institutions for interaction
  - b. Develop /review /adoption
    - i. Grid codes
    - ii. Distribution code
9. Monitoring and Compliance
  - a. Information and reporting requirements
  - b. Compliance monitoring
10. Regional Issues
  - a. Interaction with other Regulators
  - b. Membership to regulatory associations – RERA/AFUR
  - c. Cross border transactions – Economic and Technical Regulation Issues

## **9. BUDGET**

The provisional budget has been prepared and detailed in Annex 2. The projected budget is E4 million. Given that the Ministry of Natural Resources and Energy has allocated E2 million, there is need source additional funding from other sources such as donor institutions to ensure adequate funding for the set up of the Regulator.

### **Funding Options**

Other options to fund the budget deficit could be:

1. Government grant
2. License fees, levies
3. Assistance by donors (funding as well as technical assistance)

## **10. COMMON PROBLEMS OF NEW REGULATORY INSTITUTIONS**

It is important for new regulators to note the following common problems:

1. Funding is inadequate or unreliable
  - a. Sources of funding
  - b. Long term sustainability
2. Consumers see no benefits from the regulator
  - a. Early wins and transparency
  - b. Misconception that prices will come down

3. Regulator and/or government do not honor commitments
  - a. Risk guarantees
  - b. Misrepresentation
4. Power Enterprise ignores the regulator's directives
  - a. Commercialization
  - b. Transparency – monitoring and compliance regimes
  - c. Enforcement of licenses/conditions
5. Regulator lacks expertise
  - a. Training
  - b. Contracting out – contract management skills
  - c. Loss of trained staff
6. The new regulatory system is performing poorly but it is politically difficult to make changes
  - a. Periodic independent evaluations
  - b. Regulatory Impact Assessments (RIA)
7. Regulator is required to do “too much, too soon”
  - a. Phase-in functions
  - b. Contracting out
  - c. “Slowly, slowly catches the monkey...”

## 11. GOVERNANCE ISSUES

### Independent, Fully Functional Regulator

1. Decision making independence
  - a. Regulator's decision are made without the prior approval of any other government entity
  - b. Regulator's decisions can be overturned only by a court or a pre-established arbitration panel
2. Financial independence
  - a. An earmarked, secure and adequate source of funding
3. Management independence
  - a. Autonomy over internal administration
  - b. Protection from dismissal without due cause
4. Transparency
  - a. Public consultations with affected parties
  - b. Public written decision with explanations for the decisions

### Rethinking the Classic Independent Regulatory Model

Back in the 90's the thinking was:

*“A requirement of all power lending will be explicit movement toward the establishment of a legal framework and regulatory processes satisfactory to the Bank.....this requires countries to set up transparent regulatory processes that are clearly independent .....”*

Source: The WB's Role in the Electric Power Sector, World Bank Policy Paper - 1993

Now:

*“.. a credible regulatory system requires more than a formally independent regulatory entity.....other transitional arrangements may need to be established.... including limiting the amount of discretion that regulatory bodies have in setting prices and key parameters..”*

Source: Public and private sector roles in the supply of electricity services, Operational Guidance for World Bank Group Staff – 2004

## Transparency – Best Practices

*“Tools and measures that foster confidence in and understanding of the regulatory processes and decisions by all stakeholders.”*

### Transparency of Decisions

1. Major regulatory decisions are available to the public
2. Major regulatory decisions contain the rationale for the decision
3. Regulator specifies procedures, methodology and timetable for tariff reviews

### Participation

1. Regulator formally and informally consults with all industry stakeholders
2. Regulator uses a variety of consultation techniques – public hearings, ad-hoc meetings, written comments, working groups/round tables
3. Public availability of comments received

### Availability of Information

1. Annual Report
  - a. Information on regulated companies
  - b. Information on major regulatory decisions
  - c. Information on quality of service
  - d. Information on tariffs charged
  - e. Information on the regulator itself
2. Websites
  - a. Primary and secondary legislation
  - b. Concessions and licenses
  - c. Consultation papers
  - d. Information for consumers
  - e. Information on internal organization and budget of regulator

## **ANNEX 1 - ROLES**

### **ROLE OF THE CARETAKER ADMINISTRATOR**

1. Identify office space outside the Ministry offices and those of utility - this is critical to show independence of the regulator from the beginning ensure installation of telephone lines fax, computers etc
2. Purchase basic office furniture (including board room) to facilitate critical Board Meetings and approval of initial budget (Initial furniture can be loaned from MNRE or Utility if necessary)
3. Open an account and initial signatories can be chosen from MNRE and MOF
4. Develop initial procedures for board meetings- serve as secretary to the Board (prepare Board Agenda with Chairperson)
5. Implement Board decisions
6. Recruit temporary office staff- messenger/cleaner/driver, secretary/receptionist, accounts clerk etc
7. Develop terms of reference of the following consultants:
  - a. Regulatory Expert Advisor (hands on expert with previous regulatory experience)- assist to advise the Board on basics of regulation advise if typical regulatory methods and assist in the initial development of basic licensing framework, economic regulation framework and handling of customers, assisting in drafting requirements for technical assistance etc.
  - b. Human Resource or Organizational Development Consultant to develop basic recruitment procedures, salaries, conditions of service, allowances and general job descriptions and grading, performance management system
  - c. Finance Consultant –set up procurement procedures, accounting systems and procedures
  - d. Default – government procedures can be adopted but take cognizance of regional norms

### **ROLE OF MINISTRY OF FINANCE**

1. Ensure correct allocation of Financial Resources
2. Advise in initial budget development

### **ROLE OF MINISTRY OF NATURAL RESOURCES AND ENERGY**

1. Setting up of the Regulatory Authority –monitor all the activities of caretaker administrator – defining terms of reference identifying relevant person, allocation of resources, etc
2. Ensure availability of seed capital
3. Appointment of Board members and Chief Executive Officer
4. Develop initial key performance indicators for the regulator (e.g. that all players should be licensed by date X)