



هيئة تنظيم الكهرباء - عمان
AUTHORITY FOR ELECTRICITY REGULATION, OMAN

GUIDANCE FOR EXEMPTION APPLICATIONS

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FOREWORD

1. The Authority for Electricity Regulation, Oman ("the Authority") is responsible for the regulation of the electricity and related water sector in the Sultanate of Oman. The Authority derives its functions, duties and powers from the Law for the Regulation and Privatisation of the Electricity and Related Water Sector (the "Sector Law") promulgated by Royal Decree 78/2004. The provisions of the Sector Law came fully into force on 1 May 2005.
2. Article (3) of the Sector Law designates certain electricity related activities as "Regulated Activities" and requires any Person seeking to undertake a Regulated Activity to be authorised to do so by the Authority. Authorisation can take the form of a Licence, or an Exemption from the requirement to be licensed (an "Exemption").
3. This document explains the regulatory and legal framework within which the Authority will consider Exemption applications and outlines the Exemption application process, the procedures followed by the Authority when assessing Exemption applications, and the timetable for processing such applications.
4. This guidance does not cover applications for a Licence which is provided in a separate document. Any Person interested in applying for a Licence should contact the Authority for advice.
5. This document is presented in several sections:
 - Section 1 describes the regulatory and licensing framework within which the Authority will consider Exemption applications;
 - Section 2 describes the Exemption application process;
 - Section 3 describes the Appropriate Person criteria published by the Authority in accordance with the requirements of Article (22) paragraph 18 of the Sector Law;
 - Section 4 highlights some of the main conditions of the Exemption;
 - Section 5 explains the change of control provision in the Exemption; and
 - Section 6 clarifies the Exemption revocation procedures.

1: INTRODUCTION

Scope of the guidance

- 1.1 This guidance is provided to assist applicants wishing to apply for an Exemption and those Persons to whom the Authority has granted an Exemption ('Exemption Holders'). The guidance is descriptive and does not form part of the legal framework. Applicants are advised that this guidance is not a substitute for the Sector Law, regulations made by the Authority and regulatory documents, such as the Grid Code and Distribution Code. Applicants are advised to seek legal advice on specific matters of interpretation of the Sector Law and Exemptions.
- 1.2 The Authority will be pleased to advise applicants on an individual basis on any aspect of the Exemption application process. Such advice is given without prejudice to the discretion of the Authority. The Authority will consider each application on its merits, and in the context in which the application is made.
- 1.3 This guidance sets out the minimum timescales within which the Authority would expect to process Exemption applications. While every effort will be made to process applications expeditiously, adherence to a particular timescale cannot be guaranteed as an Exemption application may be subject to matters outside of the Authority's direct control.

The regulatory framework

- 1.4 Article (3) of the Sector Law designates the following activities as Regulated Activities:
 - (a) Generation, Transmission, Distribution, Export, Import or Supply of electricity;
 - (b) Generation of electricity related with the Desalination of Water;
 - (c) Generation of electricity co-located with the Desalination of Water in the same site;
 - (d) Operation of a central Dispatch system;
 - (e) The development and/or operation of International Interconnections; and
 - (f) The functions assigned to the Oman Power and Water Procurement Company in the Sector Law.
- 1.5 Article (4) of the Sector Law prohibits any Person from undertaking a Regulated Activity unless authorised by the Authority. Authorisations granted by the Authority must accord with the requirements of the Sector Law, including with regard to the form and content of Exemptions, the requirement to consult with interested Persons before granting an Exemption, and satisfaction of the Appropriate Person criteria published by the Authority in accordance with Article (22) paragraph (18) of the Sector Law.

- 1.6 Authorisation to undertake a Regulated Activity may take the form of either a Licence or an Exemption. As a general guideline, any Person whose principal business activity is a Regulated Activity will in most cases require a Licence. Any Person undertaking a Regulated Activity that is ancillary to its principal business activity will in most cases require an Exemption. However, the Authority reserves the right to determine in each case whether a Licence or an Exemption is the appropriate form of authorisation.
- 1.7 In determining whether or not an Exemption should be granted, the Authority must have regard to its statutory duties and functions. The duties of the Authority are set out in Appendix A and the functions of the Authority are set out in Appendix B to this guidance. The Authority will in particular wish to ensure that the applicant satisfies the Appropriate Person criteria and will comply with the various requirements placed upon it by the Sector Law and a relevant Exemption. The Appropriate Person criteria are set out in Appendix C.
- 1.8 A decision by the Authority to grant an Exemption to a Person may not be taken to imply that a representation is made to any other Person in respect of the technical or financial competence or good standing or legal probity of the Person to whom an Exemption is granted.
- 1.9 An Exemption can only be granted to a legal person. Therefore, for example, a division, unit or team within a company cannot hold an Exemption. Exemptions cannot be held at group level for one or more operators within a corporate group.
- 1.10 The Exemption Holder will be the legal entity responsible for undertaking the Regulated Activity.

Scope of Exemptions and Exemption conditions

- 1.11 Exemptions granted by the Authority are written, legal documents. The governing language is the English language.
- 1.12 The form of Exemptions and Exemption application procedures are established by the Authority.
- 1.13 The Authority may include any Exemption conditions it considers necessary for the regulation of the Regulated Activities.
- 1.14 Exemption conditions are the subject of Section 4 of this guidance

2: THE EXEMPTION APPLICATION PROCESS

How to apply

- 2.1 Article (100) of the Sector Law requires the grant of an Exemption to be subject to a written application to the Authority. The Authority has published an exemption application form that identifies the information required to be provided with each application. Copies of the exemption application form are available from the Authority on request. The exemption application form incorporates the minimum information required in an exemption application.
- 2.2 The Authority will not process an incomplete application, and will notify an applicant that the application will not be considered until the required information is provided. The exemption application form also provides for the provision of additional information that the Authority may consider necessary for a complete understanding of the applicant's proposed activities, and to determine if the applicant satisfies the Appropriate Person criteria.
- 2.3 Applicants are reminded that Article (132) (b) of the Sector Law makes it a criminal offence when applying for an Exemption to submit information or data to the Authority which is inaccurate and is intended to mislead the Authority.

Health and Safety

- 2.4 As part of the application processes, applicant will be asked to demonstrate that they have given due consideration to the health and safety of the general public and to persons employed by the Exemption Holder, in all circumstances in accordance with applicable law and any regulations from Competent Authorities.

The condition requires the Exemption Holder to establish and submit for approval to the Authority, a written health and safety policy, with details of the management arrangements which the Exemption Holder will put in place to give effect to such policy.

- 2.5 An applicant may not apply for one or more Exemptions at the same time, using a single application form. Each exemption is subject to a separate application.
- 2.6 Each Exemption application is subject to an application fee of 1,000 (one thousand) Rial Omani. In most circumstances, this fee is non-refundable.

Procedure and Timing

- 2.7 The Authority will seek to ensure that compliant applications are processed within 16 (sixteen) weeks. Non compliant or complex applications may require longer time to process. Applicants should note that the 16 week timescale starts with the submission of a full and complete application, which includes all of the necessary supporting information stipulated in the exemption application form. The Authority will not process incomplete applications or those submitted without all of the necessary supporting information.
- 2.8 Applicants are advised to apply at least six months in advance of the date on which they propose to commence the Regulated Activity for which authorisation is sought.

Exemption application time line

2.9 The processing of an Exemption application will proceed in stages, as outlined in Figure 1: Exemption Application Timeline

Stage	Action	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16
1	Receipt of application and application fee																
2	Check of application and Authority initial decision																
3	Statutory Consultation																
4	Final decision																
5	Compliance confirmation and grant of Exemption Licence																

Stage	Weeks	Action
1: Initial stage		The Authority will acknowledge receipt of the application and application fee.
2: Checking/initial decision	1-6	The Authority will check the application for completeness, and may seek any further information required to come to an initial decision on whether the application should be processed and an Exemption granted.
3: Statutory Consultation	6-10	The Authority will publish the Notice stipulated in Article (102) of the Sector Law stating that it proposes to grant the Exemption. The Notice will identify the Person to whom the Exemption will be granted, giving reasons, and inviting representations. As the consultation proceeds, the applicant will submit information to confirm the implementation of arrangements required to be in place on commencement of operations.
4: Final Decision	10-16	The Authority will consider all responses to the consultation. If objections are received the Authority may seek further discussions with the applicant. The Authority will decide whether to grant the Exemption or investigate further.

2.10 The following paragraphs describe in more detail each stage of the Exemption application process.

Stage 1: Initial Stage

2.11 The Authority will confirm and acknowledge receipt of the Exemption application and application fee.

Stage 2: Checking the Application and Initial Decision

2.12 Within two weeks after receipt, the application will be assessed for completeness to ensure there is sufficient information to allow the Authority to make an initial decision on whether to approve or reject the application.

2.13 The initial decision on whether to accept or refuse the application will be based on the Authority's assessment of whether the applicant is likely to satisfy the Appropriate Person criteria which in turn will be based on an assessment of information provided with the application. The Authority has published criteria it will use to determine whether an applicant is an Appropriate Person. The "Appropriate Person" criteria are set out in Appendix C.

2.14 If the exemption application is incomplete, or where further clarification is needed, the Authority will notify the applicant as soon as possible and will usually allow two weeks for any additional information to be provided. Longer periods may be agreed with the applicant in certain circumstances. The 16-week minimum timescale begins once the Authority has received all of the information necessary to make a determination against the Appropriate Person criteria.

2.15 If the Authority determines that the application should be rejected, the applicant will normally be given at least four weeks to make further representations. A decision to reject an exemption application does not preclude a further application being made at a later date.

2.16 If the Authority is minded to grant the Exemption, it will confirm this initial decision and proceed to the statutory consultation required by Article (102) of the Sector Law.

Stage 3: Statutory consultation

2.17 The Sector Law requires the Authority to publish a notice in two local daily newspapers, one of which is in the Arabic language, stating that it proposes to grant an Exemption; identifying the Person to whom the Exemption is to be granted; giving reasons for the grant of the Exemption and specifying a period of at least 28 days for representations or objections to be made to the Authority.

2.18 The Authority attaches importance to the public consultation process.

Stage 4: Final decision

2.19 The Authority will consider all representations and objections received in response to the consultation and if it considers it necessary to do so, it will seek discussions with the applicant and/or any Person who has made representations or lodged an objection with the Authority. If there are no representations or objections and the applicant has provided all the information required by the Authority to grant the Exemption, the Exemption may be granted within two weeks following the end of the statutory consultation period.

- 2.20 Where representations affect any significant regulatory, contentious or other issues, the Authority may wish to hold discussions jointly with the applicant and relevant third parties, or give third parties the opportunity to respond to the applicant's comments on their representations. The Authority will aim to complete any such discussions and reach a final decision within eight weeks, although this could be longer if particularly complex or contentious issues are raised which may require further investigation.
- 2.21 Before granting an Exemption, the applicant will be asked to confirm that there have been no material changes to any of the information submitted since the date of the application. The Authority will normally provide a letter in standard form required to be completed and signed by the applicant giving such confirmation.
- 2.22 If the Authority concludes that the application should be rejected, the applicant will normally be given at least four weeks to meet the Authority and make further representations, after which period the Authority will make a final determination. A decision not to grant Exemption does not preclude a further application being made at a future date.

Granting the Exemption

- 2.23 If the Exemption is granted, the applicant will be required to confirm its compliance with the Exemption conditions. Exemptions will not normally be granted, and cannot come into effect, until the Authority has received the required assurances from the applicant.

Public Register

- 2.24 Article (27) of the Sector Law requires the Authority to establish and maintain a Public Register.
- 2.25 The Public Register is open to inspection by any Person with an economic interest in the electricity and related water sector. The Authority has the right to charge a fee for access to the Public Register.
- 2.26 Information provided in the course of an exemption application will be disclosed on the Public Register. The Authority may at its sole discretion agree to a request to withhold information considered to be particularly sensitive from the Public Register. Such requests will be considered on merit. However, the Authority is strongly committed to ensuring the transparency of the Exemption process, and the general presumption is that all information submitted with an application will be disclosed on the Public Register.

3: APPROPRIATE PERSON CRITERIA

- 3.1 Before an Exemption is granted, the Sector Law requires the Authority to ensure that the applicant satisfies the Appropriate Person criteria. In summary, the Sector Law requires the Authority to ensure Exemptions are only granted to Persons who have appropriate technical abilities, are solvent and financially sound, and are otherwise qualified to undertake the Regulated Activity for which they are applying.
- 3.2 This section summarises the Appropriate Person criteria published by the Authority in accordance with the requirements of Article (22) paragraph (18) of the Sector Law. A copy of the full Appropriate Person criteria are set out in Appendix C to this guidance and applicants should refer to these before completing the application form.

Establishment, Good Standing and Legal Power

- 3.3 The Authority will refuse to grant an Exemption to any applicant (1) not properly established (2) not having the full legal power to engage in the Regulated Activities in the Sultanate of Oman or (3) who is not generally of good standing and a fit and proper person to hold an Exemption.

The Authority will consider a number of specific matters in relation to the general good standing of the applicant and its sponsors or shareholders and the applicant's fitness to hold an Exemption as set out in the Appropriate Person criteria.

Sufficient Capabilities

- 3.4 The Authority will not grant an Exemption unless it is satisfied that the applicant is fully capable of complying with obligations arising from the Sector Law and the relevant Exemption.
- 3.5 The Authority will not grant an Exemption until it is satisfied that the applicant will, before the commencement of the Exemption, have sufficient appropriately qualified personnel working within its business or otherwise available to it to meet the requirements of the Sector Law and the Exemption.

Financial Competence

- 3.6 The Authority will not grant an Exemption unless it is satisfied that the applicant has, or will before the commencement of the Exemption have sufficient financial competence and be of sufficient financial standing to undertake the Regulated Activities and otherwise operate the business which will be subject to regulation by the Exemption.

Technical Competence

- 3.7 The Authority will not grant an Exemption unless it is satisfied that the applicant has, or will have by the commencement of the Exemption, sufficient technical competence to discharge its functions.
- 3.8 The applicant must satisfy the Authority that it fully understands the technical requirements it will need in order to satisfy its obligations as an Exemption Holder and

that it has within its business or available to it sufficient technical resources and personnel, of suitable qualification, to enable it to do so. In considering this issue the Authority shall have particular regard to the information provided pursuant to Part II of the exemption application form including the curriculum vitae of persons with overall operational responsibility for the relevant Regulated Activity.

Laws of Oman

- 3.9 Pursuant to Article (80) of the Basic Law of the Sultanate of Oman (promulgated by Royal Decree No. 101/96), the Authority will not grant a Licence if to do so would result in a contradiction of the provisions of any laws and decrees, or international trades and agreements which constitute part of the laws of the Sultanate of Oman

4: EXEMPTION ARTICLES

4.1 Each Exemption is granted by the Authority in the form of a Licence Exemption Order and contains a number of Articles and the conditions with which the Exemption Holder must comply.

Structure of Licence Exemption Orders

4.2 The Licence Exemption Order sets out the principal terms of the Exemption, including:

- **Grant of the Exemption:** confirmation of the grant of the Exemption pursuant to the powers conferred on the Authority by Article (5) of the Sector Law;
- **Articles of Exemption:** confirmation that the Exemption is granted on the Conditions contained in the Licence Exemption Order, and that the Exemption is subject to modification and termination.
- **Exemption Term:** confirmation of the date on which the Exemption is granted and its term;
- **Exempted Activities:** confirmation of the Regulated Activity or Activities authorised by the Exemption;
- **Governing Language:** confirmation that the governing language is the English language;
- **Definitions:** a section listing defined terms used in the Exemption; and
- **Interpretation and Construction:** a provision explaining how the Exemption is to be construed.
- **Provision of information to the Authority:** a requirement to provide the Authority, in such manner and at such times as the Authority may request, information that the Authority considers necessary, or it may require for the purpose of performing the functions assigned to it by the Sector Law. Such information includes any documents, accounts, estimates, returns or reports of any description (whether or not prepared specifically at the request of the Authority). The information must be delivered in the format specified by the Authority.
- **Exemption fees**
A requirement to pay in each year the annual Exemption fee determined by the Authority from time to time.
- **Termination**
A right of the Authority to terminate the Exemption by giving not less than 30 days written notice to the Exemption Holder if the Exemption Holder fails to comply with, or breaches certain undertakings. Section 6 of the guidance provides further details on termination/revocation.

5: EXEMPTION CONDITIONS OF PARTICULAR INTEREST TO INVESTORS

Change of Control

Exemption condition

5.1 The Termination and Review Condition in each Exemption identifies a change of control of the Exemption Holder as one of the events that may lead to revocation of the Exemption. The Exemption Holder must obtain the written approval of the Authority prior to a change of control or risk the Exemption being revoked.

What is a change of control?

5.2 Each Exemption defines "control" as follows:

In respect of a Person by another, that that other (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (i) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that Person or of any other Person which controls that Person; or
- (ii) controls or has the power to control the affairs and policies of that Person or of any other Person which controls that Person; or
- (iii) is the parent undertaking of that Person or is the parent undertaking of any other Person which controls that Person; or
- (iv) possesses or is, or will be at a future date, entitled to acquire:
 - (a) twenty per cent (20%) or more of the share capital or issued share capital of, or of the voting power in, that Person or any other Person which controls that Person; or
 - (b) such part of the issued share capital of that Person or any other Person which controls that Person as would, if the whole of the income of such Person were in fact distributed, entitle him to receive twenty per cent (20%) or more of the amount so distributed; or
 - (c) such rights as would, in the event of the winding-up of that Person or any other Person which controls that Person or in any other circumstances, entitle him to receive twenty per cent (20%) or more of the assets of such Person which would then be available for distribution,

and, for those purposes, there shall be attributed to any Person the rights or powers of any nominee or associate of his and the rights and powers of any one or more Persons which he, or he and any nominee or associate of his, controls.

- 5.3 In summary, change of control would occur where a person acquires 20% or more of the shareholding in an Exemption Holder. Without prejudice to any legal provisions relating to market share or economic interests, the change of control provisions do not apply where the purchase of shares takes place on the Muscat Securities Market.

Impact of change of control

- 5.4 A change of control of a company that is an Exemption Holder does not necessitate the award of a new Exemption since the legal entity that holds the Exemption remains the same. It is the identity of the shareholders, or at least one of them, that has changed. However, a change of control may have a significant effect on the ability of the Exemption Holder to continue to discharge its obligations under the Exemption. Therefore, in each instance where there is a change of control, the Authority will approach the change in the same way as if the Exemption Holder were applying for a new Exemption. Hence the information required is very similar to that required of a new applicant for an Exemption. Copies of the change of control application form are available from the Authority.
- 5.5 If it is determined that the change of control would alter the suitability of the Exemption Holder to continue to be authorised to undertake the Regulated Activity, the Authority may serve notice of its intention to revoke the Exemption.
- 5.6 If the Authority would not have awarded a Exemption to an applicant controlled by the change of control applicant, then the Authority is unlikely to approve the change of control. Conversely, if the Authority considers an applicant be an Appropriate Person despite the change of control, the Authority is likely to approve the change of control.

Comfort prior to a change of control

- 5.7 The Authority has developed a process for Persons wishing to acquire control of a Exemption Holder to apply for a letter highlighting possible regulatory action following the proposed acquisition. This requires such Person to complete the change of control application form and to provide the additional information detailed therein, and submit the application at least eight weeks prior to the proposed acquisition date. This type of request currently attracts no fee. Two sets of the signed application form and all supporting information are required.
- 5.8 The Authority will assess on the basis of information received whether the Person is a fit and proper person to be in control of an Exemption Holder.
- 5.9 If the Authority is satisfied that such Person has demonstrated itself to be a fit and proper person to be in control of a Exemption Holder, the Authority may issue a letter stating that it has reviewed the information provided and, on the basis of that information, is able to confirm that the proposed change of control is likely to be approved. This letter is, however, not binding on the Authority and the final decision on an application for approval of a change of control will be made following an assessment of all the information available to the Authority at that time.

Confidentiality

5.10 The Authority recognises that such advance notifications may be commercially sensitive and will respect the confidentiality of such information. However, applicants should note that the Authority would expect to inform other interested parties of potential changes of control.

Formal notification procedure

5.11 If an Exemption Holder is not able to give prior notification, the Authority should be informed of a change of control as soon as practicable after that change has taken place. This notification should, where appropriate, include the percentage or fraction of shareholding that the new owner has acquired and the date upon which the change of control occurred.

5.12 If the Exemption Holder's registered company name or address has changed as a result of the change of control, this should be clearly stated and a copy of the certificate issued by the Ministry of Commerce & Industry submitted as soon as practicable to enable the Authority to update its records and the Public Register.

5.13 The Authority will require a change of control application from the new owner as soon as possible after the acquisition has taken place in order to assess whether or not to approve it.

Modification

5.14 The Authority has the right to modify the conditions of any Exemption when the public interest so requires according to the following procedures:

- (a) The Authority is obliged to publish a notice in respect of the proposed modification at least 30 days before making such modification stating the reasons and effects of such modification and granting a period not less than 28 days for the submission of objections in respect of the modification. The Authority is required to take into consideration any objections that may be submitted to it;
- (b) If the Exemption Holder agrees to the modification intended to be made, the Authority shall make the modification. If the Exemption Holder objects to the modification, it may appeal and any such appeal must be settled pursuant to the provisions of the Sector Law;
- (c) The Authority is required to publish the modification intended to be made to any Exemption in two local daily newspapers, one of them in the Arabic language;
- (d) Exemption Holders may apply to the Authority for the modification of their Exemptions. The application must contain the reasons for the proposed modification and be accompanied by such documents, information and particulars required for making the proposed modification and the evaluation of the application. The Authority will acknowledge receipt of the application and it may seek any further information required to come to an initial decision or whether the modification ought to be made. The Authority will then follow the procedure for Exemption modification referred to above.

Revocation

- 6.1 Article (121) of the Sector Law and the Termination condition in each Exemption sets out the circumstances in which the Authority may revoke the Exemption.
- 6.2 When the Authority decides to revoke an Exemption, the Authority will notify the Exemption Holder of its intention to revoke the Exemption 30 days before the revocation date. The notification will include the reasons for the decision to revoke the Exemption and specify the period for submission of objections which will not be less than 28 days after the date of such notification. The Authority will consider any objections and reply to them within 30 days after the date of their submission.
- 6.3 The Exemption Holder or any Person whose interest is affected by the decision of the Authority to revoke an Exemption may appeal such decision in accordance with Article (125) of the Sector Law.

Non-use provision

- 6.4 The Authority may revoke an Exemption where the relevant Regulated Activity has either not been commenced within 12 months after the date on which the Exemption came into effect, or where it has ceased for a continuous period exceeding 90 days. In such case, the Authority may, serve notice on the Exemption Holder that the Exemption will be revoked.

Revocation by agreement

- 6.5 Where an Exemption Holder has either not commenced operating or has ceased all Regulated Activities and does not anticipate recommencing them within the near future, it should contact the Authority to arrange a revocation by agreement. In such case, the Authority requires written confirmation from the Exemption Holder that:
 - (a) no Regulated Activities were commenced or that all Regulated Activities have ceased;
 - (b) Regulated Activities are not anticipated to commence or recommence within the near or foreseeable future; and
 - (c) the Exemption Holder therefore requests its Exemption be revoked.
- 6.6 The Exemption Holder should also contact the Authority to discuss the provision of assurances in respect of liabilities to third parties arising from any operations ("tail liabilities").
- 6.7 If the Authority agrees that the Exemption should be revoked, a revocation agreement signed on behalf of the Authority will be sent to the Exemption Holder for signature. Revocation takes effect from the date on which the Authority and the Exemption Holder sign the agreement.
- 6.8 Revocations are notified to interested parties and are placed on the Public Register.

Appendix A: Duties of the Authority under Article 22 of the Sector Law

The Authority shall:

1. Secure the provision of electricity and Related Water services in all parts of the Sultanate of Oman and protect the interests of Customers particularly Customers who have limited income, the sick and elderly;
2. Encourage the promotion of competition in the interest of the public in the electricity and Related Water sector conducive to the achievement of public interest;
3. Secure and develop the safe, effective and economic operation of the electricity and Related Water sector in the Sultanate of Oman and to enhance the safety of the public;
4. Secure the Security of Supply in the Sultanate of Oman;
5. Secure the Licensees are undertaking to meet all reasonable demands relating to Connection to the Total System and Supply;
6. Secure compliance with the policies of the government in relation to Omanisation and training of Omani content leading to the creation of technical staff capable of undertaking the responsibility;
7. Facilitate the privatisation of the electricity and Related Water sector in the Sultanate of Oman;
8. Secure the protection of Rural Customers and encourage Supply of electricity to them through Connection or RAEC Connections in accordance with the provisions of Articles (85) of this Law;
9. Take the necessary measures to enable Licensees to undertake the regulated activities pursuant to this Law and secure the effective operation of their activities in order to attract finance for their licensed activities in an economic manner;
10. Ensure the financial and technical capability of Licensees;
11. Secure the necessity for taking into consideration the protection of the Environment;
12. To meet its obligations regarding the procurement and sale of Imports and Exports of electricity and International Interconnection in accordance with the provisions of Articles (114) and (115) of this Law;
13. Secure the conduct of fair and transparent competitions for New Capacity and Output by the Oman Power and Water Procurement Company;

14. Undertake not to unduly discriminate without legal justification between Persons and to act consistently in like cases;
15. Secure the minimization of regulatory burdens on Licence Holders or Exemptions Holders;
16. Secure the preparation of technical specifications and criteria, and Performance Security Standards, for the electricity and Related Water sector, to maintain and review them in accordance with the relevant exigencies of the public interest;
17. Prepare a Public Register containing all that relates to Licenses and Exemptions and any modifications made therein, and papers and documents relating to any of the above, and the certificates in respect of any Member of the Authority, and to maintain such Public Register;
18. The preparation of objective criteria to ensure that Licenses and Exemptions are granted to Appropriate Persons and to review, implement, and comply with such criteria to make them available to relevant Persons to obtain them on request;
19. Secure the preparation of criteria relating to the welfare of the Customer and to amend, maintain, follow up compliance and implement such criteria;
20. Monitor the development of the electricity and Related Water market in the Sultanate of Oman;
21. Provide advice to Ministries in relation to financing of RAEC Connection and Electrification Funding and the calculation of financial subsidy and tariffs and other functions assigned to it in accordance with the provisions of this Law;
22. Review the situation of the electricity market in order to assess the scope for further Liberalization and submit reports to this regard, and to assist in the development of criteria to be applied pursuant to the Salalah Project Agreements. The Authority shall take into consideration the provisions of the agreements concluded before the promulgation of this Law in respect of electricity and Related Water sector projects.

Appendix B: Functions of the Authority under Article 25 of the Sector Law

The Authority shall have the following functions:

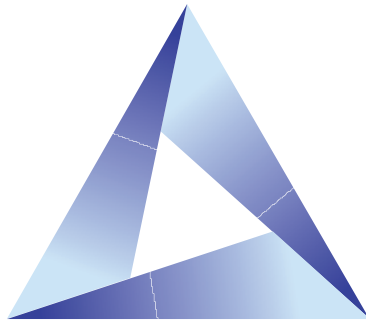
1. Implementation of the general policy for the electricity and Related Water sector and the policy of the State in relation to regulated activities pursuant to the provisions of this Law;
2. Preparation of programmes and plans necessary for the development of the general policy of the electricity and Related Water sector in the Sultanate of Oman;
3. Issuance, modification and revocation of Licenses and approval of Exemptions and follow up its compliance and to oblige Licensees and Exemption Holders to discharge their duties prescribed in this Law;
4. Determine the form of Licenses in respect of each regulated activity, which is subject o the provisions of this Law;
5. Taking measures for the implementation of obligations arising from international agreements in the field of electricity and Related Water to which the Sultanate of Oman is a party, and the resolutions issued by international regional organizations to which the Sultanate has acceded, or will accede to, all being in coordination with the Competent Authorities in this respect and in a manner not in conflict with the provision of the Law;
6. Determination of the terms, rules, specifications and obligations, which Licensees and Exemption Holders shall comply with;
7. Monitoring of the implementation of the terms and rules of Licenses or Exemptions by Licensees and Exemption Holders;
8. Examination of complaints submitted by Customers and Licensees and taking prescribed procedures in respect thereof pursuant to the provisions of this Law;
9. Preparation of programmes necessary for the creation of awareness about the importance of the electricity and Related Water sector and the effect resulting from the development of the sector on development plans and welfare of the citizens;
10. Coordination with the relevant Ministries and government units in all that is required for the development of the sector pursuant to the provisions of this Law;
11. Issuance of regulations specifying the manner of expending RAEC Connection and Electrification Funding, monitoring the extent of compliance with such regulations by the Rural Areas Electrification Company, and the Authority shall submit a report

in this respect, a copy of which shall be sent to the Ministry of National Economy, the Ministry of Finance, and the Ministry of Housing Electricity and Water;

12. Setting out rules to regulate the keeping and maintenance of records by Licensees in the manner specified by the Authority;
13. Setting out standard technical criteria to be complied with in relation to Connection to a transmission or distribution System of a Licensee, and in relation to the use and operation of such Systems, and the criteria relating to the maintenance and development of the Licensee's System;
14. Settlement of disputes arising between Licence Holders or Exemption Holders or between Customers, or any other Persons in accordance with the provisions of a Licence or Exemption pursuant to the provisions of this Law;
15. Issuance of regulations and decisions authorized by this Law.



هيئة تنظيم الكهرباء - عمان
AUTHORITY FOR ELECTRICITY REGULATION, OMAN



هيئة تنظيم الكهرباء - عمان
AUTHORITY FOR ELECTRICITY REGULATION, OMAN

APPROPRIATE PERSON CRITERIA

Edition 2: December 2008

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INTRODUCTION

The Authority for Electricity Regulation, Oman ("the Authority") is the authority established pursuant to Article (19) of the law for the regulation and privatisation of the electricity and related water sector ("the Sector Law"). This document sets out the Appropriate Person Criteria ("the criteria") which the Authority will apply when assessing whether or not to grant a Licence or Exemption to a Person seeking to undertake one or more of the Regulated Activities stipulated in Article (3) of the Sector Law..

The criteria set out in this document have been prepared, are published, will be implemented complied with and kept under review by the Authority pursuant to relevant provisions of the Sector Law, including:

- (a) Article (22) paragraph 18 (regarding the preparation of Appropriate Person criteria);
- (b) Article (88) paragraph 3 (c) (ii) (regarding competitions for rural systems);
- (c) Article (100) (regarding the grant of Licences and Exemptions);
- (d) Article (122) (a) (b) and (c) (concerning matters relating to the revocation of a Transmission Licence or Distribution Licence); and
- (e) Condition 6 of the Power and Water Procurement Licence.

In summary, the Sector Law requires the Authority to ensure that Licences and Exemptions are only granted to persons who have appropriate technical abilities, are solvent and financially sound, and are otherwise qualified to undertake the functions for which they are to be authorised. The criteria established in this document will be applied for the purposes of determining Appropriate Persons.

These criteria should be read in conjunction with guidance for applicants issued by the Authority from time to time that will clarify how the criteria will be applied in particular circumstances. The Authority will be pleased to provide guidance to applicants on a one to one basis.

The criteria should also be read in conjunction with the Authority's published Licence and Exemption application forms which set out the principal sources of information the Authority will use to determine whether an applicant satisfies the Appropriate Person criteria. The criteria will be applied differently in relation to Licences and Exemptions depending upon the extent to which the Regulated Activities exempted might impact the system of a Licensee, or have implications for the health and safety of the public.

In most cases the Authority will seek to issue a decision on whether an applicant satisfies the Appropriate Person criteria within 10 weeks of receiving a full and complete application

form. A longer time period may apply in cases where additional information is required by the Authority to assess the materiality of issues.

The grant (or refusal) of a Licence or Exemption by the Authority may not be taken to imply that assurance is given which may be relied upon by any Person as to the technical or any financial competence or good standing or legal probity of the applicant.

Article (125) of the Sector Law provides a right of appeal against any decision of the Authority relating to the grant or refusal to grant a Licence or Exemption.

Terms defined in the Sector Law shall have the same meanings in this document as they are given in the Sector Law.

THE ASSESSMENT CRITERIA

The Authority will consider all relevant circumstances and act in accordance with its statutory duties

In considering any application for a Licence or Exemption, the Authority will consider all relevant circumstances. Accordingly, whilst the following are criteria which the Authority expects to apply in most circumstances, these may need to be adjusted or supplemented by new criteria to fit the particular circumstances of any given application.

In addition to applying the criteria, and in making an assessment as to whether or not to grant a Licence or Exemption and in determining the conditions to be contained in any Licence or Exemption to be granted, the Authority will consider any representations and objections made to it in response to any notice published by the Authority pursuant to Article (102) of the Sector Law.

The Authority is obliged under Article (22) of the Sector Law to discharge its functions in accordance with the duties specified in that Article. These duties will necessarily inform every decision made in relation to the grant of a Licence or Exemption.

Establishment, good standing and legal power

The Authority will refuse to grant a Licence or Exemption to any applicant which (1) is not properly established (2) does not have full legal power to engage in the Regulated Activities in the Sultanate of Oman or (3) which is not generally of good standing and a fit and proper person to hold a Licence or Exemption.

Accordingly, the Authority will need to be satisfied in respect of these matters before granting a Licence or Exemption. The Authority will look at all relevant circumstances and will rely in particular on the information provided to it by the applicant in the Licence or Exemption application form.

Applicants must, before the grant of any Licence or Exemption, be established in Oman in accordance with the requirements of the Commercial Companies Law and other relevant requirements. Information to be supplied by applicants will include: the Memorandum of Association, Articles of Association, company registration certificates, and other documents relating to the corporate governance of the proposed Licence or Exemption Holder. Please refer to Part 11 of the application form.

Applicants must satisfy the Authority that they have full legal power to undertake the Regulated Activities and generally operate the business with which the application is concerned, in the Sultanate of Oman and in accordance with Oman Law. If the applicant is a new venture, the applicant's sponsor or shareholders must demonstrate both that the applicant has full legal power and that its sponsors or shareholders all have full legal power to invest in the applicant. If the sponsors or shareholders in the applicant are, or are to be, entities established outside Oman, the opinion of an independent firm of

lawyers of international repute (approved by the Authority) confirming this will be required.

The Authority will consider a number of specific matters in relation to the general good standing of the applicant and its sponsors or shareholders and the applicant's fitness to hold a Licence or Exemption. These include:

1. Whether the applicant or its sponsors or shareholders, have previously applied for and been refused a Licence or Exemption, in the Sultanate of Oman or in any other legal jurisdiction;
2. Whether the directors of the applicant, or the directors of its sponsors or shareholders, are subject to criminal proceedings, have been convicted of any criminal offence, or are or have been disqualified from standing as directors in any company or generally in any legal jurisdiction;
3. Whether any key personnel proposed by the applicant to be involved in its business are subject to criminal proceedings, have been convicted of any criminal offence, or are or have been disqualified from standing as directors in any company or generally in any legal jurisdiction;
4. Whether the applicant, or its sponsors or shareholders, have ever been the holder of a Licence or Exemption or analogous legal instrument in any legal jurisdiction which has been revoked;
5. Whether the applicant, or any sponsors or shareholders, in the applicant or any of their respective directors, or any key personnel proposed by the applicant to be involved in its business, have ever been the subject of any insolvency or bankruptcy or analogous proceedings in any legal jurisdiction;
6. Whether the applicant, or any sponsors or shareholders in the applicant, are the subject of any current or pending litigation against them of a material nature; and
7. Whether the applicant, or any of its sponsors or shareholders, have been the subject of any material prosecutions or enforcement orders made by any environmental agencies, local authorities, safety authorities, economic or technical regulator or any analogous body in any legal jurisdiction.

Full and proper application

The Authority will not grant a Licence or Exemption in respect of which (1) any applicable fees have not been paid by the applicant or (2) the Authority is not satisfied a full and proper application has been made or (3) the Authority believes that information with which it has been supplied is false or calculated to be misleading or if in any way full disclosure has *not been made to it*. Article (132) of the Sector Law makes it an offence to submit information when applying for a Licence or Exemption that the applicant knows to be inaccurate and that is intended to mislead the Authority.

Compliance with Sector Law and Licences

The Authority will not grant a Licence or Exemption to a person if to do so (or if the undertaking by that person of the Regulated Activity concerned) would necessarily cause an infringement or contravention of the Sector law or a relevant Licence or Exemption.

The capabilities of the applicant to comply with its duties as a holder of a Licence or Exemption, should the application be successful

The Authority will not grant a Licence or Exemption unless it is satisfied that the applicant is fully capable of complying with obligations arising from the Sector Law and a relevant Licence or Exemption, if the application should be successful.

The Authority will, as a first step need to be satisfied that the applicant fully understands the functions powers and duties which it would have upon grant of the Licence or Exemption.

The Authority will also expect to be satisfied that the applicant has put in place, or will before the grant of the Licence or Exemption have put in place, policies and procedures sufficient to comply fully with those requirements.

The Authority will not grant a Licence or Exemption unless it is satisfied that the applicant will have entered into or acceded to all relevant industry agreements, codes and other arrangements which will be the subject of Conditions of a Licence or Exemption.

The Authority will not grant a Licence or Exemption until it is satisfied that those codes and arrangements have been established in a manner which will comply with the Licence or Exemption upon its grant.

Finally, the Authority will not grant a Licence or Exemption until it is satisfied that the applicant will, before the commencement of the Licence or Exemption, have sufficient appropriately qualified personnel working within its business or otherwise available to it to meet the requirements of the Sector Law and the Licence or Exemption to be granted.

Financial competence

The Authority will not grant a Licence or Exemption unless it is satisfied *that the applicant has, or* will before the commencement of the Licence or Exemption have sufficient financial

competence and be of sufficient financial standing to undertake the Regulated Activities and otherwise operate the business which will be the subject of the Licence or Exemption.

Where the applicant is a new venture, this will depend in large part on (1) the Authority's assessment of the financial standing of the applicant's shareholders and (2) the robustness of the applicant's business plan. The applicant and, where relevant, its sponsors or shareholders must be solvent.

There is no absolute standard for what constitutes appropriate financial standing and different circumstances may require different thresholds. Similarly, different thresholds may be appropriate for different Regulated Activities.

Before the grant of a Licence the Authority will when assessing the 5-year Business Plan provided pursuant to Part 11, para 4 of the application form consider whether or not the applicant has:

- Sufficient financial resources to carry out the Regulated Activities proposed in its business plan; and

- Sufficient financial resources and standing to enable it to raise funds in the future to make any investments in its business or systems which are known to be required at the time of the commencement of the Licence or Exemption or which might reasonably be expected to be required in either case to meet the obligations under the Sector Law or the proposed Licence or Exemption; and

- Any known exposure to any circumstances outside the business of undertaking the relevant Regulated Activities which might prevent it from meeting its obligations under the Sector Law or its Licence or Exemption.

Technical competence

The Authority will not grant a Licence or Exemption unless it is satisfied that the Applicant has, or will by the commencement of the Licence or Exemption have, sufficient technical competence to discharge its functions.

The Authority will wish to be satisfied that the applicant fully understands the technical requirements it will need to meet in order to satisfy its obligations as the holder of a Licence or Exemption and that it has within its business or available to it sufficient technical resources and personnel, of suitable qualification, to enable it to do so. In considering this issue the Authority shall have particular regard to the information provided pursuant to Part 11 of the Licence and Exemption application forms.

Laws of Oman

Pursuant to Article 80 of the Basic Law of the Sultanate of Oman (promulgated by Royal Decree 101/90), the Authority will not grant a Licence if to do so would result in a contravention

of the provisions of any laws and decrees, or any agreements which constitute part of the laws of the Sultanate of Oman.

AUTHORITY CONTACT DETAILS

Authority for Electricity Regulation, Oman

P.O. Box 954, Postal Code:133

Al Khuwair,

Muscat

Sultanate of Oman

Tel.: + 968 24 609 700

Fax.: + 968 24 609 701

enquiries@aer-oman.org

www.aer-oman.org

