



هيئة تنظيم الكهرباء - عمان
AUTHORITY FOR ELECTRICITY REGULATION, OMAN

GUIDANCE FOR LICENCE 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 licenced (an "Exemption").
3. This document explains the regulatory and legal framework within which the Authority will consider Licence applications and outlines the Licence application process, the procedures followed by the Authority when assessing Licence applications, and the timetable for processing such applications.
4. The framework of the licensing regime is set out in the Sector Law. The Authority will update and issue further guidance as the licensing regime evolves.
5. This guidance does not cover applications for a Licence Exemption which is provided in a separate document. Any Person interested in applying for a Licence Exemption should contact the Authority for advice.
6. This document is presented in several sections:
 - Section 1 describes the regulatory and licensing framework within which the Authority will consider Licence applications;
 - Section 2 describes the Licence 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 Licence;
 - Section 5 explains the change of control provision in the Licence; and
 - Section 6 clarifies the Licence revocation procedures.

1: INTRODUCTION

Scope of the guidance

- 1.1 This guidance is provided to assist Licensees and applicants wishing to apply for a Licence. 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 Licences.
- 1.2 The Authority will be pleased to advise applicants on an individual basis on any aspect of the Licence application process. Such advice is given without prejudice to the discretion of the Authority. The Authority will consider each application on its merit, 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 Licence applications. While every effort will be made to process applications expeditiously, adherence to a particular timescale cannot be guaranteed as a Licence 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 licensing regime introduced by the Sector Law, including with regard to the form and content of Licences, the requirement to consult with interested Persons before granting a Licence, 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 a Licence ought to 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 of 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 Licence. The Appropriate Person criteria are set out in Appendix C.
- 1.8 A decision by the Authority to grant a Licence 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 a Licence is granted.
- 1.9 A Licence can only be granted to a legal person. Therefore, for example, a division, unit or team within a company cannot hold a Licence. Licences cannot be held at group level for one or more operators within a corporate group.
- 1.10 The Licensee will be the legal entity responsible for the undertaking of the Regulated Activity.

Scope of Licences and Licence conditions

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

2: THE LICENCE APPLICATION PROCESS

How to apply

- 2.1 Article (100) of the Sector Law requires the grant of a Licence to be subject to a written application to the Authority. The Authority has published a licence application form that identifies the information required to be provided with each application. Copies of the licence application form are available from the Authority on request. The licence application form incorporates the minimum information required in a licence 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 licence 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 a Licence to submit information or data to the Authority which is inaccurate and is intended to mislead the Authority.
- 2.4 An applicant may not apply for one or more licences at the same time, using a single application form. Each licence is subject to a separate application. A fee is payable in respect of each application. Application Fees will be stipulated by the Authority from time to time.

Procedure and Timing

- 2.5 The Authority will seek to ensure that compliant applications are processed within 16 (sixteen) weeks. Non compliant or complex applications may require longer 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 licence application form including information relating to the Appropriate Person criteria. The Authority will not process incomplete applications, or those submitted without all of the necessary supporting information.
- 2.6 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.

Licence application time line

2.7 The processing of a licence application will proceed in stages, as outlined in Figure 1.

Figure 1: Licence 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 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 a licence 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 Licence. The Notice will identify the Person to whom the Licence 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 Licence or investigate further. A decision to grant a Licence will be confirmed by issuing the Notice stipulated in Article (103) of the Sector Law.

2.8 The following paragraphs describe each stage of the licence application process in more detail.

Stage 1: Initial Stage

2.9 The Authority will confirm and acknowledge receipt of the licence application and application fee.

Stage 2: Checking the Application and Initial Decision

2.10 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.

2.11 The initial decision on whether to grant 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.

2.12 If the licence 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.

2.13 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 a licence application does not preclude a further application being made at a later date.

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

Stage 3: Statutory consultation

2.15 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 a Licence; identifying the Person to whom the Licence is to be granted; giving reasons for the grant of the Licence; and specifying a period of at least 28 days for representations or objections to be made to the Authority.

2.16 The Authority attaches importance to the public consultation process.

Stage 4: Final decision

- 2.17 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 a Licence, the Licence may be granted within two weeks following the end of the statutory consultation period.
- 2.18 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.
- 2.19 Before granting a Licence, 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.
- 2.20 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 a Licence does not preclude a further application being made at a future date.

Granting the Licence

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

Public Register

- 2.22 Article (27) of the Sector Law requires the Authority to establish and maintain a Public Register.
- 2.23 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.
- 2.24 Information provided in the course of a licence 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 licensing 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 a Licence 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 Licences 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. 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 a Licence 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 a Licence.
- 3.4 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 as set out in the Appropriate Person criteria.

Sufficient Capabilities

- 3.5 The Authority will not grant a Licence unless it is satisfied that the applicant is fully capable of complying with obligations arising from the Sector Law and the relevant Licence.
- 3.6 The Authority will not grant a Licence until it is satisfied that the applicant will, before the commencement of the Licence, 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.

Financial Competence

- 3.7 The Authority will not grant a Licence unless it is satisfied that the applicant has, or will before the commencement of the Licence, 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 Licence.
- 3.8 Before the grant of a Licence the Authority will, when assessing the 5-year business proposals provided pursuant to Part II, paragraph 4 of the application form, consider whether or not the applicant has:
- (a) sufficient financial resources to carry out the Regulated Activities proposed in its business plan;

- (b) sufficient financial resources and standing to enable it to raise funds 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 which might reasonably be expected to be required in either case to meet the obligations under the Sector Law or the relevant Licence; and
- (c) any known exposure to circumstances outside the business of undertaking the relevant Regulated Activities which might prevent it from meeting its obligations under the Sector Law or the Licence.

Technical Competence

- 3.9 The Authority will not grant a Licence unless it is satisfied that the applicant has, or will by the commencement of the Licence have, sufficient technical competence to discharge its functions.
- 3.10 The applicant must satisfy the Authority that it fully understands the technical requirements it will need in order to satisfy its obligations as a Licensee 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 licence application form including the curriculum vitae of persons with overall operational responsibility for the relevant Regulated Activity.

Laws of Oman

- 3.11 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 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: LICENCE CONDITIONS

- 4.1 Each Licence granted by the Authority contains conditions with which the Licensee must comply.
- 4.2 The Authority may include any Licence conditions it considers necessary for the regulation of the Regulated Activities, including those with regard to:
- (a) standards to ensure security of supply and efficient operation;
 - (b) standards of customer service;
 - (c) the implementation of the Grid Code;
 - (d) the implementation of the Distribution Code;
 - (e) arrangements for charging Permitted Tariffs for connection and supply and, where no Permitted Tariff is provided for, a Cost Reflective Tariff;
 - (f) terms and conditions of customer supply contracts and codes of practice;
 - (g) technical and safety rules for the industry as a whole;
 - (h) a requirement to comply with environmental obligations;
 - (i) compliance with Omanisation and Omani content obligations;
 - (j) the “Economic Purchase” obligation (as defined in the Sector Law) in relation to activities carried on by Licenced entities; and
 - (k) a range of other regulatory policies reflecting the Authority's statutory functions and duties.

Structure of Licences

- 4.3 Part I of each Licence sets out the principal terms of the Licence, including:
- **Grant of the Licence:** confirmation of the grant of the Licence pursuant to the powers conferred on the Authority by Article (25) of the Sector Law;
 - **Conditions of Licence:** confirmation that the Licence is granted on the Conditions contained in the Licence, and that the Licence is subject to modification in accordance with Article (109) of the Sector Law, and revocation in accordance with the Licence revocation conditions;
 - **Licence Term:** confirmation of the date on which the Licence is granted and its term;
 - **Licenced Activities:** confirmation of the Regulated Activity or Activities authorised by the Licence;
 - **Governing Language:** confirmation that the governing language is the English language;
 - **Definitions:** a section listing defined terms used in the Licence; and

- **Interpretation and Construction:** a provision explaining how the Licence is to be construed.

4.4 Part II of each Licence contains certain conditions that are common to all Licensees. These are summarised below:-

- **Prohibited activities**

A prohibition from carrying on any activities other than the Licensed Activities and other activities necessarily ancillary thereto, without the prior written consent of the Authority.

- **Cross Ownership**

A prohibition on the Licensee or on any of its affiliates to own shares or have an economic interest of whatever kind in any other Licensee or such Licensee's affiliates without the prior written approval of the Authority. This prohibition does not extend to the Government or to any entity that is wholly-owned by the Government;

- **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 for 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.

- **Requirement to coordinate**

A requirement to co-operate and co-ordinate with other Licensees so as to allow other Licensees to perform their Regulated Activities.

- **Accounts for separate businesses and regulatory accounts**

A requirement to maintain and provide for each separate business stipulated by the Authority, accounting and reporting arrangements prepared in accordance with such Regulatory Accounting Guidelines as may be enforced from time to time and such other accounting standards as may be approved by the Authority from time to time.

- **Health and Safety**

A duty to give due consideration to the health and safety of the general public and to persons employed by the Licensee, in all circumstances in accordance with applicable law and any regulations from Competent Authorities.

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

- **Economic Purchase**

A requirement to take all necessary steps to ensure that all goods, assets and services which are purchased by the Licensee or are otherwise acquired by it are purchased or otherwise acquired and managed on an economic purchase basis. Economic purchase means purchase on the best economic terms reasonably obtainable, having regard to quality, quantity, the nature of the item(s) to be purchased, the available manner of delivery and the future security, reliability and diversity of supply of the item(s) to be purchased.

- **Non-discrimination**

A prohibition from creating any undue preference in favour of or unduly discriminating against any Person or class of Persons.

- **Environmental matters**

A requirement to prepare a statement based on any guidance issued by the Authority and the then applicable environmental standards in the Sultanate of Oman, designed to protect the environment from the effect of the Licensed Activities and operational objectives and management arrangements to give effect to such policy.

The Licensee is required by the condition to review the policy, the operational objectives and management arrangements periodically and otherwise as appropriate.

- **Insurance requirements**

A requirement to hold and maintain third party liability insurance on terms approved by the Authority. The Authority will not permit a Regulated Activity to be undertaken unless it has first approved the insurance arrangements.

- **Omani content and Omanisation**

A requirement to use all reasonable efforts to promote and encourage the employment and training of Omani nationals and to otherwise comply with and procure compliance with Government policy from time to time in respect of Omanisation and Omani content. The Licensee is required, on an annual basis (or at such other intervals as the Authority may direct), to prepare and submit a statement setting out how the Licensee is complying with these obligations and how it proposes to continue to comply with them.

- **Disposal of assets**

A prohibition from:

- (a) Transferring its interests in the Licence without the prior written consent of the Authority;
- (b) Disposing of or relinquishing operational control of any relevant asset otherwise than in accordance with the Licence condition; or

- (c) Creating or agreeing to create any security or effecting the disposal of or relinquishing control of any relevant assets or liabilities or creating or agreeing to create or extinguishing or agreeing to extinguish any interest used in connection with the Licensed Activities, without the prior written consent of the Authority.

- **Licence fees**

A requirement to pay in each year the annual Licence fee determined by the Authority from time to time.

- **Revocation**

A right of the Authority to revoke the Licence by giving not less than 30 days written notice to the Licensee if the Licensee fails to comply with, or breaches certain undertakings (see section (6) for further discussion of the revocation provisions of this condition).

- 4.5 Part III (and subsequent parts) of each Licence contains conditions specific to the relevant Regulated Activity undertaken or to be undertaken by the Licensee.

5: LICENCE CONDITIONS OF PARTICULAR INTEREST TO INVESTORS

Change of Control

Licence condition

- 5.1 The Revocation Condition in each Licence identifies a change of control of the Licensee as one of the events that may lead to revocation of the Licence. The Licensee must obtain the written approval of the Authority prior to a change of control or risk the Licence being revoked.

What is a change of control?

- 5.2 Each Licence 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, a change of control would occur where a person acquires 20% or more of the shareholding in a Licensee. 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 and would ordinarily breach the thresholds stipulated in the change of control provisions.

5.4 The Authority is reviewing the change of control threshold and may issue revised shareholding thresholds from time to time.

Impact of change of control

5.5 A change of control of a company that is a Licensee does not necessitate the award of a new Licence since the legal entity that holds the Licence remains the same. It is the identity of the shareholders, or at least one of them, that is changing. However, a change of control may have a significant effect on the ability of the Licensee to continue to discharge its obligations under the Licence. Therefore, in each instance where there is a change of control, the Authority will approach the change in the same way as if the Licensee were applying for a new Licence. Hence the information required is very similar to that required of a new applicant for a Licence. Copies of the change of control application form are available from the Authority.

5.6 If it is determined that the change of control would alter the suitability of the Licensee to continue to be authorised to undertake the Regulated Activity, the Authority may serve notice of its intention to revoke the Licence.

5.7 If the Authority would not have awarded a Licence 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 to 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

- 5.8 The Authority has developed a process for Persons wishing to acquire control of a Licensee 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.
- 5.9 The Authority will assess on the basis of information received whether the Person is a fit and proper person to be in control of a Licensee..
- 5.10 The Authority will also consult the Ministry of Commerce & Industry regarding consumer protection matters and, in particular, any impact which the proposed change of control would have on the Licensee's ability to meet its Licence obligations relating to third party liability insurance cover.
- 5.11 If the Authority is satisfied that such Person has demonstrated itself to be a fit and proper person to be in control of a Licensee, 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

- 5.12 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

- 5.13 If a Licensee 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.
- 5.14 If the Licensee'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.
- 5.15 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

- 5.16 Article (109) of the Sector Law gives the Authority the right to modify the conditions of any Licence 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 of 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 Licensee agrees to the modification intended to be made, the Authority shall make the modification. If the Licensee objects to the modification, it may appeal and 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 Licence in two local daily newspapers, one of them in the Arabic language; and
 - (d) Licensees may apply to the Authority for the modification of their Licences. 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 on whether the modification ought to be made. The Authority will then follow the procedure for Licence modification referred to above.

Revocation

- 6.1 Article (121) of the Sector Law and the Revocation condition in each Licence sets out the circumstances in which the Authority may revoke the Licence.
- 6.2 When the Authority decides to revoke a Licence, the Authority will notify the Licensee of its intention to revoke the Licence 30 days before the revocation date. The notification will include the reasons for the decision to revoke the Licence 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 Licensee or any Person whose interest is affected by the decision to revoke a Licence may appeal such decision in accordance with Article (125) of the Sector Law.

Non-use provision

- 6.4 The Authority may revoke a Licence where the relevant Regulated Activity has either not been commenced within 12 months after the date on which the Licence 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 Licensee that the Licence will be revoked.

Revocation by agreement

- 6.5 Where a Licensee 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 Licensee 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 Licensee therefore requests its Licence be revoked.
- 6.6 The Licensee 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 Licence should be revoked, a revocation agreement signed on behalf of the Authority will be sent to the Licensee for signature. Revocation takes effect from the date on which the Authority and the Licensee 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.

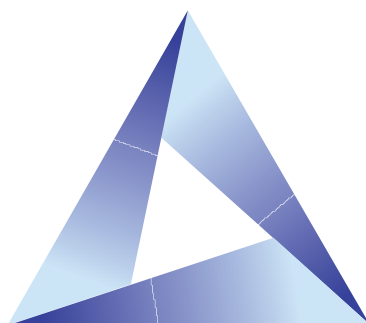
Appendix B: Functions of the Authority under Article 25 of the Sector Law

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 to 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 and 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

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.

FAQ'S

Who requires a Licence?

Article (3) of the Sector Law designates certain electricity related activities as "Regulated Activities". Article (4) of the Sector Law requires any Person seeking to undertake a Regulated Activity to be authorised to do so by the Authority. A licence is the principal form of authorisation issued by the Authority.

The Regulated Activities listed in Article (3) of the Sector Law include: Generation (or Generation of electricity Co-located with/Related to Desalination of Water), Transmission, Distribution, Export, Import or Supply of electricity.

How do I apply for a Licence?

Article (100) of the Sector Law requires the grant of a Licence to be subject to a written application to the Authority. The Authority has published a licence application form that identifies the information required to be provided with each application. Copies of the licence application form are available from the Authority on request and is available on the Authority web site : www.aer-oman.org.

The licence application form incorporates the minimum information required in a licence application.

When do I need a Licence?

A Licence is required prior to the commencement of a Regulated Activity.

Can I apply for more than one Licence?

An applicant may not apply for one or more licences at the same time, using a single application form. Each licence is subject to a separate application. A fee is payable in respect of each application. Application fees are stipulated by the Authority from time to time.

Who can apply for a Licence?

A Licence can only be granted to a legal person. Therefore, for example, a division, unit or team within a company cannot hold a Licence. Licences cannot be held at group level for one or more operators within a corporate group.

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