

AFRICA INSTITUTE FOR ENERGY GOVERNANCE

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10th December 2020

The Managing Director,

Umeme

Dear Madam/Sir



0312360835
0312360622

RE: NOTICE OF INTENTION TO SUE ERA AND UMEME OVER ILLEGAL ELECTRICITY CHARGES

The above refers

The undersigned civil society organizations wish to thank you for the continued efforts to regulate the electricity sector in Uganda. However, we are concerned about some of the illegal decisions being made under your supervision and implemented by electricity distributors.

We have come across your letter dated 8th December 2020 titled "**implementation of electricity service connections**" written to all distribution licensees.

First, we note with concern that you increased connection charges and made other decisions with huge impacts on Ugandans before consulting consumers. This violates the laws that require ERA to ensure transparency and accountability in the electricity sector.

Second, on your letter, you indicate that you are implementing a policy directive by the minister of energy and mineral development as provided for under Section 17 of the 1999 Electricity Act. Your interpretation of Section 17 is wrong and illegal in as far as it creates an impression that ERA is not independent and is under obligation to follow the minister's policy directive without reason.

Third, your letter also talks about the challenges facing the Free Connections Policy that was commenced in 2018 and goes ahead to ask distributors to breach contracts that were with Ugandans who had applied and paid inspection fees before the free connection policy was suspended.

Fourth, your letter specifically indicates that based on the minister's policy directive, the Electricity Regulatory Authority has decided the following:

- That all electricity distribution licensees are directed to allow consumers to pay for their connections.

- That all consumers who had already made applications through the ECP shall be required to make top up payments in line with the new approved connection charges.
- That consumers who had made applications under the ECP but do not have capacity to make top up payments shall be advised to wait until such a time when government has mobilised resources to finance the new connections as guided by the minister in the policy directive.

Fifth, the letter outlines the approved costs for new connections as follows:

No.	Type of connection	Cost in UGX
1.	No pole single phase connection	-Wired pre-paid split metre: 576,773 -Wireless pre-paid split metre & PLC: 610,918
2.	No pole three phase connection	2,031,325 to 3,445,256
3.	One pole single phase connection	1,989,135 to 2,308,019
4.	Standardized labour and transport costs	Single phase, no pole: 50,000 Single phase, 1 pole: 210,000 Three phase, no pole: 90,000

ACTION TAKEN BY UMEME

Sixth, following ERA's new approved connection charges, UMEME, Uganda's main electricity distributor, circulated a notice titled "**Customer Funded Electricity Connections**" indicating that the implementation of the new approved charges commenced on December 8, 2020.

VIOLATIONS AND OUR PLANNED ACTIONS

We bring it to your attention that the above approved new connection charges and other related decisions are in violation of the 1999 Electricity Act and other laws. This letter therefore serves to demand that you immediately revoke the said directive and direct all electricity distributors to stop charging electricity consumers illegal connection charges.

ERA's decision on the new electricity connection charges violates many provisions of the 1999 Electricity Act including:

- Section 4 which establishes ERA and Section 16 which provides for its independence. The law clearly provides that ERA shall, subject to the declared policy of government and, except as is otherwise provided in this Act, be independent in the performance of its functions and duties and exercise of its powers and shall not be subject to the direction or control of any person or authority.
- Section 17 provides for the powers of the minister where the said minister may give directions in writing to the authority with respect to the policy to be observed and

implemented by the authority. However, the same law provides that the minister's policy directive shall not adversely affect or interfere with the performance of the functions and exercise of powers of ERA.

OUR OPINION

We submit that the minister has no powers to direct ERA to increase or reduce connection fees without public consultations. Implementing the minister's directive without public consultations adversely affects and/or interferes with the performance of the functions and exercise of powers of ERA.

Further, the new exorbitant connection fees violate government's obligations under Section 62 of the 1999 Electricity Act to promote, support and provide rural electrification programmes to achieve equitable regional distribution access to electricity; maximise the economic, social and environmental benefits of rural electrification and promote expansion of the grid and development of off-grid electrification.

More so, the exorbitant new connection fees also violate the functions of ERA as provided for under Section 10 of the 1999 Electricity Act as regards electricity sector regulation in Uganda. The law empowers ERA to establish a tariff structure and to investigate tariff charges; to approve rates of charges and terms and conditions of electricity services provided by transmission and distribution companies and to advise the minister regarding the need for electricity sector projects.

The directive also undermines ERA's function to prepare industry reports and to gather information from generation, transmission and distribution companies; to acquire information and carry out investigations relating to any of its functions; and to perform any other function that is incidental or consequential to its electricity regulatory functions.

It is also clear that the new connections policy directive and the approved charges violate Section 11 of the 1999 Electricity Act on how ERA should conduct its functions. The law empowers ERA to perform its functions and exercise its powers in a manner that is open and objective; fair and reasonable; and nondiscriminatory.

Further, the policy directive and the approved new connection charges violate the 1999 Electricity Act in as far as it fails to ensure that licensees comply with and protect the interests of consumers in respect of prices and charges. It also fails to ensure transparency in relation to the activities of the power sector and the authority; fair balance of the interests of the consumers, government and participants in the power sector and promote continuity in the supply of electricity. It is dangerous for ERA to allow licensees to increase connection charges from the previous UGX 98,000/ for no pole to UGX720,000/ and UGX 2,023,281/ for one pole. This is another form of corruption at a time when the President is calling for reduction of power tariffs in Uganda to improve livelihoods.

Furthermore, the directive and approved charges violate section 77 of the 1999 Electricity Act as they fail to ensure effective supply of electricity to consumers. Any failure by UMEME and other electricity distributors to connect applicants who had made applications under the ECP before it was suspended amounts to a breach of contract. The law does not allow new changes to be imposed on such applicants before new negotiations.

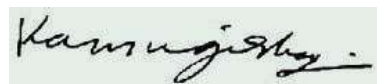
It is also clear that Section 119 of the Electricity Act empowers ERA to make regulations to provide for the fees to be charged and any other matter necessary or convenient for giving full effect to electricity services in Uganda. It is therefore wrong for ERA to allow the minister to take over its powers to determine connection charges.

OUR DEMANDS

- The minister should immediately recall the policy directive on new connection charges.
- ERA should immediately revoke the new connection charges.
- UMEME should immediately stop implementing the new connection charges.
- The customers who complied with the ECP and applied for power before the ECP was suspended must be supplied with electricity. Any action contrary to their application amounts to a breach of contract and both ERA and UMEME shall suffer liability.
- ERA should conduct wide and effective public consultations before any changes in the connection charges.
- The Auditor General should audit the implementation of the ECP from its commencement in 2018 to today to check if there was value for money. The people responsible must account for the USD 112 million that was planned for the ECP. How was UMEME selected to implement the policy? How did the Rural Electrification Agency (REA) supervise implementation of the policy?

If our demands are not met within 14 days from the date of this letter, we shall have no option but to file a case in court to stop the above violations.

Thank you,



Dickens Kamugisha,

Chief Executive Officer, AFIEGO

CC

- Speaker of Parliament
- Minister of Energy and Mineral Development
- Minister of State for Energy
- Attorney General, Ministry of Justice and Constitutional Affairs

- Permanent Secretary, Ministry of Energy and Mineral Development
- Executive Director, Rural Electrification Agency
- The Auditor General
- Inspector General of Government
- Chairperson Board, ERA
- Umeme Uganda Limited
- Allan & Festo Advocates
- Kasadha & Co Advocates

Other signatories:

1. Youth for Green Communities
2. Oil Refinery Residents Association
3. World Voices Uganda
4. Centre for Energy Governance
5. Center for Citizens Conserving
6. Karambi Action for Life Improvement
7. Guild Presidents' Forum for Energy Governance
8. Kwataniza Women's Group
9. Centre for Constitutional Governance
10. Graffen Organisation –Butimba
11. Citizens Concern Africa
12. Action Coalition on Climate Change
13. South Western Institute for Policy and Advocacy
14. African Initiative on Food security and Environment
15. Twimukye Women's Organisation
16. Environmental Governance Institute
17. Association of oil-affected youth
18. Kasese Citizens Coalition to Safeguard Biodiversity
19. Katwe Sanitation and Clean Energy Women's Club
20. Friends of Nature
21. Kasese Women for Development
22. Friends for Environment and Development