



# ADMINISTRATIVE PROCEDURE REGULATIONS

September 2020

LD

## Table of Contents

<b>PART I - GENERAL PROVISIONS</b> .....	4
1. CITATION .....	4
2. AUTHORITY .....	4
3. SCOPE .....	5
4. PURPOSE .....	5
5. DEFINITIONS .....	5
<b>PART II – MEETINGS OF THE COMMISSION</b> .....	7
6. TYPES OF COMMISSION MEETINGS.....	7
7. RECORD OF MEETINGS .....	8
8. PRACTICE BEFORE THE COMMISSION .....	8
9. WITHDRAWAL OF MATTER .....	8
<b>PART III - OPPORTUNITY TO BE HEARD</b> .....	9
10. PURPOSE OF PUBLIC NOTICES AND DOCKETING .....	9
11. SCOPE OF OPPORTUNITY TO BE HEARD .....	10
12. AFFECTED PARTIES .....	10
<b>PART IV – PROCEDURE FOR ADJUDICATORY PROCEEDINGS</b> .....	11
13. APPLICATION OF THIS PART .....	11
14. ADJUDICATORY PROCEEDINGS .....	11
15. INQUIRIES BY THE COMMISSION.....	11
16. ALTERNATIVE DISPUTE RESOLUTION .....	11
<b>PART V - ADDITIONAL PROCEDURES FOR RULEMAKING</b> .....	12
17. NOTICE OF RULEMAKING .....	12
18. COMMENT PERIOD.....	12
19. ADOPTION OF RULES.....	12
<b>PART VI - PUBLIC HEARINGS</b> .....	13
20. REQUIREMENT FOR PUBLIC HEARINGS .....	13
21. HEARINGS ON COMMISSION INITIATIVE .....	13
22. NOTICE OF PUBLIC HEARING AND VENUE .....	13
23. HEARING PROCEDURE .....	14
24. COMMISSION DECISION AFTER HEARING .....	15
<b>PART VII - COMMISSION DECISIONS</b> .....	15
25. GUIDING PRINCIPLES FOR COMMISSION DECISIONS.....	15
26. RECONSIDERATION OF DECISIONS .....	15
27. JUDICIAL REVIEW OF DECISIONS .....	16
ANNEX I .....	17

GUIDELINES FOR ATTENDANCE AT PUBLIC HEARINGS HELD BY THE  
COMMISSION ..... 17  
ANNEX II ..... 19  
SAMPLE SCRIPT FOR HOLDING PUBLIC HEARINGS..... 19  
FORM OF APPLICATION FOR RECONSIDERATION OF COMMISSION DECISION .... 23

*LDS*

**REPUBLIC OF LIBERIA  
STATUTORY RULES AND ORDERS**

Published on 17<sup>th</sup> September 2020

Liberia Electricity Regulatory Commission  
-----

IN EXERCISE of the powers conferred by, section 3.3(A)(4) and 13.7, the 2015 Electricity Law of Liberia, the Liberia Electricity Regulatory Commission (LERC) makes the following regulations this 17<sup>th</sup> day of September 2020.

**ADMINISTRATIVE PROCEDURE  
LERC - REG. – 003  
2020**

**PART I - GENERAL PROVISIONS**

**1. CITATION**

- (1) These Regulations may be cited as the Liberia Electricity Regulatory Commission Administrative Procedure Regulations, 2020
- (2) These Regulations come into force on the 17<sup>th</sup> day of September 2020.

**2. AUTHORITY**

- (1) These Administrative Procedure Regulations are the formal and binding procedure relating to the Commission's decision making required to be articulated and published by the Commission under Section 13.7 of the Law, and is also adopted as a supplement to the Liberian Administrative Procedure Act ("APA"), Chapter 82 of the Liberian Executive Law, Title 12 of the Liberian Code of Laws Revised.
- (2) These Regulations shall be construed consistently with statutes and the Constitution and in the event of any conflict, the statutory or constitutional authority shall prevail over the Regulations.
- (3) To the extent permitted by law, where good cause appears the Commission may permit a deviation or waiver from the Regulations, the procedural requirements or deadlines of any other rule or order if it finds that compliance with that rule or order will be impracticable, inexpedient or unnecessary.

LDS  
APR 4

### 3. SCOPE

These Regulations shall apply to both non-rulemaking and rulemaking decision making processes of the Commission, as the case may be, as required by Section 13.7 of the Law.

### 4. PURPOSE

The purpose of these Regulations is to ensure that:

- (a) the Commission will operate in an open, transparent and impartial manner, including the use of a formal docketing system for tracking matters pending before it;
- (b) parties are granted a fair hearing in all matters before the Commission both adjudicatory and non-adjudicatory;
- (c) all affected parties can participate in the processes of the Commission; and
- (d) the Commission is able to keep the general public fully informed about the Commission actions as contemplated by the Law.

### 5. DEFINITIONS

(1) Unless the context otherwise requires, any reference to the Law or any other statute these Regulations or any other rule shall be deemed to include all amendments thereto.

(2) Unless the context otherwise requires, all capitalized terms defined in the Law shall have the same meanings herein. In addition, the following definitions shall apply herein, unless the context requires otherwise:

“Affected party”	means all persons, natural, Governmental, or other legal entities, who seek to become formally recognized as parties to a particular proceeding and who file written notification with the Commission of their desire to do so, provided that they are not formally determined by the Commission at any time to be “completely unaffected by the outcome of a particular matter”;
“APA”	means the Liberian Administrative Procedure Act, Chapter 82 of the Liberian Executive Law, Title 12 of the Liberian Code of Laws Revised, as it may be amended from time to time;
“Chairman”	means the chairman of the Board of Commissioners of LERC;

“Commission”	means the Liberia Electricity Regulatory Commission, sometimes referred to as the “Regulator” or “LERC,” created under the Law;
“Docket number”	means the unique filing system employed for recording, tracking and managing matters that are formally brought before the Commission;
“Final rules”	means the version of rules that is published by the Commission following the conclusion of the consultations or comments period following which the rules become law in the absence of a legal challenge or a successful appeal to the Commission for a review;
“Law”	means the 2015 Electricity Law of Liberia, as it may be amended from time to time;
“Managing director”	means the managing director of LERC;
“Non-rulemaking”	means the decisions of the Commission which though binding, do not result in a rule and include both adjudicatory and non-adjudicatory decisions;
“Party”	means a) the specific person that is directly interested in or actively concerned with the prosecution, defence in a proceeding; b) and has been given hearing status in an adjudicatory proceeding under a statute; or c) a person who has filed a petition before the Commission;
“Public hearings”	means formal meetings for receiving testimony from the public on a proposed regulatory action of the Commission for which the public hearings are required under the Law;
“Proposed rules”	initial draft version of rules developed and published by the Commission by a notice of rulemaking inviting comments for consideration for finalization;
“Rule making”	means the process by which the Commission creates or promulgates second and third tier legislative instruments such as Regulations, Rules, Codes and Standards which are issued and capable of being enforced judicially by power granted under the Law; and
“Stakeholder”	means a person, group of persons or organization whose legal rights, duties or privileges are impacted directly or indirectly by the regulatory decisions of the Commission.

LDS

## PART II – MEETINGS OF THE COMMISSION

### 6. TYPES OF COMMISSION MEETINGS

(1) Under Section 13.7(1)(j) of the Law, the Commission is required to make all regulatory decisions in public meetings.

(2) The Commission will also hold various other kinds of meetings, all of which are to be organized as public meetings, except as otherwise indicated as follows:

- (a) **Regular meetings** – which are official business meetings that are regularly scheduled at the same day and time each month or quarter, and unless changed in a rulemaking procedure as required by the Law, it is hereby determined that the Commission will hold its regular meetings on the first and third Wednesday of each month.
- (b) **Special meetings** – which are meetings that may be held at a date, time and place determined by the Commission in a written public notice duly given, for the purpose of considering or acting upon a specific issue as described in such notice.
- (c) **Executive sessions** – which shall be conducted in accordance with the Commission's **Internal Procedure or Bylaws** and organized as follows:
  - (i) the Commission may discuss only the matters specified in the written notice duly given for such session except that additional matters may be added upon amendment of the agenda;
  - (ii) the notice of meeting shall not be less than **3** days provided that such notice shall be duly given in writing, in the timeframe required for notice of a meeting of which the executive session constitutes a part; and
  - (iii) attendance in any executive session is limited to commissioners, staff, and counsel.
- (d) **Work sessions** – which are informal meetings at which no votes may be taken, but at which commissioners and staff may fully discuss more complex or time-consuming issues in advance of another meeting, where action will be taken on the matter.
- (e) **Public hearings** – which are required for certain named matters under the Law as described in regulation **20**.

(3) In addition to executive sessions which are not open to the public, the Commission shall indicate by notice, which specific ordinary meetings, special meetings and work sessions are open to the public.

(4) The quorum required for the Commission to take an action at any of the foregoing meetings shall be two Commissioners, including the Chairman and where the two other Commissioners take a decision, that decision shall be ratified by the Chairman.

## **7. RECORD OF MEETINGS**

(1) Subject to other specific provisions on the keeping of records under these Regulations, except for Executive Sessions of the Commission, the Managing Director shall ensure that a record is kept of date, time and place of each deliberative session, the members of the Board of Commissioners in attendance and all the votes.

(2) The record of meetings may be kept through the maintenance of minutes, audio, video or other electronic recording.

(3) Every decision of the Commission shall be in writing and a copy shall be maintained by the Managing Director.

## **8. PRACTICE BEFORE THE COMMISSION**

(1) A party to any matter before the Commission which requires a decision, may be represented by an attorney or other expert.

(2) An attorney duly admitted to practice in Liberia, an attorney admitted to practice in another jurisdiction that is recognised or permitted to practice in Liberia and any authorized officer, employee or representative of the party may appear before the Commission.

(3) A non-attorney appearing in a proceeding before the Commission shall be familiar with the Law, the sector Regulations and the procedures under the APA and failure to do so may result in sanctions, including a temporary or permanent bar from appearing in the representative capacity before the Commission.

## **9. WITHDRAWAL OF MATTER**

(1) A party or affected party that initiates proceedings or brings a matter before the Commission may voluntarily withdraw the proceedings or matter by filing a notice of discontinuance which may dismiss it and unless otherwise specified by the Commission, an order dismissing a matter shall be without prejudice.

(2) The Commission may on its own motion dismiss a process after:

(a) serving notice on a party or parties, in the absence of a show of good cause to the contrary and may dismiss an action for want of prosecution more than twelve months after a last docket entry showing some action has been taken; or

(b) failure of the party initiating the proceedings to comply with these Regulations or other required action or any order of the Commission after notice that the failure or omission may result in dismissal.



## PART III - OPPORTUNITY TO BE HEARD

### 10. PURPOSE OF PUBLIC NOTICES AND DOCKETING

- (1) The purpose of the Law and these Regulations is to ensure that:
  - (a) the parties have a fair hearing; and
  - (b) stakeholders are given a meaningful opportunity for participation in the decision-making processes of the Commission, which include both rulemaking and non-rulemaking processes, and the Regulations shall apply to both types of processes.
- (2) To ensure the fair and meaningful opportunity for participation that the Law envisions, Section 13.7(1)(a) requires that:
  - (a) a public notice shall be duly given by the Commission for each matter brought before it, by any person, for decision or other action under the Law or otherwise; and
  - (b) each such matter shall be assigned an official docket number for tracking purposes by the Commission, which tracking may be maintained on either a manual or an automated system.
- (3) A public notice given by the Commission under sub-regulation (2) shall in addition to the docket number assigned by the Commission, contain each of the following:
  - (a) a statement of the legal authority and jurisdiction under which the applicable public meeting or hearing is to be held;
  - (b) a reference to the particular sections of any statute, regulations, or rules that will be implicated in the substance of the meeting or hearing;
  - (c) a short and plain statement of the matter to be considered, provided that any statement describing such matter shall be considered short and plain if it provides at least the following:
    - (i) names of any parties known to the Commission at the outset of its consideration process;
    - (ii) location of any electricity facility involved in the matter, and indicate whether the developer or operator involved is Liberian or foreign; and
    - (iii) with respect to any electricity facility to be developed in connection with the matter, its expected capacity, duration of time for development, and approximate dollar cost.
  - (d) if written comments or information are requested, a statement to that effect and instructions for submission;
  - (e) schedule of all hearings, deliberations, and decisions that have been held or made, or are expected to be held or made, by the Commission in connection with its consideration of the matter, including without limitation
    - (i) dates for formal intervention by interested parties;
    - (ii) dates of permitted or required written submissions by all persons;

- (iii) dates, times and locations of any scheduled public meetings or hearings; and
  - (f) such other information as may be required to ensure fair and meaningful participation as required by the Law.
- (4) Notices shall be considered to have been publicly given or published if published in the Official Gazette, on the Commission's website and in at least one newspaper of general circulation within Monrovia.

#### **11. SCOPE OF OPPORTUNITY TO BE HEARD**

(1) A meaningful opportunity to participate in the decision-making processes of the Commission shall include without limitation the following, as required by Section 3.7(1)(g) of the Law:

- (a) providing all parties, the ability to obtain necessary information and documentation from other parties in the matter;
- (b) the right to submit evidence and arguments to the Commission; and
- (c) the opportunity to examine all of the evidence that the Regulator will rely upon in making its decision in the matter.

(2) In accordance with Section 82.4(2) of the APA, at any public hearing, the Commission shall hear testimony from any and all persons, provided that they have expressed an interest in writing to be heard on the matter, and have done so in accordance with the written rules of the Commission.

#### **12. AFFECTED PARTIES**

(1) Meaningful opportunity to be heard is a right extended under the Law to all affected parties, provided only that they have filed timely written notification of their desire to become formally recognized as parties with the Commission.

(2) The definition of affected party in the Law is very broad and includes all persons, natural, Governmental, or other legal entities who have filed the necessary notification with the Commission, unless they are completely unaffected by the outcome of the matter, as formally determined by the Commission.

(3) The Commission recognizes the duty imposed under the Law to grant virtually every member of the public the opportunity of being heard in all matters related to tariffs and to quality and availability of service, and when it is impracticable to do so, the Commission shall devise and publish a mechanism for collecting as many views of the members of public as possible.

## **PART IV – PROCEDURE FOR ADJUDICATORY PROCEEDINGS**

### **13. APPLICATION OF THIS PART**

- (1) This part applies to adjudicatory proceedings or inquiries and investigations launched by the Commission into the activities of Licensees.
- (2) For the purposes of this Part, License includes a permit or authorization and Licensee includes the holder of a Permit or an Authorization issued by the Commission to engage in a regulated activity within the electricity industry.
- (3) The Commission shall as far as practicable follow the procedures in the APA in adjudicating or handling proceedings under this Part.

### **14. ADJUDICATORY PROCEEDINGS**

The Chairman shall designate an appropriate Hearing Officer to hear a contested matter which is a proceeding, including but not limited to the grant or refusal, modification, suspension or revocation of a license, in which the legal rights, duties or privileges of a party are determined after an opportunity of being heard.

### **15. INQUIRIES BY THE COMMISSION**

- (1) Under section 3.3 B (1) of the Law, the Commission may undertake inquiries and investigations into the activities of licensees.
- (2) If the Commission decides to launch such inquiries or investigations, the Chairman shall designate an appropriate Officer to do so and such an officer may be appointed from among the staff or external persons with expertise in the matter under consideration.
- (3) The Commission shall develop and publish guidelines for conducting inquiries and investigations.

### **16. ALTERNATIVE DISPUTE RESOLUTION**

- (1) In any adjudicatory proceeding, a party or parties may, if permissible, request that some or all the issues in dispute in the proceedings be resolved through the use of alternative dispute resolution, including the use of neutral facilitators, mediators or arbitrators.
- (2) The request shall state why the party or parties believe such alternative method would be appropriate and the timing of such attempt a resolution.
- (3) The Commission shall consider such requests and issue an order either granting the request or denying it after the parties have had an opportunity to file their position.

## PART V - ADDITIONAL PROCEDURES FOR RULEMAKING

### 17. NOTICE OF RULEMAKING

- (1) Section 13.7(2) of the Law requires that all rulemaking by the Commission shall begin with the publication of a Notice of Proposed Rulemaking.
- (2) Such Notice shall set forth the following:
  - (a) the subject matter on which the Commission is considering issuing new or amended rules;
  - (b) any initial views that the Commission may have on the area of rulemaking to be addressed and the matters to be affected thereby, including a brief description and the conclusions of any relevant preliminary or other studies that have already been undertaken by the Commission or others on the subject matter;
  - (c) any questions or information requests that the Commission is including in the Notice, with respect to which it is soliciting written comments from stakeholders and other members of the public; and
  - (d) the date by which the Commission is looking for such comments or information to be submitted which, absent emergency, shall be not less than 30 days from the publication date of the Notice.

### 18. COMMENT PERIOD

- (1) During the 30 days, or such other number of days determined by the Commission as comment period, interested persons may file with the Commission written testimony expressing their views on the subject matter, as well as whether there is a need for new rules or amendments to existing rules to address their concerns.
- (2) Following the comment period, the Commission with the assistance of staff shall review and consider the views included in all submitted comments.
- (3) Based on such review and consideration, the Commission shall determine whether to:
  - (a) go no further with the rulemaking process;
  - (b) seek further comments; or
  - (c) move forward with formal rulemaking.

### 19. ADOPTION OF RULES

To move forward with the formal rulemaking, the Commission shall proceed as follows:

- (a) it shall first prepare Proposed Rules, which shall then be published for not less than 30 days, provided that such publication shall indicate:
  - (i) that the Commission is seeking written comments from stakeholders and other members of the public on the Proposed Rules, and

- (ii) the date and method by which such written comments should be submitted;
- (b) it shall next review and consider the written comments received by it, and based thereupon, shall determine whether to:
  - (i) go no further with the rulemaking process; or
  - (ii) seek further comments on the Proposed Rules; or
  - (iii) move forward with adoption of Final Rules.
- (c) to adopt Final Rules, the Commission shall:
  - (i) take formal action to adopt such Final Rules, including a text of such Rules in the minutes of such meeting or action;
  - (ii) prepare a written statement that shall set forth the record of its deliberations;
- (d) the written statement shall include:
  - (i) a summary and analysis of all comments received;
  - (ii) the reasoning for adopting the Rules as it did; and
  - (iii) the justification for doing so.

## **PART VI - PUBLIC HEARINGS**

### **20. REQUIREMENT FOR PUBLIC HEARINGS**

(1) Under Section 13.7(1)(h) of the Law, the Commission is required to hold public hearings in respect of the following matters:

- (a) setting of tariffs;
- (b) promulgation of rules and regulations;
- (c) any consumer complaints or other types of disputes, to the extent they are formally adjudicated; and
- (d) all matters with respect to which one or more affected parties has so requested.

(2) The Commission will also hold public hearings for objections raised by affected parties in connection with its issuance of Licenses.

### **21. HEARINGS ON COMMISSION INITIATIVE**

In addition to the provisions of regulation 20, the Commission may hold a public hearing on any matter on its own initiative.

### **22. NOTICE OF PUBLIC HEARING AND VENUE**

The Commission shall:

- (a) provide notice of every public hearing in accordance with regulation 10; and

*LDS*

- (b) if practicable to do so, hold at least one session of a public hearing in the community within or nearest to the area in which a proposed project or subject matter is located.

### **23. HEARING PROCEDURE**

(1) Public hearings shall be held as set forth in the Commission's notice of public hearing and shall be conducted in accordance with these Administrative Procedures, which have been duly adopted by the Commission.

(2) At the public hearing, the Commission shall hear all comments offered by all persons offering testimony, including the directly affected person in the case of any contested matter, as defined in the APA, as well as any identified stakeholders and any other member of the public, subject however to any time constraints that the Commission may impose prior to or at the outset of the hearing in the interests of efficiency, including the requirement, if any, to register in advance of the hearing with the Commission.

(3) In the interest of permitting the Commission to hear all comments, the Commission may continue any such hearing to a future date, provided that such continued hearing date shall be not more than 10 days thereafter and that such date, together with the initial hearing date and any other dates, shall not toll any existing time limit for action by the Commission on the matter.

(4) The transcript of each hearing shall constitute a part of the file established by the Commission for such matter, which in the case of hearings in a contested matter shall include all of the following, as required by the APA:

- (a) all pleadings, motions, and intermediate rulings;
- (b) a transcript of the hearing;
- (c) a statement of matters officially noticed, if any;
- (d) questions and offers of proof, objections thereto, and rulings thereon;
- (e) proposed findings and exceptions;
- (f) any decision, opinion, or report prepared by the officer presiding at the hearing; and
- (g) all staff memoranda submitted to the hearing officer or members of the Commission in connection with their consideration of the matter.

(5) A public hearing shall not be deemed a judicial or quasi-judicial hearing and as such the rules of procedure in the courts of law shall not apply.

(6) Pursuant to Section 82.2 of the APA, hearing officers may, if necessary be designated by the Commission from time to time, in writing, for any particular hearing or any category thereof, and such officers shall have all of the powers set forth in Section 82.4(8) of the APA.

(7) If public hearings are held in more than one session and in different places, all submissions and presentations shall be deemed by the Commission to have been made in a single continuous process and no person shall be allowed to reappear before the Commission with the same set of testimony, facts or issue;

(8) The Commission shall before the close of the public hearing give an applicant, a licensee or person against whom a claim or objection has been made

an opportunity to answer questions, clarify or correct any issue or matter raised during the hearing or conclude their position on the matter.

(9) The Chairman, hearing officer or person presiding at the public hearing shall regulate the proceedings at the hearing.

#### **24. COMMISSION DECISION AFTER HEARING**

(1) In accordance with the Law, all decisions of the Commission shall be prepared in writing and shall be published by Commission staff on the Commission's website and otherwise be made public as determined by the Commission.

(2) The Commission's decisions shall contain the following:

- (a) procedural history of the matter;
- (b) precise and complete description of the issue(s) presented and decided by the Commission;
- (c) statement of facts;
- (d) summary of evidence presented and arguments made by each affected party;
- (e) analysis of law and operative facts;
- (f) clear and precise statement of conclusions; and
- (g) complete rationale for decision.

### **PART VII - COMMISSION DECISIONS**

#### **25. GUIDING PRINCIPLES FOR COMMISSION DECISIONS**

In accordance with the provision of section 13.7 (3) of the Law, the decisions of the Commission must be:

- (a) consistent with its authority under the Law, the Commission's own Rules and the National Electricity Policy as published by the Ministry;
- (b) supported by legal or factual record evidence established in a public process before the Commission;
- (c) taken in an open, transparent process, including public hearings for all significant matters.

#### **26. RECONSIDERATION OF DECISIONS**

(1) A Commission decision shall become final 30 days after publication, unless a proper written application for reconsideration by the Commission shall have been earlier filed, provided that reconsideration shall be available only in the case of the Commission's non-rulemaking decisions.

(2) An application for reconsideration shall be in the form approved for such purpose by the Commission as provided in the form attached hereto as Annex III.

(3) Reconsideration may only be sought by an eligible party, which for this purpose shall mean any party that:

- (a) participated in the original proceeding; and
- (b) either formally addressed the issue with respect to which reconsideration is requested, or if it did not address the issue in the proceeding, is able to state in its application why it was precluded from doing so, which must be for reasons beyond that party's control.

(4) In drafting its written application for formal reconsideration, an eligible party must set forth the specific issues with respect to which the reconsideration is sought, and state the grounds for such reconsideration.

(5) Reconsideration is not available for Commission rulemaking decisions, which shall be subject, however, to judicial review, as described in regulation 27.

## **27. JUDICIAL REVIEW OF DECISIONS**

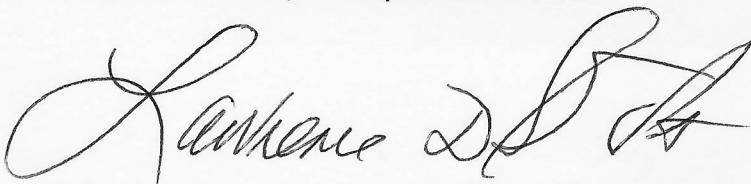
A final decision of the Commission may be appealed by any affected party to a court of competent jurisdiction, which shall initially include at least the Civil Law Court sitting in the City of Monrovia, and such court shall have the power to consider:

- (a) whether the Commission acted in accordance with its authority under the Law; and
- (b) whether its decision is supported by the legal and factual evidence presented in the matter.

## **THE COMMON SEAL OF LIBERIAN ELECTRICITY REGULATORY COMMISSION**

Was affixed pursuant to the ORDER OF THE COMMISSION

On this 17<sup>th</sup> day of September 2020.



**Dr. Lawrence D. Sekajipo, CPA, CFE, DBA, JSM  
CHAIRMAN  
BOARD OF COMMISSIONERS**

LDS