



## **MEDIATION PROCEDURES**

*(Section 3(2)(c) of the Electricity Act, 2007 (Act No. 4 of 2007))*

**NOVEMBER 2010**

**Issued by:**

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## INTRODUCTION

In terms of section 3(2)(c) of the Electricity Act, 2007, it is a function of the Electricity Control Board to mediate certain disputes. Section 3(2)(c) provides that:

*“In order to achieve its objects the Board must, at the request of any interested party, act as mediator for the settlement of disputes between licensees or between licensees and their customers or prospective customers regarding -*

- (i) the right to the supply of electricity;*
- (ii) the quality of any such supply and the provision of services in connection therewith;*
- (iii) the installation and functioning of meters;*
- (iv) the suitability of the equipment of a licensee;*
- (v) delays in or refusal of supply by a licensee;*
- (vi) any other matter which a licensee or customer refers to the Board for mediation.”*

Mediation is a settlement effort which utilises the services of an impartial, third-party mediator, knowledgeable in the field of the dispute, in an effort to reach a mutually acceptable agreement. By agreeing to mediate, parties agree to negotiate to attempt to settle their differences. Neither the ECB nor the Mediation Panel has the power or authority to render a binding decision or to force the parties to accept a settlement. Whenever parties choose to mediate through the ECB as anticipated in section 3(2)(c) of the Electricity Act, 2000, the following Mediation Procedures apply to the proceedings.

The purpose of these Mediation Procedures is to set out the procedures to be followed by the Electricity Control Board and parties seeking mediation to ensure a fair and orderly manner in which mediation will be conducted.

## 1. Definitions

In these Mediation Procedures, unless the context clearly indicates otherwise, any word or expression to which a meaning has been assigned in the Electricity Act, 2007 (Act No. 4 of 2007), has the same meaning, and -

- 1.1 “application” means an application for mediation;
- 1.2 “Chairperson” means the Chairperson of the Panel;
- 1.3 “dispute” means a dispute between licensees, between licensees and their customers, prospective customers or any other interested person regarding any of the following matters:
  - 1.3.1 the right to the supply of electricity;
  - 1.3.2 the quality of any such supply and the provision of services in connection therewith;
  - 1.3.3 the installation and functioning of meters;
  - 1.3.4 the suitability of the equipment of a licensee;
  - 1.3.5 delays in or refusal of supply by a licensee;
  - 1.3.6 any other matter which a licensee or customer refers for mediation;
- 1.4 “ECB” means the Electricity Control Board;
- 1.5 “Electricity Act” means the Electricity Act, 2007 (Act No. 4 of 2007);
- 1.6 “Panel” means the Mediation Panel established by clause 3;
- 1.7 “party” means any interested party to a dispute which is to be the subject of a mediation;
- 1.8 “personal interest”, in relation to a member of the Panel, means a financial interest in the subject of a mediation, or any other interest (whether direct or indirect), which may cause a conflict of interests in the performance of duties by the member;
- 1.9 “Procedures” means these Mediation Procedures;
- 1.10 “Secretary” means the Secretary of the Panel appointed or designated under clause 5.

## **2. Mediation Procedures: General Administrative Clauses**

- 2.1 These Procedures apply to the mediation of disputes under section 3(2)(c) of the Electricity Act.
- 2.2 Updated copies of these Procedures must be made available by the Secretary to any person so requesting, but subject thereto that, if the Panel so decides, the Secretary may charge such person the actual cost of making such copies.
- 2.3 The Secretary is the channel through which parties to a mediation communicate with each other regarding the mediation and with the Panel.
- 2.4 Communications to the Secretary and the Panel must be -

- 2.4.1 physically delivered to -

**The Secretary of the Mediation Panel  
Electricity Control Board  
No 8 Bismarck Street  
ECB House  
WINDHOEK**

- 2.4.2 or addressed to -

**The Secretary of the Mediation Panel  
Electricity Control Board  
PO Box 2923  
WINDHOEK**

- 2.4.3 or by way of facsimile to (061) 374 305.

- 2.5 No formal record or transcript of the mediation shall be made.

## **3. Mediation Panel**

- 3.1 The Panel consists of-

- 3.1.1 such members of the Board of the ECB as those Board members may elect amongst themselves;

- 3.1.2 such senior staff of the ECB that the Board members may elect,

but subject thereto that the Panel must consist of at least three persons of whom at least one must be a board member of the ECB.

- 3.2 The persons appointed as members of the Panel shall elect a chairperson and deputy chairperson from amongst their number but subject thereto that the person elected as chairperson must be a member of the Board of the ECB.
- 3.3 Members of the Panel are appointed by the Chairperson of the Board of the ECB.
- 3.4 The Board of the ECB decides on the term for which, and the conditions subject to which, members of the Panel are appointed.
- 3.5 Members of the Panel, who are not in the fulltime employment of the ECB, may, subject to the Electricity Act, be paid remuneration and allowances from the funds of the ECB for Panel related duties performed by them.

#### **4. Principles applicable to Panel members**

- 4.1 Panel members must at all times act in an independent, neutral and impartial manner to assist parties in reaching an amicable settlement to a dispute.
- 4.2 Panel members must comply with the rules of natural justice and fair administrative procedures and must give reasons for recommendations by and/or decisions of the Panel.
- 4.3 Panel members must -
  - 4.3.1 discharge their functions diligently and efficiently and always with due courtesy to all persons partaking in mediation proceedings;
  - 4.3.2 devote sufficient time and proper attention in the discharge of their functions;
  - 4.3.3 apply procedures which will avoid unnecessary cost or delay and will promote the efficient performance of their functions;
  - 4.3.4 be guided by principles of objectivity, fairness and justice.
- 4.4 Panel members are not liable for any act or omission arising from their role as mediator.
- 4.5 Panel members will not act as arbitrators, witnesses, consultants, experts, representatives, or counsels of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation proceedings, unless all the other members of the Panel and all the parties to the dispute agree otherwise in writing.

- 4.6 Panel members may not transmit or otherwise disclose confidential information provided by one party to any other unless specifically authorized in writing by the party providing the confidential information.

## **5. Secretary and secretariat of Panel**

- 5.1 Unless the Panel members, with the approval of the Board of the ECB, deem it fit to appoint an outside person or persons to act as the Panel's Secretary and secretariat (if any), secretarial services to the Panel must be provided by the staff of the ECB and an employee of the ECB must be appointed as Secretary.

- 5.2 The Secretary is, subject to the instructions of the Panel members, responsible -

5.2.1 for all administrative arrangements connected with mediation proceedings;

5.2.2 for communications of the Panel,

and must otherwise perform all functions entrusted to the Secretary in terms of these Procedures.

- 5.3 The Secretary is assisted by the secretariat (if any).

## **6. Personal interest**

- 6.1 A member of the Panel who, in any particular mediation, has a personal interest in the subject thereof must disclose such interest prior to the commencement of mediation proceedings in connection therewith and may not partake in the relevant proceedings.

- 6.2 The Chairperson must appoint another member of the Panel in such member's place in the manner anticipated in clause 3.1.

## **7. Commencement of mediation**

- 7.1 A party to a dispute initiates mediation by so advising, in writing, the other party or parties against whom the dispute is declared and must include therein a brief identification the nature of the dispute and inviting such other party to agree to mediation.

- 7.2 The receiving party must reply within 14 days from the date sent or within such period of time as specified in the invitation contemplated in clause 7.1.

- 7.3 Parties must submit a dispute for mediation in the form of Form MP/ECB1 and each party must separately complete that form.

- 7.4 Parties must take note that mediation is a voluntary procedure and that the ECB will, within a reasonable time and in as far as possible, attempt to obtain the cooperation in the mediation procedure of the receiving party (where the receiving party does not voluntarily agree to mediation after an invitation thereto as anticipated in clause 7.1).

## **8. Date, time and place of mediation**

- 8.1 Mediations must, in as far as possible, be held at the offices of the ECB in Windhoek unless factors such as, but not limited to, saving time and cost compels a different place.
- 8.2 The date, time and place for the first hearing and all subsequent hearings, if any, shall be determined by the Panel members in consultation with the parties.

## **9. Proceedings at mediation**

- 9.1 At the commencement of the mediation session, the parties must make oral presentations explaining their positions and for this purpose the parties may call such witnesses and present such evidence as they deem fit.
- 9.2 The Chairperson, after consulting the other Panel members, must decide in which sequence the parties -
- 9.2.1 will make their presentations;
  - 9.2.2 will have the opportunity to respond to the other party's presentations; and
  - 9.2.3 may cross-examine the other party or the other party's witnesses.
- 9.3 The Panel members -
- 9.3.1 may question the parties to clarify their positions;
  - 9.3.2 must review the strengths and weaknesses of each party's contentions and make suggestions accordingly.
- 9.4 The Panel members has no authority to impose a settlement but must act as neutral and impartial facilitators to help the parties narrow their differences and reach a resolution to their dispute.
- 9.5 If requested by the parties, the Panel members may at any stage of the proceedings offer settlement proposals.



- 9.6 The Panel members may request either of the parties or each party to submit further explanation of such parties' or party's position, supplemented by any documents or other information deemed appropriate.
- 9.7 The Panel members may conduct separate private meetings with each party in order to improve their understanding of the positions of the parties.
- 9.8 If one or more of the parties has/have a substantial need for discovery in order to prepare for the mediation session, the parties must attempt to agree on a plan for such necessary discovery but if they fail to reach agreement, the parties will present the matter to the Panel members for a non-binding recommendation.
- 9.9 If, during mediation proceedings, any point regarding the proceedings is raised by any party to the proceedings, the Chairperson must allow such point to be raised and must, after deliberation with the other Panel members, make a final ruling with regard thereto.
- 9.10 Any member of the Panel may at any time, with the permission of the Chairperson, interrupt proceedings in order to ask questions or clarify issues.

## **10. Representation**

- 10.1 The parties have the right to be represented by legal or any other representation of a party's choice, but each party must have present an individual with decision-making authority to discuss, negotiate and conclude a settlement.
- 10.2 The parties may appear for themselves if they so choose but may seek counsel at any time during the mediation.

## **11. Orderly conduct at proceedings and time frames**

- 11.1 For the orderly conduct at proceedings, the Chairperson may -
- 11.1.1 order any person whose conduct is obstructive to leave the hearing;
  - 11.1.2 place a time limit on any party with regard to the presentation of its case or a reply to or cross-examination of another party;
  - 11.1.3 make any such other ruling as the Chairperson may deem fit for the benefit of the orderly conduct of proceedings.
- 11.2 At the request of the Chairperson, a party must indicate the time frame it will require to present its case, point or evidence, its response or its cross-examination and the Chairperson may limit such a party to that time frame or such shorter time frame as the Chairperson may deem expedient.

**12. Completion of mediation proceedings**

12.1 Mediation proceedings are deemed to have been completed -

12.1.1 in the event of such proceedings not having been completed within 10 days after the commencement thereof, but the parties may agree to extend this time period provided that each extension is not longer than 20 days; or

12.1.2 in the event of the mediation proceedings not having been completed after two mediation sessions, but the parties may agree to extend the number of sessions allowed in terms of the mediation provided that no more than one additional session may be agreed to at any one time.

12.2 Mediation proceedings are completed when -

12.2.1 a settlement has been reached by the parties; or

12.2.2 the parties agree to terminate the mediation due to no reasonable foreseeable prospect that the dispute can be resolved through mediation.

**13. Termination of mediation**

13.1 Mediation is voluntary and any party or all parties may withdraw from the proceedings at any time prior to the execution of a written settlement agreement by giving written notice to the Panel and the other parties.

13.2 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by the parties.

**14. Cost**

Each party must bear its own costs.

**15. Confidentiality**

15.1 The Panel members, the Secretary, the secretariat (if any) and the parties agree not to disclose, transmit, introduce or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation proceedings by the Panel or the parties as evidence in any lawsuit, arbitration or other proceeding, unless authorized in writing by all parties to the mediation or compelled by law.

15.2 The fact that a mediation has occurred or is continuing shall not be considered confidential.

**16. Deviation from Clauses**

16.1 The Chairperson may direct, at a particular hearing, a deviation from these Clauses where such deviation is –

16.1.1 necessitated by extraordinary circumstances; or

16.1.2 required under the circumstances of the case for a just resolution of a matter raised at a mediation,

for purposes of ensuring a fair, just and speedy hearing for all parties involved, and irrespective of whether the deviation is caused by an omission or defect in these Procedures, or is additionally required.

16.2 A deviation anticipated in clause 16.1 may not prejudice any party to a public hearing, and the Chairperson, before issuing such a direction, must provide a full opportunity to the parties to be heard on the merits of any such proposed deviation and the deviation eventually directed by the Chairperson only has effect in respect of the that mediation and does not, unless these Procedures are appropriately amended in terms these Procedures, per se apply in other subsequent proceedings.

**17. Amendment of Clauses**

These Procedures may at any time in writing be amended by the Board of the ECB.



**PRESCRIBED FORM FOR APPLICATIONS FOR MEDIATION BY THE ECB**

*(Note: If this form is completed by hand, it must be completed in bold letters  
This form must be completed separately by each party to a dispute to be submitted for mediation and for this purpose the "requesting party" means the party first requesting mediation and "receiving party" means the party receiving such a request.)*

**1. Details of the Requesting party/Receiving party\*:**

Name of Party \_\_\_\_\_

Organisation (where applicable)/description\* \_\_\_\_\_

Address (postal and physical): \_\_\_\_\_

\_\_\_\_\_

Name of contact person: \_\_\_\_\_

Designation of contact person: \_\_\_\_\_

Telephone number: \_\_\_\_\_ (.....)

Fax number: \_\_\_\_\_ (.....)

E-mail address: \_\_\_\_\_

Name(s) of parties to be joined to mediation (if any)  
\_\_\_\_\_

*(Note 1: Please note that unless otherwise stipulated by the party, all documents to be submitted to/served on the party will be submitted/served at the physical address given above (or if the party resides outside Windhoek, and where practicable, to the fax number provided and the original posted to the postal address provided) for the attention of the contact person given above.)*

\_\_\_\_\_

\* Please indicate whether the applicant is a licensee or a customer (and type of licensee/customer) or neither.

*(Note 2: Where parties are to be joined the particulars required under section 1 must be provided on a separate form to be attached to this application with regard to each party to be joined.)*

**2. Request for mediation:**

2.1 The Party and all parties joined (if any), by submitting this properly completed and signed form to the Mediation Panel (“the Panel”), are requesting the mediation of a dispute by the Panel as provided for in section 3(2)(c) of the Electricity Act, 2007 (Act No. 4 of 2007), (“the Electricity Act”), in regard of:

- the right to the supply of electricity;
- the quality of any such supply and the provision of services in connection therewith;
- the installation and functioning of meters;
- the suitability of the equipment of a licensee;
- delays in or refusal of supply by a licensee;
- any other matter which a licensee or customer refers to the ECB for mediation.

*(Note: tick the appropriate box above; application for several related disputes to be mediated may be joined. Where the party wishes to request mediation with regard to more than one dispute the information required by this form must be provided with regard to each dispute.)*

2.2 Does the receiving party (parties) to the dispute to be submitted for mediation agree to the mediation?

- YES
- NO

*(Note: if the answer is yes the receiving party (parties) must submit to the Secretary a fully completed Form MP/ECBI.)*

2.3 Accordingly, the party and all parties joined (if any) below set out the relevant facts, which are the subject of the dispute to be mediated, and submit the related information as provided for hereunder.

2.4 By agreeing to mediate, parties are agreeing to negotiate in an attempt to settle their differences in good faith.

**3. Information regarding receiving party (parties)\***

Name of opposing party: \_\_\_\_\_

Organisation (where applicable)/description:♦ \_\_\_\_\_

Address (postal and physical): \_\_\_\_\_

Name of contact person:

(if available) \_\_\_\_\_

Designation of contact person \_\_\_\_\_

Telephone number: (.....) \_\_\_\_\_

Fax number: (.....) \_\_\_\_\_

E-mail address: \_\_\_\_\_

Name(s) of additional receiving parties to mediation (if any) \_\_\_\_\_

*(Note 1: Where there is more than one receiving party the particulars required under section 3 must be provided on a separate form to be attached to this application with regard to each receiving party.)*

**4. Provide hereunder the full details of the dispute (and supporting arguments therefor) which the party intends to submit for mediation, including the issues to be resolved by means of mediation**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* Only to be completed by requesting party in the event of the receiving party not agreeing to a mediation and the intervention of the ECB is required.

♦ Please indicate whether the receiving party is a licensee or a customer and type of licensee/customer.

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*(Note: if the above space is insufficient, additional information, clearly marked, may be attached to this form at the end. Where available, supporting evidence for facts or contentions relied upon may be provided.)*

5. **Indicate hereunder the date (or if no specific date is determinable, the time frame more or less) on which the dispute surfaced**

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6. **Details of the party's and all parties' joined (if any) prior involvement, if any, in (1) consultation procedures regarding the dispute (if any); (2) any other consultations or negotiations between parties which relate to the matter disputed**

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*(Note: if the above space is insufficient, additional information, clearly marked, may be attached to this form at the end)*

7. **Indicate hereunder remedy claimed by the party**

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*(Note: if the above space is insufficient, additional information, clearly marked, may be attached to this form at the end)*

8. **Presentation**

Provide the name, title, address and qualifications of the person who will be representing the party and all parties joined (if any) during the mediation proceedings

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9. **Additional information**

The following additional information (if any) requested by the Panel must be attached to this application, namely:

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**DECLARATION**

I, ..... on behalf of ..... (*if applicable*) in my capacity as ..... (*if applicable*) hereby declare that the information submitted by me in this application is to the best of my knowledge not false or misleading and that this is a *bona fide* dispute submitted for mediation.

Thus done at \_\_\_\_\_ on \_\_\_\_\_  
*(fill in place)* *(fill in date)*

\_\_\_\_\_  
*(Signature)*

of behalf of (*if applicable*)

\_\_\_\_\_  
*(Name of organisation/approved authority/etc)*

**DECLARATION BY PARTIES JOINED TO THE DISPUTE**

I, ..... on behalf of ..... (*if applicable*) in my capacity as ..... (*if applicable*) hereby declare that -

- (a) ..... (*name of party to be joined*) wishes to be joined to the mediation proceedings regarding this dispute and gives my/its permission to be so joined;

- (b) the information submitted by me/it in this application is to the best of my/its knowledge not false or misleading and that this is a *bona fide* dispute submitted for mediation.

Thus done at \_\_\_\_\_ on \_\_\_\_\_  
*(fill in place)* *(fill in date)*

\_\_\_\_\_  
*(Signature)*

of behalf of *(if applicable)*

\_\_\_\_\_  
*(Name of organisation/approved authority/etc)*

*(Note: This declaration must be completed by each party to be joined to the dispute)*