FIFTY-NINTH ORDINARY SESSION OF THE COUNCIL OF MINISTERS
Ouagadougou, 14 – 15 December 2007

REGULATION C/REG.27/12/07 ON THE COMPOSITION, ORGANISATION, FUNCTIONS AND OPERATION OF THE ECOWAS REGIONAL ELECTRICITY REGULATORY AUTHORITY (ERERA)

THE COUNCIL OF MINISTERS,

MINDFUL of Articles 7, 8 and 9 of the ECOWAS Treaty as amended, establishing the Authority of Heads of States and Government and defining its composition and functions;

MINDFUL of Article 3 of the ECOWAS Treaty stating the orientations of Community actions for the achievement of its aims and objectives;

MINDFUL of Articles 26, 28, and 55 of the ECOWAS Treaty relating to the promotion, cooperation, integration and development of energy projects and sectors of the Member States of the Community;

MINDFUL of Protocol A/P.1/7/91 of 6 July 1991 relating to the Community Court of Justice;

MINDFUL of Protocol A/P2/8/94 of 6 August 1994 relating to the Community Parliament;

MINDFUL of Protocol A/P4/1/03 of 31 January 2003, hereafter referred to as the « ECOWAS Energy Protocol » establishing the legal framework intended to promote long-term cooperation in the energy sector within the ECOWAS region, and based on complementarities and mutual benefits with a view to achieving increased investment in the energy sector and increased energy trade in the West African region;

MINDFUL of Article 31 (n) of the Energy Protocol requesting the Meeting of Energy Ministers of ECOWAS Member States to establish regulatory bodies for energy systems, programmes and projects;
MINDFUL of Supplementary Protocol A/SP1/1/05 of 19 January 2005 amending the Protocol relating to the Community Court of Justice;

MINDFUL of Protocol A/SP.1/06/06 of 14 June 2006 amending the Revised Treaty of ECOWAS;

MINDFUL of Protocol A/SP2/06/06 of 14 June 2006 amending the Protocol relating to the Court of Justice;

MINDFUL of Protocol A/SP3/06 of 14 June 2006 amending Protocol A/P2/8/94 relating to the Community Parliament;

MINDFUL of Supplementary Act A/SA.../12/07 establishing the ECOWAS Regional Electricity Regulatory Authority (ERERA);

MINDFUL of Decision A/DEC.5/12/99 of 10 December 1999 relating to the establishment of a West African Power Pool (WAPP);

MINDFUL of Decision A/DEC. 6/01/05 of 19 January 2005 relating to the development of a regional regulatory framework for the power sector within ECOWAS as a prelude to the establishment of a Regional Regulation Body, and requesting the ECOWAS Executive Secretariat to take necessary measures for setting up this regulatory framework;

MINDFUL of Decision A/DEC.1/06/06 of 14 June 2006 relating to the Commission of the Economic Community of West African States (ECOWAS);

CONSIDERING Resolution n°3 dated 5 April 2002 of the WAPP Steering Committee composed of the Energy Ministers of ECOWAS Member States, relating to the creation of a Regional Regulatory Body and the development of a legal and regulatory framework for the West African Power Pool;

RECOGNISING that the creation of a Regional Regulatory Body has amongst others the principal objective of establishing an attractive environment for investors and developing cross-border power pooling within the ECOWAS power sector;

CONVINCED of the need to promote a regional approach to cross-border power pooling and to monitor the institutional and technical harmonisation of national electricity structures within ECOWAS in order to organise the regional electricity market and to create favourable conditions for investment and capacity development in Member States;

AWARE that the Power Sector Regional Regulatory Body constitutes a necessary condition for the implementation, supervision and control of cross-border exchanges;

DESIROUS to effectively build the regional electricity market, and to that effect, provide the regional electricity regulatory authority with necessary powers and an efficient system of organisation and operation;
ON THE RECOMMENDATION of the eighth meeting of the Energy Ministers of ECOWAS Member States, held in Lomé on 16 November 2007;

ENACTS:

CHAPTER I: ORGANISATION OF ERERA

Article 1: Composition of the Regulatory Council

The Regulatory Council shall be composed of five (5) members, one of who shall be the Chairman, subject to the transitional provisions of article 39 of this Regulation.

Article 2: Governing Board of ERERA

ERERA shall be governed by a decision-making and managerial body called the Regulatory Council. The Regulatory Council shall be vested with all the necessary powers for the accomplishment of the missions assigned to it by this Regulation.

Article 3: Functions of the Regulatory Council

1. The Regulatory Council shall define the general policy of ERERA and take regulatory decisions. It shall have responsibility on the administration of ERERA and the supervision of its activities;

2. The Regulatory Council shall decide the development policy of ERERA;

3. The Regulatory Council shall adopt the annual programme of activities of ERERA and notifies the President of the Commission thereof;

4. The Regulatory Council shall carry out the exercise referred to in article 9 of this Regulation;

5. The Regulatory Council shall order and approve investigations, control measures and audits;

6. The Regulatory Council shall define and adopt the organogram, internal regulation of ERERA, its internal, financial, accounting, human resource
management procedures, the remuneration and benefits of the staff of ERERA;

7. The Regulatory Council shall prepare and adopt the annual budget as well as the financial statements of ERERA in accordance with article 38 of this Regulation;

8. The Regulatory Council shall employ the personnel of ERERA, within the provisions of the ECOWAS Personnel Regulation, the laws of the host country and the powers vested in it;

9. The Regulatory Council shall recruit and dismiss all agents and employees of ERERA. It shall determine their remuneration, allowances and other employment and retirement conditions in accordance with these provisions of this Act and the internal regulations of ERERA. It shall assign staff members to the various technical and administrative positions of the Council. It shall be empowered with disciplinary powers over them.

10. The Regulatory Council shall approve purchases, contracts and conventions related to the operations of ERERA. It shall take loans strictly within budgetary limits and in accordance with the provisions of this Regulation;

11. The Regulatory Council shall not later than the month of May of each year, prepare an annual report of the activities of ERERA during the preceding year, and circulate as specify in article 18.7.g of this Regulation;

12. The Regulatory Council shall authorize the participation of ERERA in any association, group or professional organizations whose activities are related to its missions.

**Article 4: Tenure of Regulatory Council Members**

Regulatory Council members shall be appointed for a non-renewable tenure of five (5) years and they shall serve on full-time basis.

**Article 5: Appointment of Members of the Regulatory Council**

1. The Regulatory Council Members shall be appointed based on their moral integrity, skill, expertise, legal, technical, economic and financial qualifications. They shall have at least ten (10) years of experience in electricity generation, transmission, distribution or sale and/or experience in the fields of regulation, law, accounting, economics, finance or administration.

2. The Chairman of the Regulatory Council shall have occupied a high level managerial position in his previous functions.
3. The Regulatory Council members shall be citizens of ECOWAS Member States, exercise their civil and political rights and shall have a clean criminal record.

4. The Regulatory Council Members shall be recruited under the supervision of the ECOWAS Commission, assisted by an independent and reputable recruitment agency.

Article 6: Dismissal - Resignation - Vacancies

1. The tenure of Members of the Regulatory Council shall not be interrupted before its expiry except on grounds of negligence, serious misconduct or conviction of criminal offence.

2. The decision for dismissal shall be taken by the Council of Ministers based on the recommendation of the Meeting of Energy Ministers.

3. In the case of resignation, death or dismissal, a Member of the Regulatory Council shall be replaced under the conditions stipulated in Articles 4 and 5 of this Regulation.

4. Whenever a vacancy occurs in the Regulatory Council, the Chairman of the Regulatory Council shall notify, in writing, the ECOWAS Commission, which shall immediately initiate the replacement process.

Article 7: Status of Members of the Regulatory Council

1. In accordance with the provisions of Article 88 of the Revised Treaty of ECOWAS, Members of the Regulatory Council shall enjoy, for action taken in the exercise of their duties, on the territory of ECOWAS Member States, the immunities provided for in the General Convention on Privileges and Immunities of ECOWAS, and any other agreement entered into between ECOWAS and the host country.

2. They shall not be sued, declared wanted, arrested or tried as a result of acts performed, measures taken or opinions or votes cast in the exercise of their duties.

Article 8. Independence of Members of the Regulatory Council

1. The Members of the Regulatory Council shall have full independence to exercise their mandate for the accomplishment of the missions entrusted to them. Consequently, they shall not solicit, accept or receive any instruction from any Government, company, public or private organization or any ECOWAS institution.
2. Member States and others institutions in the ECOWAS region shall respect their independence in the exercise of their duties.

**Article 9: Professional confidentiality/secrecy**

1. The Members of the Regulatory Council shall strictly adhere to professional confidentiality regarding information, fact, act and/or awareness, which they obtained knowledge of, in the course of their duties, during their tenure and thereafter without limit to the duration.

2. The Members of the Regulatory Council shall ensure adherence to this rule by all staff members of ERERA.

3. Members of the Regulatory Council shall take decisions collectively and shall be obliged to keep their deliberations confidential.

4. During their duties, no Member of the Regulatory Council shall consult, deliberate, take a decision or a public stance on any issue that is pending or will be submitted before the Regulatory Council.

**Article 10: Conflict of Interest**

1. The functions of a Regulatory Council Member shall be incompatible with any other elected mandate or any public or private employment, paid or otherwise, in a Member State and any professional activity remunerated or otherwise;

2. A Regulatory Council Member shall not directly or indirectly, perform duties or receive payment, nor shall he retain an interest in any enterprise operating in the Power Sector, or in any other enterprise whose activities are affiliated to the sector.

3. Where a Regulatory Council Member has performed an activity, accepted an employment or an elected mandate, which is incompatible with their duties as a Council Member or in breach of the obligations defined in the first and second sub-section of this Act, during his mandate, the Regulatory Council member shall be dismissed following due process, after consultation with the Regulatory Council, without prejudice to legal prosecution.

4. For a period of one (1) year following the expiry of their mandate, The Regulatory Council Members shall be prohibited from taking or having any direct or indirect interests, from occupying a paid or unpaid employment, offering their services or enjoying any form of remuneration from an enterprise operating in the power sector. Consequently as compensation for this obligation, they shall be granted an indemnity which is equivalent to 12 months of their remuneration at the expiration of their mandate, except in
cases of dismissal, resignation or contravention of the provisions of this Regulation.

**Article 11: Oath of Office**

On assumption of office, at the session of the Council of Ministers, each Member of the Regulatory Council shall take an oath, which shall be administered by the President of the Community Court of Justice. By this oath, the Member of the Regulatory Council shall pledge to observe the obligations of independence, integrity, honesty, reserve and neutrality inherent in the exercise of his duties.

**Article 12: Remuneration**

1. The Regulatory Council Members shall be remunerated on full time basis by ERERA.

2. Their remuneration shall be determined by the Council of Ministers who shall be guided by the levels of remuneration of Statutory Appointees of ECOWAS.

**Article 13: Chairmanship of the Regulatory Council**

1. The Chairman of the Regulatory Council shall be appointed by the Council of Ministers, in accordance with article 5 of this Regulation. He shall be a statutory appointee, as defined by the provisions of the ECOWAS Staff Rules and Regulations.

2. In the absence of the Chairman, the Regulatory Council shall elect one of its members as Interim Chairman, for a period not exceeding six (6) months.

3. In the event of an absence of more than five (5) months, an interim Council Chairman shall be appointed, within one month, in accordance with the provisions of articles 5 and 13.2 of this Regulation.

4. The delegated member shall perform the functions of the Chairman in the interim until the appointment of the new Chairman.

**Article 14: Functions of the Council Chairman**

1. The Chairman shall represent the Regulatory Council in all activities and shall represent ERERA in any case of law.

2. The Chairman shall organise and coordinate the activities of ERERA.
3. The Chairman shall set the agenda, convene and preside over Council sessions.

4. The Chairman of the Regulatory Council shall be the authorising officer of ERERA.

**Article 15: Staff of ERERA**

The Regulatory Council shall be assisted in its functions by technical and administrative staff.

1. **Categories of Staff**

ERERA shall have two categories of staff:

a) international staff composed of the Regulatory Council Members, professional technical staff made up of agents and experts recruited through a call for application organised by the Regulatory Council on the basis of an open and competitive selection process conducted by independent recruitment agency and supervised by the ECOWAS Commission. Without prejudice to the provisions of this Regulation, international staff shall be subjected to the Staff Regulation of ECOWAS.

b) local administrative staff recruited and appointed by the Regulatory Council shall not benefit from any privilege and diplomatic immunity or tax and customs exemptions and shall be subject to the provisions of the work legislations of the country hosting the headquarters of ERERA and the regulations governing its staff.

2. **Qualifications and Staff Management**

All staff of ERERA shall have a profile corresponding to the post, as defined in the organisational chart adopted by the Council.

3. **Staff Obligations**

Staff members of ERERA shall comply with the provisions of article 9 of this Act concerning professional confidentiality and the provisions of article 10 concerning conflict of interest.
CHAPTER III: MISSIONS, POWERS AND FUNCTIONS

Article 16: Missions of ERERA

1. ERERA shall have the overall mission to:
   a) regulate the cross-border power pooling among ECOWAS Member States,
   b) oversee the implementation of the necessary conditions to ensure rationalization and reliability, and
   c) contribute to setting up a regulatory and economic environment suitable for the development of the regional market.

2. ERERA shall also oversee compliance with the principle of freedom of electricity transit in accordance with the provisions of article 7 of the Energy Protocol and the establishment of a clear, transparent and predictable tariff setting methodology for regional power pooling.

3. ERERA shall be responsible for the technical regulation of regional power pooling and the monitoring of regional market operations such as:
   a) respect of technical and commercial regulations and more especially the conditions for access to the interconnected transmission network, entry of operators into the market, and development of transmission infrastructure;
   b) prevention and sanction for anti-competitive practices, abuse of dominant position and conditions that could affect the proper operation of the regional market;
   c) monitoring of technical, commercial and financial performances of electricity companies;
   d) determination and compliance to tariff rules on access, network utilization and ancillary services.

4. ERERA shall assist the ECOWAS Commission in defining the strategic direction of the regional policy and the harmonization of policies, legislations and regulation of national power sectors. It shall also give an opinion on draft acts of ECOWAS Commission relating to electricity sector.

5. It shall establish effective dispute resolution procedures between regional power market players and control its proper application.

6. ERERA shall maintain partnership relations with national regulatory authorities in Member States and provide them with technical advice and assistance at their request;

7. ERERA shall ensure that there is proper communication among the various actors of the sector and shall advise those who so request.
ERERA shall have the power to:

- adopt, set, specify or interpret technical and commercial rules on cross-border power pooling, through the transmission network, between ECOWAS Member States, in accordance with the provisions of the Revised Treaty, the Energy Protocol, rules and directives given by competent ECOWAS institutions;
- make any recommendation to various regional or national participants in the ECOWAS power sector, in pursuit of the objectives and missions assigned to the Commission by this Regulation;
- authorize, approve and control the activities of various participants in the regional power market in accordance with the provisions of article 10.2 of this regulation;
- initiate investigations, carry out audits, and enforce any necessary injunction or measure to conserve or safeguard and sanction breaches and violation of established rules on cross-border power pooling such defined in point a above; and
- resolve disputes between participants on any issues that have been submitted before it concerning litigation or behaviours affecting the organization or functioning of cross-border power pooling.

For the exercise of its prerogatives, ERERA shall have the powers to do the following:

- adopt regulations having the aim of specifying community regulation on cross-border power pooling. These regulations shall have the same binding force as the executory acts from which they are derived. They shall apply to all players in the regional power market.
- give opinions or recommendations internally generated or requested by regional or national participants of the power market. Such recommendations shall only be an opinion.
- take decisions on mediation, conciliation or dispute resolutions submitted before it, observed defaults or violations in the case of sanction. Without prejudice to the provisions of articles 26 to 31 of this Regulation, these decisions shall be binding upon their subjects.
Functions of ERERA

Within the framework of the ECOWAS power sector policy, ERERA shall, in regulating cross border power pooling within the region:

advice the ECOWAS Commission on all issues relating to the regional policy and structure of the regional market;

assist the ECOWAS Commission in the harmonisation of national policies and supervision of the application of the provisions of article 43 of the Energy Protocol relating to energy efficiency;

In the technical regulation of cross border power pooling

ERERA shall:

a) oversee conformity of national rules and regulations with the community law, inform ECOWAS of deviation of Member States from community rules;
b) approve technical rules for the functioning and access to the regional power transmission network;
c) oversee the application and respect of technical rules and norms applicable to the regional power market;
d) periodically evaluate the application of standards and propose their improvements to the Commission;
e) disseminate technical information on network management to all participants;
f) sanction defaulting operators in case of non-compliance with applicable regulation.

In the management of the regional market

ERERA shall:

a) ensure the application of the provisions of article 7 of the Energy Protocol relating to power transit;
b) ensure the application of community directives on the organization of the regional market;
c) supervise the drafting and approve the rules for the functioning of the regional market;
d) draft and assist in the adoption by Member States, of harmonised criteria for the granting of licenses and authorisations for participants in the regional market;
e) approve applications for authorizations or licenses to participate in the regional market, proposed by national regulatory authorities;
f) ensure a non-discriminatory access to the regional electricity transmission network and approve network access protocols;
ensure the development of a suitable environment for the emergence of private regional operators;
ensure proper functioning of the market by enforcing compliance to technical and commercial rules;
supervise, in collaboration with national regulators, the application of the principles of accounts separation and transparency implemented by electricity companies; ERERA shall ensure that these rules, perimeters and principles do not permit any discrimination, cross subsidies or market distortion;
prevent and/or sanction defaulters of anti competitive practices, abuse of dominant position and all other violations of market operation rules or license or authorization contracts, and possibly initiate a process to enforce compliance in case of non-execution of a sanction;
request and access reports from network managers and make any recommendation within its area of competence;
carry out periodical benchmarking of operators and an assessment of their technical and financial viability.

In planning regional market development
ERERA shall:
contribute to the optimal management and development of power resources, to the demand side management, to the competitiveness of economic activity and to the control of future choices of technology;
review and give its opinion on the Master Plan proposed by WAPP for the development of regional infrastructure;
approve the selection criteria of operators involved in the development of regional electricity infrastructure, in order to avoid any anti competitive practices;
be consulted for any request for authorization for construction of additional lines to the regional transmission network, as defined in the master plan;
ensure respect of the regional network development plan and propose solutions in case of deviations that are likely to influence the regional market.

In setting transmission and ancillary services tariffs
ERERA shall:

a) set regulations on accounting rules for tariff structure and costs for transmission and ancillary services;
b) approve tariff proposals emanating from operators;
c) publish applicable tariff rates and oversee their application;
d) revise tariff and accounting rules for transmission costs and ancillary services costs through open consultation with stakeholders;
e) periodically audit costs and transmission tariffs.

In dispute resolution
ERERA shall resolve disputes arising from the application or interpretation of this Regulation or any other Act relating to the regional market. It shall establish and publish rules and procedures for the resolution of disputes.

In information and audit

ERERA shall:

organize a data collection and data management system on power pools and the performance of participants in the power sector, in collaboration with national regulators, WAPP, transmission network managers, market operators and other sub-regional and regional institutions;

obtain information required for the exercise of its missions from the participants in the regional market. ERERA shall have access to the accounting records of participants operating in the regional market;

specify by way of a regulation, the nature of information required and the method of collection or submission thereof;

ensure the confidentiality of information according to its internal rules of procedure;

subject to confidentiality rules, distribute relevant information on market operations to the ECOWAS Commission, national regulators and WAPP;

carry out, when required, necessary audits in the execution of its missions;

present an annual activity report to the President of the ECOWAS Commission.

Article 19: Principles governing regional market organisation

In order to promote infrastructural development and attract investments, the Signatory States agree that the organisation of the regional market of ECOWAS shall be based on the following principles:

- Unrestricted power pooling between Member States within a competitive framework;
- Application of non-discriminatory rules for power pooling and dispute resolution;
- Protection and promotion of private investments;
- Environmental protection and promotion of energy efficiency.

In the application of these principles and taking into account the uneven level of development and the diversity in the organization of the power systems of Member States, the Signatory States to this Regulation shall encourage:

- interconnection of all Member States in the long run;
- freedom of transit of electricity between Member States by ensuring non-discriminatory, transparent and fairly priced network access;
gradual introduction of an open and competitive regional wholesale power market;
adaptation of operational, safety and tariff rules for transmission of cross-border power pooling;
harmonization of national market organization rules in conformity with the rules and principles defined in this Regulation;
the implementation of the principles of national treatment and “Most-favoured-nation” treatment in cross-border power pooling;
gradual elimination of technical, administrative and other barriers to power pooling;
prevention of market distortions and hindrances to competition within the power sector.

The Signatory States shall ensure that electricity companies are operated in accordance with the principles and rules of the Energy Protocol and this Regulation. In addition, they shall be obliged to prohibit:

agreements, associations and concerted practices by and between companies, with the objective or having the effect of restricting or distorting competition within the Community;
any practices by one or several companies, resembling the abuse of a dominant position on the regional market or in a significant part thereof;
government assistance, which is likely to distort competition by favouring certain companies or activities in the regional power sector.

The details of the foregoing principles of organization of the regional power market shall be enunciated by way of directives from the Council of Ministers.

**Principles of the Regional Market Regulation**

The Signatory States of this Regulation affirm that regional regulation of the West African power sector shall be based on the following principles:

1. Independence from authorities, private interests and power sector participants;
2. Transparency in the regulatory process, through the drafting of rules and regulatory procedures according to a process involving institutional, national and regional participants;
3. Rationality, predictability, consistency and stability of the decisions and actions of ERERA;
4. Effectiveness and efficiency of regulatory actions through provision of adequate expertise to regional power sector participants and a quantitative and qualitative system of observation and information;
5. Collective decision-making by ERERA.
ER III: OPERATION OF ERERA

21: Sessions of the Regulatory Council of ERERA

Convoking of sessions

The Regulatory Council shall meet at least once every month on the summons of the Chairman by letter, telex, fax, or electronic mail. The modalities of convoking of sessions shall be defined in the rules of procedure.

The Regulatory Council shall hold ordinary sessions at the end of the first quarter of the financial year to approve the accounts of the preceding year and in the third quarter to adopt the budget of the next financial year.

The Regulatory Council may hold extraordinary sessions, either at the initiative of the Regulatory Council Chairman, or on the request of at least two (2) members, who shall specify the purpose of the meeting.

The Secretary to the Regulatory Council meetings shall be a member of the technical or professional personnel designated by the Council for the performance of such duties.

Quorum

The quorum for the Regulatory Council meetings shall be the presence of three (3) members. However, during the transitional period as defined by article 39 of this Regulation, this quorum shall be two (2) members.

Where this quorum is not attained, the Council shall newly convene the same order of business within a maximum period of five (5) days. The Regulatory Council shall then validly deliberate with the members present.

Deliberations

The decisions of the Regulatory Council shall be taken by majority vote of the members present. If the votes are equal, the Chairman shall have a casting vote.
These minutes shall mention the names of the members present, excused or absent. Copies and extracts of these minutes shall be certified true copies or extracts by the Chairman or two Regulatory Council Members in his absence, conforming to the original.

22: Consultative Committees and Public Hearings

ERERA shall establish:

A consultative committee composed of representatives of national electricity regulators and representatives of national directorates responsible for the power sector;

A consultative committee composed of representatives of operators;

A consultative committee composed of representatives of ECOWAS electricity consumers.

ERERA shall organize an annual meeting with these committees to present its annual activity report and receive proposals on the improvement of the regional regulation process.

Where the need arises, ERERA shall establish other consultative committees, organize, if necessary, public hearings for consultation and receive proposals on the improvement of the regional regulation process.

The functions, operations and procedural rules of these committees, as well as the public hearings shall be specified in the rules of procedure ERERA, in accordance with article 24 of this Regulation.

23: External Expertise

ERERA may use external experts and consultants in the accomplishment of its mission.

The recruitment of these experts and consultants shall be based on an open and competitive selection process.
24: Rules of Procedure

The internal organization and operational procedures of ERERA shall be defined in accordance with this Regulation, which shall be adopted by the Regulatory Council.

25: Official Newsletter and Internet Website

ERERA shall create an official newsletter and an Internet website on which it shall publish all non-confidential information concerning the regional market, such as its reports, regulations, rules, decisions, recommendations, opinions or public notices, on-going proceedings, requests for opinion and announcements.

CHAPTER IV: RULES FOR PROCEEDINGS

26: Referral to ERERA

ERERA may, on its own or at the request of any entity, individual or corporate body having legitimate interest, may instigate proceedings on any violation of the provisions of the Energy Protocol, this Regulation and any other Act relating to the operations of the regional market.

ERERA shall receive complaints and petitions in writing in the form prescribed by the Regulatory Council, specifically stating the names of the parties, their identities and addresses, the subject of the request, as well as the nature and full facts of the case.

ERERA shall not, on its own or at the request of any party, entertain investigations and/or proceedings on any violations that are beyond three (3) years if such violations have never been investigated or processed.

Upon receipt of a complaint or petition, ERERA shall, where necessary, take precautionary measures as specified by its Rules of Procedure and in conformity with article 27 of this Regulation as well as operators licenses, in order to temporarily halt the violations concerned while awaiting the final decision.

27: Process of the Proceedings

ERERA shall establish, approve and publish its Rules of Procedure.
pon receipt of a request, or information in respect of any violation within its rea of competence of ERERA, the Chairman shall convene a meeting of the egulatory Council for the purpose of determining the applicable procedure in scordance with its Rules of Procedure. The Regulatory Council shall, where ecessary, publish the commencement of proceedings and notify directly the oncerned parties and national regulators.

he Regulatory Council shall conduct the hearing for the parties and maylicit evidence or testimony from the public.

he Regulatory Council shall deliberate in closed-door sessions and make its esision.

he decision of the Regulatory Council shall be supported by appropriate idence.

he deadline for decision making by the Regulatory Council on any case erred to it or initiated by it shall be prescribed in the rules of procedure.

nce a decision is made, interested parties shall immediately be notified of the esision, which shall be published in the Official Newsletter of ERERA and on e website.

28: Enforcement of the Decisions of ERERA

cept in the case of an appeal before the ECOWAS Court of Justice, and in cordance with article 31 of this Regulation, decisions of ERERA shall be binding.

e decisions of ERERA shall be enforceable and binding on the parties. The esisions are final unless stayed or set aside by the ECOWAS Court of Justice.

each Member State, the decisions of ERERA shall be enforced in accordance th the applicable rules of procedure.

h Signatory State shall ensure the execution of decisions taken by ERERA. here a State or any of its components fails or refuses to enforce the esions taken, ERERA shall refer the matter to the ECOWAS Commission, hich shall ensure the application of the provisions of the ECOWAS Treaty ating to sanctions applicable in the case of non respect of obligations.
CHAPTER VII: DISPUTE RESOLUTION, POWERS OF SANCTION AND APPEAL

29: Dispute resolution

shall:

rve complaints on disputes concerning regional market operations and power pooling and shall investigate them;

rize the resolution of dispute relating thereto;

vested with the mandate conferred on the ECOWAS Commission by article 7 of the Energy Protocol relating to power transit, and take all precautionary measures and/or settle any disputes relating to the application or interpretation of the said article;

ut prejudice to the application of the provisions of the WAPP convention for settlement of dispute, receive disputes emanating from parties to these edures, or other third parties whose rights, as recognized by the provisions of applicable community regulation, were affected by these decisions;

ish rules for the public hearings and resolution of the disputes referred to

cordance with the provisions of its rules of procedure, inform the ECOWAS mission, WAPP, national regulators and any other interested participants of legitimate interest, of the disputes referred to it.

30: Sanctions

r the party in breach fails or refuses to comply with the decision of RA as duly notified, ERERA shall:

impose a fine; and/or

Suspend or revoke the operating licence or authorization of the defaulting operator.

A shall, on its own or at the request of any actor in the power sector, se sanction for any observed breaches or violations of community action on cross-border power pooling.

A shall not take a decision unless notice has been given to the party in

h. The party shall have the right to consult the file and present its
ence by making written or oral representation either by themselves or through their counsel.

After a decision has been made, ERERA shall issue a formal notice in writing to the party in breach to comply with the rules.

The sanction shall be proportional to the gravity of the breach, the extent of economic damage, the situation of the party or the group to which the party belongs and the possible repetition of the prohibited practices. The sanction shall be determined individually for each party and shall include detailed justifications in support thereof.

The magnitude of the fine shall be dependent upon the benefit derived by the offending party from the violation and the provisions contained in the licences or authorizations held by it. Such monetary penalty, for each violation, shall not exceed 1% of the annual revenue realized by the perpetrator of the served violation. This penalty shall be doubled in the event of recurrence.

The proceeds of such fines shall be deposited in a special fund. The Council of Ministers shall by regulation, specify the mode of management and utilisation of the fund within the regional sector.

The rules and levels of the sanctions shall be specified by a regulation of the Council of Ministers.

31: Appeal

Appeals on questions of law on the regulations and decisions of ERERA shall be made to the ECOWAS Court of Justice within 30 days from the date of receipt of the notification of the decisions on individual acts or publication in the Official Newsletter.

The decision of the Court on any appeal shall be based on the legality and licitation of the provisions of Community legislations by ERERA.

Where the Court confirms the decisions of ERERA, such decisions shall be final and conclusive but where it is overruled, the Court shall order ERERA to re-examine the matter.

Appeals before the ECOWAS Court of Justice shall be conducted according to the rules of procedures defined in the various protocols relating to the Court of Justice.
CHAPTER VI: ACCOUNTING AND FINANCIAL PROVISIONS

Le 32: Financing of ERERA

ERERA shall have ordinary and extraordinary sources of funds.

The following shall be considered as the ordinary sources of funds:

a) annual fees levied on cross-border power pooling by electricity companies operating under a license, convention or authorization regime of cross-border power pooling as defined by this Regulation, the ECOWAS Energy Protocol and provisions of the convention, license or authorization referred to herein; and

b) charges for processing cases, inspection and supervision as well as procedural charges paid by West African power sector operators by virtue of ERERA rules.

The following shall be considered as extraordinary sources of funds:

a) loans;

b) subsidies from States and grants from public or private, national or international organizations; and

c) gifts and legacies,

subject to the approval of the Regulatory Council.

The initial budget of ERERA shall be exclusively financed by an extraordinary budgetary allocation provided by the ECOWAS Commission and any other subsidies received from development partners.

The method of calculation of the annual fee shall be set by the Council of Ministers through a regulation, following a proposal by ERERA.

All charges and fees shall be collected directly from market operators, and such payments shall be deposited into a current account opened in the name of ERERA at a banking establishment situated at the location of its headquarters.

The ECOWAS Commission shall mobilize the necessary financing for the speedy establishment of the ECOWAS Regional Electricity Regulatory Authority (ERERA) and for the effective commencement of its activities.
34: Budget of ERERA

The annual income and expenditure of ERERA shall be contained in the budget. The expenditures of ERERA shall comprise of operational expenses and costs of equipment in relation to its functions.

Subject to the provisions of article 3 of this Regulation, the Regulatory Council shall adopt the budget not later than two (2) months before the commencement of the financial year.

The budget shall be submitted for approval to the Council of Ministers through the ECOWAS Commission.

35: Financial regulation of ERERA

Subject to the provisions of this Regulation, ERERA shall establish and implement internal financial regulations, consistent with ECOWAS financial regulations and principles.

The financial year of ERERA shall be from 1st January to 31st December.

At the end of each financial year, the Chairman of the Regulatory Council shall:

a) close the books of accounts and cause the accounting and allied books to be prepared;

b) establish a financial statement of transactions carried out within the financial year.

In the event of an operating surplus, the Regulatory Council shall place such surplus in a reserve for the purpose of financing future deficits or other activities. However this reserve shall not exceed 25% of the income from ordinary resources of the financial year. Any excess above this amount shall oblige the Council to reduce regulatory fees/charges in the subsequent year so as to bring the reserve to the authorized limit.

The external auditor of ECOWAS Institutions shall be responsible for auditing the ERERA accounts and shall submit a report thereon to the Council of Ministers through the Audit Committee.

The financial documents of ERERA shall be submitted to the external auditor within two (2) months after the closing of the financial year.
He shall certify the truth and accuracy of the accounting records of the financial year.

The staff of ERERA shall, without restriction or delay, furnish the external auditor with any records required by him in the performance of his audit.

The external auditor shall be held responsible by ERERA and third parties, for all damages, errors or negligence committed by him in the performance of his duties.

The external auditor may, on the invitation of the Chairman of the Regulatory Council, attend Council Meeting and participate in an advisory role.

**ARTICLE 36: Audit**

ERERA shall, every three (3) years, undertake an independent audit of its accounts, organization and procedures for the evaluation of its efficiency in relation to its missions. The ECOWAS Commission shall approve the terms of reference of such audit, proposed by the Regulatory Council. The audit shall be carried out by a reputable audit firm appointed by the Regulatory Council, after a transparent and competitive selection process, approved by the ECOWAS Commission.

The audit report shall be submitted through the ECOWAS Commission to the Council of Ministers.

The Authority of Heads of State and Government, the Council of Ministers or the Meeting of Energy Ministers shall have the power, at any moment, to investigate the administrative and financial management of the ERERA.

**ARTICLE 37: Relations between ERERA and other regional and Sub-regional institutions**

In accordance with the provisions of articles 37.1 and 38 of the Energy Protocol, ERERA shall negotiate and conclude cooperation agreements with regional and sub-regional institutions, with which it shares related fields including investment, competition, arbitration and international trade.

These cooperation agreements shall have the objective of harmonizing and strengthening regulation of the regional market.
Relations with Third Parties

RERA shall negotiate agreements with operators outside ECOWAS, wishing to anticipate in the regional market, subject to the ECOWAS Treaty.

The relationship established and the rights and obligations emanating from such agreement shall be appropriate to the particular circumstances of the agreement, and shall not derogate from the provisions of this Regulation.

39: Transitional provisions

The Council of Ministers shall appoint the Chairman of the Regulatory Council pursuant to article 15 of this Regulation.

The Council of Ministers shall, not later than twelve (12) months after the appointment of the Chairman, appoint two other Members of the Regulatory Council.

The Council of Ministers may appoint the fourth and fifth Members of the Council three (3) years after the assumption of duty of the Chairman.

Following his appointment, the Chairman of the Regulatory Council shall take all necessary measures and carry out all necessary administrative formalities to establish ERERA at its physical headquarters.

He shall authorize expenditures, organize the recruitment of technical and administrative staff and supervise the creation of the rules of procedure.

40: Amendment and revision

Any Member State may submit proposals for the amendment or revision of this Regulation.

Any such proposals for amendment or revision shall be submitted to the ECOWAS Commission, which shall notify other Member States thereof not later than thirty (30) days after the receipt of such proposals.

The amendments and revisions shall be adopted by the ECOWAS Council of Ministers after due consideration by the Meeting of Energy Ministers.

41: Publication

Regulation shall be published by the ECOWAS Commission in the Official Journal Community within thirty (30) days of the date of its signing by the Chairman
Council of Ministers. It shall also be published by each Member State in its Gazette within the same time frame.

ONE AT OUAGADOUGOU, THIS 15TH DAY OF DECEMBER 2007

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H.E. Mrs. Minata SAMATÉ CESSOUAMA

CHAIRPERSON

FOR COUNCIL