

UNLOCKING ZAMBIA'S ENERGY SECTOR:

Open Access Electricity Market - the
Elephant in the Room



Zambia's energy sector has evolved over the years, with the adoption of the National Energy Policy 2019, the Electricity Act 2019, and the Energy Regulation Act 2019 collectively paving the way for a liberalised open access market.

An open access market allows independent power producers (IPPs) and large power consumers to sell or buy electricity by connecting to and using the electricity transmission and distribution network, regardless of who owns or operates the network.

On 19 July 2024, the Minister of Energy issued the much-anticipated Electricity (Open Access) Regulations 2024 (the “**Open Access Regulations**”), which outline the procedure and requirements for accessing the grid as follows:

Eligibility and participation criteria:

Not everyone can apply to access the grid under the Open Access Regulations. Eligibility is limited to electricity trading license holders with the capacity to trade at least 1 MW, suppliers with an installed capacity of at least 1 MW, and consumers with a consumption capacity of at least 1 MW. Financial capacity is also a key eligibility criterion.

Open access segments:

Open access to the grid is divided into three segments:

- (a) Long- term access (more than 5 years)
- (b) Medium-term access (3 months to 5 years)
- (c) Short-term access (less than 3 months)

Application and Approval Process:

Eligible participants must apply to the relevant transmission or distribution network services provider. The network services provider must notify the system operator (i.e. ZESCO) of the application for open access before granting it. A key responsibility of the system operator is to schedule the open access transactions.

Upon receiving notification from a network services provider, the system operator is required to assess the relevant transmission or distribution network for congestion. The system operator will only approve open access if there is no congestion. However, the Open Access Regulations do not prescribe a timeline for the system operator to approve grid access.

Allotment of Priority for Open Access:

Generally, priority is granted to long-term access applicants, followed by medium-term access, and then short-term access, while still taking into account the principle of “first come, first served.”

Benefits of an Open Access Market

The benefits of an open access market are immense, including:

- (a) Mitigating credit risks for generation projects
- (b) Development of competitive pricing for large consumers
- (c) Enhancing wheeling revenue streams for utilities
- (d) Improving the country's energy mix by increasing the number of bankable power projects from non-drought-prone sources such as solar and wind energy

Independent System Operator

While the Open Access Regulations have been lauded as a solution for a competitive and efficient electricity market, the legal right to access the grid is only one building block toward achieving this goal. An effective open access regime requires transparent rules for grid and market operations and an independent system operator free of conflicts of interest.

The system operator ensures the reliability of the power system, manages the transmission system, dispatches energy, and balances supply and demand in a fair manner. It operates and manages the entire electricity transmission and distribution system.

Therefore, an independent system operator is crucial for the success of a competitive open access market and will help attract more private investment.

The Elephant in the Room

In Zambia, the system operator role is performed by ZESCO, the national power utility, which is an active participant in all

segments of the electricity market. ZESCO owns and operates 75% of Zambia's generation capacity and the majority of transmission assets.

It is unclear whether the system operator function will be separated from ZESCO to achieve independence, and if so, how. This could be achieved through legal unbundling (creating a subsidiary to handle system operations) or at least by functionally separating transmission and distribution operations from generation and supply. Thus, a governance structure will need to be implemented to mitigate potential conflicts of interest.

While the Electricity Act requires network service providers to grant access within 30 days of receiving an application, the system operator's approval is a critical part of the open access approval process, and no similar timeline is provided for the system operator's decision. As a result, delays by the system operator could hinder access, and the indemnity provisions in the Open Access Regulations, which protect the system operator from liability in certain cases, may limit its accountability.

Further, according to the Open Access Regulations, the system operator will, by January 2025, develop and submit to the Energy Regulation Board ("**ERB**") for approval, guidelines and procedures for the operation of the transmission system and distribution system as required by the Open Access Regulations.

The ERB has yet to publish details of the open access market structure, market rules, and transmission and distribution pricing methodology. It will be interesting to assess how the issue of system operator independence is addressed.

The benefits of open access nonetheless override any immediate operational challenges and full realisation of an efficient open access market will be a work in progress that will evolve over time.

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ABOUT US

Moira Mukuka Legal Practitioners provides support to clients in the development and financing of energy projects and the analysis and allocation of risk. We operate at the leading edge of legal trends which shape the energy industry. For example we were legal advisors on the establishment of the first green bond programme in Zambia to finance the development of renewable energy projects.

Our clients include private sector developers, financiers, contractors, users and service providers. While acting for one participant, we can therefore understand the perspective of the others.

This publication does not necessarily deal with every important issue or cover every aspect of the topics with which it deals. It is for general information and is not designed or intended to provide legal or other advice.

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