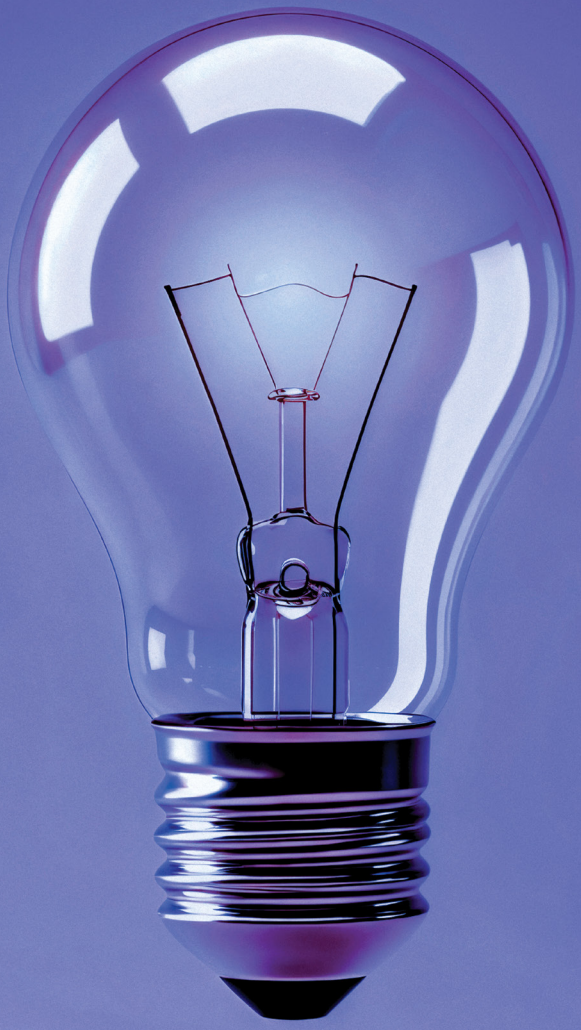
Liberalization of the **Electricity Sector** and the role of the **Regulator** in **Uganda**.



Energy Series.

April, 2026

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1.1. BACKGROUND

The Electricity sector is a dynamic region of practice for industry drivers in energy yet pivotal in the development of the economy coupled with the ambition of UNSDG No. 7 (Affordable and Clean Energy). A strong understanding of the electricity supply chain is important for stakeholders as they may be required overtime to deal with the evolving industrial demands of reducing energy consumption, improving safety, reducing light pollution and reducing carbon emissions associated with electricity generation among others.



1.1.1 What is Liberalization?

First liberalization of the electricity sector is the process of deregulating and opening up the electricity markets competition, with the aim of increasing efficiency, reducing prices and improving service quality a concept that is achieved by breaking up monopolies, separating electricity generation from transmission and distribution and introducing market based pricing mechanisms which process helps consumers create more energy competitive markets, lower prices for consumers, more innovation and investment in the industry.

Uganda has gone through liberalization and privatization since 1990 to ensure there is increased private sector participation in the sector, improving service quality and expanding access to electricity including reduction of the cost of energy, which has been realized through the contracting mechanism at the time.

One of the key steps in the liberalization of the energy industry in Uganda commenced with the establishment of Electricity Regulatory Authority (ERA) in 2000, which is responsible for regulating the generation, transmission, and distributing of electricity.

It essentially issues licenses, sets tariffs and monitors the performance of energy companies to ensure compliance with regulatory standards.

It is also crucial to note that the Government of Uganda has equally established the Rural Electrification Agency, which is responsible for expanding access to electricity in rural areas alongside attracting private investors through offering incentives, tax exemptions and providing support towards the development of renewable energy.

1.1.1.1 The Trilemma of energy sector.

There is a trilemma expected of in the energy industry which concerns balancing three objectives of; a reliable supply where there is need for a nation's capacity to meet current and future energy demand reliably, with demand and bounce back swiftly from system shocks with minimal disruption to supplies, affordable pricing which speaks to energy equity on a country's ability to provide universal access to affordable, fairly priced and abundant energy for domestic and commercial use and *environmental sustainability.*

Whereas the first two are critical, it is also crucial to respond to the issue of carbon emissions through decarbonization and/or carbon sequestration strategies that eventually represent the transition of a country's energy system towards mitigating and avoiding potential environmental harm and climate change impacts.

The challenges at the national level that have been recognized by the World Energy Council are; policy balance where governments must look at the available local resources and the prevailing economic situations, tradeoffs that emphasizes on low carbon infrastructure I.e capital intensive and the shocking prices this may create to consumers and geopolitical risks in instances where trade issues and insecurity cause destabilization in the industry there by forcing governments to strategize for security over sustainability.

Liberalization and Regulation concepts go handy as one opens up the economy of a country to private participation, regulation keeps at play to avert the likelihood of overboard participation and economic loss in the industry where there is less government control.

1.1.2 The New Developments in the Electricity Amendment Act, 2022

ERA no longer advises the Minister on any new electricity projects; it is independent and can always make a decision as such. Under section 10 (a) of the Principal Act; transmission and distribution companies are now referred to as licensees and the Authority is charged with the responsibility of reviewing and approving the rates and charges of licensees. Section 32 was amended to mean that as and when licensees make applications to ERA, the Minister is involved in making decisions, which erodes the powers and mandate of ERA, it actually erodes its independence highlighted herein.

Section 17 was amended to give the Minister mandate on renewable energy in which the Minister is vested with power of developing plans and policies regarding renewable energy. It is now the position that renewable energy goes beyond the scope of hydropower to include solar, biomass, coal among others. The Act also supports Renewable Energy Feed-in Tariffs (REFIT) to some reasonable MW.

Further, the Act proposes that ERA be empowered to impose fines on licensees for the breach of terms of the licensee. It seeks to require licensees to develop dispute resolution procedures to address complaints from their customers before these are referred to the tribunal. This is without prejudice of the position in section 109 of the principal Act where the Electricity Disputes Tribunal is vested with original and appellate jurisdiction.

(see: Edward Banda (Suing as Administrator of the Estate of the Late Eldad Banda) Vs. Attorney General Complaint No. EDT/10 of 2020).



On classification of Licensees, section 37 of the Act was amended to mean that licensees for power suppliers might be differentiated depending on the technology and infrastructure used by different licensees in which ERA is inclined to create different license classes and thereby setting different tariffs upon which power can be sold. From the foregoing, power tariffs in the country remain a major concern since it is always high compared to the position in the region; a case in point is a comparison with Tanzania where in both residential/domestic and industrial scale Uganda is at 0.18 - 0.20 per Kwh and Tanzania is at 0.09 – 0. 10 per Kwh, on industrial scale, Uganda is at 0.08 – 0.10 per Kwh and Tanzania is at 0.06 – 0.08 per Kwh raising issues about the comfort of consumers at the final stage of production. *(see: Volume 16, Issue 3 Page 23-37, 2024; Article no. JENRR.114279 ISSN: 2581-8368 Efficient Tariff System in the Electricity Distribution: Evidence from Uganda).*



On Appeals, section 44 of the principal Act was amended to state the limitation period of appeal from the tribunal to the High Court to be 28 days from the date of receipt of the Tribunals decision on both a matter of law and fact and will take the same procedure that governs appeals with necessary modifications. The Tribunal reserves the power to review its own decision however where the party is not contented, the next appropriate forum is the High Court.

Section 55 (g) of the principal Act was repealed doing away with the power of the systems operator setting tariffs. By strengthening the role of the Authority, it now has powers to approve tariffs including those of renewable energy projects up to 50 MW.

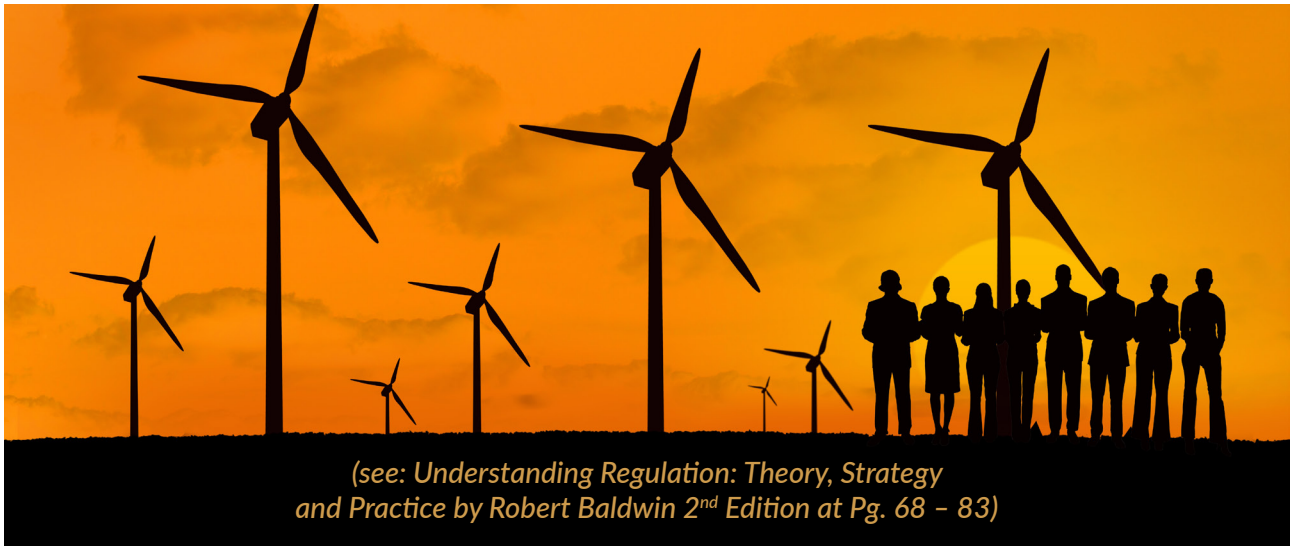
Section 75 (7) of the Amendment provides for the holder of a generation license as opposed to a hydro power generation license in the principal Act, must pay royalties to the District local Government in which a renewable energy station is situated I.e peat, biomass, solar, wind), the ERA is given power to prescribe maximum penalties.

Section 75 (11) & (12) now provides that a person in possession of a distribution license, the said person must have a net metering plan system which allows the consumers or home owners to have control of usage of electricity at different hours of the day thereby creating effective energy efficiency and turning consumers into prosumers. This in essence reduces on the cost of electricity forexample a homeowner will not switch on electricity lights during day save for charging and a little usage.

However, this may affect the use of renewable energy since one with solar power relies on sunlight.

Section 118A of the Amendment introduces a dispute resolution mechanism at grass root level between licensees and consumers which mechanism must first be approved by the ERA, where the parties are not satisfied; a matter can always be referred to the Authority or tribunal. The essence of this grass root mechanism is to ensure faster dispute resolution and effective response for local consumers.

1.1.2.1 The Role of the Regulator.



Regulation in this sense means the command and control of events, ways, or procedures by the responsible authority. The role of the regulator in the electricity supply chain is to ensure that production, transmission, distribution and consumption of energy in the country is done in an efficient, safe, reliable and sustainable manner, licensing and monitoring of electricity generation, transmission and distribution companies to ensure that they comply with technical, safety and environmental standards, regulating electricity tariffs to ensure that they are reasonable and cost effective and that they provide incentives for efficient and sustainable energy, promoting competition in the electricity sector, ensuring that there is a level playing field for market participants and preventing anti competitive practices, setting and enforcing technical standards for energy infrastructure including the quality and reliability of electricity, encouraging the development of renewable energy among others.

Most economies world over are entrenched with regulatory capture which eventually leads to market failures. Regulatory Capture is a form of government failure where regulatory agencies, intended to protect the public interest, end up advancing the commercial or political interests of the special interest groups they oversee.

More related to economic market expectation many instances of the rationales of regulating can be described as instances of market failure and as such, regulation in such cases is argued to be justified because the uncontrolled market place will, for some reason fail to produce behavior or results in accordance with the public interest. Therefore, to ascertain if a workout of regulation is better or in need of reform it is significant to check on the benchmarks that are critical in such evaluation.

Indeed *"regulatory capture"* occurs when the regulatory agencies such as government bodies or independent regulators become too closely aligned with the industries they are meant to regulate. In the energy industry, it actually occurs when the regulatory agency responsible for overseeing the industry becomes overly influenced by the interests of energy companies or other stakeholders.

Important to note is that when the regulatory capture occurs, the regulator may be more likely to make decision that benefit the interests of energy companies rather than consumers or the public interest. This can lead to a lack of enforcement of regulations, in adequate oversight and limited competition in the market. It can also make it difficult for new companies to enter the market as already established companies may use their influence to limit competition.

Thus, we advise on a criterion for good regulation I.e; is the action or regime efficient, is the action or regime supported by legislative authority, is there an appropriate scheme of accountability, Are procedures fair, accessible, and open and whether the regulator is acting with sufficient expertise.

That notwithstanding, the major three factors that contribute to regulatory capture in the energy industry include;

i). *The regulatory capture ideology where the regulator may have an ideological alignment with the energy companies leading to decisions that favour the interests of the companies,*
ii). *Industry lobbying where energy companies may use their resources to influence regulators through lobbying or other means and*
iii). *Revolving door where regulators may move between the regulatory agency and energy companies which can create conflict of interest or the appearance of impropriety.*

1.1.2.2 Price Regulation in the Energy Industry.

This is the process of setting and controlling the prices that consumers pay for energy services. Price regulations is usually carried out by government agencies or regulatory bodies that have the authority to set and enforce price controls. Focus on the price regulation mechanisms;

i). *Cost based Regulation*, which involves setting prices based on the cost of producing and delivering energy services. The regulator sets a rate of return that energy companies are allowed to earn on their investments and sets prices to cover these costs,
ii). *Rate of return Regulations,* which involves setting price to allow energy companies to earn a reasonable rate of return on their investments and sets prices to cover these costs,
iii). *Price Cap Regulation* which involves setting a maximum rice that energy companies can charge for their services. Prices are typically set based on market conditions and adjusted periodically to reflect changes in costs or market conditions and;
iv). *Revenue Cap Regulation* that involves setting a cap on the total revenue that energy companies can earn over a specific period. Prices are adjusted to ensure that companies do not exceed the revenue cap.



Conclusion

Finally, the liberalization steps have proved that strategic reforms are not golden for affordability. The future of the electricity sector as part of the energy industry lies in the component of creating the atmosphere fit for investors and the human capital to advise. With the competing tariffs, there is need for a strategic regulatory framework to meet consumer demand at all levels and have convergence for National Development Plan goals and renewable dominant energy.



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