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THE SIERRA LEONE ELECTRICITY AND WATER REGULATORY COMMISSION ACT, 2024

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No.



2024

Sierra Leone

A BILL ENTITLED

**THE SIERRA LEONE ELECTRICITY AND WATER
REGULATORY COMMISSION ACTS, 2024.**

Short title.

Being an Act to provide for the continuation of the Sierra Leone Electricity and Water Regulatory Commission to regulate the provision of electricity and water services and to provide for other related matters..

[]

ENACTED by the President and Members of Parliament in this present Parliament assembled. Date of commencement.

PART I - PRELIMINARY

- Interpretation 1. In this Act, unless the context otherwise requires -
- "Alternative water producing entity"-means other entities other than the main utilities that develop, manage and supply water through non-traditional sources such as supplement or alternative to conventional water supply systems.
- "captive power generator" means a captive generator that produces electricity with a rated output of 10 KVA and above for the generator's own use and not for resale;
- "Chairman" means the Chairman of the Commission appointed under section 5;
- "Commission" means the Sierra Leone Electricity and Water Regulatory Commission established referred to under section 3;
- "community" means a body of people living as a group;
- "consumer" means a person who purchases, receives or makes use of any service provided by a public utility and does not deliver or resell the service to others;
- "Director-General" means the Director-General appointed under section 26;
- "Authority" means Electricity Distribution and Supply Authority established under section 25 of the National Electricity Act, 2011 (Act No. 16 of 2011);-

"Company" means Electricity Generation and Transmission Company established under section 2 of the National Electricity Act, 2011;

"Fines" means a penalty that is required to be paid by a person for contravening any provision of this Act;

"GVWC"-means Guma Valley Water Company responsible for producing, selling, distributing and conserving water in the western area of Sierra Leone

"inspector" means an inspector appointed under section 43;

"IPP" means Independent Power Producers which are private entities that generates and sell electricity to utilities, and other consumers;

"IWP" means Independent Water Producers private entities that produce and distribute or sell water to municipalities or other consumers;

"levies" means charges by statute on Licensee, payable to commission;

"licence" means a right or permission granted by the Commission to a person, organization, business, community or any other entity to engage in the generation, production, distribution, sale and provision of electricity, water and sanitation services;

"Mini-grid" means any electricity supply system that comprises a power generation unit and a local distribution network, which may be compliant or non compliant with the distribution code, supplying electricity to more than one consumer and which can operate in isolation from a main grid utility's network.

"member" means a member of the Commission;

"Minister" means the Ministers responsible for -

- (a) energy
- (b) water and sanitation;

"person" means utilities, either natural persons, Government institutions, agencies or bodies, corporate entities, associations, partnerships, businesses, communities;

"public register" means the public register of the Commission in Section 41;

"public utility" means any provider of electricity, water and sanitation services to the public;

"rate" means the tariff price per unit of services supplied by a public utility;

"registration" means to be officially recognised by the Commission as a service provider in the electricity, water and sanitation sectors;

"regulated service" means the supply of a commodity derived directly from the business in which a public utility is engaged;

"regulated supplier" means a person engaged in activities in a regulated sector and includes any holder of a licence issued under this Act;

"regulatory fees" means, charges paid to commission by licensees;

"SALWACO"-means Sierra Leone water company responsible for producing, selling, distributing and conserving water in the provincial cities and towns.

"sanitation services" means safe waste water collection, transport, treatment and disposal of waste water;

"standard" includes -

- (a) technical standards relating to the content and supply of regulated services;
- (b) standards for the terms and conditions of supply of goods and services; and
- (c) quality of service standards;

"tariff" means the rate to be charged the consumer for the use of electricity, water or sanitation services;-

"unregulated service" means the supply of a commodity derived directly from the business in which a person is engaged, registered with the Commission as permit holder not required to obtain a licence in accordance with regulations adopted under this Act;

"water production" means the harnessing and treatment of water.

2. (1) This Act shall apply to all state and non-state entities Application.
in the electricity, water supply and sanitation sector.

PART II-THE SIERRA LEONE ELECTRICITY AND WATER REGULATORY COMMISSION.

3. (1) There is hereby continued in existence, the body Continuation of Commission.
which immediately before the commencement of this Act, was known as the Sierra Leone Electricity and Water Regulatory Commission.

(2) The Commission is a body corporate having perpetual succession, a common seal and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name and, subject to this Act, of performing all such acts as bodies corporate may by law perform.

(3) The Commission shall have a common seal, the use of which shall be authenticated by -

- (a) the signature of the Chairman or the Director General of the Commission authorised either generally or specially by the Commission for that purpose;
- (b) ensuring every documents purporting to be an instrument executed or issued by or on behalf of the Commission and to be sealed with the common seal of the Commission authenticated in the manner stated in paragraph(a) of subsection (3) shall be deemed to be so executed or issued without further proof unless the contrary is proved;
- (c) ensuring that in appropriate cases, the seal may be affixed to documents outside of Sierra Leone.

Board of Commission.

4. (1) The governing body of the Commission shall be a Board of Commissioners, in which shall be vested, subject to this Act, the control and supervision of the Commission.

(2) The Board shall, in addition to its functions under subsection (1), be responsible to-

Composition of Board.

- (a) advise the Commission on any aspect of its mandate and functions; and
- (b) monitor and evaluate the work of the Commission.

5. (1) The Board of the commission shall consist of a Chairman and the following other members -

- (a) a representative of the Sierra Leone institution of Engineers;

(b) a representative of the Sierra Leone Consumer Protection Agency;

(c) a representative of the Sierra Leone Labour Congress;

(d) one technical representative each, not below the rank of a Director, from the Ministries responsible for water resources, sanitation and energy;

(e) 2 other persons, with formal qualifications, extensive knowledge and experience relevant to the functions of the Commission, one each from the electricity, water and sanitation supply sectors;

(f) Director General, Sierra Leone Electricity and Water Regulatory Commission.

(2) The Chairman and other members of the Commission, who are not ex-officio, shall be appointed by the President on the recommendation of the Minister, subject to the approval of Parliament:

Provided that, at least, one third of such appointments shall be women.

6. (1) The Chairman and other members of the Commission, who are not ex-officio officers, shall hold office for a term of 3 years and shall be eligible for re-appointment for a further term of 3 years only.

Tenure of members.

(2) A person shall cease to be a member of the Commission on any of the following grounds-

(a) for his inability to perform the functions of his office by reason of infirmity of mind or body;

(b) for proven misconduct;

- (c) if he becomes bankrupt or insolvent;
- (d) if he is convicted and sentenced for an offence involving fraud or dishonesty;
- (e) if he fails to attend 3 consecutive meetings of the Commission without reasonable cause; or
- (f) if he resigns his office by written notice to the Minister.

Meetings of Commission. 7. (1) The Commission shall meet for the dispatch of its business, at least, once every 6 months at such time and place as the Chairman may determine.

(2) The Chairman shall preside at every meeting of the Commission and in his absence, the members present shall appoint one of their number to preside.

(3) A minimum of 5 members of the Commission may, by notice in writing signed by them, request the Chairman to summon a special meeting of the Commission for such purposes as may be stated in the notice.

(4) The Chairman or, in his absence, the member appointed to act in his stead, shall summon a special meeting within 5 days of his receipt of the notice referred to in subsection (3).

(5) The quorum at any meeting of the Commission shall be 5.

(6) The Chairman or other person presiding shall have a casting vote where there is an equality of votes.

(7) Any proposal circulated among all members and agreed to in writing by a two-thirds majority of all members shall be of the same force or effect as a decision made at a duly constituted meeting of the Commission and shall be incorporated in the minutes of the next succeeding meeting of the Commission:

Provided that, if a member requires that such proposal be

placed before a meeting of the Commission, this subsection shall not apply to such proposal.

(8) The Commission may co-opt any person to attend and participate in its deliberations on any matter but such person shall not vote on an issue for the decision by the Commission.

(9) The Commission shall cause minutes of all its meetings to be taken and signed by the Chairman and kept in proper form.

(10) Subject to this Act, the Commission shall regulate its own procedure.

8. (1) A member of the Commission who has any interest, whether direct or indirect in any matter being considered or to be considered by the Commission, shall disclose the nature of his interest to the Commission and the disclosure shall be recorded in the minutes of the Commission and that member shall not take part in a deliberation or decision of the Commission relating to that matter. Disclosure of interest.

(2) A member of the Commission who contravenes subsection (1) shall be guilty of misconduct and shall be removed from the Commission.

9. (1) An action or other proceedings shall not lie or be instituted against a member of the Commission or member of a committee of the Commission for or in respect of any act or thing done or omitted to be done in good faith in the exercise of his functions under this Act. Immunity of members.

(2) A member of the Commission shall not be personally liable for any debt or obligation of the Commission.

10. The Chairman and other members of the Commission and any person co-opted by the Commission under subsection (1) of section 5 shall be paid such remuneration and shall be reimbursed by the Commission for expenses incurred in connection with the discharge of their functions. Remuneration of members.

11. (1) Where the Chairman or a member of the Commission

Filling of vacancies. dies, resigns, is removed from office or is absent for a continuous period exceeding 3 months or is by reason of illness unable to perform the functions of his office for a continuous period of 3 months, in the case of -

- (a) the Chairman, the members of the Commission shall, elect one of their number to act as Chairman until such time as the Chairman resumes his office or another is appointed in his stead; and
- (b) a member, the Chairman shall, subject to this Act, have another person appointed to the Commission.

(2) Where a person is appointed as Chairman or appointed as a member to fill a vacancy, he shall hold office for the remainder of the term of the previous Chairman or member, as the case may be, and shall, subject to this Act, be eligible for re-appointment.

PART III-FUNCTIONS AND POWERS OF SIERRALEONE ELECTRICITY AND WATER REGULATORY COMMISSION.

Functions of Commission. 12. (1) The object for which the Commission is established is to regulate the provision of the highest quality of electricity, water and sanitation services by electricity, water and sanitation service providers to consumers in Sierra Leone.

(2) Without prejudice to the generality of subsection (1), it shall be the functions of the Commission to-

- (a) issue and as the case may be renew, amend, suspend, revoke and cancel licenses;
- (b) monitor and enforce compliance with the terms of licences;
- (c) provide guidelines on rates chargeable for provision of electricity and water services;
- (d) protect the interest of consumers and

providers of electricity and water services;

- (e) monitor and enforce standards of performance for provision of electricity and water services;
- (f) initiate and conduct investigations into the quality of service given to consumers;
- (g) promote fair competition among public utilities;
- (h) conduct studies relating to economy and efficiency of public utilities;
- (i) make valuation of property of public utilities as it considers necessary for the purposes of the Commission;
- (j) collect and compile data on public utilities as it considers necessary for the performance of its functions;
- (k) advise any person or authority in respect of any public utility;
- (l) maintain a register of public utilities; and
- (m) enhance public knowledge, awareness and understanding of the regulated sectors including-
 - (i) the rights and obligations of consumers and regulated suppliers;
 - (ii) the ways in which complaints and disputes may be initiated and resolved;
- (n) take into account the need to protect the

- environment;
- (o) provide advice or assistance to a public utility to assist or enable the public utility or service provider of water and electricity to comply with any requirement of the Act or license requirements;
- (p) prepare and publish of utility performance reports quarterly and yearly,
- (q) conduct and assess customer satisfaction survey of the regulated entities;
- (r) approve water and electricity projects whether funded by government, grant or private;
- (s) develop and enforce performance standards for the generation, transmission and distribution of electricity;
- (t) develop and enforce performance standards for the water supply services;
- (u) approve standards for the quality of electricity and water supply services;
- (v) establish tariff structures for the electricity and water services;
- (w) facilitate an integrated approach by mainstreaming water and sanitation in its regulatory framework, manage interlinkages, supports the social, economic and dimensions for sustainable development;
- (x) lead in the negotiation, review, drafting and

- approval of power purchase agreement, water purchase agreement and contracts between the Authority and other IPPs, Guma Valley Water Company and IWPs or other company, SALWACO and IWPs or other regulated entities or eligible buyers;
 - (y) engage the services of a consultant or expert as it may consider necessary for the proper and efficient performance of the functions of the Commission.
 - (z) carry out such other activities conducive to the attainment of the object of the Commission stated in subsection (1);
13. (1) Subject to this Act, the Commission shall have power to-
- (a) require and have access records including a data storage system or device in the possession or under the control of a public utility and or mini grid or alternative water producing entity;
 - (b) require public utility to furnish the Commission with information in relation to its business and the regulated public service it provides;
 - (c) require the public utility and or mini grid or alternative water producing entity to create a regulatory unit with a focal person responsible to handle all utility licenses and reporting requirements and other administrative work for the utility or entity
 - (d) register persons who are required to register with the regulator where they are not required to hold a licence in accordance with regulations adopted under this Act;
 - (e) impose timelines, fines and penalties for non-
- Power of Commission.

compliance as to providing the above-mentioned and for failure to meet quality of service standards;

- (f) to impose regulatory fees or levies on electricity and water service providers such as independent power producers, electricity generation and distribution, captive generators and small power producers, water producers, etc;
- (g) enforce compliance and standards of performance for electricity, water and sanitation services.
- (h) any other factors the Commission considers relevant.

Power to regulate rates and charges.

to-

14. (1) Subject to this Act, the Commission shall have power

- (a) set or otherwise determine rates for electricity and water services;
- (b) carry out regular reviews of rates and charges for regulated and unregulated services.

(2) The Commission shall, in making a determination, setting rates and charges or establishing the method for regulating rates and charges of services, under subsection (1), take into account-

- (a) the cost of making, producing and supplying the goods or services;
- (b) the return on assets in the electricity and water sector;
- (c) any relevant benchmarks, including

international benchmarks for prices, costs and return on assets in comparable industries;

- (d) the financial implications of the determination;
- (e) the desirability of establishing maximum rates and charges, and in carrying out regular reviews of rates and charges;
- (f) any other factors specified in the relevant sector legislation;
- (g) the consumer and investor interests;
- (h) the desire to promote competitive rates and attract new entrants to the market.

15. (1) The Commission may, by notice in writing, summon a person whom it believes has information or document that may assist in the performance of its functions to-

Power to obtain information.

- (a) appear before it and answer orally on oath or affirmation any question relevant thereto;
- (b) furnish the information in writing signed by him or in the case of a body corporate, signed by a competent officer of the body corporate; or
- (c) produce or otherwise deliver the original or copy of a document in his possession or under his control.

(2) For the purpose of subsection (1), the Chairman or a Member or the Director- General shall administer the oath or affirmation.

(3) A person upon whom a summons is served under

subsection (1) shall comply with such summons notwithstanding the provision of any law to the contrary or an oath of secrecy.

(4) A person who without reasonable excuse neglects or fails to comply with the summons issued under subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding NLe. 5,000.00.

(5) A person who, in making a statement or furnishing information under subsection (1) willfully makes a false or misleading statement or a statement which he does not believe to be true commits an offence and shall be liable, on conviction, to a fine not exceeding NLe. 5,000.00.

(6) The Commission may, where it has reasonable cause to believe that a person is in possession of a document that may assist in the performance of any of its functions, on application to a Judge obtain a warrant for the entry and search of any property in the possession or control of that person.

(7) Where a search is effected under subsection (6), the authorised person effecting the search may-

- (a) seize and take possession of any document, computer, computer disk or other related article; or
- (b) inspect, make copies of or take extracts from any book, record or document.

(8) The Commission may, where an authorised officer under subsection (7) is refused entry into the premises, on application to a Judge, obtain a warrant authorising a police officer to forcibly enter the premises with the authorised officer to conduct the search and make copies or take extracts of documents therein.

16. (1) The Commission may, where it appears that the

activities of a person or company are in contravention with this Act, ^{Power to} serve on that person an enforcement notice requiring him to take ^{notice.} such steps, as the Commission thinks necessary, to prevent or stop the activities or breach of terms and conditions of a licence or registration.

(2) An enforcement notice under subsection (1) shall specify-

- (a) the offending activity or breach of terms and conditions;
- (b) the steps required to be taken; and
- (c) the time within which the steps shall be taken or may, direct immediate cessation of the offending activity.

(3) The Commission may, where a person on whom an enforcement notice is served, fails, neglects or refuses to take the action required, -

- (a) enter or authorise another person to enter the business premise, office or facility under the control of that person;
- (b) take all necessary action to prevent or stop the activities to which that enforcement notice relates; and
- (c) recover, as a civil debt, from that person, the expenses incurred in undertaking this enforcement.

(4) A person who fails to comply with an enforcement notice served on him under subsection (1), commits an offence and is liable, on conviction, in the case of -

- (a) non-corporate entities, to a fine of not less

than NLe. 100,000.00;

- (b) corporate entities, to a fine of 500,000.00;
- (c) a continuing violation after notice has been served to an additional fine of not less than Le 5,000.00 for each day for which the violation continues.

(5) The Board shall, notwithstanding subsection (4), impose or levy such fine as the Board may deem fit in the circumstance.

17. (1) The Commission shall consult stakeholders where it considers it necessary or expedient to introduce or make changes to a key policy.

(2) The Commission shall give notice of a consultation under subsection (1) by-

- (a) publishing a notice in the Gazette and in newspapers circulated generally in Sierra Leone;
- (b) sending a written notice to -
 - (i) service providers whose interests are likely to be affected by the outcome of the consultation;
 - (ii) industries and consumer organisations which the Commission considers to have an interest in the matter; and
 - (iii) the Minister.

(3) The notice under subsection (2) shall specify-

- (a) the purpose of the consultation;
- (b) the matters to be dealt with in submissions;
- (c) the time within which submissions should be forwarded to the Commission; and
- (d) the form in which submissions should be made.

(4) The Commission shall establish an annual programme for general consultation before the start of each year with such persons and organisations as the Commission may consider necessary to consult for the purpose of effectively carrying out its functions.

18. (1) The Commission shall, in carrying out its functions and exercising its powers under this Act, in relation to particular markets for regulated services, take into account whether - Competition policy.

- (a) the conditions for effective competition exist in the market;
- (b) an exercise of power by the Commission is likely to -
 - (i) cause a reduction of competition or additional costs in the market; and
 - (ii) be detrimental to the public;
 - (iii) any such detriment to the public is likely to outweigh any benefit to the public resulting from the exercise of the power.

19. The Commission may, delegate to a member or an employee a power conferred on the Commission by this Act other than the power to- Delegation.

- (a) grant, renew, revoke or cancel a licence;

- (b) fix the method of calculating and reviewing rates and charges;
- (c) adopt a code of conduct;
- (d) make rules or regulations;
- (e) make a decision to hold a consultation; or
- (f) adopt a report on the result of a consultation.

Public register.

20. (1) The Commission shall maintain a public register relating to its functions which shall be available for public inspection during business hours.

(2) The Commission shall determine the type of information to be placed on the register.

Publication.

21. The Commission shall publish in the Gazette as soon as practicable-

- (a) a code of conduct proposed to be adopted;
- (b) a summary of a decision by the Commission setting rates or charges for regulated goods or services;
- (c) a policy guidance or direction from the Minister; and
- (d) any other information which the Commission may, in the public interest, decide to publish in the Gazette.

Ministerial support.

22. The Minister shall, for the purposes of section 12, be responsible to -

- (a) build and sustain an enabling environment

for the operations of the electricity and water supply sectors;

- (b) ensure that the policy making, regulatory and enforcement structures have the capacity to perform their respective functions comprehensively and fairly;
- (c) formulate and review policy and its implementation accordingly;
- (d) promote universal access to electricity and water supply services; and
- (e) promote research into the development of technologies, the use of new techniques by providers of electricity and water supply services and to develop adequate human resources in collaboration with such other agencies of Government as the Commission considers appropriate.

23. The Commission shall, subject to this Act, not be subject to the direction or control of a person or authority in the performance of its functions.

Independence of Commission.

24. The Commission shall, within 12 months of the commencement of this Act, adopt a code of conduct prescribing standards of behaviour to be observed by members and employees of the Commission in the performance of their duties.

Code of conduct.

25. (1) There shall be a Complaint Tribunal which shall have authority to adjudicate on, or determine claims or disputes under this Act.

Tribunal.

(2) The Tribunal shall comprise -

- (a) a High Court Judge, who shall be Chairman;

- (b) 2 legal practitioners; and
- (c) one technical person each, from the Ministries responsible for energy, water resources and sanitation.

(3) The head of the legal department of the Commission shall serve as secretary.

Powers of Tribunal.

26. (1) The Tribunal may, in the exercise of its functions under subsection (1) of section 25, have power to make an order-

- (a) requiring a party to pay money;
- (b) requiring a party to supply goods or services for specified periods;
- (c) requiring a party to supply goods or services on specified terms and conditions;
- (d) requiring a party to pay the costs of another party or of a person appearing at the hearing or producing documents; and
- (e) dismissing a complaint; or
- (f) any other claim that may arise.

(2) Where a party is not satisfied with a decision of the Tribunal, he shall appeal to the Court of Appeal within 21 days of the decision.

(3) An Order of the Tribunal under subsection (1), shall be enforceable as an Order of the High Court.

PART V - ADMINISTRATIVE PROVISIONS

27. (1) The Commission shall have a Director-General who shall be appointed by the Commission after consultation with the Public Service Commission. Director-General.

(2) A person shall not be appointed Director-General unless he has formal qualification in law, economics, finance or engineering and extensive knowledge and experience relevant to the functions of the Commission.

(3) The Director-General shall not be removed from office except for reasons which would justify his removal from the Public Service.

(4) The Director-General shall be responsible to the Commission for-

- (a) the day-to-day administration of the Commission;
- (b) the submitting of reports, work programmes and budgets to the Commission;
- (c) the arrangement of the business and the recording and keeping of the minutes of the meetings of the Commission;
- (d) the supervision and discipline of the other staff of the Commission; and
- (e) performance of such other functions as the Commission may assign to him.

28. (1) The Commission shall have a Deputy Director-General who shall be appointed by the Commission after consultation with the Public General. Service Commission. Deputy Director-General.

(2) A person shall not be appointed Deputy Director-

General unless he has formal qualification in law, economics, finance or engineering and extensive knowledge and experience relevant to the functions of the Commission.

(3) The Deputy Director-General shall be responsible to the Commission to-

- (a) assist the Director General in the day to day administration of the Commission;
- (b) provide technical assistance, capacity development and ensuring productivity and performance;
- (c) assist in the formulation and execution of policies;
- (d) direct and oversee projects;
- (e) managing staff including hiring, development and performance assessments; and
- (f) perform such other functions as the Commission may assign.

Other staff
Commission.

29. (1) There shall be appointed by the Commission, on such of terms and conditions as the Commission may determine, such other staff of the Commission as the Commission may require for the efficient discharge of its functions under this Act.

(2) Public officers may be seconded or otherwise give assistance to the Commission.

(3) The Commission may engage the services of such consultants and advisers as it considers necessary for the efficient discharge of its functions.

(4) Liability shall not be laid on a staff of the Commission

for any loss or damage sustained by any person as a result of the exercise in good faith or performance of any function which is conferred on the Commission.

30. The Commission shall have the following directorates-

- (a) Directorate of administration and finance;
- (b) Directorate of audit and accounting;
- (c) Directorate of economic regulations;
- (d) Directorate of Legal, Licencing and consumer Affairs;
- (e) Directorate of Electricity
- (f) Directorate of Water and
- (g) such other directorates as the Commission may from time to time determine.

Directorates
of
Commission.

PART VI - FINANCIAL PROVISIONS

31. (1) The activities of the Commission shall be financed by funds consisting of-

Funds of
Commission.

- (a) monies appropriated by Parliament to the Commission for the discharge of its functions;
- (b) payments or property due to the Commission in respect of any matter incidental to its functions;
- (c) monies accruing to the Commission in the course of the performance of its functions under this Act;
- (d) grants, donations, bequests or other

contribution made to the Commission by persons other than regulated suppliers or other entities operating in a regulated sector;

- (e) one percent of gross sales on all kilowatt or cubic meters of electricity or water sold by the regulated utilities or suppliers; and
- (f) such proportion of government levy on electricity, water and other regulated products as may be determined by Parliament.

(2) The Commission may from time to time apply the proceeds of the funds specified in subsection (1)-

- (a) for the promotion of energy efficiency and productive use of electricity, water and related products;
- (a) for the promotion of projects to develop and utilize renewable energy resources including solar energy and mini-hydro plants;
- (b) to human resources development in the energy sector;
- (c) to enhance public knowledge, awareness and understanding of issues concerning safety, efficiency, conservation, health, gender, education, protection and preservation of the environment; and
- (d) for such other relevant purposes as may be determined by the Commission.

Accounts and audit. 32. (1) The Commission shall keep proper books of account and other records in relation to the activities, property and finances of the Commission in a form approved by the Auditor-General, and shall prepare in respect of each financial year of the a financial statement which shall include -

- (a) balance sheet accounts;

- (b) income and expenditure accounts; and
- (c) source and application of funds.

(2) The accounts of the Commission kept under subsection (1) shall, not later than 2 months after the end of each financial year, be audited by the Auditor-General or an auditor appointed by him.

(3) For the purposes of subsection (2), the Auditor General or the auditor appointed by him shall be entitled to have access to all books of account, vouchers and other financial records of the Commission and to require such information and explanation thereon as he may think fit.

(4) The Commission shall provide the Auditor-General or the auditor appointed by him with all necessary and appropriate facilities for the examination of the accounts and records of the Commission.

(5) The Auditor-General or the auditor appointed by him shall submit to the Commission a report on the audited accounts and the financial statements referred to in subsection (1) and shall, in his report draw attention to -

- (a) irregularities in the accounts;
- (b) matters that are likely to adversely affect the operations of the Commission; and
- (c) any other matter which, in his opinion, ought to be brought to the notice of the Commission.

33. The financial year of the Commission shall be the same as the financial year of the Government.

Financial year.

34. (1) The Commission shall, within 3 months after the end of the financial year, submit to the Minister a report on the performance of its functions during that year and on its policy and programmes including a list of persons granted licences in that year.

Annual report.

(2) The annual report shall include the accounts and

annual financial statement prepared under section 15 and the report of the audit thereon.

(3) The Minister shall lay copies of the annual report before Parliament within 30 days upon receipt of the report.

(4) The Commission shall make copies of the report available to all stakeholders once it has been laid before Parliament.

PART VII-LICENSING AND OTHER RELATED PROVISIONS

Licence requirement.

35. (1) A person shall not-

- (a) sell, provide, arrange or otherwise supply access to electricity and water services;
- (b) construct , install or operate any facility for the sale, provision or supply of electricity and water services;
- (c) engage in the business of transmission, wholesale supply, distribution or sale of electricity, water or related products; or
- (d) engage in the business of water production and distribution,

unless that person holds a licence granted by the Commission save for a person that is an unregulated service provider in accordance with regulations adopted under this Act.

Application for licence.

36. (1) A person who requires a licence under this Act shall make a written application to the Commission in such form as may be prescribed by the Commission.

(2) A person applying for a licence shall submit-

(a) relevant information to support the application; and

(b) the prescribed fee.

(3) The Commission shall within 10 days of the receipt of an application, acknowledge receipt and shall within sixty days thereafter inform the applicant in writing of the decision of the Commission.

(4) In making a decision under subsection (3), the Commission may-

- (a) make such inquiry and consult such persons or authorities as it may deem necessary to ascertain whether the applicant is capable of operating or rendering the services for which he is seeking the licence;
- (b) cause a notice of the application for licence to be published in the Gazette or any other medium prescribed by the Commission; and
- (c) consider any written notice of objection or other representation made in relation to such application.

(5) Subject to this Act, where the Commission is satisfied with an application, it shall grant the licence to the applicant.

(6) A licence issued under subsection (5) shall-

- (a) be in the prescribed form;
- (b) authorise the licensee to undertake such activity as may be specified therein;
- (c) contain such terms and conditions as the Commission may think necessary; and

(d) be valid for such period as specified therein.

(7) The licensing of a licensee providing a regulated service to which this Act applies, shall be in accordance with the provisions of this Act.

Restriction of licence. 37. The Commission shall grant a licence to a person that is registered or incorporated to do business in Sierra Leone.

Non transfer of licence. 38. (1) A licence granted under this Act shall not be transferred except with the written approval of the Commission.

(2) A licensee who wishes to transfer his licence may apply to the Commission in the prescribed form and manner.

(3) An application made pursuant to subsection (2) shall be accompanied by an application of the proposed transferee.

(4) The Commission shall, in considering an application for transfer, have regard to the same matters as in considering the grant of a new licence and shall approve the transfer if satisfied with the application of the proposed transferee.

Renewal of licence. 39. (1) A person who wishes to renew his licence shall make a written application to the Commission in the prescribed form not later than 3 month before the expiry of the licence.

(2) The procedure for the application for a licence shall, with the necessary modification, apply to the renewal of a licence

(3) A licensee who fails to renew his licence or whose application for renewal is rejected by the Commission shall cease to function as such.

Modification of licence. 40. (1) The Commission may, subject to this Act and any regulations made under it, modify any licence granted under this Act if the modification is permissible under the terms of the licence or is required in the public interest.

(2) A modification shall be made under subsection (1) unless the Commission has given at least 60 working days written notice-

(a) stating that the Commission proposes to make the modification; and

(b) setting out the effect of the modification.

41. (1) The Commission may suspend or cancel a licence where it is satisfied that- Suspension or cancellation of licence.

(a) the licensee has contravened a term or condition of his licence;

(b) the licensee has given information to the Commission which is false or misleading in any material particular; or

(c) it is in the public interest to do so.

(2) A licence shall not be suspended or cancelled unless the Commission has given written notice of its intention to the licensee together with the reasons for doing so.

(3) The Commission may in a notice under subsection (2) require the licensee to show cause in writing, within such time as may be specified in the notice why the licence should not be suspended or cancelled.

(4) The Commission shall, after considering the explanation of the licensee, inform the licensee in writing of its decision and reasons therefore.

(5) In determining whether it is necessary to suspend or cancel a licence granted under this Act, the Commission shall consider the extent to which the licensee is likely to sustain loss or damage as a result of the suspension or cancellation.

(6) A licence which is not utilised within one year from the date of its grant may be cancelled by the Commission after notice of not less than 30 days has been served on the licensee.

(7) Any person agrived by the decison of the Commission under this section may appeal to the Minister.

Register. 42. (1) The Commission shall maintain a register and shall record in it-

- (a) licences issued under this Act and relevant terms and conditions;
- (b) licences granted prior to the enactment of this Act;
- (c) suspended and cancelled licences;
- (d) permit holders and other unregulated service providers.
- (e) such other information relating to public utilities as the Commission considers appropriate and not being contrary to public interest or the commercial interest of any person.

(2) A person who wishes to obtain an extract from the register shall do so in accordance with conditions stipulated by the Commission.

Prior operators. 43. Any person operating a public utility prior to the Commencement of this Act who wishes to continue with his operations shall apply for a licence under this Act within 3 month of commencement of this Act and shall cease operation if he has not secured a licence within 6 months of such commencement.

PART VIII - INSPECTION

Inspectors. 44 (1) The Commission shall appoint inspectors to ensure that the provisions of this Act are complied with.

(2) A person shall not be appointed as an inspector unless that person is suitably qualified and possesses the necessary expertise to enable him to perform the functions of an inspector in an efficient manner.

(3) An inspector shall at any reasonable time, with the necessary equipment, enter any premises of a public utility to inspect the premises or carry out any function imposed upon him under this Act or regulations made under this Act.

(4) Where an inspector is refused or prevented from gaining entry to any premises of a public utility, the Commission may, on application to a Judge, obtain a warrant for the purpose of the entry and inspection of the premises.

(5) An inspector shall submit a report of his inspection or investigation to the Commission for necessary or appropriate action.

(6) A person shall not-

- (a) knowingly make a false or misleading statement to an inspector; or
- (b) deliberately obstruct or hinder or attempt to hinder or obstruct an inspector carrying out his functions under this Act or regulations made under this Act.

PART IX -SERVICE, RATES AND OTHER RELATED PROVISIONS

45. (1) A public utility licensed under this Act shall-

- (a) maintain the equipment and property used in the provision of the service in such a condition as to enable it to effectively provide the service;
- (b) make such reasonable effort as may be necessary to provide the public with service that is safe, adequate, efficient, reasonable and non-discriminatory; and
- (c) make such repairs, changes, extensions and improvements in or to the service as may be necessary or proper for the efficient delivery of the service to the consumer.

Duty to provide Adequate service.

(2) Where a public utility contravenes this section, the Commission shall in writing direct that public utility to the level of service that should be provided and may include such other direction as to secure compliance with subsection (1).

(3) A direction issued under this section may include payment of compensation by the public utility to any consumer for damage or loss suffered on account of the failure of the public utility to comply with subsection (1).

(4) Where the technology employed by a public utility is out of date or where any advancement in technology which should result in an improvement in the service or in reducing the cost to the consumer is not incorporated in the service within a reasonable time, the Commission may in writing direct the public utility to take such measures as the Commission considers appropriate to remedy the omission.

(5) A direction issued by the Commission under this section shall specify a reasonable time for compliance and where compliance is in stages, different times may be specified to comply with each stage.

Standards of performance.

46. (1) A public utility shall meet the required standard of performance outlined in its licence.

(2) The Commission shall monitor the standard of performance of the public utility.

(3) Where a public utility contravenes this section, it shall pay such compensation as the Commission may determine to any person adversely affected as a result of that contravention.

(4) The requirement for payment of compensation under this section does not -

- (a) limit the right to any other remedy at law which may be available to the complainant; or

(b) preclude the Commission from taking any other measure or imposing any other sanction that the Commission has a right to impose in respect of the act or omission that constitutes the failure.

47. (1) Where a public utility has entered into an agreement with any institution or body corporate for the provision, development or expansion of a service and the implementation of the agreement is not effected within a reasonable time, the institution or body may submit a written complaint to the Commission. Agreement to supply.

(2) The Commission shall, after receipt of complaint made under subsection (1) send a notice of such complaint to the public utility concerned and provide the public utility a reasonable opportunity to be heard.

(3) Where the Commission is satisfied that the public utility has failed to implement the terms of the agreement within a reasonable time, the Commission may-

- (a) direct the public utility to pay the institution or body such sum as it considers reasonable;
- (b) recommend the cancellation or suspension of the public utility's licence; or
- (c) give such other directions as it considers necessary.

48. A public utility shall not restrict or refuse to provide its services unless- Restriction on refusal to provide service.

- (a) it has a written permission of the Commission; or
- (b) its licence is, as the case may be revoked, suspended, cancelled or expired.

Fixing rates 49. (1) The Commission shall prepare and provide public utilities with guidelines for levels of rates that may be charged by the public utilities for the services provided.

(2) In preparing the guidelines the Commission shall take into account-

- (a) the interest of consumers;
- (b) the interest of investors;
- (c) the cost of production;
- (d) assurance of the financial integrity of the public utility; and
- (e) any other factor the Commission considers relevant.

Capacity of power generation. 50. (1) The capacity for the production of captive power electricity generation by producers shall be 10 KVA and above.

(2) Where a captive power generator sells to a third party, it shall-

- (a) be categorized as an IPP and would require a generation licence; and
- (b) require a power purchase agreement and or concession agreement with the relevant party.

Cost of production. 51. (1) The Commission may investigate and determine whether any expenditure incurred by a public utility is justified or reasonable in order to assess the cost of production of any service provided by the public utility.

(2) Where the public utility does not itself produce or generate the service which it provides to consumers, but obtains it from another source, the Commission may investigate the cost of production or generation of the producer or generator in order to determine the reasonableness of the rate being charged or proposed to be charged for the services concerned.

52. (1) No public utility shall demand or receive any rate for the service it provides unless the rate chargeable for the service has been approved by the Commission. Approval of rates.

(2) Notwithstanding subsection (1), a public utility may, with the written permission of the Commission, demand and receive from a consumer any special rate agreed to by the public utility and the consumer.

(3) The Commission shall, before approving any rate provide, as far as practicable, the public utility and the consumer affected by the rate a reasonable opportunity to be heard and shall take into account any representation made before it.

53. The Commission shall publish in the Gazette and the mass media any rate that it approves. Publication of tariffs.

54. (1) Where the Commission decides to fix a uniform rate for any service a public utility provides, it shall take into consideration-

- (a) the population distribution of the country;
- (b) the need to make the best use of any natural resources of the country; and
- (c) the economic development of the country.

(2) The Commission may approve different rates for different classes of consumers.

55. (1) A Licensee shall, within such a time as may be determined by the Commission, file with the Commission the rate to be charged or to be paid by the consumer for the use of electricity, water and sanitation services showing the rate it charges or services it provides. Filing of tariff.

(2) Copies of the rate to be charged or to be paid by the consumer for the use of electricity, water and sanitation services shall be published or otherwise made available to the public for inspection.

New service and change in existing rates.

56. (1) Where a public utility start a new service for which rates are chargeable or desires to revised any existing rate charge by it for any sservice, it shall file with the Commission notice of the propose new rate or revised rate as the case may be at least 60 days before the commencement of the new service or the effective date of the revised rate.

(2) The notice under subsection (1), where it relates to rates for new service shall state -

- (a) the new rates;
- (b) the effective date of the rates; and
- (c) any other particulars that may be required by the Commission.

(3) The notice under subsection (1), where it relates to changing existing rates, shall state-

- (a) the existing rates and the proposed rates;
- (b) the effective date of the proposed rates;
- (c) the reasons for the change in rates; and
- (d) any other particulars that may be required by the Commission.

(4) The Commission shall, within 30 days upon acceptance of the application as being complete under subsection (1), take a decision on the rate.

(5) The Commission, in setting new rates or revised rates, shall consider the following-

- (a) unexpected repair and maintenance expenses as may result from a natural disaster;
- (b) revenues to finance existing debts service requirements;

(c) unexpectedly high cost associated with expensive items beyond the managerial control of the utility, such as energy cost, inflation, or purchase water costs;

(d) other unexpected and unusual costs, the utility may incur, subject to the Commission's approval.

(6) Notwithstanding the provision in subsection (2), the Commission shall adopt a multi-year tariff order system for end user tariffs with principles that allow for efficient costs, adjustments for uncontrollable.

57. (1) Where a dispute arises with respect to any Joint use arrangement made under subsection (1) any of the disputed party of facilities. shall submit a written complaint to the Commission.

(2) Where the Commission is satisfied after investigation that a joint use of equipment and facilities -

- (a) is necessary to provide safe, adequate and economic service to consumers;
- (b) will not result in irreparable damage to the owners or users of the equipment or facilities; and
- (c) is just and reasonable, having regard to the circumstances of the case, the Commission may direct that two or more public utilities enter into an agreement for joint use or other arrangement upon such terms as the Commission may determine.

(3) The Commission may upon a complaint from a public utility or consumer affected by the directives under subsection (3) modify or revoke its earlier directives.

Returns and information. 58. (1) The Commission may, in writing require a public utility to furnish the Commission at such time as the Commission shall determine, the following -

- (a) a detailed report of finances and operations of the public utility; and
- (b) contracts, reports of engineers, documents, books, accounts and any other record in possession or control of the public utility and in any way relating to its property or service.

Ascertainment value of property. 59. (1) The Commission may, in writing, direct the ascertainment by value of appraisal, of the value of the property of any public utility and in that connection, may enquire into every fact which it considers has any bearing on that value, including the amount of money expended by the public utility in order to provide adequate service to the public.

(2) Expenses incurred in connection with any appraisal order by the Commission shall be charged to the capital account of the public utility whose property is the subject of the appraisal.

Obligation to bill. 60. A public utility shall give to every consumer except a consumer on payment meters, after every calendar month or at such time as may be determined by the Commission, a bill showing the sum payable by the consumer for the service provided by the public utility during the preceding month or such time as may be determined by the Commission.

Adjustment of credit consumers. 61. Where a consumer is entitled to receive any money from a public utility as a result of favourable change in rates, the money shall be adjusted to towards any money future debt by the consumer to the public utility or paid in cash to the consumer.

Interest to be paid on deposits. 62. (1) A public utility that requires its consumers to make cash deposit with it as a condition before receiving a service, shall pay interest on the deposit at such rate as the Commission shall determine except where the deposit is held by the public utility for less than 6 months.

(2) Subject to subsection (1), a public utility shall disclose to the consumer the amount of interest which has accumulated on deposits during the calendar year and the proportion which stands to the credit of the consumer.

63. (1) A public utility shall establish procedures for dealing with from the complaints of consumers or potential consumers. consumers. Complaints from consumers.

(2) A procedure shall not be established or modified unless-

- (a) the public utility consults and receives approval from persons or bodies that constitute a fair representation of consumers; and
- (b) the proposed procedure or modification is approved by the Commission.

(3) A publish utility shall publish the approved procedure in such a manner as the Commission may require and send copies of the procedures to consumers who make request therefore.

(4) The Commission may direct the public utility to review its procedures or the manner in which it modifies the procedures.

PART X - UNFAIR COMPETITION.

64. (1) A public utility shall not engage in any activity whether by act or omission which has, or is intended to have the effect of unfairly preventing, restricting or distorting competition in relation to any business activity relating to any utility service provided by that public utility. Unfair Competition.

(2) A public utility shall not deny access or service to a customer except for failing to pay dues or for any other just cause.

(3) A public utility shall provide equal opportunity for access to the same type and quality of service to all customers of the same type in a given area at substantially the same tariff rate, limiting variations to available or appropriate technologies required to serve specific customers.

(4) For the purpose of subsection (1) an act or omission shall include-

- (a) any abuse by the public utility, either alone or with others which unfairly excludes or limits competition between that public utility and any other party;
- (b) entering into any agreement or engaging in any concerted practice with another which unfairly prevents, restricts or distorts competition; or
- (c) the implementation of anti-competitive changes in the market structure and in particular, anti-competitive mergers and acquisitions in the relevant sector.

(5) A person affected by a contravention of this section by a public utility may submit a complaint to the Commission.

(6) Where it appears that a person has contravened this section, the Commission shall forward a written notice to that person stating -

- (a) that the Commission is investigating a possible breach of fair competition;
- (b) the reasons for the suspicion, including any matter of fact or law which is relevant to the investigation;
- (c) where appropriate the steps to be taken to remedy the contravention.

(7) The public utility which is the subject of the investigation may, within 30 days from the date of the notice referred to in subsection (6) make a representation in response to the notice and forward to the Commission all information required under the notice.

(8) The person affected by the contravention may also make a representation to the Commission.

65. (1) Where the Commission concludes after investigation that a public utility is competing unfairly it shall - Penalties for unfair competition.

- (a) order the public utility to stop the unfair competition;
- (b) require the public utility to pay a fine not exceeding the equivalent of 10 percent of the annual turnover of the public utility;
- (c) declare any anti-competitive agreements or contracts null and void; or
- (d) modify, suspend, cancel or revoke the licence if any of the public utility where the anti-competitive behaviour is serious or persistent enough to warrant such action.

(2) The provisions of subsection (1) shall not affect in any way the right of a person to take any other action against the public utility under any other law.

(3) Any person aggrieved by the decision of the Commission under this section may appeal to the Minister.

(4) The provisions of this section shall not limit or in any way affect the obligations of a public utility under any term or condition of a licence.

PART XI - OFFENCES AND OTHER RELATED PROVISIONS

Offences. 66. (1) A person who aids, abets, conspires with others or induces in anyway another person to engage in any activity prohibited under this Act commits an offence is liable on conviction to a fine not exceeding Le 40,000.00 or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.

(2) Any person who suffers loss or damage as a result of a contravention of this Act may recover compensation for such loss or damage from the person who contravened the Act, whether or not that person has been convicted of the offence.

(3) Where a supplier fails to pay the stipulated one percent of gross sales to the Commission, a late penalty of one percent will be charged daily on the outstanding balance till the amount due and owing is paid in full.

(4) Where an offence is committed by a body corporate, the body corporate shall be liable on conviction to a fine not less than NLe.200,000.00.

(5) Where an offence is committed by a partnership or firm, it shall be liable on conviction to a fine not less than NLe. 100,000.00.

False return. 67. A public utility which makes a return or furnishes information to the Commission which is false in any material particular commits an offence and shall be liable on conviction to a fine not exceeding NLe.80,000.00.

Obstruction. 68. A person who obstructs or interferes with a member of the Commission, officer or person employed by the Commission in the exercise of the powers conferred by this Act commits an offence and shall be liable on conviction to a fine not less than NLe. 3,000.00 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

69. Where the Commission, before or after any investigation makes any decision or gives any direction requiring any person to do or desist from doing any act and the person fails to comply with the decision or direction, the Commission may apply to the High Court for the enforcement of the decision or direction. Enforcement of decision.

PART XII - MICELANEOUS

70. (1) The Commission may make a compliance order against a person where - Compliance order.

(a) it is satisfied that the person has committed an offence under this Act; or

(b) it has evidence that the person is likely to commit an offence under this Act.

(2) A compliance order may require a person to-

(a) refrain from conduct which contravenes this Act; or

(b) take the necessary action to comply with this Act.

(3) A copy of the compliance order shall be served on the person against whom it is made.

(4) A compliance order shall be -

(a) made in writing specifying the grounds of its making;

(b) enforceable as an injunction in the High Court; and

(c) placed on the public register.

Sanitation.

71. (1) The Commission shall regulate-
- (a) liquid waste management, including collection, transport, treatment and disposal of wastewater.
 - (b) non-domestic liquid waste;
 - (c) sludge management;
 - (d) sewerage services;
 - (e) greywater management;
 - (f) aspects of public health, environmental sustainability, social well-being related to wastewater systems and services;
 - (g) the setting of minimum services standards as well as monitoring and regulating sanitation service provision;
 - (h) the collection, removal, disposal or treatment of human excreta and domestic wastewater;
 - (i) the collection, treatment and disposal of industrial wastewater;
 - (j) sanitation services including all service providers and the Sanitation service delivery environment.
 - (k) development and enforcement of sanitation services, standards and regulations;
 - (l) develop comprehensive regulations and guidelines governing inspections of service providers' premises, including standards for provision of sanitation services and general

environmental compliance.

Confidentiality

72. (1) Except otherwise provided by this Act or for the purposes of any court order or proceeding thereunder, no person shall disclose information or material obtained under this Act.

(2) For the purposes of this Act, any person who gives or discloses any information or material referred to in subsection (1) to the Commission, whether under compulsion of law or otherwise, may claim confidentiality in respect of the whole or part of the information or material.

73. (1) A person who fails to comply with any requirement under this Act for which no offence is specifically created commits an offence and shall be liable on conviction to a fine not less than Le 100,000.00 or to an imprisonment for a term not exceeding 5 years or to both such fine and imprisonment. General Penalty.

74. The Commission may, by statutory instrument make Regulations. Regulations for carrying out the purposes of this Act.

75. The Sierra Leone Electricity and Water Regulatory Commission Act, 2011 (Act No. 13 of 2011) is hereby repealed and Repeal.

replaced.

MEMORANDUM OF OBJECT AND REASON

The object of this Act is to provide for the continuation of the Sierra Leone Electricity and Water Regulatory Commission to regulate and manage the provision of electricity and water services and to provide for other related matters.

The Act is divided into XII parts.

Part I states words with their particular meaning in construing the Act and the extent to which the Act can be applied.

Part II deals with the continued existence of the Sierra Leone Electricity and Water Regulatory Commission, a body corporate having a board as its governing body. Part III touches on functions and powers of Sierra Leone Electricity and Water Regulatory Commission with the power to regulate rates and charges, consultations with stakeholders where it considers it necessary or expedient to introduce or make any changes to a key policy.

Part IV addresses complaints against a supplier of regulated goods or services in relation to any matter connected with the supply, possible supply or purported supply of the goods or services. There is the Tribunal that investigate all complaints and attempt to resolve the complaints amicably, and in the event they cannot be resolved within 30 to 60 days, the tribunal shall present its findings and recommendations for action to the Commission.

Part V dilates on the staff of Commission, highlighting on the appointments of the Director General, his deputy and other personnel charged with the day to day running of Commission. Also in this part are directorates for the following matters -administration and finance audit and accounting rates, tariffs and consumer services Legal Affairs.

Part VI deals arranges the financial provisions of the Commission, outlining the funds of the Commission, books of account and other records in relation to activities of the Commission and its audit.

Part VII provides for the licensing and other related provisions to sell, provide, arrange or otherwise supply access to electricity and water services, even to construct, install or operate any facility for the sale, provision or supply of electricity and water services by engaging in the business of transmission, wholesale supply, distribution or sale of electricity, water or related products.

Part VIII caters for the appointment of inspectors of the Commission who are charged with the responsibility to ensure that the provisions of this Act are complied with.

Part IX states the standard of services that providers of electricity or water supply are to meet and it is the responsibility of the Commission shall monitor the standard of performance of the public utility.

Part X treats the aspect of unfair competition of providers and the penalties attach to such acts.

Part XI stipulates offences with their respective penalties.

Part XII - Miscellaneous provision that provides for rules, regulations to enrich this Act and a repeal provision that replaces the Sierra Leone Electricity and Water Regulatory Commission Act, 2011.

Made this day of , 2024

MOHAMED B. D. SEISAY
Chairman, Electricity and Water Regulatory Commission.

FREETOWN,
SIERRA LEONE.