DECEMBER 2, 2017
Saturday Monitor
www.monitor.co.ug

Concession tenure. Umeme recently notified government on the need to review the concession tenure with the view of renewing it, so that it can mobilise long-term capital to invest in the distribution network.

Finance ministry steps in Shs115b Umeme, ERA row

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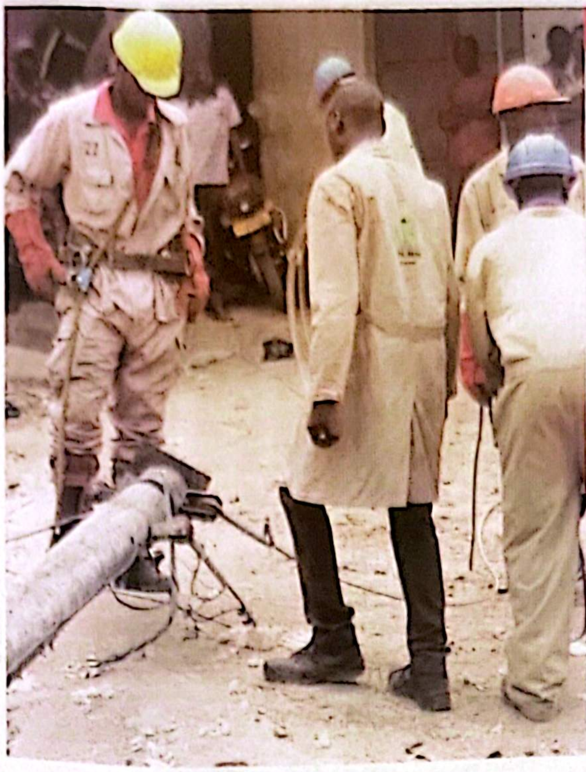

ISSUES AT HAND

Dispute. The dispute arises from a 2012 amendment the ERA made to Umeme's power supply licence. Following the modification, ERA started reconciling projected income from the sale of energy with the actual income.

Pending. From 2012 to 2016, ERA has clawed back Shs115b. Umeme managing director Selestino Babungi, says the company has not given up its right to recover the money.

Mitigation. The ministry wants to resolve the row to avoid any adverse impact on the electricity sector.

Umeme field team install power in Kampala recently. FILE PHOTO

KAMPALA. Finance ministry has roped itself in a Shs115b dispute between power distribution company Umeme and the Electricity Regulatory Authority (ERA).

The ministry says it wants to resolve the row to avoid any adverse impact on the electricity sector. The dispute arises from a 2012 amendment the regulator made to Umeme's Power Supply Licence.

Following the modification, ERA started reconciling projected income from the sale of energy with the actual income. Additionally, the regulator reconciles the projected and the actual corporation tax paid by Umeme.

For instance, in case Umeme was supposed to collect, say, Shs1 trillion but it ended up collecting Shs1.2 trillion, should it say it needs to invest Shs1.3 trillion next year, ERA will approve Shs1.1 trillion.

The balance will come from the difference between Shs1.3 trillion and Shs1.2 trillion. In the past, the utility did not have to per se invest the excess revenue in the network.

The purpose of reconciling the projected energy sales with the actuals was to ensure the excess revenue is used in place of borrowed funds to invest in the distribution network. It was also meant to provide counterpart funding for electricity distribution projects.

From 2012 to 2016, ERA has clawed back Shs115b. Consequently, Umeme said it had to 'write off' the amount.

However, while releasing Umeme's 2017 half-year interim results in October, the company managing director, Mr Selestino Babungi, said, "Impairment is prudence. It does not mean the company has given up its right to recover this money."

Umeme's deputy managing director Sam Zimbe added that "...these are revenues we are entitled to..."

According to Mr Babungi, once the company recovers the Shs115b from the government, it will be good news to the shareholders.

The Finance Minister, Mr Matia Kasaija, told *Daily Monitor* on October 23 that consultations among stakeholders in the electricity sector are going on to resolve the row amicably.

Although he did not mention them, among those to be consulted could be the Uganda Electricity Transmission Company Ltd (UETCL), which sells bulk electricity to Umeme – among other distribution companies.

The ministry is also likely to consult the Uganda Electricity Distribution Company Ltd (UEDCL), which in 2005 leased the power distribution network to Umeme.

Other stakeholders are the Rural Electrification Agency, in whose interest Umeme once in a while executes some rural electrification projects and the ministries of Energy, Finance and Justice and Constitutional Affairs.

But at the back of the stakeholders' minds will be Umeme's argument that the modification of its supply licence adversely impacts the entire sector.

Mr David Grylls, one of Umeme's directors, in 2012, wrote that the reconciliation would have a significant adverse impact on the finances of key participants such as UETCL and UEDCL.

As for Umeme, he wrote: "Our preliminary analysis shows...the amendment...would...reduce the company's earnings as well as its ability to raise finance.

"In this regard, the company's loss reduction programme, which was predicated on raising financing against revenues earned by the company under the original tariff methodology, would no longer be financially viable."

Earlier, Mr Grylls had pointed out that Umeme could start to apply its contractual remedies such as the exercise of contractual offsets against payments to UETCL and UEDCL as well as access to the Escrow Account. Of these, the only available option is offsetting payments to UETCL. As for the Escrow Account, it is empty.

Years back, when some government departments defaulted on clearing their electricity bills, Umeme 'recovered' the money from the Escrow Account. Since then, the account has never been replenished.

Going by the concession agreements, Umeme was supposed to be making monthly rental payments to the account. With just eight of 20 years left for the concession to end, it is unlikely it will call for the termination now.

According to Umeme, it has so far invested $500.1m (Shs1.8 trillion) since the start of the concession in 2005 and 2016. Of that, it has recovered just Shs429b.

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Percentage. Increase in number of Umeme customers (1, 019, 453).

In other words, should it decide to leave now, away from the Shs115b, the government would have to reimburse the $382.8m (Shs1.4 trillion) plus whatever interest might be due.

At the time Mr Grylls wrote, Umeme had petitioned the Electricity Disputes Tribunal (EDT) and asked it to overturn ERA's decision. The matter dragged on until May 2016 when Umeme sought to settle the matter out of court.

To that end, Umeme and ERA agreed to a consent judgment, which upheld the amendments. So ERA continued with the reconciliations.

According to the consent judgment, Umeme committed to use the revenue from excess energy sales on investments, specifically approved by the regulator. The utility was to use the reconciled revenue allowed to it to leverage concessional or counterpart funding.

Furthermore, investments made using reconciled finances were not to form part of the buy-out amount for Umeme upon the termination of the concession.

Umeme was to submit, before the start of every tariff year, its plan of how it will invest the reconciliation amounts and grants/concessional/counterpart funds for approval by the regulator.

The company was expected to have invested the reconciliation amounts of a previous year by the end of any given year.

The investments using reconciliation amounts were not to earn a return on investment and capital recovery or depreciation allowance.

In the event that the management of the assets created through the investments made using the reconciliation amounts increase Umeme's operational and maintenance costs beyond what was allowed as Distribution Operation and Maintenance Costs (DOMC) for the period ending 2018, Umeme may apply to the respondent for approval of such incremental DOMC.