



**SOLAR PV ROOFTOP RENTAL / LEASE BUSINESS
STAKEHOLDER CONSULTATION REPORT
JUNE 2022**

1. INTRODUCTION AND BACKGROUND

Namibia has a substantial renewable energy resource base, which has a huge potential role to play in the country's power supply. The National Energy Policy (2017) recognizes the benefits of renewable energy technologies with regard to sustainability and security of supply. Studies have also revealed different regulatory provisions that may be applied to govern the supply of electricity derived from renewable energy resources.

Over the past few years, many homes and business owners have considered the installation of alternative forms of electricity generation facilities and connecting them to their utility's electrical network, and many have done so. These facilities are intended to reduce the amount of energy purchased from the utility as well as providing some environmental benefits.

The ECB developed Net Metering Rules in 2016 to allow electricity users with rooftop-based PV and wind energy systems to offset part of their conventional electricity requirements. Net metering is intended to encourage private investment in renewable energy resources, stimulate economic growth in the country, contribute to energy security, and enhance diversification of Namibia's energy resources.

As of late, Namibia has seen an increase in the number of service providers that offer equipment rental/lease agreements for rooftop systems to their customers subject to the payment of a fixed rental amount per month for the duration of the rental/lease agreement. The rental agreement could be either a pure rental agreement or a rent-to-own agreement.

This report aims to provide background on the SOLAR PV ROOFTOP RENTAL / LEASE BUSINESS, specifically the agreements to that nature, as well as a summary of the discussions with the affected stakeholders. The report concludes with the ECB's preliminary opinion and map the way forward.

2. BACKGROUND

The ECB has previously approved solar PV rooftop rental / lease agreements upon request by some service providers. The approved rental agreement involves the leasing of the equipment to the customer, subject to the payment of a fixed rental amount per month for the duration of the lease agreement (usually 20 years). The rental amount is based on the capital and financing costs of the plant, and also incorporates a return for the lessor of the equipment. The ECB's approval of such agreements on the condition that the rental/lease is not linked to the sale of electricity. The ECB has always been maintained that if the rental for the solar

equipment is linked to the units sold, it could be construed as selling electricity for which a generation licence is required under section 17 of the Electricity Act of 2007.

The ECB's approval of the agreements allowed for the rental to be adjusted in accordance with performance of the plant, i.e. if the plant under-performed, the rental would be adjusted by the ratio by which the plant had under-performed vis-a-vis the forecasted production. This would be tantamount to a discount in favour of the lessee. It is also similar to the payment of liquidated damages by the equipment supplier in case of under-performance of the plant.

The ECB has not allowed the rental to be adjusted for over-performance of the plant because any additional production or additional exports to the grid would be for the benefit of the lessee and or through the accumulation of credits.

The adjustment formula usually looks as follows:

$$A = B \times (C/D)$$

Where:

A = the Adjusted Rental for the relevant Month;

B = the Rental for the relevant Month;

C or "Actual Production" = the actual production of the System for the relevant Month as per the inverter(s) reading(s) of the System;

D or "Forecasted Production" = the forecasted production of the System for the relevant Month as per the Forecasted Production Table set out in an Annexure in the agreement.

Upon reconsideration of the adjustment of the rental based on the performance of the plant, the ECB came to the conclusion that the value given to the under-performance of the plant (i.e. the adjustment of the rental due to the under-performance of the plant linked to the actual units produced by the plant), in fact amounts to the selling of electricity, which, despite our previous approval in this regard, is not authorized under section 17 of the Electricity Act without the requisite generation or supply licence.

The ECB has not been appraised of the situation under the outright sale of rooftop solar PV equipment, but assumes that such sale would also operate under a performance or liquidated damages regime in case of under-performance of the sold equipment. Any payments or adjustments under those agreements would, in the opinion of the ECB, similarly result in the selling of electricity due to the value given to the units under-delivered.

The ECB needs to address this issue comprehensively, to ensure that there is no selling of electricity under these circumstances.

The ECB therefore wishes to issue a ruling that is fair to all parties concerned, which does not stifle innovation in the industry, and which is applicable to all future sellers of rooftop systems and rooftop rental service providers.

On this basis, the ECB in June 2020 requested written submissions from service providers and distribution licensees on how to deal with performance adjustment of rental under an equipment rental agreement or the payment of liquidated damages under the sale of rooftop equipment to ensure that such action does not amount to the sale of electricity under the Electricity Act.

The next section summarized the submissions made to the ECB.

3. DISCUSSIONS

The summary of responses by services providers and distribution licensees.

3.1 Service Provider 1

The service provider's business model is based on two elements:

- (i) it leases an agreed upon area to install the equipment – this is governed by a written lease agreement in terms of which a fixed rental is paid to the lessee; and
- (ii) it then enters into an equipment rental agreement with the same counterparty in terms of which it is, inter alia, agreed that the counterparty will lease certain solar modules and accompanying fittings, implements, equipment and appliances from the lessor, which are installed on the leased area.

The equipment leased is used by the counterparty for the generation of electricity (by it) for internal use by the occupants. The performance of the equipment goes to the root of the Equipment Rental Agreement. Should the equipment not perform as agreed, the rental to be paid by the counterparty under the Equipment Rental Agreement will be adjusted in accordance with an agreed formula. According to the service provider, this cannot be construed the lessor is selling electricity to a third party.

The service provider is further of the opinion that allowing the adjustment in rental serves as a penalty mechanism in the event of under performance of the equipment, which cannot be regarded as selling electricity. The performance penalty serves as a warranty in favour of the lessee.

The service provider therefore believes the performance of the equipment is not linked to the actual units of electricity generated by the equipment. If the performance of the equipment was linked to the actual units produced by the equipment, which on the version of the ECB would have resulted in the selling of electricity, its clients should also have benefitted from any over-performance, (which is not the case).

3.2 Service Provider 2

The service provider is in the business of leasing and financing solar PV systems on a rent-to-own basis. The object of this business model is to provide a lessee, who cannot afford to purchase a solar system upfront, with a financing structure which enables them to install a solar system and generate electricity for their own consumption. This business model affords a lessee the ability to be afforded the rights that are given under section 18 of the Electricity Act, 2007.

The service provider is not generating, supplying or distributing any electricity in respect of which a license would be required since it is the lessee who generates the electricity for its own consumption, and such Lessee is exempt from holding a licence as per section 18(1). All net-metering applications and grid connections are in the name of the respective lessees and not in the name of the service provider.

According to the service provider, the rental amounts that the lessee is paying cannot be said to constitute a charge for the provision of electricity under section 27(1) of the Electricity Act, 2007. For the service provider to be regarded as charging for electricity, it would need to be established that the service provider is providing the electricity, which it does not. It is the lessee who is generating electricity for its own consumption. Stated differently, section 27(1) applies to a licensee who would levy a charge in connection with the provision of electricity to a customer. The service provider is not providing electricity and the lessee is not required to hold a license.

Whilst the service provider has elected to adjust the monthly rental charge to reflect the actual performance of the asset being leased, this is simply a means by which the service provider underwrites system performance. The service provider denies that this then causes the company's business model to constitute a "sale of electricity". The service provider states that how a party elects to charge for a service does not change the nature of that service: it remains the lessees who are generating electricity for their own consumption.

3.3 Service Provider 3

Service provider 3 believes energy production must not be linked to rent, as it will otherwise be construed as selling of electricity. The monthly leasing fee must be

independent from energy produced. The customer must be provided some sort of security regarding the productivity and functioning of the leased equipment, which must include:

- (i) Availability guarantee
- (ii) Electrical checkups on a regular basis and/or
- (iii) Performance ratio guarantee (without liquidated damages)

In case the equipment is underperforming the lessor must rectify the matter immediately without liquidated damages payable. In case the lessor cannot rectify the malfunctioning of the equipment, the contract must be terminated immediately.

3.4 Service Provider 4

The service provider's equipment lease business model, as provided for in their lease agreements, has been devised in order to enable persons to generate electricity for own consumption utilising generation plants with an installed capacity of less than 500 kVA, as is provided for in section 18 of the Electricity Act, 2007, and which persons are not able to afford to purchase such plant in one amount. The aforesaid business model affords these persons the ability to be afforded the rights that are given under section 18 of the Electricity Act, 2007.

The service provider is of the opinion that it as the lessor under the rental agreement, is not generating, supplying or distributing any electricity in respect of which a license would be required since it is the lessees who generate the electricity from the equipment for their own consumption, and these lessees are exempt from holding a licence as per section 18(1).

All net metering applications and grid connections are in the name of the lessees and not in the name of the service provider, and, accordingly, it is of the view that section 27(1) of the Act does not find any application. The rental amounts that the lessees are paying cannot be said to constitute a charge for the provision of electricity under section 27(1) of the Act because the lessor is not providing the electricity, instead it is the lessees who are generating electricity for their own consumption from equipment rented from the service provider. Section 27(1) applies to a licensee who would levy a charge in connection with the provision of electricity against any customer. The lessor is not providing electricity and the lessee is not required to hold a licence.

The service provider's rental agreement does not provide for the payment of liquidated damages under the sale of rooftop equipment. It provides the customer with a purchase option to acquire the rooftop equipment for the value of the system at the time of the purchase. No liquidated damages are payable from the service provider to the customer

3.5 Distribution Licensee 1

The licensee does not support the methodology to calculate monthly rental amounts for leased solar rooftop systems, which involves adjustments of rental amounts according to the performance of the rooftop systems, resulting in indirect selling of electricity.

The licensee believes the ECB should restrict the initiative to the definition of “rent-to-own” whereby the customer (lessee) pays a fixed monthly rent amount to the lessor determined by the financing cost of the solar rooftop for a set period, with the lessee given a non-obligatory option to buy the system at the end of the set period. The rental amount may be subject to annual percentage increases as determined by the lessor, however, should not involve monthly adjustments determined by a system’s performance.

Alternatively, the ECB may consider the credit purchasing agreement, whereby a customer buys the rooftop system on credit and pay-it-back over a set period with interest determined by the lessor. Under this scenario, a fixed monthly amount should also apply but should not involve monthly adjustments determined by a system’s performance.

3.6 Distribution Licensee 2

The main reason for installing solar rooftops is the reduction of the electricity bills. This is mainly done by:

- Cash purchase and installation of solar systems
- Loan/financing, and
- Lease agreements (since PPAs are not available)

Among the above, lease agreements and loan financing are common among Large Power Users, since they do not have to pay for high upfront solar panel, equipment, and installation costs. The lease agreement has been devised in absence of PPAs for generation plants below 500kVA.

This model assists customers who are not able to finance their PV power plants outright, by paying a monthly rental fee to a developer according to how much their plant has generated and what has been consumed by the customer.

As the licensee is not privy to these contractual agreements between the lessor and lessee (applicant for net metering) it finds itself limited to examine the same.

The licensee proposed that the approval of rooftop installation must be granted on the presentation of proof of system ownership, proof of purchase, or presentation of the lease agreement to ensure there is no outright resale of electricity.

4. THE OPINION OF THE ECB

The ECB has always maintained that if the rental for the solar equipment is linked to the units sold, it could be construed as selling electricity for which a generation licence is required under section 17 of the Electricity Act of 2007. Upon reconsideration of the matter of adjustment of rental based on under-performance of the plant, the ECB is of the view that the value given to the under-performance of the plant (i.e. the adjustment of the rental due to the under-performance of the plant linked to the actual units produced by the plant), in fact amounts to the selling of electricity, which, despite the ECB's previous approval granted to service providers in this regard, is not authorised under section 17 of the Electricity Act without the requisite generation or supply licence.

Based on the outcome of the various consultations held and arguments in the written submissions made, the ECB is of the opinion that if the monthly bills to the customers by the suppliers are variable because of regular adjustments due to performance of the system, then it is akin to the selling of electricity, but if the bills remain constant, fixed as per the contract, then no selling of electricity is involved.

The ECB interrogated three scenarios of potential entrepreneurial proposals to the customer to confirm the issue of selling or not selling of electricity in different business models as follows:

- a) Outright purchase of equipment from seller – The ECB is of the opinion there is no selling of electricity
- b) Rental of equipment from owner with fixed monthly payment without any adjustment due to performance or liquidated damages. If any performance issue occurs, it is rectified without adjustment to rental amount. - The ECB is of the opinion there is no selling of electricity.
- c) Rental of equipment from the lessor with variable monthly payments based on adjustments due to performance or liquidated damages. -The ECB is of the opinion that the selling of electricity is involved.

The ECB has a fundamental problem with scenario (c) above, because it believes this involves selling of electricity. Most suppliers however believe that the performance adjustments as per their business models / agreements cannot be considered as selling of electricity. The suppliers indicated that the use of metering data to determine the adjustment of the rental amount is the only manner in which plant performance can be assessed.

Under scenario (c) above, the following pertinent issues are noted:

- By adjusting the fixed rental amount in proportion to the performance of the equipment i.e. readjusting the rental amount according to the units (kilowatt-hours) generated is considered as selling units of electricity.
- There is a value attached to the adjustment which is linked to the generated units.
- If there is a dispute on the adjustment, the regulator will be party to the dispute since the issue under dispute will be linked to the output (electricity production) of the equipment and not just the equipment rental.
- To be considered as not selling electricity, the invoice should just contain the fixed rental amount and not amounts for performance issues.
- Technical performance-related issues should be dealt with as once-off amounts paid separately when it is established that the equipment is performing outside its manufacturing specifications (tolerance band) rather than at regular intervals, monthly, yearly etc.

The position of the ECB is that if the monthly bills to the customers by the suppliers are variable because of regular adjustment due to performance of the system, then it is like the selling of electricity, but if the bills remain constant, fixed as per the contract, then no selling of electricity is involved.

The ECB feels further consultations is needed before implementing its decision regarding scenario (c) above in order not to stifle innovation in the industry.

5. THE WAY FORWARD

The ECB wishes to solicit further input from the stakeholders through a stakeholder meeting, which is scheduled for 1 July 2022.

The purpose of the meeting is to discuss ways to ensure that rental payable is not adjusted based on performance of the plant, but to explore other ways of ensuring system performance that are fair and equitable to both service providers and their customers.