



**Consumer Complaints and Dispute Resolution Rules and
Procedures: URA Rules and procedure for assisting in resolution
of consumer complaints
Case No. U-0009-14 (Amendment)**

On 28th May 2015, in exercise of its powers under section 19 of the URA Act, the Utilities Regulatory Authority (URA) Commission issued the Final Decision and Order, Case U-0009-14 – Consumer Complaints and Dispute Resolution Rules and Procedures: URA rules and procedure for assisting in resolution of consumer complaints (CCDR).

UNELCO challenged the CCDR Order in Supreme Court (Judicial Review Case 745 of 2015.)

The case was heard by Hon. Judge Chetwynd who upheld that the issuance of CCDR Order was within powers and authority of the URA. UNELCO appealed the trial court ruling before the Court of Appeals (Civil Appeal Case No.16/3472 CoA/CIVA.).

The Court of Appeals found that Section 3 of the Act obligated the URA to act consistent with the provisions of the concession contracts between government and UNELCO.

The Court of Appeals also found in paragraph 184 of the judgment that “*the Dispute Resolution Decision is, in general terms authorized by section 19 of the URA Act. Section 19 expressly empowers the Regulator, if requested by a person, to assist that person in resolving any dispute with the Utility in respect to a regulated service.*”

However, court found that in ‘three respects the CCDR Order appears to go beyond that which is contemplated by the UNELCO electricity concession contract.’ The Court of Appeal said it is appropriate for the URA to be given an opportunity to revise the CCDR order to cure the three defects, which are:

- (1) **Right to Appeal to a competent court.** The Court’s view (paragraph 180) is that the CCDR limits the parties right of appeal *to* only from the (ruling of) appeal committee, to a competent court. The Court held that to be consistent with the concessions, a person may appeal to the Supreme Court on the merits of the case, ‘ab initio’ or afresh.
 - (2) **Onus of proof.** The Court of Appeal expressed concern with the provision in Rule 5.2 in the CCDR order which imposes reverse onus of proof on
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UNELCO. The CCDR states in Rule 5.2 that in cases “where the responsibility under a Complaint/Application cannot be determined with certainty by Staff/HO, the burden of proof shall be on utility”. The court held that this provision was inconsistent with the concession agreement.

- (3) **Interim order.** The Court of Appeal found that the interim order provision in Rule 4.16 of the CCDR binding the disputing parties to its Decision pending appeal to the Supreme Court is not consistent with UNELCO Concession agreement; therefore the relevant provision should be revised.

The sections in the CCDR which contain the above three provisions are 4.16, 4.17, 4.19 and 5.2. In addition, certain minor amendments are also made in Rules 1.1(a), 1.2, 1.5, 4.2, 4.18, 5.1 and 5.5 for clarity.

Therefore the CCDR Order dated May 25 2015 is hereby amended in compliance with the Court of Appeal decision of 18th November 2016.

This amended Order replaces the previous CCDR rules issued on 28th May 2015 published in the Official Gazette as Notice No. 148 of 2015.

Made at Port Vila this 20th day of February, 2017.

Consumer Complaints and Dispute Resolution Rules and Procedures: URA Rules and procedure for assisting in resolution of consumer complaints

Case No. U-0009-14 (Amended)

1. Introduction

1.1. The Rules

Revision of Rule 1.1(a)

(a) Replaced the word “manner” with “process”;

(b) Delete “shall approach the URA and request for”, substitute “to follow when

These Consumer Complaints and Dispute Resolution Rules and Procedures (Rules) prescribe:

- (a) the process in which a consumer, or a person using or wishing to use a regulated service, (Complainant) to follow when requesting URA’s assistance in resolving its grievance/ dispute (Complaint) with a utility in respect of a regulated service;
- (b) conditions to be fulfilled by the Complainant prior to requesting URA’s assistance;
- (c) the process that will be followed by the staff of the URA, authorized by the URA for this purpose (Staff), in resolving the Complaint; and
- (d) the role and responsibilities of the Complainant, utility and the URA.

Revision of Rule 1.2 (heading)

Delete “Applicability”, replace with “complaints”;

1.2. Complaints

A Complaint may be made on any aspect of supply of electricity or water against a utility, i.e. a service provider that supplies electricity or water to a consumer for payment. The Complaint may involve disputes regarding new connection, billing errors, applicable tariff, consumption, disconnection, quality, safety or any other matter related to the regulated services.

1.3. Out-of-court dispute resolution platform for consumers’ convenience

The URA is releasing these Rules to provide an out-of-court dispute resolution platform that is quick, efficient and low-cost.

1.4. Contravention of Acts

If during the Complaint resolution process it appears to URA that any provisions in the URA Act, the Electricity Supply Act (ESA), the Water Supply Act (WSA) or the Water Resources Management Act (WRMA, and collectively “Acts”) may have been contravened by a party, the URA may take all necessary steps pursuant to the Acts to address the issue. The URA may separately investigate the offence, issue infringement notices, and award compensation under the Acts.

These Rules do not limit the rights or remedies available to the URA, Complainant, utility or any other third party under the Acts or other applicable laws of Vanuatu.

Variation of Rule 1.5

Previous provision is replaced with this new provision.

1.5. Application for Compensation under Section 6 of the Electricity Supply Act

For the purpose of an application for compensation made under section 6 of the ESA, the process laid out under section 6 of the ESA will be followed in addition to those outlined in this Rule.

1.6. Before requesting URA assistance

Before approaching the URA for assistance, the Complainant must first contact the utility and attempt to resolve the issue(s). Utility has the obligation to investigate the complaint and make best efforts to resolve the grievance. The Complainant may approach URA if despite such efforts the grievance/ dispute remain unresolved to his/her satisfaction.

Consumers should be aware that utilities have been advised and encouraged to establish an appropriate consumer grievance resolution process.

2. Process: Broad Outline

2.1. A two stage resolution process

The Rules provide a two stage Complaint resolution:

- (a) **Stage I - Mediation:** an informal process where a URA Staff assists the disputing parties in arriving at a solution that is mutually acceptable.
- (b) **Stage II – Resolution by a Hearing Officer (HO):** a formal procedure before a HO as defined under Rule 4.7. The parties have the right to appeal the HO’s decision in accordance with Rule 4.17.

2.2. Standard process and special requests

A Complaint received by the Staff will first be processed through Stage I in accordance with the process set out in Rule 3. If the disputing parties fail to arrive at a mutually acceptable solution, the Complaint may then be resolved through Stage II.

If the Complainant wishes that the Complaint be resolved through Stage II, without first attempting to resolve through Stage I, he/she/it must so specifically request in writing and the matter may be taken up at the discretion of the HO. Complainant should be aware that resolution through Stage II may typically take longer and may not be as cost effective as he/she/it may be required to pay filing fees and incur costs in accordance with Rule 4.21.

Revision of Rule 2.1(b)

Delete “(defined under Rule 4.7), the HO’s decision shall be binding on the disputing parties as set out in the decision” substitute “as defined under Rule 4.7

2.3. Discretion of the URA

If the Staff/ HO determine that the matter under dispute is beyond the URA's powers under the Acts, or other applicable law, it shall notify the Complainant/ disputing parties.

3. Stage I: Resolution through Mediation

3.1. Requesting for assistance

A Complainant may approach the URA for assistance by calling, emailing, mailing or coming to URA's office, during normal business hours on weekdays (excluding public holidays). The relevant phone number, email address and office address are provided on URA's website.

The Complainant shall identify herself/himself/ itself by name, address, customer number and the serving utility.

3.2. Recording Complaint and assigning complaint number

The Complaint will be handled by a Staff. On receiving the Complaint the Staff shall record the information provided by the Complainant in a Complaints Ledger maintained by URA and assign a Complaint Number.

3.3. Mediation process and request for information

The Staff will typically require the Complainant to provide written details in respect of the Complaint:

- (a) nature of the Complaint;
- (b) whether the Complainant has approached and tried to resolve the issue with the utility. If the Complainant has not done so, the Staff shall advise the Complainant to first approach the utility before requesting URA for assistance; and
- (c) responses received from utility in respect of the Complaint.

The Staff, if requested, can assist the Complainant in writing-up the Complaint.

The Staff shall then notify the utility of the Complaint and information received from the Complainant.

The Staff may request the disputing parties to provide additional information and documents to better understand the issue. Both parties shall provide information/ documents promptly so that URA can swiftly assist in resolution of the Complaint.

To the extent necessary, the Staff shall consult with the other departments of URA in this matter (e.g. legal, tariff, engineering) and undertake a preliminary examination of the matter.

The disputing parties will be called for a mediation session. Pursuant to consultations and review of information received the Staff shall evaluate the Complaint and inform both parties of its recommendation(s). The Staff shall give reasons for its recommendation(s). The Staff may liaise between the parties to assist them in arriving at a solution that is acceptable to both of them.

At this stage the recommendation of the Staff is not binding on the disputing parties.

3.4. Maintenance of records

In respect of each Complaint, the Staff shall maintain a file recording the mediation process under Stage I.

3.5. Timeline for resolution and priority cases

The Staff will endeavor to contact the utility and assist in the resolution of the Complaint at the earliest possible. Typically, URA anticipates that a Complaint should be resolved within 10 working days.

Disputes involving disconnection, safety, availability and quality of service shall be treated with urgency and given priority.

3.6. Resolution of Complaint

If the mediation is successful and acceptable to the parties, the Complainant and the utility are advised to take appropriate actions to give effect to their settlement. The Staff shall treat the matter as resolved and completed.

The utility shall inform the Staff of such resolution in writing within 5 working days.

3.7. Dispute not resolved under Stage I

If after the mediation process under Stage I the disputing parties are unable to arrive at a mutually acceptable solution, then the Complainant may request that the matter be resolved by a HO in accordance with Rule 4.

4. Stage II: Resolution by HO and Appeal

4.1. Approaching URA for decision on dispute

Subject to Rule 3.7, the Complainant shall submit a complaint form, available on the URA website, (**Application**) along with a filing fee (if applicable) in accordance with Rule 4.21.

The Application is to be submitted at URA's office during normal business hours on weekdays (excluding public holidays) or via email or mail. The email and office addresses are provided on URA's website.

4.2. Application

**Revision of
Rule 4.2**

Repeal 3rd
paragraph and
replace with new
paragraph.

The Complainant may request a URA staff for assistance in filling out the prescribed form.

The Complainant must submit all supporting material including last bill, investigative reports and field reviews (if any).

The URA may request the complainant to disclose further document or information relating to its complaint.

4.3. Recording Application and assigning docket number

The URA shall record the details of the Application in a Dispute Resolution Ledger maintained by URA and assign a Docket Number within 2 (two) working days of its submission to URA. The Complainant must have submitted a fully completed Application and paid the filing fee, if applicable.

4.4. Informing the utility

Within 3 (three) days of registering the Application in the docket system, the HO shall notify the concerned utility that a formal complaint has been filed against it by the Complainant.

4.5. Response by utility

Upon being informed by HO the utility shall promptly but no later than 5 working days provide its response/ clarifications in writing to the HO along with relevant supporting documents, field investigation reports, etc. In special cases, depending upon the nature of the information/ document(s) to be prepared, the utility may request additional time.

The utility must submit all previous documents relevant to the complaint in its possession to the URA.

4.6. Right of parties to obtain copies of documents

Each party is entitled to receive all documents provided by the counter party to URA in respect of the Application. The concerned parties may collect copies of such documents from the other party.

4.7. Hearing Officer (HO)

The hearing officer (HO) shall be a person who has requisite expertise to evaluate and determine the matter in an impartial manner, and authorized by the Commission to hear and resolve the consumer complaints and disputes.

The HO shall not be the same individual who assisted the disputing parties under Stage I.

4.8. Analysis

To analyze the grievance the HO may require the disputing parties to (a) provide additional information and clarifications, and (b) perform such actions that are necessary including the HO may exercise the powers set out under Section 19(2) of the URA Act.

The parties shall provide the information and perform the actions within the time period as required by the HO.

If a party fails to timely comply with such requirement(s), the HO reserves the right not to accept any submissions made after that time and to decide the matter on the basis of the information made in compliance with the HO's requirements.

If a utility fails to timely provide information or perform required actions, the HO may rule in the favor of the Complainant and recommend to the URA to take actions under the URA Act in respect of such non-compliance.

4.9. Staff to provide its records to HO

HO shall be provided all the records and information maintained by Staff during Stage I review, including the recommendation made by Staff in Stage I. The HO will be informed of the recommendation provided so he/she may have a holistic picture, however the HO shall conduct an independent review of facts.

4.10. Hearing by the HO

1. The HO shall schedule a hearing of the parties (Hearing) in accordance with Rule 4.14.
2. The HO shall conduct the proceedings in a reasonable and consistent manner. The HO is empowered to receive and review all information and reasonably determine its relevance to the case on hand. The HO may direct the parties to focus on issues pertinent to the Complaint. The HO shall ensure that the disputing parties are treated fairly and non-discriminatorily and are given a reasonable opportunity to present their case.
3. Without limiting sub-rule 2 above and subject to Rules 4.14 and 4.16, during the Hearing the HO will broadly implement the following process:
 - (a) the Complainant shall have the opportunity to explain its/his/her Complaint and the remedy sought, along with submitting relevant documents;
 - (b) the utility shall have the opportunity to respond, which must be supported with reasons, and submit relevant documents;
 - (c) each disputing party shall have the opportunity to question/ seek clarifications from the other party and examine the documents submitted;

and

(d) the HO shall give a reasoned decision.

4. HO shall endeavour to conclude the Hearing in one day. As necessary, the HO may schedule additional hearings.

4.11. Representation

In the Hearing, the parties may represent themselves or be represented by a third party.

4.12. HO's Decision

**Revision of Rule
4.12.2**
*Delete "as issued
shall be binding on
the Complainant
and the utility,"
inert "is"*

1. Once the Hearing is concluded, the HO shall announce his/her final decision on the matter (**HO Decision**). The HO Decision may be issued on the same day (as the date the Hearing is concluded) or on a later date, which shall be no later than 5 working days.
2. The HO Decision shall be issued in writing and include the reasons for the decision. A copy of the HO Decision shall be sent to the parties immediately. A HO Decision **is** subject only to the appeal process set out in Rule 4.17.

4.13. No additional costs or expenses

Other than as specifically provided under the Rules or URA Act, the URA may conduct field inspections and other investigations, as necessary, at its own cost and no additional costs will be charged to the disputing parties.

For the avoidance of doubt, it is clarified that each disputing party must bear its own costs including in respect of travel, photocopying, appointment of a representative, or an expert to defend its claims.

4.14. Hearing: Procedure

1. **Time, Place and Date**
 - (a) The HO shall schedule a date and time for the Hearing, taking mutual convenience of parties into account, and shall inform the parties at least 5 calendar days before the Hearing. If a party is located outside Efate, the HO may hold the Hearing via teleconference.
 - (b) A party may request for Hearing postponement for a valid reason, which may be granted at the discretion of the HO after reasonable consideration.
2. **Absence of party:**
 - (a) If a party, without informing in advance and without sufficient cause, fails to attend the Hearing, the Hearing shall proceed unless the party present and the HO mutually agree to postpone the Hearing. Usually, unjustified absence would be to the benefit of the party present.

(b) If both parties fail to attend the meeting without cause, the case may be dismissed by the HO.

3. The Hearing is not open to public.
4. The discussions at the Hearing shall be recorded by way of minutes by the HO. A party may transcribe the proceedings at its own cost.

4.15. Maintenance of records

The HO shall maintain records, keep copies of relevant documents exchanged and copy of minutes of the Hearing, which shall be maintained and preserved in the URA document system.

4.16. Findings and decisions of the Hearing Officer

During Stage II, the HO may issue its findings and decision and advise the parties accordingly.

4.17. Right to appeal to Appeal Committee

Either party may appeal the HO's findings and decision by filing a notice of grievance before a URA committee that shall comprise one URA Commissioner and one URA staff, who was not the HO on the dispute under appeal (Appeal Committee).

The notice of grievance must be submitted to the URA within 10 days of the HO Decision. The notice of grievance must contain:

- the issue or issues being contested;
- a detailed description of any facts or matters supporting the grievance; and
- a detailed description of any alleged error of law, fact or procedure as followed by HO under the Rules.

4.18. Decision by Appeal Committee

1. The Appeal Committee may confirm or vary the HO Decision, with brief reasoning. The Appeal Committee shall inform the parties of its decision.
2. The Appeal Committee shall not conduct its own hearings or investigate the matter anew. Rather it shall make a determination based on the record and evidence already presented to the HO. In exceptional circumstances the Appeal Committee may require that certain aspects of the matter be reinvestigated by the HO.
3. The Appeal Committee shall endeavor to issue its decision within 10 working days of receipt of the appeal.

Replace Rule 4.16
Rule 4.16 (interim Order) is repealed and replaced with the new provision "Findings and decisions of the Hearing Officer".

Revision of Rule 4.17
Delete "Decision or interim order" substitute "findings and decisions"

Revision of Rule 4.18

1. Paragraph 1, delete "by issuing an Order (Order)"
2. Paragraph 3, delete "an Order", substitute "its decision"

Revision of Rule 4.19

1. Delete "Order", substitute "decision"
2. Delete heading "Appeals to Court", replace with "filing complaint before Supreme Court"
3. Insertion of paragraphs 2 and 3

4.19. Filing complaint before Supreme Court

1. The parties have the right to appeal the decision of the Appeal Committee before a competent Court in accordance with applicable Vanuatu laws.
2. Despite sub-rule 1 and Rule 4.17, a dispute or complaint in respect of utilities services provided by UNELCO within the Concessions of Port Vila, Malekula and Tanna, a party may file a case *ab initio* on its merits on the same matter to the Court in accordance with the relevant provisions of the UNELCO Concession.
3. To avoid doubt, URA may participate in the hearing before the court as *amicus curia* and present evidence gathered during the CCDR proceedings.

4.20. Generic Complaints

1. If the URA receives multiple complaints (whether at Stage I or Stage II) of a similar nature against a utility that suggests a pattern of misconduct or a generic problem of service, then all similar complaints will be consolidated and handled by the HO as a 'Generic Complaint' in accordance with this Rule 4.
2. The HO may bring Generic Complaints to the notice of the public (including hold public meeting) and request for their comments. Based on the issue(s) raised by the public, the HO may expand the scope of the Generic Complaint.
3. Subject to timely receipt of information from the parties, the HO shall endeavour to resolve such Generic Complaints within 30 days of receipt of Application/ Complaint.
4. Where the HO decides to consolidate two or more Complaints/ Applications, the HO shall inform the concerned parties as soon as practical.

4.21. Filing fee

Complainants falling in the category of:

- (a) Residential or Government customer shall not be required to pay any filing fee;
- (b) Commercial customers shall be required to pay filing fees of VUV 2500; and
- (c) Industrial customers shall be required to pay filing fees of VUV 5000.

Repeal of Rule 5.1

Rule 5.1
“(Interpretation of these rules)” is
~~repealed.~~

Repeal of Rule 5.2

Rule 5.2 is repealed.

5. Additional Obligations and Rights

5.1. (Repealed)

5.2. (Repealed)

5.3. Withdrawal of Complaint/ Application

The Complainant may withdraw its Complaint/ Application or the parties may settle the issue at any time during the resolution process. Both parties must promptly inform the Staff or the HO of such withdrawal/ settlement.

5.4. Time bar

1. Other than in exceptional circumstances, a Complaint (or where the Complainant chooses not to file a Complaint but files an Application under Rule 4) should be filed within 90 days from the date the Complainant becomes aware of the issue in respect of which the complaint is made. Normally, the Complainant would know relatively quickly whether the utility would grant him/her the relief and if the Complainant chooses to file a Complaint/Application under the Rules, it should do so at the earliest and not wait till the expiry of the 90 day period.
2. The decision of whether to hear a time barred Complaint/Application shall be at the discretion of the URA.

5.5. Obligation of utility to inform its consumers

The utility **should** display on its website and publish on its bills:

- (a) that its consumers have the right to request URA assistance in resolving their grievances with the utility under these Rules; and
- (b) the contact details of URA (phone number, email and address).

Utility shall keep in all their office(s) copies of these Rules and shall provide them to its consumers, if so requested, free of charge.

5.6. Utility's regular reporting requirement

Utility must submit quarterly reports to URA of all outstanding consumer complaints filed by consumers with the utility. The report must provide aggrieved consumer's name and customer number, nature of grievance, date of filing of grievance by customer with utility and current status of grievance.

The report must be filed latest by 15th January, 15th April, 15th July and 15th October of each year.

5.7. Conflict of interest

1. To ensure that no conflict of interest exists in respect of the HO, the Appeal Committee members and the Staff involved in the resolution of Complaint/ Application, such person must disclose to URA in writing if the person has:
 - (a) a personal or business relationship with a disputing party; or
 - (b) any financial interest in the outcome of the proceedings.

*Revision of
Rule 5.5*

*Delete "shall"
substitute
"should"*

2. The HO/ Staff shall immediately inform both parties of such interest.
3. The Appeal Committee member, HO or Staff having such conflict of interest may recuse himself/ herself from the case. A party may also request such recusal to the URA for its consideration.

5.8. Confidentiality

The URA, the disputing parties and their representatives shall keep confidential all personal and financial information of the other disputing party, subject to disclosure being required by laws of Vanuatu.

The Complaint, Application, appeal, all information and documents pertaining thereto, shall become part of URA's permanent record.