



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

Vol. 448   Pretoria   11   October   2002   **No. 23909**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

---

## GENERAL NOTICE

---

### NOTICE 1861 OF 2002

The Electricity Supply Industry Regulatory Bill has been introduced to Cabinet by the Minister of Minerals and Energy. Cabinet has approved that the Bill be released for public comments.

The Bill will be re-submitted to Cabinet for approval and progression to Parliament after comments have been analysed and consolidated.

Comments on the Bill should be forwarded to:

**To:**

Attention: The Director General  
Ms N Magubane  
Department of Minerals and Energy  
P O Bag X59  
PRETORIA  
0001

**Fax:** (012) 320-0713

**E-mail:** [nelisiwem@mepta.pwv.gov.za](mailto:nelisiwem@mepta.pwv.gov.za)

The deadline for submission of comments is 25 October 2002.

**ELECTRICITY REGULATION BILL**  
(To be introduced)

**Minister of Minerals and Energy**

---

**ELECTRICITY REGULATION ACT****ACT No. OF 2002**

**To establish a national regulatory framework for the electricity supply industry, to provide for the National Electricity Regulatory Authority as the custodian and enforcer of the national regulatory framework, to provide for the issuing of licences relating to the generation, transmission, distribution and retail of electricity, and the provision of certain services in connection therewith, and for matters connected therewith.**

**BE IT ENACTED BY the Parliament of the Republic of South Africa:-**

**CONTENTS****PREAMBLE****CHAPTER 1****DEFINITIONS**

1. Definitions

**CHAPTER 2****NATIONAL ELECTRICITY REGULATORY AUTHORITY**

2. Continuation of regulatory authority
3. Mission
4. Powers, functions and duties.
5. Regulatory principles
6. Constitution of Regulatory Authority
7. Disqualifications and requirements regarding appointment to Regulatory Authority
8. Vacation of office and termination of appointment
9. Meetings of Regulatory Authority
10. Duties of members of Regulatory Authority
11. Decisions of Regulatory Authority
12. Personnel of Regulatory Authority
13. Funds of Regulatory Authority
14. Accounting by Regulatory Authority
15. Reporting by Regulatory Authority
16. Delegation of powers
17. Executive committees
18. Advisory committees
19. Customer forums

**CHAPTER 3****LICENCES AND REGISTRATION**

20. Activities to be carried on under licence
21. Conversion of licensing into registration
22. Registration
23. Powers of regulatory authority
24. Application for licence
25. Advertising of licence
26. Information to be supplied by applicant
27. Finalisation of application
28. Conditions of licence

29. Tariffs and charges
30. Amendment of licence
31. Revocation of licence on application
32. Contraventions
33. Revocation of licence by court
34. Renewal of licences

#### **CHAPTER 4**

#### **RESOLUTION OF DISPUTES**

35. Resolution of disputes by regulatory authority

#### **CHAPTER 5**

#### **INQUIRIES AND INVESTIGATIONS**

36. Investigations

#### **CHAPTER 6**

#### **GENERAL PROVISIONS**

37. Entry, inspection and information gathering
38. Prohibition on agreements contrary to Act
39. Special provisions relating to electricity distributors
40. Expropriation
41. Regulations, guidelines, rules and directives
42. Repeal of laws and savings
43. Title and commencement

#### **SCHEDULE I**

Repeal and amendment of laws

#### **SCHEDULE II**

Exemption from obligation to apply for and hold a licence

**PREAMBLE**

The purpose of this Act is to establish a framework within which the electricity supply industry of the Republic of South Africa should function. The Act establishes the National Electricity Regulatory Authority as the custodian and enforcer of this regulatory framework to monitor and ensure that the interests and needs of present and future customers of electricity are safeguarded and met, having regard to the efficiency, effectiveness and long-term sustainability of the electricity supply industry.

## CHAPTER 1

### DEFINITIONS

#### Definitions

1. In this Act, unless the context otherwise indicates -

“board” means the board of the regulatory authority referred to in section 6;

“consumer” means a consumer of electricity, whether purchasing electricity or not;

“customer” means a person purchasing electricity;

“chief executive officer” means the chief executive officer of the regulatory authority referred to in section 12;

“department” means the Department of Minerals and Energy;

“distribution” means the conveyance of electricity through a distribution power system, and “distribute” and “distributing” have corresponding meanings;

“distribution power system” means a power system operating at less than 132kV;

“distributor” means a person distributing electricity;

“facility” means any facility related to the generation, transmission and distribution of electricity;



“generation” means the production of electricity by any means, and “generate” and “generating” have corresponding meanings;

“generator” means a person generating electricity;

“licence” means the licensing of persons as contemplated in section 19;

“licensee” means the holder of a licence granted or deemed to be granted by the regulatory authority under this Act;

“Minister” means the Minister of Minerals and Energy;

“person” includes statutory and governmental bodies and institutions;

“prescribe” means the prescribing by regulation by the Minister in the *Gazette*;

“register” means the registration of persons as contemplated in section 20;

“regulatory authority” means the National Electricity Regulatory Authority referred to in section 3;

“retail” means the retail buying and selling of electricity as a commercial activity, whether for the account of the person involved therein, or on behalf of somebody else, and “retailing” has a corresponding meaning;

“supply” means the generation, transmission, distribution and retailing of electricity, whether licensed in terms of this Act or exempted in terms of Schedule II thereto, or not;

“transmission” means the conveyance of electricity through a transmission power system, “transmit” and “transmitting” have corresponding meanings;

“transmission power system” means a power system operating at 132kV or more;

“transmitter” means a person transmitting electricity; and

“this Act” includes any Government notices, rules, codes of practices or directives.

## CHAPTER 2

### NATIONAL ELECTRICITY REGULATORY AUTHORITY

#### Continuation of regulatory authority

- 2 The National Electricity Regulator referred to in the Electricity Act, 1987 (Act No. 41 of 1987), continues to exist under this Act, but shall be called the National Electricity Regulatory Authority.

#### Mission

3. The mission of the National Electricity Regulatory Authority is to regulate the electricity supply industry in accordance with the regulatory framework embodied in this Act, so as to ensure that the electricity supply service needs of existing and future electricity customers are met in the most efficient, cost effective and sustainable manner.

#### Powers, functions and duties of regulatory authority

4(1). The regulatory authority may –

- (a) subject to the provisions of this Act, issue licences for -
- (i) the construction of generation, transmission and distribution facilities;
  - (ii) the operation of generation, transmission and distribution facilities;
  - (iv) the import and export of electricity;

- (iii) the retailing of electricity; and
  - (iv) any prescribed service related to the generation, transmission and distribution of electricity;
- (b) subject to the provisions of this Act, require persons to register with the regulatory authority in a deregulated environment;
  - (c) gather and store information relating to the construction, operation and the provision of services in the generation, transmission, distribution and retailing of electricity;
  - (d) impose penalties on and issue directives to licensees and registered persons;
  - (e) act as mediator or arbitrator in accordance with the provisions of this Act;
  - (f) consult with Government Departments and other bodies and institutions regarding issues of importance to the electricity supply industry;
  - (g) co-operate with other persons for purposes of capacity building and relationship building;
  - (h) advise the Minister in particular and Government in general on matters affecting the electricity supply industry, including energy efficiency, environmental matters and health and safety issues;
  - (i) approve prices, tariffs and charges charged by licensees and trading arrangements entered into in the operation of generation, transmission and distribution facilities or the retailing

of electricity, or determine the methodology to be used in the determination of prices, tariffs and charges thus charged;

- (j) monitor and take appropriate action, if it deems it necessary, to ensure that access to transmission and distribution facilities are provided in a non-discriminatory, fair and transparent manner;
- (k) within the ambit of its powers, and with due regard to the role and function of the Competition Commission, promote competition in the electricity supply industry;
- (l) facilitate the expropriation of land or any right in, over or in respect of such land as is necessary for the exercise of a licensee's or registered person's rights;
- (m) operate bank accounts, invest monies and make payments out of its accounts for the purposes of achieving its objectives;
- (n) acquire or rent fixed or movable property and dispose thereof in order to perform its functions;
- (o) establish executive and advisory committees and consumer forums;
- (p) appoint and remunerate personnel and enter into agreements or other arrangements for the performance of its functions;
- (q) comply with the auditing and reporting requirements set out in this Act;
- (r) make guidelines, rules and codes of practice or conduct in connection with the governing of the electricity supply industry and the application of this Act;

- (s) hold such inquiries and perform such inspections as may be necessary to exercise its powers and to perform its functions and duties;
- (t) exercise any power or perform any duty or function assigned to it under any other law; and
- (u) exercise any power or function and perform any duty incidental to the exercise of its powers or functions or the performance of its duties under this Act..

#### Regulatory principles

- 5 In exercising its powers and functions under section (4), the regulatory authority shall -
- (a) in accordance with any national integrated resource plan approved by Government, promote an efficient, reliable and economic system of electricity supply in the Republic of South Africa;
  - (b) regulate in a manner that sustains and encourages improvement in efficiency, economy and reliability in electricity supply so as to enable the supply and demand for electricity to be met having regard to prevailing Government policy;
  - (c) have regard to the long-term sustainability of licensees and the need of licensees to be able to finance the carrying out of their licensed activities;
  - (d) promote competitiveness and customer choice where to do so would further the achievement of the objectives of this Act;

- (e) encourage energy efficiency, economy and safety in the use of electricity;
- (f) promote and monitor electrification;
- (g) regulate the quality of supply and service;
- (h) approve tariffs and charges, having regard to both the interests of customers and the needs of licensees;
- (i) strive towards justice and equity in the provision of electricity supply and facilitate a fair balance in and between the interests of customers, licensees and their investors and the public;
- (j) ensure the availability of electricity to present and future customers;
- (k) regulate in a manner that is transparent and fair;
- (l) regulate in accordance with principles underlying minimum regulation necessary to achieve objectives;
- (m) have regard to health, safety and the environment within the framework of existing policy and legislation;
- (n) promote optimal use of available resources and minimise the need for additional expenditure;
- (o) oversee the effectiveness of mechanisms, processes and forces at play to ensure that there is a reasonable balance between demand for electricity and supply;

- (p) take cognisance of regional policies, objectives and developments; and
- (r) regulate in a manner that promotes economic development and international competitiveness.

#### Constitution of Regulatory Authority

6. (1) The Regulatory Authority consists of five full-time members appointed by the Minister. The Minister shall also appoint these members as the members of Gas Regulator and Petroleum Pipelines Regulator.
- (2) The Minister must designate one of the members appointed under subsection (1) as chairperson of the Regulatory Authority.
- (3) If the chairperson is for any reason unable to perform his or her duties, the other members must choose another person from among themselves to act as chairperson until the chairperson can resume his or her duties or another chairperson is appointed by the Minister.
- (4) (a) A member of the Regulatory Authority holds office for a period of four years.
- (b) The Minister may reappoint a member.
- (c) If a member of the Regulatory Authority ceases to hold office, the Minister may appoint another person in his or her place for the remainder of the term of office of that member.
- (5) Members of the Regulatory Authority must be paid for their services such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.



Disqualifications and requirements regarding appointment to Regulatory Authority

7 (1) No person may be appointed as or remain a member of the Regulatory Authority if that person —

(a) is not a South African citizen resident in the Republic of South Africa;

(b) is an unrehabilitated insolvent; or

(c) has been convicted of an offence involving dishonesty;

(d) there is a probability that a material conflict of interest may arise between the interests of the member as member of the board and that members' personal, professional or business interests.

(2) The Minister must appoint, as members of the Regulatory Authority, persons who—

(a) collectively have adequate legal, technical, business, economic or other experience relevant to the electricity, gas and petroleum pipelines regulatory functions;

(b) are collectively representative of South African society as a whole; and

(c) are impartial and objective.

(3) Before appointing members to the Regulatory Authority, the Minister must by notice in the *Gazette*, call for nominations from members of the public.

(4) All members shall disclose to the Minister their personal, professional and business interests on appointment to the Regulatory Authority and notify Minister when these change.

#### Vacation of office and termination of appointment

8 (1) A member of the Regulatory Authority must vacate his or her office if that member —

(a) becomes of unsound mind;

(b) has been absent from more than two consecutive meetings without leave of the chairperson for each absence;

(c) resigns by written notification to the Minister;

(d) materially breaches any duty imposed on him or her in terms of this Act; or

(e) becomes disqualified from being a member on any of the grounds referred to in section 7(1).

(2) The Minister may terminate the appointment of a member of the Regulatory Authority if such member behaves in manner contrary to the provisions of section 10.

### Meetings of Regulatory Authority

9.(1) (a) The Regulatory Authority must meet at such times and places as may be determined by the chairperson.

(b) The chairperson must call such meetings of the Regulatory Authority as are necessary for the proper performance of its functions.

(2) The chairperson shall, upon a written request of the chief executive officer or two other members, convene a special meeting to be held within two weeks after the date of receipt of such request.

(3) Unless other procedures are prescribed, the chairperson of any meeting of the Regulatory Authority must determine the procedures to be followed at such meeting.

(4) The quorum for any meeting of the Regulatory Authority is a majority of its members.

(5) (a) The decision of the majority of the members present at a meeting constitutes a decision of the Regulatory Authority.

(b) In the event of an equality of votes on any matter the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the Regulatory Authority is invalid merely because of a vacancy on the Regulatory Authority or because any person not entitled to sit as a member sat as such member at the time when the decision was taken if the rest of the members present at the meeting and entitled to sit as members at the meeting constituted a quorum and the decision was taken by a majority of those members present and entitled to vote.

(7) The Chief Executive Officer, or if unavailable an employee of the Regulatory Authority designated by the Chief Executive Officer, shall attend all meetings of the Regulatory Authority and shall have the right to speak at but not vote at such meetings.

(8) (a) Any meeting of the Regulatory Authority is open to the public unless confidential, proprietary or commercially sensitive information is tabled for discussion, in which case an affected person must convince the Regulatory Authority as to why such information should not be disclosed to the public.

(b) If the Regulatory Authority takes a decision in any other manner than at a formal meeting, such decision comes into effect immediately but must be reduced to writing, signed by a majority of the members and submitted for noting at the first formal meeting of the Regulatory Authority following the decision.

(c) The Regulatory Authority must cause a record of all of its proceedings to be kept.

#### Duties of members of Regulatory Authority

10. Members of the Regulatory Authority may exercise all their powers under this Act and must—

(a) perform all their duties in terms of this Act;

(b) act in a justifiable and transparent manner whenever the exercise of their discretion is required;

(c) at all times act in the interest of the Regulatory Authority and not in their own or sectoral interests;

- (d) act independently of any undue influence or instruction;
- (e) recuse themselves from and refrain from voting on or discussing any matter pending before the Regulatory Authority in which they have a direct or indirect interest; and
- (f) act in a manner that is required and expected from the holder of a public office.

#### Decisions of Regulatory Authority

11.(1) Any decision of the Regulatory Authority must be—

- (a) consistent with the Constitution and this Act;
- (b) in the public interest;
- (c) within the powers of the Regulatory Authority, as set out in this Act;
- (d) taken within a procedurally fair process in which all affected persons have the opportunity to submit their views and present relevant facts and evidence at their own expense to the Regulatory Authority;
- (e) based on facts and evidence that must be summarised and recorded with the decision;
- (f) in writing; and
- (g) explained clearly as to its factual and legal bases and the reasons therefore.

(2) Any decision of the Regulatory Authority and the reasons therefore must be available to the public.

(3) Any person adversely affected by a decision of the Regulatory Authority may bring such decision under review by the High Court.

#### Personnel of Regulatory Authority

12.(1) The Regulatory Authority must appoint a chief executive officer for the Regulatory Authority.

(2) Subject to the directions of the Regulatory Authority, the chief executive officer is responsible for —

(a) the day to day management of the affairs of the Regulatory Authority; and

(b) administrative control over the employees appointed under subsection (3).

(3) The chief executive officer may appoint employees, or contract with any person, to assist the Regulatory Authority in the performance of its functions.

(4) The chief executive officer and other members of the personnel of the Regulatory Authority must be paid such remuneration, allowances, subsidies and other benefits as the Regulatory Authority with the approval of the Minister and the Minister of Finance may determine.

(5) Notwithstanding subsections (1) and (3), the Minister may determine that the Regulatory Authority appoint or make use of

persons employed or contracted by another licensing or regulatory authority falling under the Minister's jurisdiction.

(6) Section 10 applies to any member of the personnel of the Regulatory Authority, with the changes required by the context.

#### Funds of Regulatory Authority

13. The funds of the Regulatory Authority consist of —

- (a) levies imposed by or under separate legislation;
- (b) application and maintenance fees for licenses and registration;
- (c) charges for mediation, arbitration and other services rendered; and
- (d) donations or contributions received from persons, institutions, governments or administration and approved by the Minister.

#### Accounting by Regulatory Authority

14. (1) The Regulatory Authority must perform its functions in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) The Regulatory Authority must open one or more accounts in its name with one or more recognised financial institutions and deposit therein all money received from the sources contemplated in section 13.

(3) The financial records of the Regulatory Authority must be audited by the Auditor-General.

(4) The financial year of the Regulatory Authority starts on 1 April of one year and ends on 31 March of the following year.

(5) The financial records shall reflect the names of donors and the amount each donor has donated.

#### Reporting by Regulatory Authority

- 15.(1)
- (a) The regulatory authority shall, in addition to any report required in terms of the Public Finance Management Act, 1999 (Act No.1 of 1999), within three months of the end of a financial year, submit an annual report to the Minister for submission to Parliament that shall include information on licences considered, granted, refused, amended or withdrawn;
  - (b) regulations and rules made, guidelines given and directives issued;
  - (c) the execution of the business plan of the regulatory authority;
  - (d) the envisaged strategies of the regulatory authority for the forthcoming year;
  - (e) electrification;
  - (f) the performance of the electricity supply industry in general;
  - (g) the status and envisaged developments relating to health, safety and the environment; and



(h) such other information as the Minister may request or the regulatory authority may deem necessary.

(2) After submittal of the annual report to the Minister in terms of subsection (1) the regulatory authority shall cause a summary of the report to be published in the *Gazette* and appropriate newspapers.

#### Delegation of powers

16.(1) The board of the regulatory authority may delegate any power or function assigned to it under this Act to the chief executive officer, or to an employee of the regulatory authority.

(2) The chief executive officer may, subject to the provisions of other legislation that may impact on such decision, with the approval of the board of the regulatory authority delegate any power or function assigned to him or her under this Act, or delegated to him or her under subsection (1), to an employee of the regulatory authority.

#### Executive committees

17.(1) (a) The regulatory authority may appoint committees consisting of as many members of the board, employees of the regulatory authority and other persons as may be deemed necessary to perform such functions or exercise such powers of the board as the board may perform or exercise under this Act, and may at any time dissolve or reconstitute such a committee.

(b) The chairman of any such committee must be a member of the board of the regulatory authority.

(c) The provisions of section 8(3) to (6) apply to any such committee.

(2) The board of the regulatory authority is not divested of any function or power conferred upon a committee under subsection (1).

(3) Any decision of a committee performing a function or exercising a power of the board shall come into effect immediately but must be tabled at the first board meeting following such decision and may be withdrawn or amended by the board or referred back to such committee and shall, until it has been so withdrawn or amended, be deemed to be a decision of the board.

#### Advisory committees

18. The board may appoint committees consisting of as many members of the board, employees of the regulatory authority and other persons as may be deemed necessary to advise the board of the regulatory authority in general or on a particular matter.

#### Customer forums

19(1). The board may establish customer or consumer forums consisting of as many members of the board, employees of the regulatory authority and categories of customers as may be deemed necessary to advise the regulatory authority on matters affecting customers or consumers in general or a category or categories of customer or consumer in particular.

(2) The regulatory authority may require a licensee to establish a customer or consumer forum in the manner set out in the licence held by such a person.

### CHAPTER 3

#### LICENCES AND REGISTRATION

##### Activities to be carried on under licence

20.(1) No person other than a person set out in Schedule II may, without a licence issued by the regulatory authority in accordance with the provisions of this Act –

- (a) construct any generation, transmission or distribution facility;
  - (b) operate any generation, transmission or distribution facility;
  - (c) import or export any electricity;
  - (d) be involved in retailing activities; or
  - (e) perform any other prescribed service related to the generation, transmission distribution and sale of electricity. .
- (2)(a) Despite the provisions of subsection (1), a person carrying on or involved in an activity specified in Schedule II need not apply for or hold a licence.
- (3) The regulatory authority may, on such conditions as it may determine and include in an existing licence, allow an existing licensee to deviate from the requirements to obtain and hold a licence referred to in section 19(1)(a).

Conversion of licensing to registration

- 21(1) Notwithstanding the provisions of section 20, the Minister may, by notice in the *Gazette* and on receipt of a recommendation by the regulatory authority that the market to which such licence relate or the conditions under which a licensee operate are competitive, determine that any licensed activity –
- (a) no longer needs to be licensed in terms of this Act; and
  - (b) has to be registered in terms of this Act.
- (2) A determination made under section (1) shall come into operation on the date prescribed, and from that date onwards the activity ceases to be a licensed activity and becomes a registered activity, if the Minister so determines.
- (3) Any licence holder contemplated under subsection (1)(b) shall, from the date of conversion contemplated in subsection (2), be deemed to be holder of a registration certificate issued in terms of section 20.

## Registration

- 22.(1) The Minister may prescribe that any person involved in an activity related to the generation, transmission, distribution or sale of electricity that does not require licensing, whether as a result of being exempted in terms of Schedule II or as a result of the conversion of licensing to registration, register with the regulatory authority.
- (2) Any person who has to register with the regulatory authority must do so in the form and in accordance with the prescribed procedure, and an application for registration shall be accompanied by the prescribed registration fee.

(3) On receipt of an application under subsection (2) the regulatory authority shall forthwith register the applicant for the activities set out in a certificate of registration to be provided to such person: Provided that it may refuse to register such person or activity if –

- (a) the application is not made within the prescribed period;  
or
- (b) the application is contrary to the objectives of this Act.
- (c) the activity concerned becomes a licensed activity.

(4) The regulatory authority may make the issuing of registration certificates subject to –

- (a) the adherence to the provisions of this Act;
- (b) conditions related to the rendering and supply of information to the regulatory authority and the dissemination of information to customers or the establishment of customer and consumer awareness programmes.

#### Powers of regulatory authority

23(1) The regulatory authority has the power -

- (a) to determine whether any person is carrying on or involved in any activity that requires licensing or registration; and
- (b) direct any person not licensed or registered to forthwith cease such activity.

- (2)(a) Nothing in this Act precludes a potential licensee from discussing the contemplated construction or operation of generation, transmission and distribution facilities, the import or export thereof, the retailing thereof, or any other activity related thereto, prior to filing a licence application with the regulatory authority.
- (b) The regulatory authority shall furnish an applicant contemplated in paragraph (a) with all information that it may deem necessary to facilitate the filing of an application.
- (3) No request for further information, notification or discussions referred to in subsection (2) shall in any way be construed as conferring any right or expectation on an applicant.

#### Application for licence

- 24.(1) any person who has to apply for a licence in terms of section 18 must do so in the form and in accordance with the procedure prescribed by the Minister, and an application shall be accompanied by prescribed application fee.
- (2) Any application contemplated in subsection (1) shall include -
- (a) a description of the applicant, including vertical and horizontal relationships with other persons engaged in the construction or operation of generation, transmission and distribution facilities, the import or export of electricity, the retailing thereof or any other prescribed activity relating thereto;

(b) documentary evidence of the administrative, financial and technical abilities of the applicant as may be required by the regulatory authority;

(c) a description of the proposed generation, transmission or distribution facility to be constructed or operated or the proposed service in relation to electricity to be provided, including maps and diagrams where appropriate,

(d) a general description of the type of customer to be served and the tariff and price policies to be applied;

(e) the plans and the ability of the applicant to comply with applicable labour, health, safety and environmental legislation, subordinate legislation and other requirements as may be applicable;

(f) a detailed specification of the services that will be rendered under the licence; and

(g) such other particulars as the Minister may prescribe by notice in the *Gazette*.

(3) The Minister may by regulation in the *Gazette* publish requirements that have to be complied with by an applicant, before the regulatory authority may consider an application for a licence, and such requirements may relate to –

(a) the nationality or legal status of the applicant;

(b) the horizontal and vertical relationships between the applicant and persons involved in the construction

and operation of generation, transmission, distribution and retailing activities; and

- (c) the adherence to applicable tender procedures;
- (d) the compliance with black economic empowerment criteria.

#### Advertising of licence

25.(1) When application is made for a licence the regulatory authority may require that the applicant must publish a notice of the application in appropriate newspapers circulating in the area of the proposed activity in any two official languages (one of which must be English)

(2) The advertisement must state –

- (a) the name of the applicant;
- (b) the objectives of the applicant;
- (c) the place where the application will be available for inspection by any member of the public;
- (d) the period within which any objections to the issue of the licence may be lodged with the regulatory authority;
- (e) the address of the regulatory authority where any objections may be lodged;
- (f) that objections must be substantiated by way of an affidavit or solemn declaration;



(g) such other particulars as may be required by the regulatory authority by rule in the *Gazette*.

(3) The advertisement contemplated in subsection (1) must be published for such period or in such number of issues of a newspaper as may be required by the regulatory authority by rule in the *Gazette*.

#### Information to be supplied

26. Before considering an application for a licence in terms of this Act, the regulatory authority –

(a) must furnish the applicant with all substantiated objections contemplated in section 23(2)(e) in order to allow the applicant to respond thereto;

(b) may request such additional information as may be necessary to consider the application properly.

#### Finalisation of application

27(1) The regulatory authority must decide on an application in the prescribed manner within 120 days –

(a) after the expiration of the period contemplated in section 23(2)(d), if no objections have been received; or

(b) after receiving the response of the applicant as contemplated in section 24(b).

(2) The regulatory authority must provide the applicant with a copy of its decision as well as a list of the factors on which the decision was based.

- (3) Separate or combined licences may be issued for -
- (a) the construction of generation, transmission and distribution facilities;
  - (b) the operation of generation, transmission and distribution facilities; and
  - (c) the import and export of electricity;
  - (d) the retailing of electricity or any other prescribed activity related thereto.

Conditions of licence

28. (1) any licence issued under this Act may be made subject to conditions relating to --
- (a) the establishing and complying with guidelines to govern relations between a licensee and its customers, including the establishment of customer forums;
  - (b) the mediation and arbitration of disputes;
  - (c) subject to the provisions of this Act relating to the imposition thereof; monetary penalties, for non-compliance with conditions;
  - (d) the furnishing of information, documents and details which the regulatory authority may require for the purposes of this Act;
  - (e) the period of validity of the licence, which may not exceed a maximum period of thirty years in the case of generation, twenty

years in the case of transmission, twenty years in the case of distribution and ten years in the case of retailing;

- (f) conditions specifically relating to the generation, transmission, distribution, import, export, retailing or other prescribed activities related thereto;
- (g) notwithstanding the provisions of any other Act, regulation or by-law, the approval of prices, tariffs and charges, or the methodology to be used in the determining of tariffs, prices and charges, and the regulation of the revenues of licensees;
- (h) the planning and responsibility for the supply of electricity;
- (i) the setting, approving and meeting of performance improvement targets, including the monitoring thereof through certificates of performance;
- (j) the quality of electricity supply and service;
- (k) the ceding, transferring or encumbrance of licences, including the conditions relating to the compulsory transfer of a licence to another person;
- (l) the voluntary or compulsory transfer of assets and liabilities, rights and obligations;
- (m) the temporary or permanent ceasing of activities and the transfer of existing rights and obligations and liabilities and assets, including requirements relating to security and rehabilitation;

- (m) the right to construct and operate generation, transmission or distribution facilities, to import or export electricity, to retail in electricity or to perform prescribed activities related thereto, and conditions attached to those rights;
  - (n) the duty or obligation to generate, transmit or distribute electricity, and conditions attached to those duties;
  - (o) notwithstanding and to the exclusion of the provisions of the Electricity Act, 1987 (Act No. 41 of 1987), the termination of electricity supply to customers, the duty to reconnect and conditions related thereto;
  - (p) the meeting of electrification targets;
  - (q) the area of electricity supply;
  - (r) the customers to whom electricity may or must be supplied;
  - (s) the compliance with health, safety and environmental standards and requirements;
  - (t) the compliance with any rule or code of practice made by the regulatory authority;
  - (u) the compliance with energy efficiency standards and requirements;
  - (v) the undertaking of customer education programmes; and
  - (w) any other prescribed condition.
- (2) The regulatory authority may, as part of a licence condition imposed under subsection (1), prohibit the licensee from performing actions set

out in such licence without the prior approval of the regulatory authority or without complying with the requirements set out in such licence.

### Tariffs and charges

29(1) Any licence condition determined under section 26 relating to the setting, or approval of tariffs, rates, charges and the regulation of revenues must --

- (a) be sufficient for an efficient licensee to recover the full cost of its business activities, including a reasonable margin or return;
- (b) provide incentives for continued improvement of the technical and economic efficiency with which the services are to be provided;
- (c) give to consumers proper signals regarding the costs that their consumption imposes on the licensee's business;
- (d) avoid undue discrimination between customers and customer categories; and
- (e) permit the cross-subsidy of prices to certain classes of consumers in accordance with their licences.

(2) A licensee may not charge a customer any other tariff than that forming part of the conditions of the licence.

### Amendment of licences

30. (1) The Regulatory Authority may vary, suspend or remove any of the licence conditions, or may include additional conditions—

- (a) on application by the licensee;
  - (b) with the permission of the licensee;
  - (c) upon non-compliance by a licensee with a licence condition;
  - (d) if it is necessary for the purposes of this Act; or
  - (e) on application by any affected party.
- (2) The procedure to be followed in varying, suspending, removing or adding any licence conditions is as prescribed.

#### Revocation of licence on application

31.(1) The Regulatory Authority may revoke a licence on the application of a licensee if—

- (a) the licensed facility or activity is no longer required;
  - (b) the licensed facility or activity is not economically justifiable; or
  - (c) another person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person.
- (2) Licensees must give the Regulatory Authority at least 12 months notice in writing of their intention to cease their activities.
- (3) The form and procedure to be followed in revoking a licence under subsection (1) is as prescribed.

### Contraventions

32.(1) If a licensee contravenes or fails to comply with a condition of a licence or any provision of this Act the Regulatory Authority may serve a notice on such licensee in which the licensee is directed to comply with the condition or the provision of the Act within a reasonable period specified in the notice.

(2) If a licensee fails to comply with a notice contemplated in subsection (1) the Regulatory Authority may sit as a tribunal and, with due regard to section 10, decide on the matter and may impose a penalty of a fine not exceeding R2 000 000,00 per day for each day on which the contravention or failure to comply continues.

(3) Any person adversely affected by a decision of the tribunal contemplated in subsection (2) may bring such decision under appeal to the High Court.

(4) The Regulatory Authority shall consider the severity of the non-compliance in deciding the amount of any penalty.

(5) The Minister may by notice in the *Gazette* amend the amount referred to in subsection (2)(b) in order to counter the effect of inflation.

### Revocation of licence by court

33.(1) The Regulatory Authority may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there exists any ground justifying such suspension or revocation, including but not limited to, the failure of the licensee to carry out the construction, operation or trading activities for which the licence was granted.

(2) The court before which an application is made under subsection (1) may grant or refuse the application, and may make such order as to costs and maintaining the service of the licensee as it may deem fit.

#### Renewal of licences

34.(1) A condition relating to the period of validity of a licence may not be amended and a licensee who wish to continue carrying on or be involved in any activity referred to in that licence shall apply for a new licence when a licence lapses: Provided that the regulatory authority may, if it is of the opinion that the renewal does not materially affect the rights of any person, authorise such deviations from the procedure set out or referred to in that sections as it may determine.



## CHAPTER 4

### RESOLUTION OF DISPUTES

#### Resolution of disputes by regulatory authority

35.(1) The regulatory authority may, if requested thereto by a party to a dispute, act as mediator or arbitrator in disputes between licensees, or between a licensee or registered person and its customer, or between any person generating, transmitting, distributing or retailing electricity and its customer, (notwithstanding that such person may not be a licensee) relating to -

- (a) the right to supply electricity;
  - (b) the duty to supply electricity;
  - (c) the tariffs and charges at which electricity is supplied;
  - (d) delays in or refusal to supply electricity; and
  - (e) the quality of electricity supply and the provision of services in connection therewith;
  - (f) any other aspect set out in the licence or registration certificate of such licensee or registered person.
- (2) The regulatory authority shall not be obliged to act as arbitrator, but on deciding to act as arbitrator, its decision to do so becomes binding on any party concerned.
- (3) The regulatory authority may appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a

person so appointed is deemed to be an action by or decision of the regulatory authority.

- (4) The Minister shall prescribe the procedure to be followed in mediation and arbitration and the fees to be paid.
- (5) The decision of the regulatory authority, including a decision as to costs, shall be final and binding on the disputing parties in the event of arbitration.

**CHAPTER 5****INQUIRIES AND INVESTIGATIONS**Investigations

- 36 (1) The regulatory authority may, at its own instance or on receipt of a complaint or inquiry relating to the supply of electricity, appoint a person to make inquiries and report thereon to the regulatory authority.
- (2) On receipt of a report under subsection (1), the regulatory authority may institute a formal investigation.
- (3) Upon instituting a formal investigation under subsection (2) --
- (a) the regulatory authority may appoint a person to chair the investigation and as many persons as may be necessary to assist with the investigation;
- (b) the person appointed under paragraph (a) and the persons assisting him may summon witnesses and conduct the investigation in the prescribed manner.
- (4) On completion of the investigation under subsection (3) the person chairing it must submit his or her written report thereon to the regulatory authority.
- (5) On receipt of the report under subsection (4), the regulatory authority may -
- (a) refer it to the Attorney-General of the area concerned for his or her consideration;

- (b) if a licensee is involved -
  - (i) sit as a tribunal as contemplated in section 29; or
  - (ii) refer it to the Attorney-General of the area concerned for his or her consideration.

**CHAPTER 6****GENERAL PROVISIONS**Entry, inspection and information gathering

37. (1) For the purposes of this Act, any person authorised thereto in writing by the regulatory authority may -
- (a) at all reasonable times enter any property on which any activity relating to the supply of electricity is taking place and inspect any facility, equipment, machinery, book, account or other document found thereat; and
  - (b) require any person to furnish to the regulatory authority such information, returns or other particulars as may be necessary for the proper application of this Act.
- (2) The regulatory authority may require that the accuracy of any information, return or particular furnished under subsection (1) be verified on oath or by way of solemn declaration.
- (3) A person authorised by the regulatory authority as contemplated in subsection (1) shall on request show his authorisation to any person requesting it.
- (4) No information obtained by the regulatory authority which is of a non-generic, confidential, personal, commercially sensitive or proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates, except in terms of an order of the High Court.

Prohibition on agreements contrary to Act

38.(1) No agreement may contravene any -

- (a) provision of this Act;
- (b) licence granted by the regulatory authority;
- (c) condition attached to a licence granted by the regulatory authority; or
- (d) notice, rule or directive made or issued under this Act.

(2) Any agreement in contravention of subsection (1) shall be unenforceable between the parties in a court of law.

Special provisions relating to regional electricity distributors

39.(1) Notwithstanding the provisions of this Act, the following regulatory dispensation shall apply upon the commencement of the Electricity Distribution Act---

- (a) distribution and retail licences that up to that date vested or are deemed to have vested in licensees under this Act shall, to the extent decided upon by the regulatory authority, forthwith vest in regional electricity distributors as contemplated under that Act;
- (b) all rights and obligations contained in such licences shall forthwith become the rights and obligations of the regional electricity distributors concerned who shall be deemed to have substituted the former licensees as licensees;

(c) the licences referred to shall, to the extent that no such conditions exist or are not compatible with existing conditions, be subject to the conditions determined by the regulatory authority under this Act; and

(d) rights and obligations of licensees who are the holders of licences of which the electricity supply areas vest in regional electricity distributors after the date of commencement of the Electricity Distribution Act shall be subject to the same conditions as set out in paragraphs (b) and (c) above.

#### Expropriation of land by Regulatory Authority

40 (1) In pursuit of the objects of this Act, the Regulatory Authority may expropriate land, or any right in, over or in respect of land on behalf of a licensee in accordance with section 25 of the Constitution.

(2) The procedure to be followed in giving effect to subsection (1) must be prescribed.

(3) The Regulatory Authority may exercise the powers contemplated in subsection (1) only if it is satisfied that —

(a) a licensee is unable to acquire land or a right in, over or in respect of such land by agreement with the owner; and

(b) the land or any right in, over or in respect of such land is reasonably required by a licensee for facilities which will enhance the Republic's electricity infrastructure.

#### Regulations, guidelines, codes of conduct and practice and directives

41.(1)The regulatory authority may, after consultation with -

(a) licensees; and

(b) such other interested persons as may be deemed necessary,

make guidelines and publish codes of conduct and practice, or make rules by notice in the *Gazette*.

(2) Without derogating from the general nature of subsection (1), guidelines and codes of conduct and practice may relate to -

- (a) the relationship between licensees and customers;
- (b) codes of business practice and ethics;
- (c) performance objectives and the setting, approving and meeting of performance improvement targets;
- (d) codes of practice relating to the establishment and operation of electricity markets, including rules governing or guiding the behaviour of persons taking part in such markets;
- (e) codes of practice relating to establishment and operation of power pools, including rules governing or guiding the conduct of persons taking part in such markets; and
- (d) any other matter the regulatory authority deems appropriate for serving the purposes of this Act.

(3) Without derogating from the general nature of subsection (1), rules may relate to-

- (a) the procedure to be followed at meetings of the board;
- (b) the keeping of records and the giving of reasons by the board;



- (c) ensuring fair administrative action by the board in the exercise of its discretion and in particular the right of interested parties to be heard;
- (d) penalties for non-compliance with licence conditions
- (e) the rendering of information and returns
- (f) standards of quality of supply and service
- (h) any other matter that may or has to be prescribed, determined or provided for in this Act.

(4) The Minister may, by notice in the *Gazette*, make regulations regarding—

- (a) activities that have to be licensed or registered and the classification of licences into categories and sub-categories;
- (b) the form and manner of applying for licences and the fees payable on application;
- (c) the publishing of advertisements by licensees and the contents thereof;
- (d) the procedure to be followed in considering licence applications and any licence conditions in addition to those required under the Act to be imposed;
- (e) the procedure to be followed by the regulatory authority in the amendment, revocation and renewal of licences and in the non-compliance with licensing conditions;

- (f) the procedure to be followed by the regulatory authority when sitting as a tribunal, including the summoning of witnesses, the procurement and submission of documentary and oral evidence, the onus of proof, and matters related thereto;
- (g) the procedure to be followed in directing a licensee to meet the obligations of another licensee;
- (h) the form and manner of applying for and fees payable on application for licensing and registration;
- (k) the procedure to be followed and fees to be paid in mediation and arbitration proceedings;
- (l) the summoning of witnesses and the procedure to be followed in inquiries and investigations;
- (m) the inspection of and enquiry into the control and operation of any activity for the supply of electricity;
- (n) the setting of standards relating to health, safety and environment and the incorporation thereof into licences;
- (o) the prohibition of certain practices in the electricity supply industry;
- (p) the criteria for or prohibition of cross-ownership or vertical and horizontal integration by licensees in generation, transmission and distribution assets;
- (q) any other matter that may or has to be prescribed, determined or provided for in this Act.

(5) Before promulgating regulations contemplated in subsection (4), the Minister must—

- (a) consult with the Regulatory Authority;
- (b) invite public comments on such regulations; and
- (c) duly consider the comments.

Repeal of laws and savings

42.(1) Subject to the provisions of subsection (2) and (3), the laws specified in Schedule I are hereby repealed or amended to the extent set out in the third column thereof.

(2) Anything done in terms of the provisions of the Electricity Act, 1987, prior to the commencement of this Act, and which may be done in terms of the provisions of this Act is deemed to have been done in terms of this Act.

(3) Licences issued by the National Electricity Regulator in terms of the provisions of the Electricity Act, 1987, or deemed to have been issued in terms thereof prior to the commencement of this Act, shall continue in force as if they were issued in terms of the provisions of this Act: Provided that —

- (a) such licences shall lapse at a date determined by the Minister by notice in the *Gazette*;
- (b) the regulatory authority is obliged to issue substituting licences to the licensees concerned, in accordance with the provisions of this Act, prior to such licences lapsing; and

- (c) conditions imposed in terms of substituting licenses issued in under paragraph (b) shall not be more onerous in its application than that of the licence it replaces.
- (4) The Minister may, after consultation with the board and any person who may be affected thereby, amend Schedule II by notice in the *Gazette*.

Title and commencement

43. This Act is called the Electricity Regulation Act, 2002, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE I**  
**REPEAL AND AMENDMENT OF LAWS**

No and Year of Law	Short Title	Extent of repeal or amendment
<p>Act No. 41 of 1987</p> <p>Act No. 84 of 1990</p>	<p>Electricity Act, 1987</p> <p>KwaZulu and Natal Joint Services Act, 1990</p>	<p>1. The amendment of section 1 by -</p> <p>a) the deletion of the definitions of “chief executive officer”; “customer”; “financial institution”; “licence”; “licensee”; “regulation” and “this Act”; and</p> <p>b) the substitution for the definition of “regulator” by the following definition:  <u>“regulatory authority” means the National Electricity Regulatory Authority referred to in section 2 of the Electricity Regulation Act, 2001”.</u></p> <p>2. The deletion of sections 2 to 10, 12 to 17, 20 to 22, 27(1) and 28 to 32.</p> <p>The amendment of Schedule 3 by the deletion of the item referring to the Electricity Act, 1987 (Act No. 41 of 1987).</p>

---

**SCHEDULE II****EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE**

---

1. Any person who generates, transmits or distributes electricity for his or her own use.
  2. Any generation plant built for demonstration purposes only
  3. Any person who sells less than 50 GWh of electricity per annum to customers: Provided that –

---

    - (a) the conditions relating to the supply of electricity to such customers and the tariffs charged are not less favourable than the conditions of supply and tariffs that would have been applicable if they were directly supplied with electricity by the licensee who supplies the person supplying them with electricity;
    - (b) this exemption does not apply to the construction and operation of any commercial system for the supply of non-grid electricity, unless the Minister has exempted such system in writing

---
-