
GENERAL NOTICE

NOTICE 1612 OF 2007

Draft Regulation for the Electricity Expropriation

1. The Department of Minerals and Energy, hereby invite comments to be submitted to the Department for the Electricity Expropriation Regulation.
2. Comments must be in writing
3. Comments can be hand-delivery, posted, facsimiled and e-mailed to the Department.
4. Physical Address: Department of Minerals and Energy
Mineralia Centre
234 Visagie Street (c/o Visagie & Andries)
Pretoria
(For attention Mr L F Aphane, Room D414)
4. Postal Addresses: Department of Minerals and Energy
Private Bag X 59
Pretoria
0001
(For attention Mr L F Aphane, Room D414)
5. Facsimile Number: 012 317 8539 (For attention Mr L F Aphane/
Mr M M Bantsijang)

DEPARTMENT OF MINERALS AND ENERGY

No R _____/2007

ELECTRICITY REGULATION ACT, 2006**ELECTRICITY REGULATIONS FOR EXPROPRIATION ON
BEHALF OF A LICENSEE**

After consultation with the National Energy Regulator, the Minister of Minerals and Energy intend, under section 47(4) read with section 27(2) of the Electricity Regulation Act, 2006 (Act No 4 of 2006), to make the regulations in the schedule.

SCHEDULE

1. Definitions. – In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates –

"deliver" in relation to any document or notice in these Regulations, means to deliver in accordance with regulation 4;

"owner" means –

- (a) in relation to land or a registered right in, over or in respect of land, the person in whose name such land or right is registered, and –
 - (i) if the owner thereof is deceased, the executor in his or her estate;
 - (ii) if the estate of the owner thereof has been sequestrated, the trustee of his or her insolvent estate;
 - (iii) if any such land or a registered right in, over or in respect of land has vested in a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), as read with the Agricultural Debt Management Act, 2001 (Act No. 45 of 2001), that liquidator or trustee;

- (iv) if the owner thereof is otherwise in any manner not provided for in this paragraph, under a legal disability, his or her legal representative;
 - (v) if any land or registered right in, over or in respect of land has been attached in terms of an order of court, includes the sheriff and deputy-sheriff, as the case may be;
 - (vi) includes the authorised representative of the owner in the Republic; and
 - (vii) in the case of a public place or road under the control of a municipality, that municipality; and
- (b) in relation to an unregistered right in, over or in respect of land, the holder thereof;

"the Act" means the Electricity Regulation Act, 2006 (Act No. 4 of 2006); and

"the Constitution" means the Constitution of the Republic of South Africa, 1996.

2. Procedure to be followed by the licensee. – (1) Any licensee who requires the State to expropriate on its behalf land, or any right in, over or in respect of land as contemplated in section 27(1) of the Act, must after having complied with subregulations (3) and (4), apply in writing to the Minister of Public Works to do so in the manner prescribed in subregulations (2) and (6).

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- (2) The application contemplated in subregulation (1) must contain the following:
- (a) A full description of the land or right in, over or in respect of land to be expropriated on behalf of the licensee;
 - (b) the reasons and motivation why the licensee reasonably requires the said land or right in, over or in respect of land with a full description of the facilities for or in connection with which the said land or right in, over or in respect of land is so required by the licensee;
 - (c) full reasons why the said facilities will enhance the electricity infrastructure in the national interest;
 - (d) a full motivation why the requested expropriation will be in the public interest as contemplated by section 25(2) of the Constitution;
 - (e) the full name and address of the owner;
 - (f) the history of negotiation between the licensee, the owner and holders of unregistered rights in the said land for the acquisition of the land or the right in, over or in respect of land as well as the reasons why the licensee is unable to acquire such land or right in land by agreement with the said owner and holders of unregistered rights in the said land;

- (g) the names and addresses of all persons whose unregistered rights in the said land will be affected by the proposed expropriation of whom the licensee is aware;
 - (h) the practical alternatives which are open to the licensee if such land or the right in, over or in respect of land is not expropriated;
 - (i) any other facts which the licensee may deem relevant to the application; and
 - (j) a written statement whether the licensee is willing to hold the State harmless in respect of all costs to be incurred by the State in connection with the requested expropriation and if so, the way in which the licensee intends doing so.
- (3) Before lodging the application with the Minister of Public Works, the licensee –
 - (a) must publish a notice of intention to apply for the said expropriation in English and in another official language commonly used in the area where the land is situated, once in the *Government Gazette* and simultaneously therewith or not more than one week thereafter, once in the said languages in two newspapers of different languages circulating in the area in which the property is situated, which notice must contain –
 - (i) a notification that the licensee intends to apply to the Minister of Public Works for the expropriation of the said land or right in, over or in respect of land;

- (ii) a full description of the land or right in, over or in respect of land to which the application will apply and how the expropriation will affect the said land or existing rights in, over or in respect thereof;
 - (iii) a short description of the scheme for which the expropriation is intended and the address at which the application may be inspected and particulars thereof may be obtained during business hours;
 - (iv) an invitation to any interested party to deliver to the licensee at a given address and by not later than a given date (which must be at least 21 days after the last publication of the said notice) in writing any objections against the said application or any submissions relating thereto; and
 - (v) a statement notifying persons who may be affected by the expropriation applied for, of their right of review of a decision to expropriate taken by the Minister of Public Works in terms of section 27 of the Act, as set out in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (b) must deliver to the owner –
- (i) a copy of the application;

- (ii) a copy of the notice contemplated in subregulation (3)(a);
and
 - (iii) a copy of these Regulations;
 - (c) must deliver to the Regional Land Claims Commissioner in whose area the land is situated and the Director General: Land Affairs, a copy of the application and of the notice contemplated in subregulation (3)(a), both of whom may comment in writing on the said application by not later than 21 days from delivery of the said documents, informing the licensee of any land claim and any unregistered rights derived from or protected by any law under the administration of such Regional Land Claims Commissioner or of the Minister of Land Affairs, to the extent that such claim or unregistered rights will be affected by the expropriation applied for and to the extent that they may be aware of such claim or such unregistered rights; and
 - (d) may in addition advertise its intention to apply for the said expropriation in such languages as it deems appropriate on television or by radio, transmitting to the area where the property is situated and, in doing so, convey the information set out in subregulation (3)(a).
- (4) The owner must deliver his or her answer to the application, if any, within 21 days after receipt of the said documents, to the licensee at the address appointed in the said notice.

- (5) The licensee may extend any of the time periods in subregulations (3)(a)(iv), 3(c) and (4) in writing for a period of 21 days and must do so if requested in writing before the expiry of the relevant period.
- (6) The original of the application must be delivered by the licensee to the Minister of Public Works after the expiry of all time periods or extended time periods set for objections or comments or information or for the answer of the owner and the application must be accompanied by proof of the said advertisements and of delivery of the said documentation, as well as –
- (a) objections and comments;
 - (b) information supplied to the licensee by the Regional Land Claims Commissioner and the Director-General: Land Affairs; and
 - (c) the answer of the owner to the application;

if any, received by the licensee within the time periods or extended time periods set therefore and the licensee may include such comment or reply as it may deem necessary to such objections, comments, information and the answer of the owner.

- (7) The licensee must deliver a copy of the set of documents contemplated in subregulation (6) to the Minister within 7 days of the delivery of such documents to the Minister of Public Works and the Minister may within 21 days of the delivery thereof, or such extended period as the Minister may, in his or her discretion, allow, comment upon the said application and documents to the Minister of Public Works.

3. Delivery and language used in documents. – (1) Whenever a document must be delivered in terms of these Regulations, the delivery must take place at the last-known address of the addressee or at an address appointed by the addressee –

(a) by hand delivery; or

(b) by facsimile transmission to a number furnished by the addressee: Provided that a confirmatory copy of the document is sent by ordinary mail or by other suitable method within one day of such facsimile transmission; or

(c) by prepaid registered post.

(2) Whenever a document or a part of a document which is in colour has to be delivered, every copy thereof which is delivered and in the case of a facsimile transmission, the confirmatory copy must be in the same colour as the original.

(3) All documents must be in English and such other official language as may be requested in writing by the addressee.

(4) An address, including a facsimile number, if any, where delivery of further documentation or notices may take place, must be supplied by every person or official who reacts to –

(a) the notice contemplated in subregulation 2(3); and

(b) the application.

4. Urgent expropriations. – (1) Where the expropriation applied for by a licensee is of such an urgent nature that it is, in the opinion of the Minister, not feasible to comply or fully comply with the provisions of regulation 2, the Minister may direct the licensee to depart from the provisions of that regulation to the extent determined by the Minister, taking into account –

(a) the urgency of the matter; and

(b) the likely prejudice which may result from the failure to comply with the said regulation.

(2) The Minister must inform the Minister of Public Works in writing as soon as possible thereafter of the directive in terms of subregulation (1), setting out full reasons for such directive.
