

REPUBLIC OF SOUTH AFRICA

ELECTRICITY REGULATION AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 29192 of 4 September 2006)
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

[B 20—2006]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Electricity Regulation Act, 2006, so as to insert certain definitions; to make certain textual corrections; to insert a new Chapter dealing with electricity reticulation by municipalities; and to extend the Minister's powers to make regulations; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 4 of 2006

1. Section 1 of the Electricity Regulation Act, 2006 (hereinafter referred to as the principal Act), is hereby amended by—

(a) the insertion after the definition of “chief executive officer” of the following definition:

“**‘community’** means domestic end users;”;

(b) the insertion after the definition of “distributor” of the following definition:

“**‘domestic end user’** means a person who consumes electricity for domestic purposes, a light industrial or commercial customer and such other customers as the Minister may, in consultation with the Minister for Provincial and Local Government and the Minister of Finance, determine by notice in the *Gazette*;”;

(c) the insertion after the definition of “licensee” of the following definition:

“**‘light industrial or commercial customer’** means a service rendering, retailing, manufacturing, mining or agricultural customer who purchases less than five thousand mega watt hours (5000 MWh) of electricity per annum at a contiguous site other than a public water pumping scheme or a public traction substation;”;

(d) the insertion after the definition of “Minister” of the following definitions:

“**‘Municipal Finance Management Act’** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

‘Municipal Structures Act’ means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

‘Municipal Systems Act’ means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

‘municipality’ means a category of municipality that has executive authority over and the right to reticulate electricity within its area of jurisdiction in terms of the Municipal Structures Act;”;

(e) the insertion after the definition of “Regulator” of the following definitions:

“**‘relevant MEC’** means the Member of the Executive Council of a province responsible for local government matters or for finance in that province, as the case may be;

‘reticulation’ means trading with or distribution of electricity by a municipality to the community within its area of jurisdiction and includes services associated therewith;

‘service delivery agreement’ means an agreement between a municipality and an institution or person providing electricity reticulation, either for its own account or on behalf of the municipality;

‘service provider’ means a person or institution or any combination of persons and institutions which provide a municipal service in terms of a service delivery agreement;”.

Amendment of section 3 of Act 4 of 2006

2. Section 3 of the principal Act is hereby amended by the addition of the following subsection:

“(2) Subsection (1) must be interpreted within the context of the executive authority of municipalities regarding reticulation in terms of the Constitution, and the powers and duties of other spheres of government in that regard.”.

Insertion of section 7 in Act 4 of 2006

3. The following section is hereby inserted after section 6 and the heading “Application of Chapter”:

“7. The provisions of this Chapter do not apply to reticulation.”.

Insertion of Chapter IV in Act 4 of 2006

4. The following Chapter is hereby inserted after section 27 and the expression “CHAPTER IV”:

“RETICULATION

Powers and duties of municipalities

28. (1) Each municipality has the executive authority over and the duty to administer the reticulation of electricity within its area of jurisdiction.

(2) Each municipality must exercise its executive authority and perform its duty by—

- (a) complying with all the technical and operational requirements for electricity networks determined by the Regulator;
- (b) integrating its reticulation services with its integrated development plans;
- (c) preparing, implementing and requiring relevant plans and budgets;
- (d) progressively ensuring access to at least basic reticulation services through appropriate investments in its electricity infrastructure;
- (e) ensuring affordable reticulation services through the setting and structuring of tariffs within the national framework of norms and standards contemplated in section 31;
- (f) providing basic reticulation services free of charge or at a minimum cost to all domestic end users or certain classes of domestic end users within its available resources;
- (g) ensuring sustainable reticulation services through effective and efficient management and adherence to the national norms and standards contemplated in section 31;
- (h) providing reticulation services through appropriate service delivery mechanisms in terms of the Municipal Systems Act;
- (i) monitoring, evaluating and regulating the provision of reticulation services within its area of jurisdiction through monitoring and information systems, internal performance management systems, business plans, by-laws within the national framework of norms and standards contemplated in section 31 and service delivery agreements referred to in section 30, where relevant;

- (j) regularly reporting and providing information to the Department of Provincial and Local Government, the National Treasury, the Regulator and customers or domestic end users; and
- (k) executing its reticulation function in accordance with relevant national energy policies. 5
- (3) A municipality must comply with Chapter III to the extent that it is involved in any activity that requires licensing or registration.
- (4) A person other than a municipality may provide reticulation services to domestic end users only in terms of a written service delivery agreement with that municipality. 10
- (5) Any person, other than the municipality, who, at the commencement of this Act, provides reticulation services to domestic end users without a written service delivery agreement must, within the period prescribed by the Minister—
 - (a) enter into a written service delivery agreement with the municipality in accordance with section 30; or
 - (b) cease to provide reticulation services. 15
- (6) Where a person renders reticulation services to domestic end users in terms of a licence issued by the Regulator, that licence automatically lapses at the commencement of this Act and the person must— 20
 - (a) enter into a written service delivery agreement with the municipality in accordance with section 30; or
 - (b) cease to provide reticulation services.
- (7) A municipality must provide a licensed person with non-discriminatory access to its distribution power systems and associated infrastructure under its control in order for that person to supply or wheel electricity through the said municipality's reticulation networks. 25
- (8) Access in terms of subsection (7) must be provided on terms and conditions determined by the municipality concerned, and such conditions may relate to, but are not limited to— 30
 - (a) the capacity of existing reticulation networks;
 - (b) pro-rata contributions towards the strengthening or upgrading of the distribution power system in order to facilitate access, including contributions towards such upgrading by current and potential users of such systems, where applicable; 35
 - (c) upholding the rights and obligations of existing users in respect of the use of such power systems;
 - (d) compliance with any rule, code or practice issued by the Regulator;
 - (e) adherence to metering, billing and technical requirements imposed by the municipality in accordance with the national framework on reticulation norms and standards; or 40
 - (f) the fees that may be charged by a municipality for the use of the power system set within the national framework on reticulation norms and standards.

Policies and by-laws

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29. (1) A municipality must adopt and implement a reticulation services policy that—

- (a) is set within the national framework of norms and standards on the provision of reticulation services; and
- (b) through an internal or external service delivery mechanism, in accordance with the Municipal Systems Act, complies with— 50
 - (i) this Act and any other applicable legislation;
 - (ii) the national government's energy policy framework; and
 - (iii) the national norms and standards set by the Minister in terms of section 31. 55
- (2) A reticulation services policy must include conditions for the provision of reticulation services, which conditions must provide for at least the following:
 - (a) Consumer contracts;
 - (b) the standards for reticulation services; 60
 - (c) the levels of reticulation services;

- (d) the technical conditions for reticulation services, including quality standards, units or standards of measurement, verification of meters, acceptable limits of error and procedures for the settlement of complaints and disputes relating to the measurement of reticulation services provided; 5
 - (e) the installation, alteration, operation, protection and inspection of reticulation infrastructure and customer installations procedures;
 - (f) the manner of determining and structure of tariffs in accordance with the municipality's tariff policy and any national norms and standards set by the Minister; 10
 - (g) the credit control measures for the payment and collection of tariffs, and other rates and charges due for the reticulation services in accordance with the municipality's credit control policy and any national norms and standards set by the Minister;
 - (h) the circumstances under which reticulation services may be restricted, limited or disconnected and the procedure to be followed; 15
 - (i) measures to prevent unlawful connections to reticulation systems and the unlawful use of electricity; and
 - (j) methods to prevent deliberate damage to or vandalism of reticulation networks. 20
- (3) The matters referred to in subsection (2) relating to tariffs and credit control measures must comply with the requirements for tariff and credit control policies and by-laws set out in the Municipal Systems Act and the Municipal Finance Management Act.
- (4) A municipality must adopt by-laws to give effect to the implementation and enforcement of its reticulation services policy. 25
- (5) By-laws referred to in subsection (4) may differentiate between different types or categories of domestic end users, providers, services, service standards and geographical areas as long as such differentiation does not amount to unfair discrimination. 30
- (6) A municipality may elect to include in general policies and by-laws that apply to all municipal services the matters referred to in subsection (2) that relate to tariffs and credit control measures.
- (7) The Minister may make regulations relating to ancillary or administrative matters that are necessary to prescribe for effective reticulation services. 35

Selection and appointment of external service providers

- 30.** (1) A municipality must comply with Chapter 8 of the Municipal Systems Act and this Act prior to entering into a service delivery agreement with a service provider. 40
- (2) A service delivery agreement entered into by a municipality with an external service provider must comply with the Municipal Systems Act, the Municipal Finance Management Act and this Act.
- (3) The Minister may make regulations relating to—
- (a) the criteria, in addition to those provided for in the Municipal Systems Act, against which service delivery mechanisms must be assessed; 45
 - (b) matters which must be provided for in service delivery agreements; and
 - (c) compulsory or standard provisions that must be included in the service delivery agreements. 50

Norms and standards

- 31.** (1) The Minister, acting in consultation with the Regulator, must prescribe compulsory national norms and standards for reticulation services, which may include norms and standards for— 55
- (a) basic services and facilities;
 - (b) the setting and structuring of charges, rates and tariffs that relate to reticulation services or the use of distribution power systems used for reticulation, which may include a national tariff framework

utilised by a municipality in determining such charges, rates or tariffs;	
(c) the provision of basic reticulation services in terms of the tariff provisions of the Municipal Systems Act to its domestic end users or classes of domestic end users;	5
(d) appropriate credit control measures;	
(e) effective and efficient management, refurbishment, operation and maintenance of reticulation services;	
(f) the quality of reticulation services and electricity supply;	10
(g) compliance with national health and safety requirements;	
(h) appropriate investments in reticulation services and distribution power systems used for reticulation;	
(i) the management of distribution power systems used for reticulation;	
(j) viable and sustainable reticulation services;	15
(k) minimum qualifications for persons who construct, operate and maintain distribution power systems used for reticulation; and	
(l) construction, functioning and maintenance of distribution power systems and consumer installations used for the provision of reticulation services.	20
(2) The norms and standards set under subsection (1) may differentiate between different types of services, domestic end users, municipalities and different geographical areas as long as such differentiation does not amount to unfair discrimination.	
(3) The Minister must, prior to setting norms and standards in terms of this section, consider the—	25
(a) potential financial and resources implications of the norms and standards for a municipality;	
(b) implications of the norms and standards for domestic end users; and	
(c) national tariff framework that a municipality must adhere to; and	
(d) macro-economic implications for a municipality.	30

Key performance indicators

<u>32. (1) The Minister must, acting in consultation with the Regulator, prescribe general key performance indicators in respect of the technical operational issues pertaining to reticulation systems for municipalities.</u>	
(2) The key performance indicators prescribed under subsection (1) may differentiate between categories and types of municipalities.	35
(3) Management key performance indicators set by a municipality in accordance with Chapter 6 of the Municipal Systems Act must include the general key performance indicators prescribed under subsection (1).	40

Infrastructure

33. A municipality must deal with electricity-related infrastructure or land in terms of the Municipal Finance Management Act.

Obligation to monitor and regulate performance

<u>34. The Regulator must monitor compliance by municipalities with this Act.</u>	45
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Obligation to share information on monitoring

<u>35. (1) When performing its monitoring and regulation functions in terms of section 34 the Regulator must—</u>	
(a) share with a municipality the results of its monitoring to the extent that the results may assist the municipality in improving reticulation services provision and management;	50

- (b) upon detecting any emerging or impending provision or management difficulties, alert the municipality to the difficulties;
- (c) assist the municipality to avert or resolve the difficulties; and
- (d) take action to ensure compliance with this Act.

Obligation to provide information

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36. Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), every municipality must provide the Regulator with such information as may reasonably be requested.

Non-compliance by municipality

37. If a municipality fails to comply with this Act or any other applicable municipal legislation, the Regulator, the Minister or the relevant MEC must take such steps as provided for in this Chapter against that municipality as may be necessitated by the seriousness or repetitive nature of the non-compliance.

Request to comply

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38. (1) If a municipality fails to comply with this Act, the Regulator must request the municipality to comply.

(2) A request to comply in terms of subsection (1) must be in writing and must—

- (a) describe the extent of non-compliance;
- (b) request the municipality to rectify the failure within a reasonable period set out in the notice; and
- (c) request, within 14 days, a written confirmation from the municipality concerned wherein the municipality must indicate—
 - (i) the corrective measures that have been taken or will be taken; and
 - (ii) their time frames, to rectify the non-compliance; or
- (d) state that, where the municipality is unable to comply with the request, the reasons for the non-compliance must be provided in writing to the Regulator and the relevant MEC within a specific period.

(3) In the event that the Regulator has issued a municipality with a request in terms of subsection (2), the Regulator must without delay inform the Minister and the relevant MEC of that request and the period given to the said municipality to comply therewith.

Revocation of authorisation

39. If a municipality fails to comply with a request issued in terms of section 38(2), the Regulator may request the Minister to consult with the Minister for Provincial and Local Government to revoke an authorisation made in terms of section 84 of the Municipal Structures Act.

Intervention

40. (1) If a municipality fails to comply with this Act or a request in terms of section 38(2), and the conditions for a provincial intervention in a municipality in terms of section 139 of the Constitution are met, the Regulator may request the relevant MEC to—

- (a) issue a directive to the municipality concerned to comply; or
 - (b) assume responsibility for rectifying the non-compliance in accordance with section 139 of the Constitution.
- (2) A directive to expedite compliance must be in writing and must—
- (a) set out the reasons for issuing the directive;
 - (b) instruct the municipality to comply within a specific period;

- (c) state the steps that the municipality must take in sufficient detail to enable the municipality to comply with the directive; and
 - (d) state the actions that the relevant MEC, in collaboration with the Regulator, will take in the event that a municipality fails to comply with the directive.
- (3) Where the conditions for a provincial intervention in a municipality in terms of section 139 of the Constitution are met and the relevant MEC cannot or does not adequately exercise the powers or perform the functions referred to in that section within seven days of being requested to do so, the Regulator must request the Minister to—
- (a) consult with the relevant MEC; and
 - (b) act or intervene in terms of that section in the stead of the provincial executive.
- (4) The Regulator must keep the Minister and the relevant MEC informed of any request issued in terms of section 38(2) and concomitant progress made in terms of this section.
- (5) If the relevant MEC or the Minister intervenes in terms of this section that MEC or the Minister must draw on the experience and expertise of the Regulator.
- (6) If the relevant MEC or the Minister intervenes in terms of this section that MEC or the Minister and his or her representatives must have access to such information, records and documents of the municipality and its service providers as may be necessary for the intervention.

Emergencies

- 41.** (1) Where a failure by a municipality is likely to constitute a major failure of service delivery towards its community, or where a municipality or the relevant MEC has failed to comply with a directive contemplated in section 40(1), the Minister, in consultation with the Regulator and the Minister for Provincial and Local Government, may direct the municipality concerned to stop the provision of reticulation services until such time as—
- (a) that failure has been rectified; or
 - (b) that directive has been complied with.
- (2) A directive must be in writing and must—
- (a) set out the reasons for issuing the directive;
 - (b) set out the date and time from which the municipality must stop providing the service; and
 - (c) describe the steps that the municipality is required to take in sufficient detail to enable that municipality to rectify such failure or non-compliance.
- (3) A directive may not be issued in terms of subsection (1) if such directive is likely to cause undue hardship to a customer that is being supplied with reticulation services.
- (4) A municipality to whom a directive has been issued must either before or at the time referred to in subsection (2)(b) hand over the provision of reticulation services to another municipality or service provider nominated in the directive.
- (5) A municipality or service provider to whom the provision of reticulation services has been handed over in terms of subsection (4) is obliged to continue the uninterrupted provision of reticulation services on behalf of the municipality on whom the directive has been served—
- (a) until the conditions in that directive have been complied with; or
 - (b) for such other period as the parties may agree upon, whichever is the longer period.
- (6) If a municipality or service provider renders a service as contemplated in subsection (4), that municipality or service provider must enter into a service delivery agreement with the municipality concerned, which agreement must stipulate the conditions for rendering the services: Provided that the Minister may prescribe the format and the essential provisions of the service delivery agreement.

(7) The provisions of the Municipal Systems Act, the Municipal Structures Act and the Municipal Finance Management Act may be deviated from to the extent necessary to facilitate the conclusion of an agreement contemplated in subsection (6) before or on the date determined in subsection (2)(b).

(8) During the process contemplated in this section, the Regulator must ensure that the necessary interventions are made to ensure continued provision of reticulation services to the domestic end users concerned.”.

Amendment of section 44 of Act 4 of 2006

5. Section 44 of the principal Act is hereby amended by—

(a) the addition to subsection (1) of the following paragraph:

“(c) if a municipality, or a service provider acting in terms of a service delivery agreement with that municipality, fails to comply with the reticulation services policy of the municipality or fails to comply with or contravenes the national norms and standards.”; and

(b) the addition to subsection (5) of the following paragraph:

“(c) if a municipality, or a service provider acting in terms of a service delivery agreement with that municipality, is involved, act on the matter in accordance with Chapter IV.”.

Amendment of section 47 of Act 4 of 2006

6. Section 47 of the principal Act is hereby amended by—

(a) the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(b) municipalities that reticulate electricity; and”;

(b) the substitution for subsection (4) of the following subsection:

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

(a) activities that must be licensed or registered and the classification of licences into categories and sub-categories;

(b) norms and standards relating to quality of supply;

(c) ancillary or administrative matters that are necessary to prescribe for effective reticulation services;

(d) compulsory national norms and standards for reticulation services;

(e) general key performance indicators in respect of technical operational issues pertaining to reticulation;

(f) the criteria, in addition to those provided for in the Municipal Systems Act, against which service mechanisms must be assessed;

(g) matters which may be provided for in the service delivery agreement;

(h) the compulsory or standard provisions that must be included in the service delivery agreement;

(i) the inspection of and enquiry into the control and operation of any licensed, registered or reticulation-related activity;

(j) new generation capacity;

(k) types of energy sources from which electricity must be generated;

(l) the percentages of electricity that must be generated from different energy sources;

(m) the participation of the private sector in new generation activities;

(n) the setting of standards relating to health, safety and the environment and their incorporation into licences or national norms and standards;

(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) the conditions subject to which the Regulator may issue a licence;

(r) any other matter that may or must be prescribed in terms of this Act; and

- (s) any other ancillary or administrative matter that it is necessary to prescribe for the proper implementation or administration of this Act.”.

Amendment of long title of Act 4 of 2006

7. The following long title is hereby substituted for the long title of the principal Act: 5

“To establish a national regulatory framework for the electricity supply industry; to make the National Energy Regulator the custodian and enforcer of the national electricity regulatory framework; to provide for licences and registration as the manner in which generation, transmission, distribution, trading and the import and export of electricity are regulated; to regulate the reticulation of electricity by municipalities; and to provide for matters connected therewith.”. 10

Amendment of Arrangement of Sections in Act 4 of 2006

8. The Arrangement of Sections after the long title of the principal Act is hereby amended by— 15

- (a) the insertion after the expression **“ELECTRICITY LICENCES AND REGISTRATION”** of the following:

“7. Application of Chapter”; and

- (b) the insertion after the expression **“CHAPTER IV”** of the following: 20

“RETICULATION

28.	Powers and duties of municipalities	
29.	Policies and by-laws	
30.	Selection and appointment of external service providers	
31.	Norms and standards	25
32.	Key performance indicators	
33.	Infrastructure	
34.	Obligation to monitor and regulate performance	
35.	Obligation to share information on monitoring	
36.	Obligation to provide information	30
37.	Non-compliance by municipality	
38.	Request to comply	
39.	Revocation of authorisation	
40.	Intervention	
41.	<u>Emergencies.</u> ”.	35

Short title and commencement

9. This Act is called the Electricity Regulation Amendment Act, 2006, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ELECTRICITY REGULATION AMENDMENT BILL

1. BACKGROUND

The Electricity Regulation Act, 2006 (Act No. 4 of 2006) (“the Act”), was adopted by Parliament in terms of the procedure laid down in section 75 of the Constitution. The Act provides for regulation of the whole electricity industry except for reticulation of electricity by municipalities. Reticulation was excluded from the Act since it falls within a functional area listed in Part B of Schedule 4 to the Constitution and must thus be dealt with in terms of section 76 of the Constitution.

It is therefore necessary to amend the Act so as to provide for the regulation of reticulation services.

2. OBJECTS

- The main object of the Bill is to insert a new Chapter into the Act dealing with the reticulation of electricity by municipalities.
- The Bill seeks to provide a framework for setting of tariffs by municipalities.
- The Bill seeks to empower the Minister to prescribe key performance indicators for municipalities in relation to reticulation services.
- The Bill also seeks to make provision regarding the relationship between municipalities and service providers who provide reticulation services on their behalf.

3. DEPARTMENTS/ORGANISATIONS CONSULTED

3.1 The following stakeholders were consulted through various meetings owing to their key role in the electricity industry:

- National Energy Regulator of South Africa
- Eskom
- Department of Provincial and Local Government
- National Treasury
- Department of Water Affairs and Forestry
- South African Local Government Association
- NEDLAC
- Competition Commission
- Department of Public Enterprises

3.2 The Bill was further published in the *Government Gazette* for public comment and the following stakeholders provided additional inputs:

- Sasol
- AMEU
- BHP Billiton
- Umhlathuze Municipality

- Energy Intensive User Group (EIUG)
- SECCP
- Chamber of Mines South Africa
- SALGA
- COSATU
- National Energy Regulator of South Africa
- Eskom

3.3 The Bill was published in the *Government Gazette* and on the Department of Minerals and Energy website for stakeholder comment. Consultation meetings were also conducted with various national government Departments and relevant stakeholders.

4. FINANCIAL IMPLICATIONS FOR STATE

None. The National Energy Regulator was established through the National Energy Regulator Act, 2004 (Act No. 40 of 2004), and the Bill facilitates the functions of the National Energy Regulator.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution, since it falls within a functional area listed in Schedule 4 to the Constitution, namely Electricity and gas reticulation.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.