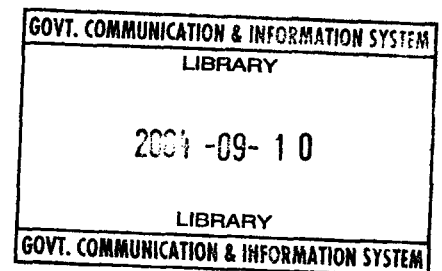


REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
ENERGY REGULATOR
BILL**

[B 9—2004]

*(As agreed to by the Portfolio Committee on Minerals and Energy
(National Assembly))*



[B 9A—2004]

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AMENDMENTS AGREED TO

ENERGY REGULATOR BILL [B 9—2004]

CLAUSE 1

1. On page 3, after line 4, to insert:

“administrative action” bears the meaning ascribed to it in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
2. On page 3, in line 6, to omit “11” and to substitute “5” .
3. On page 3, in line 17, to omit the definition of “prescribe”.
4. On page 3, in line 18, to omit the definition of “this Act”.

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Functions of Energy Regulator

4. (1) The Energy Regulator must—
 - (a) undertake the functions of the Gas Regulator as set out in section 4 of the Gas Act;
 - (b) undertake the functions of the Petroleum Pipelines Regulatory Authority as set out in section 4 of the Petroleum Pipelines Act; and
 - (c) with effect from a date determined by the Minister by notice in the *Gazette*, undertake the functions of the National Electricity Regulator as set out in section 4 of the Electricity Act.
- (2) The date contemplated in subsection 1(c) must be after 31 May 2005.

CLAUSE 5

1. On page 3, in line 36, to omit “three” and to substitute “four”.
2. On page 3, in line 39, after “Regulator” to insert:

and another part-time member as deputy chairperson
3. On page 3, after line 39, to insert:

(3) The Minister must designate one of the full-time members as the Chief Executive Officer of the Energy Regulator.
4. On page 3, in line 40, after “the” to insert “other three”.

5. On page 3, from line 43, to omit subsection (4) and to substitute:

(5) If the chairperson is for any reason unable to perform his or her functions, the deputy chairperson must perform them until the Minister designates another chairperson.

6. On page 3, from line 47, to omit subsection (5) and to substitute:

(6) (a) A part-time member of the Energy Regulator holds office for a period of four years.

(b) A full-time member of the Energy Regulator holds office for a period of five years.

(c) The Minister may reappoint a member of the Energy Regulator.

(d) If a vacancy occurs on the Energy Regulator the Minister may fill the vacancy temporarily for a period of not more than 12 months by appointing a person without complying with section 6(7).

CLAUSE 6

1. On page 4, in line 14, to omit paragraph (c) and to substitute:

(c) has, within a period of 10 years immediately before the date of the proposed appointment, been convicted of an offence involving dishonesty or served a sentence of imprisonment without the option of a fine for any other offence; or

(d) has, after appointment, been convicted of an offence involving dishonesty or been sentenced to imprisonment without the option of a fine for any other offence.

CLAUSE 8

1. On page 5, after line 17, to insert:

(3) If the chairperson is absent from a meeting of the Energy Regulator the deputy chairperson must chair the meeting.

(4) If both the chairperson and the deputy chairperson are absent from a meeting the chairperson must designate another part-time member to chair that meeting.

2. On page 5, in line 18, after "prescribed" to insert "by the Energy Regulator".
3. On page 5, in line 24, to omit "presiding at" and to substitute "chairing".
4. On page 5, from line 31, to omit subsection (7).
5. On page 5, from line 36, to omit paragraph (a) and to substitute:

(9) (a) Any meeting of the Energy Regulator must be open to the public unless the quorate meeting passes a resolution to the effect that information to be discussed during a certain part of a meeting would create a record that would in turn oblige the Energy Regulator to refuse access to that information in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

6. On page 5, after line 44, to add:

(10) (a) The Energy Regulator may establish subcommittees of its members to perform such functions of the Energy Regulator as it may determine, including conducting hearings and enquiries and sitting as a tribunal.

(b) The Energy Regulator must determine the composition of a subcommittee.

(c) The Energy Regulator may at any time dissolve or reconstitute a subcommittee.

(d) The Energy Regulator must designate a member of a subcommittee as chairperson of that subcommittee.

(e) This Act applies, with the changes required by the context, to a subcommittee established in terms of this section.

(f) The Energy Regulator is not absolved from the performance of any function entrusted to a subcommittee.

(11) The Energy Regulator must make rules concerning the manner in which notice of meetings to be held and the business to be conducted thereat is brought to the attention of the public.

CLAUSE 9

1. On page 5, in line 54, to omit "and".
2. On page 5, after line 55, to insert "(f) act in the public interest."

CLAUSE 10

1. On page 6, from line 6, to omit "at their own expense".
2. On page 6, from line 11, to omit subsections (2) and (3) and to substitute:

(2) Any decision of the Energy Regulator and the reasons therefor must be available to the public except information that is protected in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

(3) Any person may institute proceedings in the High Court for the judicial review of an administrative action by the Energy Regulator in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(4) (a) Any person affected by a decision of the Energy Regulator sitting as a tribunal may appeal to the High Court against such decision.

(b) The procedure applicable to an appeal from the decision of a magistrate's court in a civil matter applies, with the changes required by the context, to an appeal contemplated in paragraph (a).

CLAUSE 11

1. On page 6, in line 17, to omit subsection (1).
2. On page 6, after line 23, to insert:

(2) The Energy Regulator must, on the recommendation of the Chief Executive Officer, from time to time determine the personnel and other resources to be made available to the full-time members contemplated in section 5(4).

3. On page 6, in line 24, to omit “chief executive officer and other”.
4. On page 6, from line 27, to omit subsection (4) and to substitute:

(4) Despite subsection (1)(b), the Minister may, where he or she determines a need exists, instruct the Energy Regulator to make use of persons employed by or contracted to the Department or another licensing or regulatory authority falling under the Minister’s jurisdiction.

CLAUSE 12

1. On page 6, in line 37, after “rendered” to insert “in terms of this Act”.

CLAUSE 13

1. On page 6, from line 49, to omit subsection (3) and to substitute:

(3) (a) The costs of the Energy Regulator must be shared between the electricity, piped-gas and petroleum pipeline regulatory functions in proportion to the costs incurred by the Energy Regulator in respect of each of those regulatory functions.

(b) Money appropriated by Parliament must be allocated to the separate accounts for the electricity, piped-gas and petroleum pipeline regulatory functions in proportion to the costs incurred by the Energy Regulator in respect of each of those functions unless Parliament determines otherwise.

(c) Money received by the Energy Regulator other than money appropriated by Parliament must be paid into the account that is kept in terms of subsection (2) for the industry from which such money was received, and must be used for the sole benefit of that industry.

CLAUSE 14

1. On page 7, in line 14, to omit the second “and”.
2. On page 7, after line 15, to add:
 - (f) access to network infrastructure; and
 - (g) tariffs or tariff structures set or approved.

CLAUSE 16

1. On page 7, after line 31, to add:
 - (2) Decisions of the National Electricity Regulator in force immediately before the date contemplated in section 4(1)(c) remain in force until amended, replaced or repealed by the Energy Regulator.

CLAUSE 17

1. On page 7, in line 33, after “the” to insert “National”.

SCHEDULE

1. On page 8, in the third column, from the third line, to omit items 1 and 2 and to substitute:
 1. The repeal, with effect from the date contemplated in section 4(1)(c) of the National Energy Regulator Act, 2004, of sections 2, 2A, 5, 5A, 5C, 5D and 21.
 2. The amendment, with effect from the date contemplated in item 1 by the substitution for the definition of “regulator” of the following definition:

“ ‘regulator’ means the National Energy Regulator established by section 3 of the National Energy Regulator Act, 2004;”.