

REPUBLIC OF SOUTH AFRICA

PORTFOLIO COMMITTEE AMENDMENTS

TO

**ELECTRICITY REGULATION
AMENDMENT BILL**

[B 23—2023]

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

[B 23A—2023]

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ELECTRICITY REGULATIONS AMENDMENT BILL

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CLAUSE 1

1. On page 2, from line 22, substitute the definition of “balancing mechanism” for the following definition:

“**balancing mechanism**’ means a mechanism used by the system operator to balance the supply and demand of electricity in real time on the power system by cost effective dispatching of generation and demand resources;”

2. On page 3, in lines 3 to 5, substitute the definition of “central purchasing agency” with the following definition:

“**central purchasing agency**’ means the entity assigned to fulfil the role of the wholesale buyer to maintain system integrity during, and after, the transition to a competitive electricity market;”

3. On page 3, in lines 11 to 16, substitute the definition of “direct supply agreement” for the following definition:

“**direct supply agreement**’ means an agreement for the sale of electricity between a generation licensee or registrant or trader, acting in its capacity as such, and a customer, whether such electricity is supplied directly or through a transmission power system or a distribution power system, provided that the customer is not a transmitter, distributor or system operator or trader;”

4. On page 3, in lines 25 to 26, substitute the definition for “distribution licensee” for the following definition:

“**distribution licensee**’ means a holder of a licence to operate a distribution power system;”

5. On page 3, in lines 29 to 31, substitute the definition for “distribution power system” for the following definition:

“**distribution power system**’ means a network for the conveyance of electricity which operates at or below a nominal voltage of 132kV but above 11kV;”

6. On page 4, in lines 13 to 16, substitute the definition for “national transmission powers system” for the following definition:

“**national transmission power system**’ means the interconnected transmission power system used for the transmission of electricity produced by generation facilities for purposes of the supply of electricity to customers within and outside South Africa, above 132kV;”

7. On page 4, in lines 30 to 34, substitute the definition for “physical bilateral transaction” with for the following definition:

“‘physical bilateral transaction’ means a transaction entered into by generators, customers and traders for energy production which involves the conclusion of a power purchase agreement to meet demand and supply as required by the system operator;”

8. On page 4, in line 47, substitute “by the deletion of the definition of “price” “ and insert the following:

“by the substitution of the definition of “price” of the following definition:

‘price’ means a charge for electricity to an end-user or customer reflecting the cost to serve that end-user or customer and may include a tariff determined by the Regulator, and a surcharge, tax, levy or duty imposed by a municipality in terms of section 229 of the Constitution of the Republic of South Africa, 1996;”

9. On page 4, after the definition of “regulated transaction”, insert the following definition:

“‘Reticulation’ means the conveyance of electricity through a reticulation power system which operates at or below 11kV excluding trading, and “reticulate” and “reticulating” have corresponding meanings;”

10. On page 5, in lines 2 to 5, substitute the definition for “tariff” of the following definition:

“‘tariff’ means a charge to a customer or end user in respect of a licensed activity or registered activity, other than a surcharge, tax, levy or duty imposed by a municipality in terms of section 229 of the Constitution of the Republic of South Africa, 1996;”

11. On page 5, in line 20, after the definition of “transmission” insert:

“by the insertion after the definition of “transmission” of the following definition:

‘transmission development plan’ means the plan for the development of the national transmission power system referred to in sections 34(6)(b) and 35(3A);”

12. On page 5, in lines 22 to 24, substitute the definition for “transmission power system” with the following definition:

“‘transmission power system’ means a network for the conveyance of electricity which operates above a nominal voltage of 132kV including assets that are approved by the Regulator to be part of the transmission power system.”

13. On page 5, from lines 39 to 43, substitute the definition of “vesting contract” with the following definition:

“‘vesting contract’ means a contract or other financial arrangement between the National Transmission Company South Africa SOC Ltd and an Eskom generator or a distribution licensee, as the case requires, for the sale of a specified amount of electricity at a price determined by the Regulator as a mechanism to facilitate the transition to a competitive market.”

14. On page 5, in lines 47 to 49, substitute paragraph for the following:

“(a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in the Republic of South Africa;”
15. On page 6, in line 20, after “activities,” omit “and activities.”
16. On page 6, in line 40, substitute the paragraph with the following:

“(ii) set and approve prices and tariffs in a manner prescribed by a rule;”
17. On page 6, in line 41, omit clause (c).
18. On page 6, in lines 51 to 53, substitute the clause for the following clause:

“(vii) enforce performance and compliance with this Act and licence conditions imposed by the Regulator in terms of this Act, and take appropriate steps in the case of non-performance or non-compliance;”
19. On page 7, in lines 3 to 6, substitute the paragraph for the following:

“(i) mediate and arbitrate, as the case requires, disputes between generators, transmitters, distributors, traders, resellers, the transmission system operator and licensees or customers or end users excluding disputes between registrants and their customers;”
20. On page 8, in lines 25 to 26, delete the paragraph.
21. On page 8, in line 29, substitute the paragraph for the following:

“(h) such other particulars as the Regulator may prescribe by a rule.”
22. On page 8, in lines 40 to 45, substitute the paragraph for the following:

“(1) When application is made for a licence the Regulator must, in writing, direct, the applicant to publish a notice of the application, in at least two official languages as envisaged in section 6 of the Constitution of the Republic of South Africa, 1996, for a period of 30 days, in newspapers or other media, as the Regulator may specify, circulating nationally and in the area of the proposed activity.”
23. On page 9, in lines 7 to 8, substitute the paragraph with the following:

“(1) The Regulator must make a decision to grant or refuse an application in the prescribed manner within 60 days—”
24. On page 9, in lines 31 to 32, substitute the paragraph with the following:

“(d) the setting or approval of prices, charges, rates and tariffs charged by licensees;”
25. On page 9, in lines 48 to 54, substitute the paragraph with the following:

“(e) by the insertion in subsection 1 after paragraph (t), of the following paragraph:
(tA) allowing the licensee to sub-contract the performance of the licensed functions, including allowing for the licensee to subcontract the maintenance and operation of the generation, transmission or distribution facilities;”

26. On page 9, in line 58, after paragraph (f), insert the following:

“(g) by the insertion after subsection (2) of the following:

14 (3) The Regulator may, at any time during the license period, amend, vary or add any licence condition.”

27. On page 10, in lines 5 to 9, substitute the paragraph for the following:

“(1) The Regulator, when subjecting a licence to conditions relating to the setting or approval of prices, charges and tariffs charged by licensees as contemplated in section 14(1)(d)—”

28. On page 10, after line 56, insert the following:

“(2A) The Regulator may—
(a) if it is alleged in terms of section 18(1) read with section (3A)(d), or
(b) on its own assessment,
revoke a license if a licensee has contravened or failed to comply with a license condition or any provision of this Act.”

29. On page 11, in clause 18, after line 16, insert the following:

“(4) The Regulator must, when exercising the powers provided in subsection (1) and (2) of this section, comply with subsections (1) and (2) of section 10 of the National Energy Regulator Act.”

30. On page 11, after clause 18, insert the following:

“Amendment of section 18 of Act 4 of 2006, as renumbered by section 16(b) of Act 28 of 2007

Section 18 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection—

- (a) “(3A) If the tribunal finds that the allegation contemplated in subsection (3) is correct it may:
(a) serve a notice on the licensee directing the licensee to comply with the licence condition;
(b) impose a penalty contemplated in subsection (4) or any other penalty it deems appropriate;
(c) recommend the amendment of a licence condition; or
(d) recommend the revocation of the licence.”; and

- (b) By the insertion after subsection (6) of the following subsection:

“(7) The Regulator must prescribe tribunal rules or procedures.”

Amendment of section 19 of Act 4 of 2006, as renumbered by section 16(b) of Act 28 of 2007

Section 19 of the principal Act is hereby amended by the substitution of subsection (1) of the following subsection:

“(1) Notwithstanding the provision of section 18(1), the Regulator may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there is any urgent ground justifying such suspension or revocation.”

31. On page 11, in lines 21 to 23, substitute the paragraph for the following:

“20. (1) Any generation, transmission or system operation licence issued in terms of this Act is valid for a period of 20 years or such lesser period as the Regulator may determine.”

32. On page 11, in line 29, after “licence”, insert “subject to the provisions of this section”.

33. On page 13, in lines 7 to 9, substitute the paragraph for the following:

“(g)regularly reporting and providing information to the Department responsible for Provincial and Local Government, the National Treasury, the Regulator and customers;”

34. On page 13, in lines 27 to 28, substitute the paragraph for the following:

“(3) The Regulator must prescribe, by a rule, the procedure to be followed in a mediation and an arbitration and the fees to be paid.”

35. On page 14, from lines 1 to 6, delete the paragraph.

36. On page 16, in line 39, delete “and”.

37. On page 16, in line 41, after “parties” to delete the fullstop and insert “; and”.

38. On page 16, after line 41, insert the following paragraph:

“(e)develop the transmission development plan.”

39. On page 16, in line 46, delete “and”.

40. On page 16, in lines 47 to 51, substitute the paragraph with the following:

“(c)perform forecasting and dispatch scheduling; and
(d) co-operate with the Minister and any person acting as a procurer in terms of section 34, to facilitate the establishment of any new generation capacity or electricity transmission infrastructure, or acquisition of electricity, that is the subject of a section 34 determination.”

41. On page 17, in lines 43 to 45, substitute the paragraph as follows:

“(ii) conclude power purchase agreements with each Eskom generator to cover capacity payments and ancillary services for a period approved by the Regulator;”

42. On page 17, in lines 46 to 48, substitute the paragraph as follows:

“(iii) conclude vesting contracts with Eskom generators and distribution licensees, as the case requires, approved by the Regulator, to manage the transition to a competitive market; and”

43. On page 18, in line 38, to omit “wilfully”.

44. On page 18, in line 40, to substitute the paragraph as follows:

“(b)fails to comply with a direction issued in terms of section 4(b)(iiA)(bb);”

45. On page 18, in lines 49 to 52, to substitute the paragraph as follows:

“(2) Any person who is convicted of an offence by a court of law referred to in subsection (1) shall be liable to a fine not exceeding R1 000 000,00 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.”

46. On page 18, after line 52, to insert the following paragraphs:

“(3) Despite anything to the contrary contained in any other law, a Magistrates Court has jurisdiction to impose any penalty provided for in this Act.”

(4) Any person who, in any manner, without lawful authority, acquires or receives into his possession from any other person transmission, distribution or reticulation cable, equipment or infrastructure without having reasonable cause for believing, at the time of such acquisition or receipt, that such transmission, distribution or reticulation cable, equipment or infrastructure is the property of the person from whom he acquires or receives it or that such person has been duly authorized by the owner thereof to deal with it or dispose of it, shall be guilty of an offence.

(5) Any person who is convicted of an offence referred to in subsection (4) shall be liable to a fine not exceeding R5 000 000,00 or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.”

