

REPUBLIC OF SOUTH AFRICA

ELECTRICITY REGULATION BILL

(As amended by the Portfolio Committee on Minerals and Energy (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF MINERALS AND ENERGY)

[B 29B—2005]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

BILL

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; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

Sections

CHAPTER 1 5 **INTERPRETATION**

1. Definitions
2. Objects of Act

CHAPTER II 10 **OVERSIGHT OF ELECTRICITY INDUSTRY**

3. Regulator
4. Powers and duties of Regulator
5. Advisory committees
6. Customer and end user forums

CHAPTER III 15 **ELECTRICITY LICENCES AND REGISTRATION**

8. Activities requiring licensing
9. Certain activities not licensed
10. Registration 20

11.	Application for licence	
12.	Advertising of licence application	
13.	Information to be supplied	
14.	Finalisation of application	
15.	Conditions of licence	5
16.	Tariff principles	
17.	Amendment of licence	
18.	Revocation of licence on application	
19.	Contraventions of licence	
20.	Order by court	10
21.	Renewal of licence	
22.	Powers and duties of licensee	
23.	Powers of entry and inspection	
24.	Electricity infrastructure not fixtures	
25.	Rights over streets	15
26.	Liability of licensee for damage or injury	
27.	Expropriation	

CHAPTER IV

CHAPTER V 20

RESOLUTION OF DISPUTES AND REMEDIES

- | | | |
|-----|---|--|
| 42. | Resolution of disputes by Regulator | |
| 43. | Remedies against decisions of Regulator | |

CHAPTER VI

INVESTIGATIONS 25

- | | | |
|-----|----------------|--|
| 44. | Investigations | |
|-----|----------------|--|

CHAPTER VII

GENERAL PROVISIONS

- | | | |
|-----|--|----|
| 45. | Entry, inspection and information gathering by Regulator | |
| 46. | New generation capacity | 30 |
| 47. | Regulations, rules, guidelines, directives and codes of conduct and practice | |
| 48. | Repeal of laws and savings | |
| 49. | Short title and commencement | |

SCHEDULE 1

SCHEDULE 2 35

CHAPTER I

INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**chief executive officer**” means the chief executive officer of the Regulator; 5
 - *****
 - “**customer**” means a person who purchases electricity or a service relating to the supply of electricity;
 - “**distribution**” means the conveyance of electricity through a distribution power system excluding trading, and “distribute” and “distributing” have corresponding 10 meanings;
 - “**distribution power system**” means a power system that operates at or below 132kV;
 - “**distributor**” means a person who distributes electricity; 15
 - *****
 - “**end user**” means a user of electricity or a service relating to the supply of electricity;
 - “**generation**” means the production of electricity by any means, and “generate” and “generating” have corresponding meanings;
 - “**generator**” means a person who generates electricity; 20
 - “**integrated resource plan**” means a resource plan established by the national sphere of government to give effect to national policy;
 - “**licensee**” means the holder of a licence granted or deemed to have been granted by the Regulator under this Act; 25
 - *****
 - “**Minister**” means the Minister of Minerals and Energy; 30
 - *****
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 - *****
 - “**National Energy Regulator Act**” means the National Energy Regulator Act, 2004 (Act No. 40 of 2004);
 - “**person**” includes any organ of state as defined in section 239 of the Constitution;
 - “**prescribe**” means prescribe by regulation or rule;
 - “**price**” means a charge for electricity; 35
 - “**Regulator**” means the National Energy Regulator established by section 3 of the National Energy Regulator Act; 40
 - *****
 - *****
 - “**supply**” means trading and the generation, transmission or distribution of electricity;
 - “**tariff**” means a charge for electricity;
 - “**trading**” means the buying or selling of electricity as a commercial activity;
 - “**transmission**” means the conveyance of electricity through a transmission power system excluding trading, and “transmit” and “transmitting” have corresponding 45 meanings;
 - “**transmission power system**” means a power system that operates above 132kV;
 - “**transmitter**” means a person who transmits electricity; and
 - “**this Act**” includes any regulation or rule made or issued in terms thereof.

Objects of Act 50

2. The objects of this Act are to—
 - (a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in South Africa;
 - (b) ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, 55 efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;

- (c) facilitate investment in the electricity supply industry;
- (d) facilitate universal access to electricity;
- (e) promote the use of diverse energy sources and energy efficiency;
- (f) promote competitiveness and customer and end user choice; and
- (g) facilitate a fair balance between the interests of customers and end users, licensees, investors in the electricity supply industry and the public. 5

CHAPTER II

OVERSIGHT OF ELECTRICITY INDUSTRY

Regulator

3. (1) The National Energy Regulator established by section 3 of the National Energy Regulator Act is the custodian and enforcer of the regulatory framework provided for in this Act. 10

Powers and duties of Regulator

4. The Regulator— 15
- (a) must—
 - (i) consider applications for licenses and may issue licences for—
 - (aa) the operation of generation, transmission and distribution facilities;
 - (bb) the import and export of electricity;
 - (cc) trading; 20
 - (ii) regulate prices and tariffs;
 - (iii) register persons who are required to register with the Regulator where they are not required to hold a licence;
 - (iv) issue rules designed to implement the national government's electricity policy framework, the integrated resource plan and this Act; 25
 - (v) establish and manage monitoring and information systems and a national information system, and co-ordinate the integration thereof with other relevant information systems;
 - (vii) enforce performance and compliance, and take appropriate steps in the case of non-performance; 30
 - (b) may—
 - (i) mediate disputes between generators, transmitters, distributors, customers or end users;
 - (ii) undertake investigations and inquiries into the activities of licensees;
 - (iv) perform any other act incidental to its functions. 35

Advisory forums

5. The Regulator may appoint forums consisting of as many members of the Regulator, employees of the Regulator and other persons as may be necessary to advise the Regulator in general or on a particular matter.

Customer and forums forums 40

6. (1) The Regulator may establish customer or end user forums consisting of as many members of the Regulator, licensees, employees of the Regulator and categories of customers or end users as may be necessary to advise the Regulator on matters affecting customers or end users in general, or a category of customers or end users in particular.
- (2) The Regulator must require a licensee to establish and fund a customer or end users forum in the manner set out in the licence held by such a person. 45

CHAPTER III

ELECTRICITY LICENCES AND REGISTRATION

Application of Chapter

Activities requiring licensing 5

8. (1) No person may, without a licence issued by the Regulator in accordance with this Act—

- (a) operate any generation, transmission or distribution facility;
- (b) import or export any electricity; or
- (c) be involved in trading. 10

(2) Notwithstanding subsection (1), a person involved in an activity specified in Schedule II need not apply for or hold a licence issued by the Regulator.

(3) (a) Nothing in this Act precludes a potential licensee from discussing the contemplated operation of generation, transmission and distribution facilities, the import or export of electricity, trading, or any other activity relating thereto, prior to filing a licence application with the Regulator. 15

(b) The Regulator must furnish an applicant contemplated in paragraph (a) with all information necessary to facilitate the filing of an application for a licence.

(4) No request for further information, notification or discussions referred to in subsection (3) may in any way be construed as conferring any right or expectation on an applicant. 20

Certain activities not licensed

9. The Minister may, after consultation with the Regulator and stakeholders in the advisory forum, determine by notice in the *Gazette* that any activity contemplated in section 8(1) need no longer be a licensed activity from the date set out in such notice. 25

Registration

10. (1) The Minister may, in consultation with the Regulator, determine by notice in the *Gazette* that any person involved in an activity relating to trading or the generation, transmission or distribution of electricity that does not require licensing in terms of section 8 read with section 9 must register with the Regulator. 30

(2) Any person who has to register with the Regulator must do so in the form and in accordance with the prescribed procedure, and an application for registration must be accompanied by the prescribed registration fee: Provided that any person holding a valid licence at the date of a determination contemplated in section 9 must be issued with a registration certificate without complying with the prescribed procedure. 35

(3) (a) On receipt of an application in terms of subsection (2) the Regulator must forthwith register the applicant for the activities set out in a certificate of registration to be provided to such a person.

(b) The Regulator may refuse to register such a person or activity—

- (i) if the application is not made within the prescribed period or is not accompanied by the prescribed registration fee; or 40
- (ii) if the application is contrary to the objectives of this Act.

(4) The Regulator may make registration subject to—

- (a) adherence to the provisions of this Act;
- (b) conditions relating to the supply of information to the Regulator, the dissemination of information to customers or end users, and the establishment and funding of customer and end user awareness programmes. 45

Application for licence

11. (1) (a) A person who has to hold a licence in terms of section 8 must apply to the Regulator for such a licence in the form and in accordance with the prescribed procedure. 50

(b) Such an application must be accompanied by the prescribed application fee.

- (2) Any application contemplated in subsection (1) must include—
- (a) a description of the applicant, including vertical and horizontal relationships with other persons engaged in the operation of generation, transmission and distribution facilities, the import or export of electricity, trading or any other prescribed activity relating thereto; 5
 - (b) such documentary evidence of the administrative, financial and technical abilities of the applicant as may be required by the Regulator;
 - (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; 10
 - (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 such other requirements as may be applicable; 15
 - (f) a detailed specification of the services that will be rendered under the licence;
 - (g) evidence of compliance with any integrated resource plan applicable at that point in time or provide reasons for any deviation for the approval of the Minister; and
 - (h) such other particulars as the Minister may prescribe. 20

Advertising of licence application

12. (1) When application is made for a licence the Regulator may require that the applicant publish a notice of the application in appropriate newspapers or other appropriate media circulating in the area of the proposed activity in at least two official languages. 25

- (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; 30
 - (d) the period within which any objections to the issue of the licence may be lodged with the Regulator;
 - (e) the address of the Regulator where any objections may be lodged;
 - (f) that objections must be substantiated by way of an affidavit or solemn declaration; and 35
 - (g) such other particulars as may be prescribed.

(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 prescribed.

(4) The Regulator must consider objections to the application contemplated in subsection (1) and make its decision available to the public together with its reasons for such decision. 40

Information to be supplied

13. Before considering an application for a licence in terms of this Act, the Regulator—

- (a) must furnish the applicant with all substantiated objections in order to allow the applicant to respond thereto; and 45
- (b) may request such additional information as may be necessary to consider the application properly.

Finalisation of application

14. (1) The Regulator must decide on an application in the prescribed manner within 120 days— 50

- (a) after the expiration of the period contemplated in section 12(2)(d), if no objections have been received; or
- (b) after receiving the information contemplated in section 13(b).

(2) The Regulator must provide the applicant with a copy of its decision as well as the reasons for the decision. 55

- (3) The Regulator must issue separate licences for—
- (a) the operation of generation, transmission and distribution facilities;
 - (b) the import and export of electricity; or
 - (c) trading.
- (4) The Regulator is not obliged to issue a licence and may issue only one licence per applicant for each of the activities contemplated in subsection (3). 5

Conditions of licence

15. (1) The Regulator may make any licence subject to conditions relating to—
- (a) the establishment of and compliance with directives to govern relations between a licensee and its or end users, including the establishment of or end user forums; 10
 - (b) the furnishing of information, documents and details that the Regulator may require for the purposes of this Act;
 - (c) the period of validity of the licence in accordance with section 21;
 - (d) the setting and approval of prices, charges, rates and tariffs charged by licensees; 15
 - (e) the methodology to be used in the determination of rates and tariffs which must be imposed by licensees;
 - (f) the format of and contents of agreements entered into by licensees;
 - (g) the regulation of the revenues of licensees; 20
 - (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 cession, transfer or encumbrance of licences, including the compulsory transfer of a licence to another person under certain conditions, and terms and conditions relating thereto; 25
 - (l) the right to operate generation, transmission or distribution facilities, to import or export electricity, to trade or to perform prescribed activities relating thereto, including exclusive rights to do so, and conditions attached to or limiting such rights; 30
 - (m) the duty or obligation to trade, or to generate, transmit or distribute, electricity, and conditions attached to such duties or obligations;
 - (n) the termination of electricity supply to customers and end users under certain circumstances, the duty to reconnect without undue discrimination, and conditions relating thereto; 35
 - (o) the area of electricity supply to which a licensee is entitled or bound;
 - (p) the classes of customers and end users to whom electricity may or must be supplied;
 - (q) the persons from whom and to whom electricity must or may be bought or sold; 40
 - (r) the types of energy sources from which electricity must or may be generated, bought or sold;
 - (s) compliance with health, safety and environmental standards and requirements;
 - (t) compliance with any regulation, rule or code made under this Act; 45
 - (u) compliance with energy efficiency standards and requirements, including demand-side management;
 - (w) the undertaking of customer or end user education programmes;
 - (x) the need to maintain facilities in a fully operational condition;
 - (y) the period within which licensed facilities must become operational; and 50
 - (z) any other condition prescribed by the Regulator.
- (2) The Regulator may, as part of a licence condition imposed under subsection (1), prohibit a licensee from performing or force a licensee to perform any act set out in such licence.

Tariff principles

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16. (1) A licence condition determined under section 15 relating to the setting or approval of prices, charges and tariffs and the regulation of revenues—
- (a) must enable an efficient licensee to recover the full cost of its licensed activities, including a reasonable margin or return;

- (b) must provide for or prescribe incentives for continued improvement of the technical and economic efficiency with which services are to be provided;
 - (c) must give end users proper information regarding the costs that their consumption imposes on the licensee's business;
 - (d) must avoid undue discrimination between customer categories; and 5
 - (e) may permit the cross-subsidy of tariffs to certain classes of customers.
- (2) A licensee may not charge a customer any other tariff and make use of provisions in agreements other than that determined or approved by the Regulator as part of its licensing conditions.
- (3) Notwithstanding subsection (2), the Regulator may, in prescribed circumstances, 10 approve a deviation from set or approved tariffs.

Amendment of licence

17. (1) The Regulator may vary, suspend or remove any licence condition, or may include additional conditions—
- (a) on application by the licensee; 15
 - (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 Minister must prescribe the procedure to be followed in varying, suspending, 20 removing or adding any licence condition.

Revocation of licence on application

18. (1) The Regulator 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 viable; 25
 - (c) another person is willing and demonstrably able to assume the rights and obligations of that licensee in accordance with the requirements and objectives of this Act, and a new licence is issued to such a person; or
 - (d) conditions of a licence are not met.
- (2) A licensee must, in the circumstances contemplated in subsection (1)(a) and (b), 30 give the Regulator at least 12 months' notice in writing of his or her intention to cease activities, unless the Regulator determines otherwise.
- (3) The Minister must prescribe the form and procedure to be followed in revoking a licence.

Contraventions of licence 35

19. (1) If it is alleged that a licensee has contravened or failed to comply with a licence condition or any provision of this Act, the Regulator may sit as a tribunal to decide on the allegation.
- (2) If the tribunal finds that the allegation contemplated in subsection (1) is correct it may serve a notice on the licensee directing the licensee to comply with the licence 40 condition or the provision of this Act, as the case may be, within a reasonable period specified in the notice.
- (3) If it is alleged that the licensee has failed to comply with a notice in terms of subsection (2) the Regulator may sit as a tribunal to decide on that allegation.
- (4) If the tribunal finds that the allegation contemplated in subsection (3) is correct it 45 may impose a penalty of 10 per cent of the annual turnover of the licensee or R2 000 000,00 (whichever is the higher amount) per day commencing on the day of receipt of the notice contemplated in subsection (2).
- (5) The Regulator must consider the extent of the non-compliance in deciding the amount of any penalty. 50
- (6) The Minister may from time to time by notice in the *Gazette* amend the amount referred to in subsection (2) in order to counter the effect of inflation.

Order by court

20. (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 ground justifying such suspension or revocation.

Renewal of licence

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21. (1) Any generation or transmission licence issued in terms of this Act is valid for a period of 15 years or such longer period as the Regulator may determine.

(2) Any distribution or trading licence issued in terms of this Act is valid for the period determined by the Regulator.

(3) A licensee may apply for the renewal of his or her licence.

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(4) An application for renewal must be granted, but the Regulator may set different licence conditions.

(5) A licensee may not assign a licence to another party.

Powers and duties of licensee

22. (1) A licence issued in terms of this Act empowers and obliges a licensee to exercise the powers and perform the duties set out in such licence and this Act, and no licensee may cede, transfer any such power or duty to any other person without the prior consent of the Regulator.

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(2) A licensee may not discriminate between customers or classes of customers regarding access, tariffs, prices and conditions of service, except for objectively justifiable and identifiable differences approved by the Regulator.

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(3) A transmission or distribution licensee must, to the extent provided for in the licence, provide non-discriminatory access to the transmission and distribution power systems to third parties.

(4) Access in terms of subsection (3) must be provided on the conditions set out in the licence of such transmitter or distributor, that may relate to—

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(a) the circumstances under which access must be allowed;

(b) the circumstances under which access may be refused;

(c) the strengthening or upgrading of the transmission or distribution power system in order to provide for access, including contributions towards such upgrading by the potential users of such systems, if applicable;

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(d) the rights and obligations of other existing or new users regarding the use of such power systems;

(e) compliance with any rule, code or practice made by the Regulator; or

(f) the fees that may be charged by a licensee for the use of such power system.

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(5) A licensee may not reduce or terminate the supply of electricity to a customer, unless—

(a) the customer is insolvent;

(b) the customer has failed to honour, or refuses to enter into, an agreement for the supply of electricity; or

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(c) the customer has contravened the payment conditions of that licensee.

Powers of entry and inspection

23. (1) Any person authorised thereto by a licensee may at all reasonable times enter any premises to which electricity is or has been supplied by such licensee, in order to inspect the lines, meters, fittings, works and apparatus belonging to such licensee, or for the purpose of ascertaining the quantity of electricity consumed, or where a supply is no longer required, or where such licensee may cut off the supply, for the purpose of removing any lines, meters, fittings, works and apparatus belonging to such licensee.

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(2) Any person wishing to enter any premises in terms of subsection (1) shall—

(a) if possible, make the necessary arrangements with the legal occupant of the premises before entering such premises and shall adhere to all reasonable security measures, if any, of the occupant or owner of the premises;

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(b) exhibit his authorization at the request of any person materially affected by his activities.

(3) Damage caused by such entry, inspection or removal shall be repaired or compensated for by the licensee.

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Electricity infrastructure not fixtures

24. (1) Any asset belonging to a licensee that is lawfully constructed, erected, used, placed, installed or affixed to any land or premises not belonging to that licensee, remains the property of that licensee notwithstanding the fact that such an asset may be of a fixed or permanent nature. 5
- (2) An asset belonging to a licensee in terms of subsection (1)—
- (a) may not be attached or taken in execution under any process of law, or be the subject of any insolvency or liquidation proceedings, instituted against the owner of the land, the landlord or the occupier of the premises concerned; 10
 - (b) may not be subjected to a landlord's hypothec for rent; and
 - (c) may only be validly disposed of or otherwise dealt with in terms of a written agreement with the licensee.

Rights over streets

25. (1) (a) A licensee may do all such things over, in or along roads or streets and associated infrastructure as may be necessary to carry out its licensed activities. 15
- (b) Any activity contemplated in paragraph (a) must be undertaken subject to the right of supervision and in accordance with the plans, routes and specifications of the authority or person in control of that street, except in cases of emergency or where the authority concerned fails or refuses to co-operate with the licensee.
- (2) A licensee may only exercise its rights in terms of subsection (1) to the extent necessary to carry out its licensed activities, and must in doing so— 20
- (a) comply with any laws or by-laws that may be applicable;
 - (b) complete its activities within a reasonable time; and
 - (c) repair any damage caused or reimburse the person or authority in control of that road or street for any damage caused. 25
- (3) Nothing in this section may be construed as giving a licensee any rights that it does not already have in terms of its licence, or relieving a licensee from any liability in respect of any loss or damage caused by its negligence.
- (4) For the purposes of this section 'street' includes any square or enclosed public place the control or care of which is vested in any person or authority. 30

Liability of licensee for damage or injury

26. In any civil proceedings against a licensee arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated, transmitted or distributed by a licensee, such damage or injury is deemed to have been caused by the negligence of the licensee, unless there is credible evidence to the contrary. 35

Expropriation

27. (1) The State may, in order to facilitate the achievement of the objectives of this Act, 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 and section 2 of the Expropriation Act, 1975 (Act No. 63 of 1975). 40
- (2) The Minister must prescribe the procedure to be followed in giving effect to subsection (1).
- (3) The State may exercise the powers contemplated in subsection (1) only if—
- (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 45
 - (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 electricity infrastructure in the national interest.

CHAPTER IV

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CHAPTER V

RESOLUTION OF DISPUTES AND REMEDIES

Resolution of disputes by Regulator

42. (1) The Regulator must, in relation to any dispute arising out of this Act—
- (a) if it is a dispute between licensees, act as mediator if so requested by both parties to the dispute; 5
 - (b) if it is a dispute between a customer or end user on the one hand and a licensee, registered person, a person who trades, generates, transmits, or distributes electricity on the other hand, settle that dispute by such means and on such terms as the Regulator thinks fit. 10
- (2) The Regulator may appoint a suitable person to act as mediator on its behalf and any action or decision of a person so appointed is deemed to be an action by or decision of the Regulator.
- (3) The Minister must prescribe the procedure to be followed in the mediation and the fees to be paid. 15
- (4) The mediation or arbitration in terms of this section is done at the request of the parties to the dispute and no decision of the Regulator or the person contemplated in subsection (2), taken in the course of the mediation process, must be regarded as a decision contemplated in section 10(3) or (4) of the National Energy Regulator Act.

Remedies against decisions of Regulator 20

43. Section 10(3) of the National Energy Regulator Act applies to every decision by the Regulator taken in terms of this Act, except where this Act provides otherwise or where the Regulator sits as a tribunal, in which case section 10(4) of that Act applies.

CHAPTER VI

INVESTIGATIONS 25

Investigations

44. (1) The Regulator must, in applicable circumstances, at its own instance or on receipt of a complaint or inquiry relating to the generation, transmission, distribution or trading, investigate complaints—
- (a) of discrimination regarding tariffs or conditions of access; 30
 - (b) if a licensee is involved, of failure to abide by its licensing conditions; or
- *****
- (2) On receipt of a report under subsection (1), the Regulator may institute a formal investigation.
- (3) Upon instituting a formal investigation under subsection (2)— 35
- (a) the Regulator 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 or her may summon witnesses and conduct the investigation in the prescribed manner. 40
- (4) On completion of the investigation under subsection (3) the person chairing it must submit his or her written report thereon to the Regulator.
- (5) On receipt of the report, the Regulator may—
- (a) refer the report to the Director of Public Prosecutions of the area concerned;
 - (b) if a licensee is involved, act on the matter in accordance with section 19(2); or 45
- *****

CHAPTER VII

GENERAL PROVISIONS

Entry, inspection and information gathering by Regulator

45. (1) For the purposes of this Act, any person authorised thereto in writing by the Regulator may— 5
- (a) at all reasonable times enter any property on which any activity relating to the supply of electricity is taking place to inspect any facility, equipment, machinery, book, account or other document relating to electricity found thereat; and
 - (b) require any person to furnish to the Regulator such information, returns or other particulars as may be necessary for the proper application of this Act. 10
- (2) The Regulator 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 Regulator must on request show his or her 15 authorisation.

New generation capacity

46. (1) The Minister may, in consultation with the Regulator—
- (a) determine that new generation capacity is needed to ensure the continued uninterrupted supply of electricity; 20
 - (b) determine the types of energy sources from which electricity must be generated, and the percentages of electricity that must be generated from such sources;
 - (c) determine that electricity thus produced may only be sold to the persons or in the manner set out in such notice; 25
 - (d) determine that electricity thus produced must be purchased by the persons set out in such notice;
 - (e) require that new generation capacity must—
 - (i) be established through a tendering procedure which is fair, equitable, transparent, competitive and cost-effective; 30
 - (ii) provide for private sector participation.
- (2) The Minister has such powers as may be necessary or incidental to any purpose set out in subsection (1), including the power to—
- (a) undertake such management and development activities, including entering into contracts, as may be necessary to organise tenders and to facilitate the tendering process for the development, construction, commissioning and operation of such new electricity generation capacity; 35
 - (b) purchase, hire or let anything or acquire or grant any right or incur obligations for or on behalf of the State or prospective tenderers for the purpose of transferring such thing or right to a successful tenderer; 40
 - (c) apply for and hold such permits, licences, consents, authorisations or exemptions required in terms of the Environmental Conservation Act, 1989 (Act No. 73 of 1989) or the National Environmental Management Act, 1998 (Act No. 107 of 1998), or as may be required by any other law, for or on behalf of the State or prospective tenderers for the purpose of transferring any such permit, licence, consent, authorisation or exemption to a successful tenderer; 45
 - (d) undertake such management activities and enter into such contracts as may be necessary or expedient for the effective establishment and operation of a public or privately owned electricity generation business;
 - (e) subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), issue any guarantee, indemnity or security or enter into any other transaction that binds the State to any future financial commitment that is necessary or expedient for the development, construction, commissioning or effective operation of a public or privately owned electricity generation business. 50
- (3) The Regulator, in issuing a generation licence— 55
- (a) is bound by any determination made by the Minister in terms of subsection (1);

- (b) may facilitate the conclusion of an agreement to buy and sell power between a generator and a purchaser of that electricity.

(4) In exercising the powers under this section the Minister is not bound by the State Tender Board Act, 1968 (Act No. 86 of 1968).

Regulations, rules, guidelines, directives and codes of conduct and practice 5

47. (1) The Regulator may, after consultation with—

- (a) licensees;

(c) such other interested persons as may be necessary, make guidelines and publish codes of conduct and practice, or make rules by notice in the *Gazette*. 10

(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 and end users;
- (c) performance objectives and the setting, approving and meeting of performance improvement targets; 15
- (d) codes of practice relating to the operation, use and maintenance of transmission and distribution power systems;
- (e) any other ancillary or administrative matter appropriate for the proper implementation of this Act. 20

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

- (a) the keeping of information, the rendering of returns and the period for and format in which information must be kept, as well as the persons or institutions it must be rendered to; 25
- (b) standards of quality of supply and service;
- (c) the operation, use and maintenance of transmission and distribution power systems;
- (d) trading;
- (e) technical and safety standards; 30
- (f) the form and manner of applying for licences;
- (g) publishing of advertisements by licensees and the contents thereof;
- (h) the form and manner of applying for and the fees payable on application for licensing and registration;
- (i) the fees to be paid in respect of mediation and the settlement of disputes; 35
- (j) the setting of a framework for the determination of the period of validity of licences, criteria for the transfer and renewal of licences and the transfer or use of assets on a licence lapsing, including the ownership thereof;
- (k) any other ancillary or administrative matter for which it is necessary to make rules for the proper implementation of this Act. 40

(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) norms and standards relating to quality of supply; 45

- (m) new generation capacity;
- (n) the types of energy sources from which electricity must be generated;
- (o) the percentages of electricity that must be generated from different energy sources; 50
- (p) the participation of the private sector in new generation activities;
- (q) the setting of standards relating to health, safety and environment and the incorporation thereof into licences or national norms and standards;
- (r) the prohibition of certain practices in the electricity supply industry;
- (s) the criteria for or prohibition of cross-ownership or vertical and horizontal integration by licensees in generation, transmission and distribution assets; 55
- (u) the conditions subject to which the Regulator may issue a licence;
- (v) any other matter that may or has to be prescribed in terms of this Act; and
- (w) any other ancillary or administrative matter that it is necessary to prescribe for the proper implementation or administration of this Act. 60

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

- (a) consult with the Regulator;
- (b) invite public comments on the proposed regulations; and
- (c) duly consider the comments received.

5

Repeal of laws and savings

48. (1) Subject to subsections (2) and (3), the laws specified in Schedule 1 are hereby repealed or amended to the extent set out in the third column of that Schedule.

(2) Anything done by the National Electricity Regulator in terms of the Electricity Act, 1987, prior to the commencement of this Act, and which may validly be done by the Regulator in terms of this Act, is deemed to have been done in terms of this Act. 10

(3) Licences issued in terms of the Electricity Act, 1987, or that are deemed to have been issued in terms thereof prior to the commencement of this Act, continue in force as if they had been issued in terms of this Act: Provided that—

- (a) such licences lapse on a date determined by the Minister by notice in the *Gazette*; 15
- (b) the Regulator is obliged to issue substituting licences to the licensees concerned, in accordance with this Act, prior to such licences lapsing; and
- (c) conditions imposed in terms of substituting licences issued under paragraph (b) may not be more onerous in their application than those of the licences they replace. 20

(4) The Minister may, after consultation with the Regulator and any person who may be affected thereby, amend Schedule 2 by notice in the *Gazette*.

Short title and commencement

49. (1) This Act is called the Electricity Regulation Act, 2005, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 25

(2) Despite subsection (1), section 46 must be regarded as having come into operation on 1 December 2004.

SCHEDULE 1

REPEAL, AMENDMENT AND SUBSTITUTION OF LAWS

No and Year of Act	Short Title	Extent of repeal, amendment or substitution
Act No. 41 of 1987	Electricity Act, 1987	The repeal of the whole, with the exception of section 5B.
Act No. 84 of 1990	Kwa Zulu and Natal Joint Services Act, 1990	The amendment of Schedule 3 by the deletion of the item referring to the Electricity Act, 1987 (Act No. 41 of 1987).
Act No. 40 of 2004	National Energy Regulator Act	1. The substitution in section 4(1) for paragraph (c) of the following paragraph: “(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.] Electricity Regulation Act, 2005”. 2. The deletion of subsection 4(2). 3. The substitution in section 7(1) for paragraph (d) of the following paragraph: “(d) materially fails to perform any duty imposed on him or her in terms of this Act, [electricity Act] the Electricity Regulation Act, 2005, the Gas Act or the Petroleum Pipelines Act;”.

SCHEDULE 2

EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

1. Any generation plant constructed and operated for demonstration purposes only and not connected to an inter connected power supply
2. Any generation plant constructed and operated for own use
3. Non-grid connected supply of electricity except for commercial use

MEMORANDUM ON THE OBJECTS OF THE ELECTRICITY REGULATION BILL

1. BACKGROUND

The White Paper on Energy that was adopted by Parliament in 1998 highlights the need for proper regulation of the energy industry for the benefit of all South Africans. Electricity is one of the three components of energy and there is a need to enact legislation to clarify the roles of the different stakeholders in that industry. Government's intention is to optimise the operation of the industry to maximise the potential for adequate, reliable and low cost electricity to serve the people and industries of South Africa.

The Electricity Act, 1987 (Act No. 41 of 1987), provides for the National Electricity Regulator (NER) to regulate all aspects of the electricity industry. This Act is now inadequate and needs to be replaced and aligned with the Constitution. The first step in this process was the establishment of the National Energy Regulator.

The National Energy Regulator was established by the National Energy Regulator Act, 2004, to take over the functions of the National Electricity Regulator with regard to the electricity industry.

2. OBJECTS

- 2.1 The main object of this Bill is to set out the role of the National Energy Regulator in respect of the electricity industry, with regard to licensing, setting of tariffs and setting of norms of standards for the operators in the electricity industry.
- 2.2 This Bill provides for the specific legal framework for the generation, transmission and distribution of electricity to individuals, communities and the business sector.
- 2.3 The Bill further provides for the establishment of privately owned electricity generators.
- 2.4 The Bill recognises the right of municipalities, in terms of Schedule 4B to the Constitution, to reticulate electricity and at the same time regulates that right in order to ensure that municipalities meet the objectives of government in the electricity industry.
- 2.5 The Bill provides for procedures and penalties to deal with non-compliance with the norms and standards. It also deals with licensing matters, creates a dispute resolution mechanism and provides for intervention by the Minister where necessary.
- 2.6 This Bill proposes to repeal the Electricity Act, 1987 (Act No. 41 of 1987).

3. DEPARTMENTS/ORGANISATIONS CONSULTED

- 3.1 The following institutions were consulted as stakeholders affected by the Electricity Regulation Bill:
 - National Electricity Regulator;
 - Eskom;
 - Department of Provincial Local Government;
 - Department of Water Affairs;
 - National Treasury;

- South African Local Governments Association (SALGA);
- NEDLAC;
- AMEU;
- Competition Commission; and
- Department of Public Enterprises.

3.2 The Bill was published for public comment and additional inputs were received from the following stakeholders:

- Sasol;
- AMEU;
- BHP Billiton;
- Umhlathuze Municipality;
- Energy Intensive User Group (EIUG);
- SECCP;
- Chamber of Mines South Africa;
- EDI Holding;
- SALGA;
- COSATU;
- NER; and
- ESKOM.

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

None. The National Energy Regulator is already established and the Bill merely fleshes out its functions in respect of the electricity industry.

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 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 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.

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