

Namibia

## Electricity Act, 2007

Act 4 of 2007

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# Electricity Act, 2007

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**Act 4 of 2007**

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**ACT**

To establish the Electricity Control Board and provide for its powers and functions; to provide for the requirements and conditions for obtaining licences for the provision of electricity; to provide for the powers and obligations of licensees; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

**Part I – PRELIMINARY**

**1. Definitions**

In this Act, unless the context indicates otherwise -

“**Board**” means the Electricity Control Board established by section 2;

“**chief executive officer**” means the chief executive officer of the Board appointed under section 11;

“**code**” means a code made by the Board under section 3(4);

“**committee**” means a committee established by the Board under section 8;

“**consumer**” means an end user of electricity who consumes such electricity;

“**customer**” means a person to whom electricity is delivered by a licensee, and includes a consumer;

“**distribution**”, in relation to electricity, means the conveyance of electricity by means of a distribution system, which consists wholly or mainly of medium and low voltage networks, to a customer;

“**financial year**” means the financial year of the Board referred to in section 14;

“**generation**” in relation to electricity, means the production of electricity by way of natural or artificial processes;

“**guideline**” means a guideline issued by the Board under this Act;

“**electricity market**” means a market on which electricity is traded and which is established, operated and administered in accordance with the regulations, rules and codes made and guidelines issued in terms of this Act;

“**high voltage**” means a voltage of more than 44 000 volts (RMS);

“**kVA**” means kilo-Volt Amperes;

“**licence**” means a licence contemplated in section 17;

“**licensee**” means the holder of a licence;

“**Local Authorities Act**” means the Local Authorities Act, 1992 (Act [No. 23 of 1992](#));

“**local authority council**” means a local authority council as defined in section 1 of the Local Authorities Act;

“**low voltage**” means a voltage of 1 000 Volts (RMS) or less;

“**medium voltage**” means a voltage of more than 1 000 Volts (RMS) but not more than 44 000 volts (RMS);

“**member**” means a member of the Board appointed under section 4;

“**Minister**” means the Minister responsible for energy;

“**prescribed**” means prescribed by regulation;

“**provision**”, in relation to electricity, includes the generation, transmission, trading, supply, distribution, import and export of electricity, and “provide” and “provider” have corresponding meanings;

“**regional council**” means a regional council established by section 2 of the Regional Councils Act;

“**Regional Councils Act**” means the Regional Councils Act, 1992 (Act [No. 22 of 1992](#));

“**repealed Act**” means the Electricity Act, 2000 (Act [No. 2 of 2000](#));

“**RMS**” means root mean square;

“**regulation**” means a regulation made under section 43;

“**rule**” means a rule made by the Board under section 3(4);

“**standard**” means any provision occurring in any specification, code or other directive having standardization as its aim and issued by an institution or organization (including the Board) inside or outside Namibia which, whether generally or with regard to any particular article or matter and whether internationally or in any particular country or territory (including Namibia), seeks to promote standardization, and includes any amendment or substitution thereof;

“**State-owned Enterprises Governance Act**” means the State-owned Enterprises Governance Act, 2006 (Act [No. 2 of 2006](#));

[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]

“**supply**”, in relation to electricity, means the delivery of electricity to a customer as a commodity;

“**this Act**” includes the regulations;

“**trading**”, in relation to electricity, means the wholesale or retail buying and selling of electricity;

“**transmission**”, in relation to electricity, means the conveyance of electricity by means of a transmission system, which consists wholly or mainly of high voltage networks and electrical plant, from an energy source or system to a customer;

“**voltage**” means the electric potential between two points that gives rise to the flow of electricity and where specified, the RMS value of the voltage.

## **Part II – ELECTRICITY CONTROL BOARD**

### **2. Establishment of Electricity Control Board**

The Electricity Control Board is hereby established as a juristic person.

### **3. Objects, powers and functions of Board**

- (1) The objects of the Board are -
  - (a) to exercise control over and regulate the provision, use and consumption of electricity in Namibia;
  - (b) to oversee the efficient functioning and development of the electricity industry and security of electricity provision;
  - (c) to ensure the efficient provision of electricity;
  - (d) to ensure a competitive environment in the electricity industry in Namibia with such restrictions as may be necessary for the security of electricity provision and other public interest; and
  - (e) to promote private sector investment in the electricity industry, in accordance with prevailing Government policy.
- (2) In order to achieve its objects the Board -
  - (a) must make recommendations to the Minister with regard to -
    - (i) the issue, transfer, amendment, renewal, suspension and cancellation of licences; and
    - (ii) the approval of the conditions on which electricity may be provided by a licensee;
  - (b) may, and must at the request of the Minister, advise the Minister on any matter relating to the electricity industry;
  - (c) must, at the request of any interested party, act as mediator for the settlement of disputes between licensees or between licensees and their customers or prospective customers regarding -
    - (i) the right to the supply of electricity;
    - (ii) the quality of any such supply and the provision of services in connection therewith;
    - (iii) the installation and functioning of meters;
    - (iv) the suitability of the equipment of a licensee;
    - (v) delays in or refusal of supply by a licensee;
    - (vi) any other matter which a licensee or customer refers to the Board for mediation; and
  - (d) must perform such other functions as are assigned to it by or under this Act or any other law.
- (3) The Board may, for the purposes of subsection (2)(b), carry out such investigations as it or the Minister may deem necessary or expedient.

- (4) Subject to this Act and the prior approval of the Minister, the Board may by notice in the Gazette make such rules and codes as it considers necessary in order to further its objects mentioned in subsection (1), including, rules and codes relating to -
- (a) the establishment, operation and administration of electricity markets, and the licensees and other persons operating on such markets and any other matter relating thereto, which includes the issuing of safety code and a grid code the latter setting out the reciprocal obligations of users of the transmission and distribution networks and the operation of the interconnected power system;
  - (b) the introduction of market rules, the Board's market responsibilities, prudential requirements, the establishment and regulation of spot markets, regions and regional reference nodes, network losses and constraints, projected assessment of system adequacy, central dispatch and spot market operation, spot price determination, ancillary services, reliability safety net, market information, administrative price cap and market suspension, settlements, participant compensation fund, software and settlement residue actions, registered bid and offer data, methods for determining loss factors and principles for determining credit limits;
  - (c) power system security and safety;
  - (d) network connections;
  - (e) network and market pricing mechanisms;
  - (f) metering;
  - (g) good corporate governance and rules relating to objectivity, transparency and independency;
  - (h) administrative matters;
  - (i) any other matter it is authorized in terms of this Act to make rules or codes; and
  - (j) any matter with regard to which the Minister may prescribe regulations under this Act subject thereto that in the event of any regulation so prescribed conflicting with a rule or code of the Board the regulation prevails.
- (5) The Board may by notice in the Gazette issue guidelines to enhance and clarify the understanding, applicability and enforcement of any rule or code.
- (6) The rules and codes may -
- (a) require acts or things to be performed or done to the satisfaction of the Board;
  - (b) empower the Board to issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done,
- and determine periods or dates upon, within or before which such acts or things must be performed or done or may not be performed or done.
- (7) Prior to the approval of the Minister under subsection (4) and the publishing of its rules, codes or guidelines, the Board must consult with the affected role players in the electricity industry with regard to the scope, content and implementation of such rules, codes or guidelines in the manner which the Board considers appropriate.
- (8) The Board must keep an updated copy of its rules, codes and guidelines at its offices, which copy may be inspected by any interested person free of charge.
- (9) A contravention of a rule or a code is an offence and section 42(1) applies thereto with the necessary changes.



#### 4. Composition of the Board

- (1) The Board consists of five members who, subject to subsection (2), must be appointed by the Minister from amongst persons who have appropriate expertise and experience in one or more of the following, namely, the electricity industry, law, economics or environmental issues, in accordance with section 15 of the State-owned Enterprises Governance Act.

**[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]**

- (2) A person may not be appointed as a member if he or she -
- (a) is not a Namibian citizen;
  - (b) is an unrehabilitated insolvent; or
  - (c) has been convicted of an offence, other than a political offence committed before the date of Namibia's independence, for which that person has been sentenced to imprisonment without the option of a fine for a period of 12 months or more.
- (3) The Minister must appoint two of the members as chairperson and vice-chairperson of the Board, respectively.

#### 5. Term of office

Subject to section 6, a member holds office for a term of four years, and is eligible for reappointment at the end of that term.

#### 6. Vacation of office and filling of vacancies

- (1) The office of a member becomes vacant if he or she -
- (a) becomes subject to a disqualification mentioned in section 4(2);
  - (b) is absent from three consecutive meetings of the Board without the permission of the Board;
  - (c) resigns by notice in writing to the Minister; or
  - (d) is removed from office under subsection (2).
- (2) The Minister may remove a member from office if the Minister, after affording the member an opportunity to be heard, is satisfied that the member -
- (a) is incapacitated by physical or mental illness; or
  - (b) for any other valid reason is unable or unfit to efficiently discharge the functions of a member of the Board.
- (3) If a member dies or vacates his or her office before the expiration of his or her term of office, the Minister must appoint a suitable person to fill the vacancy for the remaining portion of that member's term of office.

#### 7. Meetings of the Board

- (1) The chairperson of the Board must convene the first meeting of the Board and thereafter, subject to subsection (2), meetings must be held at such times and places as the Board determines, but at least one meeting must be held every three months.
- (2) The chairperson of the Board may at any time, and must if so requested in writing by the Minister or by at least three members, convene a special meeting of the Board.
- (3) The majority of the members forms a quorum at a meeting of the Board.

- (4) The chairperson of the Board or, in his or her absence, the vice-chairperson or, in the absence of both, such other person as the members present may elect from amongst their number, must preside at a meeting of the Board.
- (5) A decision of the majority of the members present at a meeting of the Board constitutes a decision of the Board and, in the event of an equality of votes, the person presiding at the meeting has a casting vote in addition to a deliberative vote.
- (6) The Board may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Board, but such person has no right to vote.
- (7) The Board must cause proper minutes to be kept of proceedings at its meetings.
- (8) All meetings of the Board and its committees are open to the public, unless the chairperson of the Board or committee, as the case may be, in cases where he or she deems it justifiable and having given reasons therefor to persons present, orders the public to withdraw from the meeting for the duration of the discussion of a particular matter or matters on the agenda.
- (9) All resolutions of the Board, except those taken at a meeting not open to the public, must be made publicly known by affixing a copy thereof to a notice board at the offices of the Board and, if the Board so decides, in any other manner as the Board may determine.
- (10) Despite anything to the contrary in this section, the Board need not hold a meeting if the members agree thereto in writing, and in such event -
  - (a) a decision in writing dealing with a matter to be dealt at such a meeting and signed by the requisite majority of members is deemed to be a decision taken by the Board and held in terms of this section on the date on which the last signature to such decision is affixed;
  - (b) a decision contemplated in paragraph (a) must be recorded in the minutes of the first meeting of the board held subsequent to such a decision being taken.
- (11) Despite the absence of a similar provision in the repealed Act, any decision taken as contemplated in subsection (10) on 12 July 2000 or thereafter but before the commencement of this Act is deemed to have been taken in accordance with that subsection.

## **8. Committees**

- (1) The Board may, from amongst its members, establish any committee -
  - (a) to advise the Board on any matter concerning the functions of the Board as the Board may determine; or
  - (b) to perform such functions of the Board as the Board may assign to the committee.
- (2) With the permission of the Board, a committee may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the committee, but such person has no right to vote.

## **9. Disclosure of interest by members**

- (1) If a member or his or her spouse, or any company, close corporation or partnership of which the member or his or her spouse is a director, shareholder, member or partner, is in any way directly or indirectly interested in a contract entered, or proposed to be entered, into by the Board or a committee, or in any other matter which is the subject of consideration by the Board or committee, and which may cause a conflict of interests in the performance of his or her duties as member, that member must -
  - (a) forthwith fully disclose the nature of such interest at the meeting of the Board or committee at which such contract or other matter is the subject of consideration; and

- (b) withdraw from the meeting so as to enable the remaining members to discuss the matter and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests.
- (2) A disclosure by a member in accordance with subsection (1), and the decision taken by the remaining members in connection therewith, must be recorded in the minutes of that meeting.
- (3) A member who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

## 10. Remuneration of members

A member who is not in the full-time employment of the Public Service must be paid from the funds of the Board such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, determines, subject to section 22(1) of the State-owned Enterprises Governance Act.

**[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]**

## 11. Chief Executive Officer and other staff

- (1) The Board, with the concurrence of the Minister, must appoint a suitable person who has expertise relevant to the functions of the Board as Chief Executive Officer of the Board.
- (2) The Chief Executive Officer -
  - (a) is an ex officio member of the Board, but has no right to vote;
  - (b) holds office for a term of five years, and is eligible for reappointment at the end of that term;
  - (c) is responsible for the carrying out of the resolutions of the Board and manages the affairs of the Board subject to the control and directions of the Board;
  - (d) may, subject to the directions of the Board, appoint such employees as are necessary to enable the Board to properly carry out its functions.
- (3) Whenever the office of the Chief Executive Officer is vacant, or the Chief Executive Officer is for any reason unable to perform the functions of the office, the Board, may appoint -
  - (a) a staff member of the Board; or
  - (b) any other suitable person,to act as Chief Executive Officer during the vacancy or during the period that the Chief Executive Officer is unable to perform those functions.
- (4) Subject to section 22(3) of the State-owned Enterprises Governance Act, the Board,
  - [The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]**
  - (a) with the concurrence of the Minister, determines the conditions of service, remuneration and other benefits of the Chief Executive Officer and other management staff; and
  - (b) determines the conditions of service, remuneration and other benefits of its staff members below management level.

## Part III – FINANCIAL PROVISIONS

### 12. Funds of Board

- (1) The funds of the Board consist of -
  - (a) money that may be appropriated to the Board by Parliament from time to time;
  - (b) fees payable to the Board in terms of this Act;
  - (c) money collected in respect of levies imposed under section 13;
  - (d) money raised by way of loans with the approval of the Minister and the concurrence of the Minister of Finance;
  - (e) interest on investments made under subsection (2);
  - (f) donations or grants made to the Board with the approval of the Minister and the concurrence of the Minister of Finance; and
  - (g) money accruing to the Board from any other source.
- (2) The Board, with the approval of the Minister and the concurrence of the Minister of Finance, may invest any portion of its funds not immediately required by it.
- (3) All expenses incidental to the performance of the functions of the Board must be defrayed from the funds of the Board.

### 13. Levies

- (1) In order to defray the expenses incurred in the performance of the functions of the Board, the Minister may by notice in the Gazette impose a levy on every kilowatt-hour of electricity provided or consumed at any point in Namibia or upon any licensee.
- (2) A notice in terms of subsection (1) -
  - (a) must state the amount or rate of the levy or the basis or method of calculation or determination of the levy;
  - (b) must specify the date on which or the periods within which the levy is payable and the manner of payment;
  - (c) must specify the person who is liable for the payment of the levy;
  - (d) may state the person who is responsible for the collection of the levy and, in the event of there being administrative cost involved in such collection, the manner in which such cost may be recovered, including the amount or rate at which it may be recovered, but provided that such amount or rate must be cost-reflective;
  - (e) may specify the penalty or interest payable in the event of the late payment of the levy or any part thereof;
  - (f) may specify the circumstances and the manner in which exemption from the payment of any levy imposed under subsection (1) may be granted;
  - (g) may specify the measures to be applied where any person who is liable to pay the levy refuses or fails to pay that levy, including the creation of an offence punishable by way of a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and

- (h) may specify any other provision which the Minister considers necessary for the efficient administration of the imposition, payment or collection of the levy or the efficient application of this subsection.
- (3) Prior to the publication of a notice contemplated in subsection (1), the Minister must consult with the Board and the affected role players in the electricity industry with regard to the scope, content, amount and implementation of such levy.

#### **14. Financial year**

The financial year of the Board ends on 31 March in each year.

#### **15. Accounts and audit**

- (1) The Board must, in accordance with generally accepted accounting practice and procedure, cause proper books and records of account to be kept of all financial transactions, assets and liabilities of the Board.
- (2) As soon as possible after the end of each financial year, the Board must have financial statements prepared for that year, consisting of a statement of income and expenditure and a balance sheet which must reflect the Board's financial position as at the end of the financial year.
- (3) The Board's books and records of accounts and financial statements must be audited annually by an auditor or auditors engaged in public practice as defined in section 1 of the Public Accountants and Auditors Act, 1951 (Act [No. 51 of 1951](#)), and who must be appointed by the Board with the prior approval of the Minister.
- (4) For the purpose of performing the functions in terms of this Act, an auditor of the Board has all the powers which are vested in the Auditor-General with respect to a statutory institution in terms of section 26(1) of the State Finance Act, 1991 (Act [No. 31 of 1991](#)), and which the Auditor-General would have been competent to exercise had the Auditor-General been assigned the duty to act as auditor of the Board by this Act.
- (5) The auditors must prepare a report on the audit of the books and records of account and the financial statements of the Board and submit such report to the Board within four months after the end of the financial year in respect of which the audit has been carried out.

#### **16. Furnishing of information and annual report**

- (1) The Board must -
  - (a) furnish to the Minister such information as the Minister may call for in connection with the activities and financial position of the Board; and
  - (b) within six months after the end of each financial year, submit to the Minister a report on its activities during that financial year, which must include -
    - (i) the Board's audited balance sheet and income and expenditure statement, and any notes thereon or document annexed thereto providing information required by this Act; and
    - (ii) the audit report of the auditors.
- (2) The balance sheet and statements referred to in subsection (1)(b) must -
  - (a) be in conformity with generally accepted accounting practice;
  - (b) fairly present the state of affairs and activities of the Board and the results thereof; and

- (c) refer to any material matters not specifically prescribed by this Act which affect or are likely to affect the affairs of the Board, both by way of figures and a descriptive report, amplifying and explaining, where necessary, figures in the financial statements.
- (3) The Minister must table the report referred to in subsection (1)(b) in the National Assembly within 21 days after the receipt thereof, if the National Assembly is then in ordinary session, or, if it is not in ordinary session, within 14 days after the commencement of its first ensuing session.

## **Part IV – LICENCES**

### **17. Duty to obtain a licence**

- (1) Despite any law to the contrary and subject to this Act, no person may establish or carry on any undertaking for -
  - (a) the generation of electricity;
  - (b) the trading of electricity;
  - (c) the transmission of electricity;
  - (d) the supply of electricity;
  - (e) the distribution of electricity;
  - (f) the importation of electricity; or
  - (g) the export of electricity,unless such person holds a licence issued under this Act that authorises the particular activity.
- (2) A separate licence is required for each of the activities mentioned in subsection (1).

### **18. Exemptions to licence requirements**

- (1) Despite section 17, a licence is not required -
  - (a) in an unlicensed area or a licensed area where no supply network is available, for the generation of electricity by means of a generation plant which -
    - (i) has an installed capacity of less than 500 kVA; and
    - (ii) generates electricity exclusively for own consumption by the person in control of such plant and on premises owned or occupied by that person;
  - (b) in a licensed area where a supply network is available, for the generation of electricity by means of a generation plant which -
    - (i) has an installed capacity of less than 500 kVA; and
    - (ii) generates electricity as a standby supply exclusively for own consumption by the person in control of such plant and on premises owned or occupied by that person;
  - (c) for the distribution of electricity by a person who installs or has installed a distribution network exclusively for own consumption on premises owned or occupied by that person, where the estimated total demand of the installation is less than 500 kVA; or
  - (d) if exempted by the Minister on recommendation of the Board.

- (2) Any person who installs or has installed a distribution network on premises owned or occupied by that person, where the estimated total demand of the installation is 500 kVA or more -
  - (a) whether the electricity is distributed exclusively for own consumption by that person or for consumption by another person; or
  - (b) whether the electricity supplied is resold or not,may apply to the Board for an exemption from section 17(1).
- (3) An application for exemption in terms of subsection (2) is not required in respect of the internal electricity provision to occupants thereof by -
  - (a) building installations, including shopping complexes and shopping malls; and
  - (b) high density housing developments to which only low voltage electricity is distributed,which are exempted from the requirement to have a licence in terms of this Act.
- (4) For the purposes of subsections (1) and (3), electricity may only be generated or distributed with due compliance with -
  - (a) rules or codes made by the Board relating to, amongst others, charges for the provision of electricity; and
  - (b) the requirements of any other law, in particular laws relating to health, safety and environmental standards.
- (5) An application for an exemption in terms of subsection (2) must be advertised, at the expense of the applicant, in the prescribed manner.
- (6) Any objection to an exemption must be submitted to the Board in the prescribed manner.
- (7) The Board must consider an application in terms of subsection (2) and any objection thereto, and may for that purpose, at its discretion, arrange for a public hearing of the application at a suitable time and place of which not less than 14 days' notice must be given to the applicant and every objector.
- (8) At a hearing in terms of subsection (7), the applicant and an objector may be represented by a person of the applicant's or objector's choice and may lead evidence in support of the application or objection.
- (9) Not later than 30 days after conclusion of a hearing in terms of subsection (7) or, if no hearing was arranged 30 days after the expiry of the period allowed for the submission of objections in terms of subsection (6), the Board must submit the application and any objection thereto, together with its recommendations thereon, to the Minister, including any conditions which the Board recommends, should be imposed in relation to the exemption.
- (10) The Minister may either grant or refuse an application for an exemption.
- (11) The Minister may impose such conditions to an exemption granted under subsection (10), which the Minister considers to be in the public interest and necessary for the sake of the rational organisation of the provision of electricity, including conditions -
  - (a) relating to charges for the provision of electricity; and
  - (b) public health, public safety or the protection of the environment.
- (12) If an application for an exemption is refused, the Minister must in writing inform the applicant of the reasons for the refusal.
- (13) If an application for an exemption is granted by the Minister, the Board must issue the exemption in such form as the Board determines.

## 19. Trading of electricity

The Board may, if so granted by the Minister, issue one or more licences for the trading of electricity, subject to such conditions as the Minister, on recommendation of the Board, may determine, and subject further thereto that -

- (a) trading in electricity may only be done through an electricity market;
- (b) the Board may apply rules or a code to such trading; and
- (c) for the purposes of the efficient functioning of such trading and such a market, the Minister may, in accordance with section 24(3) and (4), effect such changes and additions to the conditions of a licensee as the Minister regards necessary for this purpose.

## 20. Application for licence

- (1) An application for the issue of a licence must -
  - (a) be submitted to the Board; and
  - (b) be advertised, at the expense of the applicant, in the prescribed manner.
- (2) Any objection to the issue of a licence must be submitted to the Board in the prescribed manner.
- (3) The Board must consider an application in terms of subsection (1) and any objection thereto, and may, for that purpose, arrange for a public hearing of the application at a suitable time and place of which not less than 14 days' notice must be given to the applicant and every objector.
- (4) At a hearing in terms of subsection (3), the applicant and an objector may be represented by a person of the applicant's or objector's choice and may lead evidence in support of the application or objection.
- (5) Not later than 30 days after conclusion of a hearing in terms of subsection (3) or, if no hearing was arranged, 30 days after the expiry of the period allowed for the submission of objections in terms of subsection (2), the Board must submit the application and any objection thereto, together with its recommendations thereon, to the Minister, including any conditions which the Board recommends should be imposed in relation to the licence.
- (6) The Minister may either grant or refuse an application for the issue of a licence.
- (7) If an application for the issue of a licence is refused the Minister must in writing inform the applicant of the reasons therefor.
- (8) If an application is granted by the Minister, the Board must issue the licence in such form as the Board determines, which must -
  - (a) specify the particular activity authorised by the licence;
  - (b) define the area in respect of which the licence is issued;
  - (c) contain or have attached to it any conditions imposed in relation to the licence, in addition to those provided for in this Act; and
  - (d) if applicable, contain a schedule specifying the approved tariffs that may be charged by the licensee for the provision of electricity to different classes of customers.

## 21. Criteria for consideration of application

- (1) The Minister, in considering an application for the issue, renewal, amendment or transfer of a licence, and the Board, in making its recommendation to the Minister on such application, must give due consideration to matters or activities which may adversely affect, or result in damage to,



the environment or the rights of others, and weigh against the advantages in general that may be derived from the grant of the application.

- (2) Without derogating from the generality of the provisions of subsection (1), the Minister or the Board may -
  - (a) request the applicant to submit -
    - (i) an environmental impact assessment study indicating the extent of any potential damage to or pollution of the environment and the steps proposed to be taken by the applicant to prevent or minimise such damage or pollution and to restore the environment generally and in terms of existing environmental legislation;
    - (ii) details of the technical and economic-financial resources available to the applicant to execute the work, to operate the system and to carry on the business to which the application or licence relates, substantiated by documentary proof where applicable;
  - (b) take into consideration -
    - (i) the extent to which the activities of the applicant will or may be detrimental to or adversely affect the rights and operation of other licensees or their customers in their area of operation;
    - (ii) the ability of the applicant to provide an effective service to customers; and
    - (iii) whether the grant or refusal of the application in question is in the public interest.

## 22. Incomplete information or premises

- (1) If an application for the issue or amendment of a licence is made in respect of which not all information required for the application is available or premises which still require work of a structural nature to be carried out, including the installation of plant and equipment, before operations under the licence can be commenced, the Minister may grant the licence or the amendment -
  - (a) subject to compliance with such conditions and requirements; and
  - (b) subject to such period,as the Minister may determine before the licence is issued or amended.
- (2) The Board must in writing inform the applicant of the conditions, requirements and periods imposed under subsection (1).
- (3) The Minister may at any time, on application of the applicant concerned -
  - (a) withdraw or amend any condition or requirement referred to in subsection (1);
  - (b) extend or further extend the period referred to in that subsection;
  - (c) approve an amended plan in respect of the premises referred to in subsection (1).
- (4) When the Board is satisfied that the information is complete or premises referred to in subsection (1) have been completed in accordance with the approved plan thereof, the conditions and requirements determined by the Minister have been complied with and the premises are suitable for the purpose for which they are used under the licence, the Board must issue or amend, as the case may be, such licence.
- (5) A licence or an amendment granted in terms of subsection (1) lapses if the licence is not issued or amended before the expiration of the period referred to in that subsection or any extension thereof under subsection (3)(b).

## 23. Duration and renewal of licences

- (1) Unless sooner cancelled under section 32, a licence remains valid for such period, not exceeding 50 years, as may be determined by the Minister and stated in the licence.
- (2) A licence may be renewed from time to time for such further periods, not exceeding 50 years each, as the Minister may determine.
- (3) All licence renewals done since the commencement of the repealed Act until the commencement of this Act are deemed to have been validly renewed despite non-compliance with any section of, or any regulation issued under, the repealed Act.

## 24. Conditions of licence

- (1) A licence is subject to such conditions as may be prescribed and to such other conditions as the Minister, on recommendation of the Board, may impose when granting an application for the issue, renewal, amendment or transfer of a licence, subject thereto that the schedule of tariffs contained in the licence must be approved by the Board as contemplated in section 27.
- (2) Without derogating from the generality of the power conferred by subsection (1), conditions prescribed or imposed under that subsection may include provisions relating to -
  - (a) the provision by a licensee of institutional support, transfer of technology and the funding thereof on a specified basis;
  - (b) the obligations of the licensee, upon cessation of the activities carried on under the licence concerned, with regard to the destruction, dismantling or removal of any buildings, walls, installations, equipment, structures, waste dumps or other facilities erected or used for purposes of, or in connection with, those activities, whether on the premises of the licensee or elsewhere, and the restoration of any land disturbed by such activities;
  - (c) the furnishing by the licensee of acceptable security for compliance with any condition contemplated in paragraph (b);
  - (d) prohibitions relating to the provision of electricity, including prohibitions on the trading of electricity, unless the electricity concerned is obtained under the conditions and from the person or persons determined in such licence, or sold on the conditions and to the person or persons so determined.
- (3) If the Minister, on recommendation of the Board, is satisfied that it would be in the public interest and necessary for the sake of the rational organisation of the provision of electricity to change any condition of a licence, excluding the schedule of approved tariffs, the Minister may -
  - (a) after the costs involved for the licensee and the general benefits and disadvantages that may result from the change have been taken into account; and
  - (b) subject to any procedures the Minister may prescribe with regard to such change, direct the Board to effect such change to the licence.
- (4) The Minister may not act under subsection (3) unless the Minister has -
  - (a) notified the licensee in writing of his or her intention to act in terms of that subsection and has informed the licensee of all the relevant facts pertaining to the proposed change; and
  - (b) afforded the licensee the opportunity to make representations to him or her in respect of the proposed change within a reasonable time.
- (5) For the purposes of subsection (4)(b), the licensee may be represented by a person of the licensee's choice and may lead evidence in support of the representations.

## 25. Transfer of licence

- (1) A licence may not be transferred to any other person, unless the Minister, on recommendation of the Board, has granted approval therefor.
- (2) An application for the transfer of a licence must -
  - (a) be made by the licensee and proposed transferee jointly, unless one of the parties does not so participate in such application in which event the Board may on good cause shown waive the requirement that both parties must make the application;
  - (b) be submitted to the Board; and
  - (c) be advertised at the expense of the applicants, in the prescribed manner.
- (3) Any objection to the transfer of a licence must be submitted to the Board in the prescribed manner.
- (4) The Board must consider an application in terms of subsection (1) and any objection thereto, and may, for that purpose, arrange for a public hearing of the application at a suitable time and place of which not less than 14 days notice must be given to the applicants and every objector.
- (5) At a hearing in terms of subsection (4), the applicants and an objector may be represented by a person of the applicant's or objector's choice and may lead evidence in support of the application or objection.
- (6) Not later than 30 days after conclusion of a hearing in terms of subsection (4) or, if no hearing was arranged, 30 days after the expiry of the period allowed for the submission of objections in terms of subsection (3), the Board must submit the application and any objection thereto, together with its recommendations thereon, to the Minister, which recommendations must include any conditions which the Board proposes should be imposed.
- (7) The Minister may either grant or refuse an application.
- (8) If an application for the transfer of a licence is refused the Minister must in writing inform the applicants of the reasons for the refusal.

## 26. Amendment of licence

- (1) A licence may, upon application by the licensee, and on recommendation of the Board, be amended by the Minister, but an application for an amendment which involves not more than a revision of the schedule of approved tariffs contained in the licence is considered and decided by the Board in terms of section 27.
- (2) An application for the amendment of a licence, not being an application solely for a revision of the schedule of approved tariffs, must -
  - (a) be made and submitted to the Board; and
  - (b) be advertised at the expense of the applicant, in the prescribed manner.
- (3) An objection to an application made in terms of subsection (2) must be submitted to the Board in the prescribed manner.
- (4) The Board must consider an application made in terms of subsection (2) and any objection thereto, and may for that purpose, arrange for a public hearing of the application at a suitable time and place of which not less than 14 days notice must be given to the applicant and every objector.

- (5) At a hearing in terms of subsection (4), the applicant and an objector may be represented by a person of the applicant's or objector's choice and may lead evidence in support of the application or objection.
- (6) Not later than 30 days after conclusion of a hearing in terms of subsection (4) or, if no hearing was arranged, 30 days after the expiry of the period allowed for the submission of objections in terms of subsection (3), the Board must submit the application and any objection thereto, together with its recommendations thereon, to the Minister, which recommendations must include any conditions which the Board proposes should be imposed.
- (7) The Minister may either grant or refuse the application.
- (8) If an application in terms of subsection (2) is refused the Minister must in writing inform the applicant of the reasons of the refusal.

## **27. Schedule of approved tariffs, revision thereof and other charges by licensees**

- (1) Subject to subsections (3) and (5), a licensee may not levy any charge in connection with the provision of electricity against any customer, other licensee or any other person other than in accordance with the tariffs specified in the schedule of approved tariffs contained in the licensee's licence.
- (2) The Board may from time to time, upon application by a licensee, revise the schedule of approved tariffs of the licence concerned and may require the licensee to submit such information as the Board may require for that purpose.
- (3) The Board may, in specific circumstances and on good cause shown, approve a deviation from a schedule of approved tariffs.
- (4) Unless the Board considers it to be in the public interest and necessary for the sake of rational organisation of the provision of electricity, this section does not apply to a licensee licensed to export or import electricity.
- (5) The Board may exempt any charge, cost or type of cost incurred in connection with the provision of electricity by a licensee from the requirements of subsection (1) subject to such conditions as the Board may determine.
- (6) Where a charge in a licensee's schedule of approved tariffs is such that it compromises the efficient use of electricity, the Board may, out of own accord, amend such schedule, after having considered -
  - (a) the economic impact of the amendment on the licensee and the licensee's customers;
  - (b) the representations made by the licensee as contemplated in subsection (7); and
  - (c) the general benefits and disadvantages that may result from the amendment,and subject thereto that such amendment will ensure the licensee's tariffs being sustainable and affordable in line with prudent electricity industry practices.
- (7) The Board may not act under subsection (6) unless the Board -
  - (a) has notified the licensee in writing of its intention to act in terms of that subsection and has informed the licensee of all the relevant facts pertaining to the proposed change; and
  - (b) has afforded the licensee the opportunity to make representations to it in respect of the proposed change within a reasonable time.
- (8) For the purposes of subsection (7), the licensee may be represented by a person of the licensee's choice and may lead evidence in support of the representations.
- (9) In the event of an amendment to the levy contemplated in section 13 such amended levy is from the date of commencement thereof applicable and payable in the manner determined by or under this Act despite a different levy appearing on an approved schedule of tariffs.

- (10) The Board may -
- (a) publish in the Gazette, any other newspaper or other type of media any application contemplated in subsection (2), including the tariffs applied for, or any approved schedule of tariffs or any other charge, levy, cost or type of cost to which this section relates;
  - (b) instruct a licensee to publish in the Gazette, any other newspaper or other type of media an application by such licensee contemplated in subsection (2), including the tariffs applied for, or any approved schedule of tariffs or any other charge, levy, cost or type of cost to which this section relates and to carry the cost of such publication;
  - (c) determine the type of information which, and the manner in which such information, must appear in the invoice of a licensee relating to the provision of electricity to any customer, other licensee or any other person.
- (11) A licensee who before the commencement of this Act had levied a charge in connection with the provision of electricity against a customer which charge was not in accordance with the tariffs specified in the schedule of approved tariffs in the licensee's licence -
- (a) may, within 60 days after the commencement, apply in writing to the Board for a review and reassessment of such unapproved charge;
  - (b) must set out in the application made under paragraph (a) the full details of the unapproved charge, the difference between such unapproved charge and the relevant schedule of approved tariffs and the reason for charging the unapproved charge;
  - (c) may make proposals to the Board as to manners in which the charging of such unapproved charge can be remedied.
- (12) On receipt of an application contemplated in subsection (11), the Board -
- (a) may request such additional information from the licensee as it may deem necessary;
  - (b) must review and reassess the licensee's actual charge and relevant schedule of approved tariffs to determine amendments necessary to the licensee's schedule of approved tariffs to align the schedule of tariffs with the previous tariffs approved by the Board and such other relevant factors as the Board may consider;
  - (c) must amend the schedule of approved tariffs to give effect to paragraph (b) and determine the date on which the amendment schedule of approved tariffs comes into operation.
- (13) Despite any law to the contrary, a charge with regard to which a licensee has made application under subsection (11) is deemed valid from the date of such charge having been charged by the licensee until such time as such charge is appropriately amended by the Board under subsection (12).

## **Part V – OBLIGATIONS OF LICENSEE**

### **28. Duty of licensee as to supply of electricity**

Subject to the availability of capacity and such further circumstances as may be prescribed, determined in a rule or code or included in the licence conditions of a licensee, a licensee who is licensed to supply electricity, must supply electricity within its licensed area to every person who applies therefor and who is capable of making satisfactory arrangement for payment for such supply.

## 29. Changes to licensed area and substitution of licensee

- (1) If the Board considers it to be in the public interest and necessary for the sake of the rational organisation of the provision of electricity, the Board may at any time require a licensee -
  - (a) to effect such changes or additions to the licensed area of the licensee as the Board may determine; or
  - (b) to give up all or any part of such area to another licensee or prospective licensee as the Board may determine, subject to an agreement for the payment of just compensation by such other licensee, on the basis and in the manner approved by the Board, for the facilities given up.
- (2) Where the Minister refuses an application for a licence, or for the renewal, transfer or amendment of a licence, or, under section 32, cancels or suspends the licence of a licensee, the Minister may, on recommendation of the Board and subject to such conditions as the Minister may determine, authorise an appropriate licensee or a prospective licensee in writing as a substitute electricity provider to enter upon and take control of the undertaking of -
  - (a) the applicant whose application has been refused; or
  - (b) the licensee whose licence has been cancelled or suspended..

**[There is an extra full stop at the end of paragraph (b).]**

- (3) A substitute electricity provider referred to in subsection (2) must, for the period and subject to such conditions as the Minister may determine, including a condition on the remuneration of the substitute electricity provider -
  - (a) diligently and with reasonable care operate the undertaking for and on account of, and at the risk and reasonable expense of, that applicant or licensee;
  - (b) remit -
    - (i) the balance, if any, of the net income derived from the undertaking to that applicant or licensee; or
    - (ii) such amount, if any, as the Board may determine as being reasonable compensation to that applicant or licensee;
  - (c) if the licence has been cancelled or suspended, train that licensee in the operation of the undertaking in compliance with the requirements of this Act, the licence conditions and the requirements of any other law.
- (4) For the purposes of subsection (2) -
  - (a) the entry and taking into possession by the substitute electricity provider of the undertaking does not prejudice the security of any debenture-holder or mortgagee or his or her right of enforcing such security;
  - (b) the substitute electricity provider may not restore possession of the undertaking to the applicant or licensee until such time as -
    - (i) the Minister is satisfied that the circumstances on account of which the application was refused or the licence was cancelled or suspended no longer exist or will no longer hinder the proper functioning of the undertaking; and
    - (ii) the Minister is satisfied that the applicant or licensee has satisfied or can satisfy its obligations under this Act and the conditions of its licence; and
    - (iii) in the event of a cancellation, the Minister has on recommendation of the Board reinstated the licence; or
    - (iv) in the event of a suspension, the period of suspension has expired; or

- (v) in the event of a refusal to grant an application for the issue, renewal or amendment of a licence, a subsequent application is granted by the Minister in accordance with this Act.
- (5) The application of subsection (2) does not prejudice any civil claims which any customer or other person may have against the applicant or licensee arising from its failure to fulfil its obligations in terms of the conditions of its licence, if any.
- (6) The Minister may not act under subsection (2) unless the Minister has -
  - (a) notified the applicant or licensee in writing of his or her intention to act in terms of that subsection and has informed the applicant or licensee of all the relevant facts pertaining to the proposed refusal, cancellation, suspension, sale or investment, as the case may be; and
  - (b) afforded the applicant or licensee the opportunity to make representations to him or her in respect of the proposed refusal, cancellation or suspension, as the case may be, within a reasonable time.
- (7) For the purposes of subsection (6)(b), the applicant or licensee may be represented by a person of the applicant's or licensee's choice and may lead evidence in support of the representations.
- (8) A substitute electricity provider must -
  - (a) at all times comply with the written terms and conditions stipulated in an agreement which must be concluded between the applicant or licensee and the substitute electricity provider regarding the operation of the undertaking, subject thereto that in the event of applicant and licensee not being able to reach agreement on the terms of such agreement, the disagreement must be referred to the Board for its final decision; and
  - (b) ensure that the assets in the undertaking of the applicant or licensee are reasonably safeguarded,for the duration of the period for which such undertaking is so operated.
- (9) For the purposes of subsections (1)(b) and (2), a prospective licensee is deemed to be a licensee in terms of this Act from the date on which such prospective licensee takes control of a part of all of the area or undertaking, of an applicant or licensee referred to in subsection (2) until such time as an appropriate licence is issued to such prospective licensee in terms of this Act.
- (10) To the extent that the provisions of this section interfere with the right to property of any person as contemplated in Article 16(1) or the right to practice any profession, or carry on any occupation, trade or business as contemplated in Article 21(1)(j) of the Namibian Constitution, such interference is authorised on the grounds set out in Article 16(2) and 21(2), respectively, of the Namibian Constitution.

### **30. Transmission of electricity**

- (1) A licensee who is licensed to transmit or distribute electricity, as the case may be, must within its licensed area provide access to all existing and potential users of the transmission and distribution networks against payment of compensation at a rate included in the schedule of approved tariffs, except if such refusal is reasonably based on an insufficiency of technical availability of capacity.
- (2) In the event of a dispute as to whether there is an insufficiency of technical availability of capacity, such dispute must be referred to the Board for its final decision.

### **31. Reduction or discontinuation of supply**

A licensee may not reduce or discontinue the supply of electricity to a customer, except on the following grounds -

- (a) if the customer is declared insolvent;

- (b) if the customer has failed to pay any fees, charges or other moneys due;
- (c) if the customer has failed to comply with the conditions of supply; or
- (d) if so prescribed or determined in a rule or code or licence condition.

### **32. Cancellation or suspension of licence**

- (1) If at any time it appears to the Board that a licensee has failed to comply with any of the requirements of this Act, rules or a code or to meet any of the obligations in terms of the licence, the Board may by registered letter require the licensee to rectify the default within a specified period.
- (2) Despite any provision to the contrary in this Act, if a licensee fails to comply with the requirements of a notice in terms of subsection (1), the Minister may, on recommendation of the Board, cancel the licence, or suspend the licence on such conditions with regard to reinstatement as the Minister may determine.
- (3) Steps taken under subsection (1) or (2) will not exempt the licensee concerned from civil or criminal liability in respect of an act or omission on account of which those steps were taken.
- (4) The Minister, on recommendation of the Board, may cancel or suspend a licence on such conditions with regard to reinstatement as the Minister may determine -
  - (a) if, subsequent to the granting of an application for the issue, renewal, transfer or amendment of such licence it is discovered that information furnished in connection with that application was incorrect or incomplete in a material respect;
  - (b) the licensee has ceased to conduct the licensed activities;
  - (c) the licensee has not commenced licensed activities within 12 months of the issue of the licence or within such longer period as may be stipulated by the Minister or in the licence conditions.
- (5) The Minister must cancel a licence if so requested by the licensee subject to such directives or conditions as the Minister may give or impose.

### **33. Installations to comply with requirements of other laws**

- (1) Installations for the provision of electricity, including any alterations or extensions thereto, and all other electricity practices and activities by licensees, customers and other persons, must be built, operated and conducted with due compliance with -
  - (a) the requirements of applicable laws, in particular laws relating to health, safety and environmental standards; and
  - (b) the requirements of codes, rules, standards of quality of electricity provision and services and prudent electricity practices.
- (2) If it comes to the attention of the Board that a licensee, customer or other person fails to comply with subsection (1), the Board may in writing order such licensee, customer or other person to discontinue such non-compliance.
- (3) For the purposes of this section “prudent electricity practices” means practices, methods and procedures conforming to safety and legal requirements which are attained by the exercising of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a licensee, customer or other person engaged in the same type of activity or practice.



### **34. Permission to operate under the licence of a licensee**

- (1) The Minister may, upon recommendation of the Board, in writing and subject to such conditions as the Minister may determine, grant permission to a person to operate without a licence an undertaking contemplated in section 17(1) under the licence of a licensee, subject thereto that the relevant licensee agrees that such person can operate under its licence and in the event of the licensee unreasonably refusing to allow such person to so operate the matter must be referred to the Board for its final decision.
- (2) It is deemed that subsection (1) has come into operation on 12 July 2000.

## **Part VI – GENERAL**

### **35. Expropriation**

- (1) Despite any law to the contrary, a licensee may, with the approval of the Cabinet and subject to such conditions as the Cabinet may impose, by expropriation acquire any land or any right in, over or in respect of land as the licensee may require, in the public interest, for any purpose associated with the provision of electricity by the licensee.
- (2) The Cabinet may under subsection (1) grant approval to a licensee only if the Cabinet is satisfied, after considering a report by the Board -
  - (a) that the licensee has been unable to acquire the land or right concerned on reasonable terms, other than terms relating to compensation, by agreement with the owner; and
  - (b) that the land or right concerned is reasonably required by the licensee for the purposes of the undertaking carried on by the licensee; and
  - (c) that it is in the public interest that the land or right be acquired by the licensee.
- (3) In order to report to the Cabinet on the matters referred to in paragraphs (a), (b), (c) of subsection (2), the Board must -
  - (a) hold a public hearing to receive evidence and collect information relevant to those matters; and
  - (b) give at least 14 days' written notice of the hearing to the licensee and to the owner concerned.
- (4) At a hearing in terms of subsection (3), the owner may raise any objection against the expropriation.
- (5) Neither the Cabinet nor the Board may make a finding regarding compensation payable to the owner and, in the event of the licensee and owner failing to reach agreement as to compensation, the compensation payable must be determined in accordance with the provisions of the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978).
- (6) If the Cabinet under subsection (1) grants approval for the expropriation of any land or right, such expropriation must be effected by the licensee in accordance with sections 5 to 18 inclusive of the Expropriation Ordinance, 1978, and in the application of those sections any reference -
  - (a) to "the Executive Committee" and to "the Administration" are construed as a reference to the licensee concerned; and
  - (b) to "section 2" of that Ordinance are construed as a reference to this section.

### 36. Provision of electricity by regional councils and local authority councils

- (1) The provision of electricity by a regional council or a local authority council and must be done in accordance with this section.
- (2) In the event of conflict between Regional Councils Act, or Local Authorities Act, and this Act, this Act prevails.
- (3) Unless exempted under section 18, a regional council or local authority council must be licensed in accordance with Part IV and, once so licensed, a regional council or local authority council has all the powers regarding the provision of electricity which is given to a licensee under this Act.
- (4) A regulation or model regulation made -
  - (a) by a regional council under section 32(1)(a) of the Regional Councils Act;
  - (b) by a local authority council under section 94 of the Local Authorities Act; or
  - (c) by the Minister responsible for regional and local authority councils,which relates to the provision of electricity, is subject to this Act and any regulation, code or rule made under this Act, and in the event of conflict, this Act or regulation, code or rule made under it, prevails
- (5) Section 28(1)(nA) of the Regional Councils Act, and section 30(1)(u) of the Local Authorities Act, do not apply with regard to a charge, a fee or other moneys payable in respect of an electricity service, amenity or facility provided by a regional council or a local authority council, as the case may be, subject thereto that -
  - (a) unless exempted, such charge, fee or other moneys appear in a schedule of approved tariff contemplated in section 27;
  - (b) such regional council or local authority council must, prior to the introduction of a new or amended charge, fee or other moneys, announce such new or amended charge, fee or other moneys in at least two newspapers circulating in its area;
  - (c) such regional council or local authority council visibly displays such charge, fee or moneys at all places where payment thereof are made; and
  - (d) such regional council or local authority council provides the amount of such charge, fee or moneys to any person requesting it.
- (6) Where the Minister responsible for regional councils and local authority councils, under section 54A or 92 of the Local Authorities Act divests a local authority council of a function relating to the provision of electricity, that Minister may only do so -
  - (a) after consultation with the Board; and
  - (b) subject to the Electricity Act.
- (7) Section 55(1)(a) of the Local Authorities Act only applies to a local authority council only in so far as such council has control in terms of this Act over electricity provision within the local authority area concerned and the provision of electricity by a person contemplated in section 55(1)(a) is subject to the Electricity Act.
- (8) Section 55(1)(b) and (c) of the Local Authorities Act applies to a local authority council only with regard to electricity assets under the control of the relevant local authority council.

- (9) The power of a local authority council to enter immovable property or private land in terms of sections 90A and 91 of the Local Authorities Act for the performance of a function relating to electricity applies only -
  - (a) in so far as the relevant local authority council has control over the provision of electricity within the local authority area concerned; or
  - (b) if authorization to so enter has been given to the local authority council concerned by the person so in control in terms of this Act or any other applicable law.
- (10) Subsections (4), (5), (6), (7), (8) and (9) apply with the necessary changes in respect of the management and control by a regional council of an electricity activity of a settlement area under sections 30(1)(f) and (u), 54A, 55(1)(a), (b) and (c), 91 and 94 of the Local Authorities Act by virtue of section 32 of the Regional Councils Act.

### **37. Inspections and returns**

- (1) The Board or any person authorized in writing by the Board, may -
  - (a) at all reasonable times enter the premises of any licensee, customer or other person -
    - (i) for the purpose of investigating whether the provisions of this Act, the regulations or any rule or code made by the Board or any conditions attached to a licence are being complied with; or
    - (ii) for the purpose of any inspection that is incidental to the functions of the Board, and inspect any plant, installation, machinery, books, accounts and other documents found thereat, but subject thereto that if such premises is a private dwelling the Board or a person authorized in writing by the Board may only enter such dwelling -
      - (aa) with the permission of the occupier concerned; or
      - (bb) with a warrant authorizing the entry and search of such premises obtained from a judge of the High Court or a magistrate who has jurisdiction in the area in which the premises in question are situated;
  - (b) demand from a licensee, customer or other person to furnish, in such form and at such time as may be determined by the Board -
    - (i) such periodical or other returns or information;
    - (ii) such particulars in respect of the licensee's, customer's or other person's undertaking, practices or activities; or
    - (iii) copies of any agreement relating to the provision of electricity to which such licensee, customer or person is a party,
- as the Board or that person may require.
- (2) To the extent that the provisions of this section interfere with the right to privacy of any person as contemplated in Article 13(1) of the Namibian Constitution, such interference is authorized on the grounds set out in Article 13(1) of the Namibian Constitution.

### **38. Licensee's powers of inspection, work and entry**

- (1) A licensee, or any person authorised in writing by a licensee, may at all reasonable times enter any premises to which electricity is or has been supplied by the licensee for the purpose of -
  - (a) inspecting, testing, repairing or maintaining any line, meter, fitting or apparatus of the licensee which is on or in the premises;
  - (b) ascertaining the quantity of electricity consumed on or in the premises; or

- (c) removing any lines, meters, fittings or apparatus of the licensee if a supply to the premises is no longer required or if the licensee is entitled to cut off the supply.
- (2) If any cables, wires or conduits and any civil or mechanical structures (including enclosures, poles, isolators, foundations and fences) forming part of the main of a licensee for providing electricity, are placed or installed on or are laid on or across any immovable property, whether underground or overhead, the licensee concerned may authorise -
  - (a) any staff member of the licensee; or
  - (b) any other person,to enter such immovable property for the purpose of performing any work in connection with the inspection, maintenance, removal, replacement or renewal of any of such works or accessories thereof.
- (3) A person who intends to enter any premises or property in terms of subsection (1) or (2) -
  - (a) must, except in a case of an emergency or if for other reasonable cause he or she is unable to give prior notice, give reasonable notice to the owner or occupier of the premises concerned of his or her intention to enter onto such premises and of the nature of the work to be carried out, and, if possible, make suitable arrangements with the owner or occupier of the premises for entry before entering the premises;
  - (b) may be accompanied by such other persons as may be reasonably required for carrying out the work;
  - (c) must, at the request of any person in charge of the premises, produce the written authorisation issued by the licensee to enter that premises;
  - (d) must adhere to all reasonable security measures, if any, of the owner or occupier of the premises;
  - (e) may take onto such premises such goods, equipment and materials as may be reasonably required for the purposes of carrying out the work;
  - (f) may make such excavations or erect such equipment as may be reasonably required for the purposes of carrying out the work;
  - (g) may require from the owner or occupier of the premises to remove any tree, shrub or growth or any fence or other obstacle preventing or impeding such excavations to be made or such equipment to be erected, and, in the event of such owner or occupier refusing or failing to comply with any such request reasonably made, cause any such obstacle to be removed in such manner as such authorized person considers necessary or expedient.
- (4) Any person acting under an authorization given under subsection (1) or (2) must cause the work in question to be carried out in such a manner as to limit any damage to the premises concerned or any fixtures thereon and to cause as little inconvenience as possible to the persons occupying the premises.
- (5) The licensee is, unless otherwise prescribed, responsible to repair or pay compensation for any damage caused to the premises or any fixture thereon in the carrying out of work in terms of this section.
- (6) To the extent that this section interferes with the right to privacy of any person, such interference is authorised on the grounds of public safety and economic well-being as contemplated in Article 13(1) of the Namibian Constitution.

### 39. Powerlines, meters and other apparatus are not fixtures

Any powerlines, meters, fittings, works or apparatus belonging to a licensee and lawfully placed or installed in or upon any premises, whether or not fixed to any part of such premises -

- (a) remain the property of and may be removed by such licensee;
- (b) are not subject to the landlord's hypothec for rent of such premises; and
- (c) are not liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises,

provided that it is reasonably clear that such licensee is the owner of such powerlines, meters, fittings, works or apparatus.

### 40. Non-disclosure

A person who is or was concerned in the performance of any function in terms of this Act may not disclose any information which he or she obtained in the performance of the function except -

- (a) to any person who of necessity requires it for the performance of his or her functions in terms of this Act;
- (b) if he or she is a person who of necessity supplies it in the performance of his or her functions in terms of this Act;
- (c) if such information is required by order of a court of law;
- (d) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution; or
- (e) the amount of any approved tariff.

### 41. Limitation of liability

A person is not liable in respect of act done or omitted in good faith in the exercise of a power or the performance of a duty in terms of or under this Act.

### 42. Offences

- (1) A person who -
  - (a) subject to subsection (4), contravenes or fails to comply with any provision of this Act applicable to him or her, the contravention of or failure to comply with which is not elsewhere in this Act prescribed to be an offence;
  - (b) fails to carry out any order or decision of the Board or to comply with any condition imposed or rule or code made by the Board; or
  - (c) being a licensee, contravenes or fails to comply with any condition applicable to the licence concerned,commits an offence and is liable to a fine not exceeding N\$16 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- (2) Any person who without lawful excuse (the proof of which lies upon that person) -
  - (a) abstracts, branches off or diverts any electric current or causes any electric current to be abstracted, branched off or diverted;
  - (b) consumes or uses any electric current knowing it to have been unlawfully abstracted, branched off or diverted; or

- (c) cuts off or damages or interferes with any apparatus for generating, transmitting or supplying electricity,

commits an offence and is liable to a fine not exceeding N\$16 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.

- (3) If, in any prosecution for an offence in terms of paragraph (a) or (b) of subsection (2), it is proved that any electric current has been abstracted, branched off or diverted, it is presumed, in the absence of evidence to the contrary, that the owner of any premises within which the electric current was abstracted or branched off or to which the electric current was diverted or, if the owner does not occupy the premises, the occupier thereof, abstracted, branched off or diverted the electric current, as the case may be.
- (4) Prior to any person or body charging a person under subsection (1)(a), the Board must in writing notify such person that such person has committed an offence setting out in such notification the details of the offence and further specifying the period and manner within which such person must rectify such contravention or failure, which period, unless there is compelling reason for a shorter period, may not be less than 7 days.

[The word “than” is misspelt as “then” in the Government Gazette, as reproduced above.]

- (5) If a person referred to in subsection (4), rectifies the contravention or failure in the manner and within the time frame determined by the Board, such person may not be charged with such offence as referred to in that subsection.

#### 43. Regulations

- (1) The Minister may make regulations in relation to -
  - (a) any matter which in terms of this Act is required or permitted to be prescribed;
  - (b) the form and manner in which any application or objection in terms of this Act must be made;
  - (c) the fees payable in respect of any application in terms of this Act and for the issue, renewal, amendment or transfer of a licence;
  - (d) the duties and obligations of licensees and customers;
  - (e) the procedure to be adopted by a licensee requiring rights of way or water rights in connection with the licensee's undertaking;
  - (f) the inspection by the Board and enquiry into the control and operation of undertakings;
  - (g) the units or standards for the measurement of electricity, the verification of meters, the fees to be charged therefor and the settlement of disputes as to measurements of electricity and limits of error;
  - (h) the frequency, type of current and voltage of electricity provided;
  - (i) the mode of providing electricity, including the quality of provision and the quality of service and safety;
  - (j) installment and implementation of renewable energy technologies, the use thereof (including the placing of obligations on persons with regard thereto) and the provision of electricity therefrom;
  - (k) the obligation of a licensee to provide electricity to a customer and the circumstances under which the obligation is deemed to have been waived;
  - (l) the conditions on which electricity supplied to premises may be resold by a customer to another person;

- (m) the breaking up and repair of roads by a licensee in its licensed area;
  - (n) the exemption from any of the provisions of this Act of any person in the circumstances and on the conditions specified in the regulations;
  - (o) the requirements for the erection of any generation plant;
  - (p) the conditions on which electricity is provided to customers and the responsibilities of customers in respect of electricity equipment installed on premises;
  - (q) the inspection by a licensee of electricity equipment installed on premises;
  - (r) further circumstances under which a licensee may refuse to provide or discontinue the provision of electricity to a customer;
  - (s) grounds on which a licensee may terminate a contract to provide electricity to a customer;
  - (t) the liability of licensees and customers with regard to failure to provide electricity and breach of contract;
  - (u) further grounds with regard to which a licensee may enter the premises of a customer and remove equipment and property of the licensee;
  - (v) the differentiation of charges for electricity based on the time of use or consumption thereof;
  - (w) the manner of payment for electricity provided and the charging therefor by a licensee and objections thereto;
  - (x) the circumstances in which any person may be permitted to depart or deviate from any standard contemplated in section 44;
  - (y) the establishment, operation and administration of electricity markets, including requirements relating to licensees and other persons operating on such markets, corporate governance issues, objectivity, transparency and independency, prohibitions on the establishment of more than one electricity market, and the trading of electricity in a competitive market environment;
  - (z) any other matter the regulation of which, in the opinion of the Minister, is necessary or expedient to achieve or promote the objectives of this Act.
- (2) A regulation made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith or with any condition of a licence, of a fine not exceeding N\$16 000 or imprisonment for a period not exceeding two years or both such fine and such imprisonment.
- (3) When making regulations under this section, the Minister may make different regulations with regard to different licensees or different categories of licensees.

#### **44. Standards on quality of electricity provision and service**

- (1) The Board, by notice in the Gazette, after consultation with the Minister and such role players in the electricity industry as it may determine, may -
- (a) set standards on quality of provision of electricity and of electricity related services; or
  - (b) with or without amendments incorporate any standards on quality of provision of electricity and electricity related services in its rules,
- and must indicate whether such standards are compulsory or not.
- (2) If, because of exceptional circumstances, the Board considers it appropriate to depart or deviate from a standard contemplated in this section, the Board may, subject to such conditions as it may determine, authorise the departure or deviation if such departure or deviation is not in conflict with this Act.

- (3) The Board must keep in its offices a copy of the complete updated text of every standard set or incorporated under this section, and must at the request in writing of any interested person make such copy available free of charge to any such person for inspection.
- (4) In setting or incorporating standards under this section, the Board may
  - (a) differentiate between different licensees or different type of licensees;
  - (b) impose penalties for non-compliance and determine the manner in which and to whom such penalties must be paid.
- (5) Whenever in any judicial proceedings the question arises whether -
  - (a) any writing contains the text of any standard incorporated in the rules under subsection (1), or of any amendment or substitution of any such standard; or
  - (b) any writing purporting to be a statement by a person who in that statement alleges that -
    - (i) he or she is an employee of the Board; and
    - (ii) a particular writing described in or attached to the statement contains the text referred to in paragraph (a), or an extract from that text,is on its mere production at those proceedings by any person prima facie proof of the facts stated therein.

#### **45. Documentary evidence**

In any prosecution for any offence under this Act a document which purports to be a licence, order, direction or authority issued or obtained, or rule or code made, under this Act, or a copy of such document certified as a true copy by a person who purports to be an employee of the Board, is, on its mere production, accepted as prima facie proof of the particulars mentioned therein.

#### **46. Repeal and amendment of laws and savings**

- (1) The laws specified in the Schedule are repealed or amended to the extent set out in the third column of that Schedule.
- (2) The imposition of a levy on electricity published under Government Notice No. 145 of 16 July 2001 is effective from 16 July 2001 and not 01 July 2001, and any subsequent amendment to the schedule of approved tariffs contained in a licensee's licence, to retrospectively recover such levy from its customers, is also effective from that date.
- (3) Unless otherwise provided in this Act, anything done or made under the repealed law, and which could have been done or made under a corresponding provision of this Act, is deemed to have been done or made under that corresponding provision.

#### **47. Short title and commencement**

- (1) This Act is called the Electricity Act, 2007, and, subject to subsection (2), comes into operation on a date determined by the Minister by notice in the Gazette.
- (2) The Minister may under subsection (1) determine different dates for different sections of this Act.

### **Schedule**

#### **REPEAL AND AMENDMENT OF LAWS**

##### ***(Section 46(1))***



Column 1	Column 2	Column 3
No. and year of law	Title of law	Extent of repeal or amendment
Act <a href="#">No. 2 of 2000</a>	Electricity Act, 2000	The repeal of the whole
Act <a href="#">No. 9 of 1995</a>	Export Processing Zones Act, 1995	<p>The amendment of section 22 -</p> <p>(a) by the substitution for the marginal notes of the following marginal notes:</p> <p>“Special provisions relating to the supply of water[, electricity or gas,] and the rendering of sewerage and other services”; and</p> <p>(b) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Management Company shall, subject to the provisions of subsection (2) or (5), procure from the Municipality of Walvis Bay, and from no other supplier, water [and electricity or gas] for distribution to export processing zone enterprises or other persons in the export processing zone.”.</p>