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## GENERAL NOTICE

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### NOTICE 905 OF 2011

#### Electricity Regulation Second Amendment Bill

The Department of Energy (the Department) intends to submit the Electricity Regulation Second Amendment Bill to Parliament. You are hereby requested to submit your comments on this Bill to the Department no later than 27 January 2012. Your written comments may be submitted to the Director General for attention of Matthews Bantsijang or Maduna Ngobeni as follows:

**By hand:**

Director General  
Attention: Matthews Bantsijang/ Maduna Ngobeni  
Travenna Campus  
70 Meintjies Street  
Sunnyside  
0001

Or

**By post:**

Director General  
Attention: Matthews Bantsijang/ Maduna Ngobeni  
Private Bag X19  
Arcardia  
0007

Or

**By Email:**

[epar@energy.gov.za](mailto:epar@energy.gov.za)



“**distribution**” means the conveyance of electricity through a distribution power system excluding trading, and “**distribute**” and “**distributing**” have corresponding meanings;

“**distribution power system**” means a network for the conveyance of electricity which [power system that ] operates at or below a nominal voltage of 132kV;

“**distributor**” means a person who distributes electricity;

“**end user**” means a user of electricity or a service relating to the supply of electricity;

“**Eskom**” means Eskom Holdings SOC Limited, established in terms of the Eskom Conversion Act, 2001 (Act No. 13 of 2001);

“**generation**” means the production of electricity by any means, and “**generate**” and “**generating**” have corresponding meanings;

“**generator**” means a person who generates electricity;

“**generation licensee**” means a holder of a licence to construct or operate a generation facility in terms of section 4(a)(i)(aa);

“**guideline**” means a guideline contemplated in section 35(2);

“**IPP procurement process**” means a procurement process for the acquisition of new generation capacity from independent power producers pursuant to a section 34 determination;

“**independent power producer**” means any person in which an organ of state does not hold a direct or indirect controlling interest, which undertakes or intends to undertake the development of new generation capacity pursuant to a section 34 determination;

“**integrated resource plan**” means a resource plan for new generation capacity, compiled in accordance with the provisions of section 33A to reflect [established by the national sphere of government to give effect to ] national policy on electricity planning;

“**interconnected distribution power system**” means a distribution power system that is interconnected to a transmission power system either directly or through interconnection to a distribution power system where the latter system is interconnected to a transmission power system;

“**licensee**” means the holder of a licence granted or deemed to have been granted by the Regulator under this Act;

“**Minister**” means the Minister of [ **Minerals and**]Energy;

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

**“Municipal Structures Act”** means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

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

**“National Energy Regulator Act”** means the National Energy Regulator Act, 2004 (Act No. 40 of 2004);

*“national information system” means the system provided for in section 4(a)(v)(bb);*

**“national transmission power system”** means the transmission power system used for the transmission of electricity produced by generation facilities for purposes of the supply of electricity to end users across the territory of the Republic;

**“new generation capacity”** means additional electricity capacity, including capacity derived from new generation facilities or an expansion of existing facilities, that is needed to ensure the continued uninterrupted supply of electricity, other than:

- (a) the capacity of generation facilities for own use; or
- (b) the capacity of generation facilities that are not connected to a transmission power system or an interconnected distribution power system;

**“organ of state”** bears the meaning assigned to it in section 239 of the Constitution;

**“own use”**, in the context of a generation facility, means a facility that generates electricity that is used only by the operator or owner of that facility and is not sold to any person and is not transmitted through a transmission power system or distributed through an interconnected distribution power system;

**“person”** includes any organ of state; [ as defined in section 239 of the Constitution;]

**“power purchase agreement”** means an agreement between a generator and a buyer for the sale and purchase of electricity or electricity generation capacity;

“**prescribe**” means prescribe by regulation or rule;

[“**price**” means a charge for electricity;]“**Regulator**” means the National Energy Regulator established by [section 3 of] the National Energy Regulator Act;

“**regulations**” means regulations prescribed by the Minister in terms of section 35(4);

“**reticulation**” means trading or distribution of electricity and includes services associated therewith;

“**rule**” means a rule made by the Regulator in terms of section 35(3);

“**section 34 determination**” means a determination by the Minister in terms of section 34(1);

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

“**service provider**” means a person or institution or any combination of persons and institutions which provide a municipal reticulation service in terms of a service delivery agreement;

“**supply**” means trading, dispatch, export and import and the generation, transmission or distribution of electricity;

“**tariff**” means a charge to a customer in respect of a licensed activity, other than a surcharge, tax, levy or duty imposed by a municipality in terms of section 229 of the Constitution [for electricity];

“**trader**” means a person who trades in electricity;

“**trading**” means the wholesale or retail buying and [**or**] selling of electricity[**as a commercial activity**], and “**trade**” has a corresponding meaning;

“**trading licensee**” means a holder of a licence to trade in terms of section 4(a)(i)(gg);

“**transmission**” means the conveyance of electricity through a transmission power system excluding dispatching and trading, and “transmit” and “transmitting” have corresponding meanings;

“**transmission power system**” means a network for the conveyance of electricity which [power system that] operates above a nominal voltage of 132kV;

“**transmitter**” means a person who transmits electricity; and

“**this Act**” includes the schedules to this Act and any regulation or rule made or issued in terms thereof.

## 2. **Objects of Act**

The objects of this Act are to -

- (a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in the Republic [**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, 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, renewable sources of energy 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.

## CHAPTER II

### OVERSIGHT OF ELECTRICITY INDUSTRY

3. **[Regulator][**(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.]**

## 4. **Powers and duties of Regulator**

The Regulator -

- (a) must -
  - (i) consider applications for licences and may issue licences for -
    - (aa) the construction and operation of generation facilities;

- (bb) the construction and operation of a transmission power system;
  - (cc) the construction and operation of [or] a distribution power system [facilities];
  - (ee) the import of electricity;
  - (ff) [**and**]the export of electricity;
  - (gg) trading, subject to the provisions of section 7; and
  - (hh) dispatching;
  - (ii) set and approve [regulate prices and]tariffs as contemplated in sections 14(1) and 14A;
  - (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;]**
  - (v) establish and manage:
    - (aa) monitoring and information systems relating to matters within the Regulator's jurisdiction; and
    - (bb) [**and**]a national information system,  
  
and co-ordinate the integration thereof with other relevant information systems;
  - (vi) enforce performance and compliance with this Act and licence conditions imposed by the Regulator in terms of this Act, and take appropriate steps in the case of non-performance;
  - (vii) exercise any power or perform any duty conferred or imposed on it under this Act or any other law;
- (b) may -
- (i) mediate and arbitrate disputes between generators, transmitters, distributors, the dispatcher, traders, customers or end users;
  - (ii) undertake investigations and inquiries into the activities of licensees and other matters contemplated in this Act;
  - (iii) perform any other act incidental to its functions;

**5. Advisory forums**

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.

**6. Customer and end user forums**

- (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 may [must] require a licensee, other than a generation licensee, to establish and fund a customer or end users forum in the manner set out in the licence held by such a person.

**CHAPTER III****ELECTRICITY LICENCES AND REGISTRATION****7. Activities requiring licensing**

- (1) No person may, without [a] the appropriate licence issued by the Regulator in accordance with this Act -
  - (a) construct or operate any generation facility;
  - (b) construct or operate any transmission power system;
  - (c) construct or operate any distribution power system [facility];
  - (d) import any electricity;
  - (e) export any electricity; or
  - [be involved in trading] (f) dispatch electricity.

(1A) The Minister may, by notice in the *Gazette*, determine that persons carrying on a specified category of trading require a licence.

(1B) Subject to subsection (1C), no person may, without a trading licence issued by the Regulator in accordance with this Act, engage in trading that falls within a category which is the subject of a determination in terms of subsection (1A).

- (1C) A person who, at the date that a notice is published in terms of subsection (1A), engages in trading that falls within the affected category may continue to trade until its licence application has been decided, provided that it applies to the Regulator for a trading licence within six months of the publication of that notice.
- (1D) Subject to subsection (1C), the Regulator may, at its own instance or following an investigation of a complaint -
- (a) determine whether any person is engaged in an activity requiring a licence in terms of subsection (1) or (1A) without that person holding a licence in respect of that activity; and
  - (b) direct any person engaged in an activity requiring a licence in terms of subsection (1) of (1A) who is not in possession of the necessary licence to cease such activity.
- (2) Notwithstanding subsection (1) and (1A), a person involved in an activity specified in Schedule II need not apply for or hold a licence issued by the Regulator.
- (2A) Notwithstanding subsections (1) and (1A), a person who operates a distribution power system located solely on private property:
- (a) need not apply for or hold a trading licence, provided that such person does not sell electricity to its customers at a price higher than the price at which the electricity would be sold to those customers by the person from whom that operator purchases the electricity; and
  - (b) need not apply for or hold a distribution licence.
- (3) (a) Nothing in this Act precludes a potential licensee from discussing the contemplated construction or operation of generation, transmission and distribution facilities, the import or export of electricity, trading, dispatching or any other activity relating thereto, prior to filing a licence application with the Regulator.
- (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.

## 8. Certain activities not licensed

The Minister may, after consultation with the Regulator and stakeholders in the advisory forum referred to in section 5, determine by notice in the *Gazette* that

any activity contemplated in section 7(1) need no longer be a licensed activity from the date set out in such notice.

## 9. Registration

- (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, export, import or dispatch or the generation, transmission or distribution of electricity that does not require licensing in terms of section 7 read with section 8 must register with the Regulator.
- (2) Any person who has to register with the Regulator must do so in the form and in accordance with the [**prescribed**] procedure prescribed by rule, and an application for registration must be accompanied by the [**prescribed**] registration fee prescribed by rule: Provided that any person holding a valid licence at the date of a determination contemplated in section 8 must be issued with a registration certificate without complying with the prescribed procedure.
- (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
    - (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.

## 10. Application for licence

- (1)
  - (a) A person who has to hold a licence in terms of section 7 must apply to the Regulator for such a licence in the form and in accordance with the [**prescribed**] procedure prescribed by rule.
  - (b) Such an application must be accompanied by the [**prescribed**] application fee prescribed by rule.
- (2) Any application contemplated in subsection (1) must include -

- (a) a description of the applicant, including its vertical and horizontal relationships with other persons engaged in the construction and operation of generation facilities, the construction and operation of transmission or [and] distribution [facilities] power systems, the import or export of electricity, trading, dispatch or any other prescribed activity relating thereto;
- (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 facility or the transmission or distribution power system [facility] to be constructed or operated or the proposed service in relation to electricity to be provided, including maps and diagrams where appropriate;
- (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;
- (f) a detailed specification of the services that will be rendered under the licence; and
  - [(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 Regulator **[Minister]** may prescribe.

(3) The applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to the concurrence of the Regulator, such information may be withheld from publicly available copies of the application.

## 11. Advertising of licence application

- (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.
- (2) The advertisement must state -
  - (a) the name of the applicant;
  - (b) the object **[objectives]** of the application **[applicant]**;

- (c) the place where the application will be available for inspection by any member of the public;
  - (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
  - (g) such other particulars as may be prescribed by rule.
- (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 by rule.
- (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.

## 12. Information to be supplied

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
- (b) may request such additional information as may be necessary to consider the application properly.

## 13. Finalisation of application

- (1) The Regulator must [**decide on**] grant or refuse an application in the [**prescribed**] manner prescribed by rule within 120 days -
- (a) after the expiration of the period contemplated in section 11(2)(d), if no objections have been received; or
  - (b) after receiving the response of the applicant as contemplated in section 12(a) or after receiving the information contemplated in section 12(b), whichever is the later date.
- (2) The Regulator must provide the applicant with a copy of its decision as well as the reasons for the decision.
- (a) (3) The Regulator must issue separate licences for the activities listed in paragraphs (aa) to (hh) of section 4(a)(i) [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).]**  
[S. 14 renumbered to 13 by s. 16 of Act 28/2007]
- (5) If a competitive IPP procurement process has been conducted, the Regulator shall, notwithstanding any other provision of this Act, grant a generation licence to a successful participant in that process.

### **13A Ministerial approval**

- (1) The Regulator shall not grant a generation licence unless -
  - (a) the generation facility which is the subject of the licence application will produce electricity pursuant to and in accordance with a section 34 determination; or
  - (b) the Minister has issued a written approval in respect of the generation facility.
- (2) Subject to section 34(4), the Minister shall approve a facility in terms of subsection (1)(b) if he or she is reasonably satisfied, having regard to the integrated resource plan, that the electricity generation capacity of the facility will not result in excess generation capacity or otherwise be contrary to the national interest.

### **14. Conditions of licence**

- (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 customers or end users, including the establishment of customer or end user forums;
  - (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 20;
  - (d) the setting or [**and**] approval of [**prices, charges, rates and**] tariffs charged by licensees;
  - (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;]**
- (h) the separation of the generation, transmission, distribution, export, import, trading and dispatching activities of a licensee, which may include requirements that such activities must be managed separately, with separate accounts and data, and no cross-subsidisation;
- (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;
- (l) the right to operate generation facilities, to operate transmission or distribution power systems [facilities], to dispatch, 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;
- (m) the duty or obligation to trade, or to generate, transmit,[or] distribute, import, export or dispatch 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;
- (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;
- (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, guideline or code made under this Act;
  - (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
  - (z) any other ancillary or incidental condition specified [**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.

#### **14A. Pre-approval of tariffs and licence conditions**

- (1) The Minister may, either prior to or after the relevant section 34 determination and in order to facilitate the procurement of new generation capacity through an IPP procurement process, in writing direct the Regulator, prior to the commencement of such process and within a reasonable time period specified by the Minister in that direction, to:
- (a) determine licence conditions that shall apply to the successful participant or participants in that IPP procurement process; and
  - (b) determine a tariff, a maximum tariff or a guideline tariff for a particular generation technology, that will apply to the sale of electricity generated by means of that technology pursuant to that IPP procurement process.
- (2) The direction referred to in subsection (1) may specify the parameters within which the Regulator is to determine the licence conditions, tariff, maximum tariff or guideline tariff.
- (3) The determination referred to in subsection (1)(b) may include conditions to which the tariff, maximum tariff or guideline tariff is subject.
- (4) Subject to conditions determined in accordance with subsection (3), if the Regulator has, in terms of subsection (1)(b), determined:
- (a) a tariff, the Regulator shall impose that tariff as a condition of any generation licence granted in respect of the relevant technology pursuant to the relevant IPP procurement process;

- (b) a maximum tariff, the Regulator shall, in granting a generation licence in respect of the relevant technology pursuant to the relevant IPP procurement process, approve any tariff agreed between the independent power producer and the buyer that does not exceed that maximum tariff;
- (c) a guideline tariff, the Regulator shall have regard to the guideline tariff in setting or approving the tariffs in a generation licence granted in respect of the relevant technology pursuant to the relevant IPP procurement process.

## 15. Tariff principles

- (1) The Regulator, in setting and approving tariffs as contemplated in sections 14 or 14A [A licence condition determined under section 14 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;
  - (aA) must allow for a [including a]reasonable [margin or]return commensurate with the risk of the licensed activity;
  - (b) may [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;
  - (e) may permit the cross-subsidy of tariffs to certain classes of customers; and
  - (f) may have regard to the need to ensure security of supply and diversity of supply and to promote renewable energy.
- (2) A licensee may not charge a customer any [other]tariff [and make use of provisions in agreements]other than the tariff set or approved as, or in accordance with, a licence condition [that determined or approved by the Regulator as part of its licensing conditions].
- (3) Notwithstanding subsection (2), the Regulator may, in [prescribed]circumstances prescribed by regulation, approve a deviation from set or approved tariffs.

**16. Amendment of licence**

- (1) The Regulator may vary, suspend or remove any licence condition, or may include additional conditions -
  - (a) on application by the licensee;
  - (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, removing or adding any licence condition.

**17. Revocation of licence on application**

- (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;
  - (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), give the Regulator at least 12 months' notice in writing of its 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.

**18. Contraventions of licence and this Act**

- (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 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 may impose a penalty not exceeding [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.
- (6) The Minister may from time to time by notice in the *Gazette* amend the amount referred to in subsection (4) in order to counter the effect of inflation.

#### **19. Order by court**

- (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, such as a failure to carry out the activities for which the licence was granted or material non-compliance with the conditions of the licence.

#### **20. Renewal of licence**

- (1) Any generation, [or] transmission or dispatch 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, import or export 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 it [his or her] licence.
- (4) An application for renewal must be granted, but the Regulator may set different licence conditions.
- (5) A licensee may not assign, cede or transfer a licence to another party without the consent of the Regulator.

#### **21. Powers and duties of licensee**

- (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 or assign any such power or duty to any other person without the prior written consent of the Regulator.

- (1A) A generation licensee shall be entitled to sell the electricity produced by the generation facility to which its licence relates.
- (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 in writing.
- (3) A transmission or distribution licensee must [**to the extent provided for in the licence,**] provide non-discriminatory access to its [**the**] transmission or [**and**] distribution power system 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 -
- (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;
  - (d) the rights and obligations of other existing or new users regarding the use of such power systems;
  - (e) compliance with any rule or 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.
- (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
  - (c) the customer has contravened the payment conditions of that licensee.

#### **21A. Transmission planning**

- (1) The transmitter is responsible for planning, building, maintaining, operating and expanding the transmission power system and all related infrastructure, equipment and property.

- (2) The transmitter must, with the approval of the Regulator, develop, and from time to time revise, a transmission development plan setting out the manner in which it will carry out its responsibilities as provided for in subsection (1).
- (3) The Regulator may, after consultation with the Minister, make rules regarding the content of the transmission development plan.
- (4) The transmission development plan must be developed after consultation with the Minister, the Regulator and the dispatcher, and the transmitter must as far as possible ensure alignment between the transmission development plan and relevant aspects of the integrated resource plan.
- (5) Notwithstanding the provisions of the transmission development plan, the transmitter must co-operate with the Minister and any person acting as a procurer from time to time in terms of section 34(2)(e), to align its activities so as to facilitate the establishment of any new generation capacity that is the subject matter of a section 34 determination.

## **22. Powers of entry and inspection**

- (1) Any person authorised in writing thereto by a licensee, other than a generation 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.
- (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;
  - (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.

## **23. Electricity infrastructure not fixtures**

- (1) Any asset forming part of a generation facility or a transmission or distribution power system and 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.

- (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;
  - (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.

#### 24. **Rights over roads or streets**

- (1)
  - (a) A transmission or distribution 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.
  - (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 road or 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 -
  - (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.
- (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.

**25. Liability of licensee for damage or injury**

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.

**26. Expropriation**

- (1) The Minister [State] may, on application from a licensee in the manner prescribed by regulation and in order to facilitate the achievement of the objectives of this Act, permanently or temporarily 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).]**
- (2) The Minister must prescribe the procedure to be followed in giving effect to subsection (1).
- (3) The Minister [State] may exercise the powers contemplated in subsection (1) only if he or she is satisfied, after consultation with the Regulator, that
  - (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
  - (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.
- (4) If the Minister expropriates any land or right in, over or in respect of land on behalf of a licensee in terms of subsection (1), such licensee shall become the owner of such land or the holder of such right in, over or in respect of land, as the case may be, on the date of the expropriation.
- (5) The fees, duties and other charges that would have been payable by the licensee contemplated in subsection (1) in terms of any law if he or she had purchased the land or right in, over or in respect of land must be paid in respect of the expropriation of that land or right in, over or in respect of land.
- (6) The licensee contemplated in subsection (1) shall refund all costs incurred by the Minister in the performance of his or her functions in terms of this section, including the costs of valuing the land or right in, over or in respect of land and any compensation payable pursuant to section 25(3) of the Constitution.
- (7) The Regulator shall undertake such investigations and provide such technical assistance as the Minister may require for purposes of exercising his or her functions under this section.

## CHAPTER IV

### RETICULATION

#### 27. Duties of municipalities

Each municipality must exercise its executive authority and perform its duty by-

- (a) complying with all the technical and operational requirements for electricity networks determined by the Regulator;
- (b) integrating its reticulation services with its integrated development plans;
- (c) preparing, implementing and requiring relevant plans and budgets;
- (d) progressively ensuring access to at least basic reticulation services through appropriate investments in its electricity infrastructure;
- (e) providing basic reticulation services free of charge or at a minimum cost to certain classes of end users within its available resources;
- (f) ensuring sustainable reticulation services through effective and efficient management and adherence to the national norms and standards contemplated in section 35;
- (g) regularly reporting and providing information to the Department of Cooperative Governance and Traditional Affairs [**Provincial and Local Government**], the National Treasury, the Regulator and customers;
- (h) executing its reticulation function in accordance with relevant national energy policies; and
- (i) keeping separate financial statements, including a balance sheet of the reticulation business.

#### 28. Selection and appointment of external service providers

- (1) A municipality must comply with Chapter 8 of the Municipal Systems Act and this Act prior to entering into a service delivery agreement with a service provider.
- (2) A service delivery agreement entered into by a municipality with an external service provider must comply with the Municipal Systems Act, the Municipal Finance Management Act and this Act.
- (3) The Minister may make regulations relating to-

- (a) the criteria, in addition to those provided for in the Municipal Systems Act, against which service delivery mechanisms must be assessed;
- (b) matters which must be provided for in service delivery agreements; and
- (c) compulsory or standard provisions that must be included in the service delivery agreements.

**29. Key performance indicators**

- (1) The Regulator must, after consultation with the Minister, publish [**prescribe**] general key performance indicators in respect of the technical operational issues pertaining to reticulation systems for municipalities.
- (2) The key performance indicators published [**prescribed**] under subsection (1) may differentiate between categories and types of municipalities.
- (3) Management key performance indicators set by a municipality in accordance with Chapter 6 of the Municipal Systems Act must include the general key performance indicators published [**prescribed**] under subsection (1).

## CHAPTER V

### RESOLUTION OF DISPUTES AND REMEDIES

**30. Resolution of disputes by Regulator**

- (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 or arbitrator if so requested by both parties to the dispute;
  - (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, dispatches, transmits, or distributes electricity on the other hand, attempt to settle that dispute by such means and on such terms as the Regulator thinks fit.
- (2) The Regulator may appoint a suitable person to act as mediator or arbitrator 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 Regulator [**Minister**] must prescribe the procedure to be followed in a [**the**] mediation and arbitration and the fees to be paid.

- (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 or arbitration process, must be regarded as a decision contemplated in section 10(3) or (4) of the National Energy Regulator Act.
- (5) When acting as arbitrator, the Regulator or the person contemplated in subsection (2) must issue a decision on the matter, and such decision is binding on the parties to the dispute.

### 31. [Remedies against decisions of Regulator

**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

#### 32. Investigations

- (1) The Regulator must, in applicable circumstances, at its own instance or on receipt of a complaint or inquiry relating to generation, transmission, distribution, ~~[or] trading or dispatching~~, investigate ~~[complaints]~~ -
  - (a) alleged ~~[of]~~ discrimination regarding tariffs or conditions of access;
  - (b) if a licensee is involved, an alleged ~~[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) -
  - (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 prescribed by regulation.
- (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 18(2).

## CHAPTER VII

### GENERAL PROVISIONS

#### **33. Entry, inspection and information gathering by Regulator**

- (1) For the purposes of this Act, any person authorised thereto in writing by the Regulator may -
  - (a) at all reasonable times enter any property on which any activity relating to the supply of electricity is taking place, or is suspected to be 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.
- (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 authorisation.
- (4) No information obtained by the Regulator in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or proprietary nature may be made public or otherwise disclosed to any person without the consent of the person to whom that information relates, except in terms of an order of the High Court.

#### **33A. Integrated resource plan**

- (1) The Minister shall, after consultation with the Regulator -
  - (a) compile an integrated resource plan;
  - (b) revise the integrated resource plan from time to time; and
  - (c) publish the integrated resource plan and any revisions thereof in the *Gazette*.

- (2) The Regulator and any licensee shall timeously provide such assistance and information as the Minister may require for the purpose of compiling and monitoring the implementation of an integrated resource plan.
- (3) Before publishing an integrated resource plan as contemplated in subsection (1)(c), the Minister must invite public comments on the proposed integrated resource plan, and duly consider the comments received.

#### 34. New generation capacity

- (1) The Minister may, after [in] consultation with the Regulator, make a determination**[(a) determine]** that new generation capacity is needed to ensure the continued uninterrupted supply of electricity.
- (2) A determination referred to in subsection (1) must include provisions dealing with:
- (a) the extent of the new generation capacity required to be established, or electricity required to be produced, pursuant to such determination;
  - (b) **[(determine)]** the types of energy sources from which the electricity may [must] be generated and an indication as to**[and]** the amount [percentages] of electricity that may [must] be generated from each of such sources;
  - (bA) the identity of the generator or generators of the electricity to be produced, if known, or, if not known, whether the generator or generators will be independent power producers, organs of state or any other person;
  - (bB) whether the electricity thus produced must be purchased by a person designated in the determination as the buyer of such electricity;
  - (c) **[(determine)]** whether [that] the electricity thus produced may only be sold to [the person] The buyer referred to in paragraph (bB)**[in the manner set out in such notice];**
  - (d) **[(determine that electricity thus produced must be purchased by the persons set out in such notice;)]**
  - (e) where applicable, the identity of the person responsible for preparing and conducting the procurement process for the acquisition of the electricity thus produced, which may be a person different from the buyer of such electricity; and
  - (f) where applicable, the procurement process to be conducted for acquisition of the electricity thus produced, which may include:

- (i) a detailed stipulation of the procurement process in the determination;
  - (ii) the stipulation in the determination of general principles governing the procurement process with which the procurement process determined by the person designated as the procurer in accordance with paragraph (e) must comply; or
  - (iii) a provision stipulating that the person designated as the procurer in accordance with paragraph (e) will be responsible for determining the procurement process.  
**[require that new generation capacity must -**
  - (iv)
  - (v) (i) **be established through a tendering procedure which is fair, equitable, transparent, competitive and cost-effective;**
  - (vi)
  - (vii) (ii) **provide for private sector participation.]**
- (3) A determination referred to in subsection (1) may include provisions dealing with any ancillary matter that is necessary or desirable to facilitate the procurement of new generation capacity.
- (4) No new generation capacity may be established or procured otherwise than pursuant to and in accordance with a determination made by the Minister in terms of this section.
- (5) In making a determination in terms of this section, the Minister must have regard to the content of the integrated resource plan, but may, where in the opinion of the Minister it is appropriate to do so, deviate from that plan.
- (6) The Minister may facilitate the establishment of new generation capacity pursuant to a determination contemplated in this section.
- (7) The Minister has such powers as may be necessary or incidental to the function referred to **[any purpose set out]** in subsection (6), including the power to -
- (a) undertake such management and development activities, including entering into contracts, as may be necessary to prepare and conduct procurement processes **[organise tenders and to facilitate the tendering process]** for the development, construction, commissioning and operation of **[such]** new electricity generation facilities **[capacity]**;
  - (b) purchase, hire or let anything or acquire or grant any right or incur obligations for or on behalf of the State or prospective generators **[tenderers]** for the purpose of transferring such thing or right to an appointed **[a successful tenderer]** generator;

- (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 generators [**tenderers**] for the purpose of transferring any such permit, licence, consent, authorisation or exemption to an appointed generator [**a successful tenderer**];
  - (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.
- (8) The Regulator, in exercising its powers and performing its functions [**issuing a generation licence**] -
- (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.
- (9) In exercising the powers under this section the Minister is not bound by the State Tender Board Act, 1968 (Act No. 86 of 1968).

### **35. Regulations, rules, guidelines, directives and codes of conduct and practice**

- (1) The Regulator may, after consultation with -
- (a) licensees;
  - (b) municipalities that reticulate electricity; and
  - (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*.
- (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;
  - (b) a methodology for the calculation of tariffs to be set or approved in terms of sections 14 or 14A, which methodology must be consistent with section 15 and any regulations prescribed in terms of section 35(4)(rA);
  - (c) performance objectives and the setting, approving and meeting of performance improvement targets;
  - (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.
- (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;
  - (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;
  - (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;
  - (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.

- (4) The Minister may, by notice in the *Gazette*, make regulations regarding-
- (a) activities that must be licensed or registered and the classification of licences into categories and sub-categories;
  - (b) the promotion of broad-based [norms and standards relating to quality of supply] black economic empowerment, local content and local economic development in the electricity supply industry, including broad-based black economic empowerment, local content and local economic development requirements in respect of licensees or categories of licensees
  - (c) ancillary or administrative matters that are necessary to prescribe for effective reticulation services;
  - (d) compulsory national norms and standards for reticulation services;
  - (e) general key performance indicators in respect of technical operational issues pertaining to reticulation;
  - (f) the criteria, in addition to those provided for in the Municipal Systems Act, against which service mechanisms must be assessed;
  - (g) matters which may be provided for in the service delivery agreement;
  - (h) the compulsory or standard provisions that must be included in the service delivery agreement;
  - (i) the inspection of and enquiry into the control and operation of any licensed, registered or reticulation-related activity;
  - (j) new generation capacity;
  - (k) types of energy sources from which electricity must be generated;
  - (l) the percentages of electricity that must be generated from different energy sources;
  - (m) the participation of the private sector in new generation activities;
  - (n) the setting of standards relating to health, safety and the environment and their incorporation into licences or national norms and standards;
  - (nA) the rehabilitation of land used in connection with a licensed activity, including the provision of financial security for rehabilitation purposes and the composition and amount of such security;
  - (o) the prohibition of certain practices in the electricity supply industry;

- (p) the criteria for or prohibition of cross-ownership or vertical and horizontal integration by licensees in generation, transmission and distribution assets;
  - (pA) licence qualification criteria which must be met in order for the Regulator to issue a licence;
  - (pB) considerations that the Regulator must take into account in considering a licence application;
  - (q) the conditions subject to which the Regulator may issue a licence;
  - (r) norms and standards for the setting of reticulation tariffs, in consultation with the Minister of Finance;
  - (rA) principles and procedures for the setting and approval of tariffs, maximum tariffs and guideline tariffs, including principles of cost recovery by licensees;
  - (rB) the provision of non-discriminatory access by transmission and distribution licensees to transmission and distribution power systems;
  - (rC) the operation, use and maintenance of transmission and distribution power systems;
  - (rD) penalties to be imposed on a licensee for failing to comply with the obligation to engage in the activity authorised by its licence and, in the case of a generation licensee, for failing to comply with any minimum electricity output stipulated in its licence;
  - (rE) the content of power purchase agreements or particular types of power purchase agreements;
  - (rF) the establishment and management of a national information system;
  - (s) any other matter that may or must be prescribed by regulation in terms of this Act; and
  - (t) any other ancillary or administrative matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (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.

(6) The Minister may only make regulations contemplated in subsection (4)(b) in consultation with the Minister of Trade and Industry.

### **35A. Delegation and assignment**

(1) The Minister may, subject to such conditions he or she may impose, in writing delegate any power conferred on him or her under this Act, except a power to make regulations, and may assign any duty so imposed on him or her, to the Director-General of the Department of Energy or any other officer in that Department.

(2) The Minister may at any time:

(a) withdraw a delegation or assignment made in terms of subsection (1); or

(b) withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1).

(3) The Minister is not divested of any power or exempted from any duty delegated or assigned in terms of subsection (1).

### **35B. Offences and penalties**

(1) Any person who wilfully –

(a) contravenes the provisions of section 7(1) or 7(1B);

(b) fails to comply with a direction issued in terms of section 7(1D)(b);

(c) obstructs or hinders any person authorised in terms of section 33(1) in the exercise of his or her powers under section 33; or

(d) makes any false or misleading statement to the Regulator in connection with any matter contemplated in this Act,

shall be guilty of an offence.

(2) Any person who is convicted of an offence referred to in subsection (1) shall be liable to a fine not exceeding [insert] or to imprisonment for a period not exceeding [insert] years or to both such fine and imprisonment.

**35C. Transitional provisions**

- (1) Eskom is deemed to be the holder of a dispatch licence, provided that it applies to the Regulator for such a licence within six months of the date determined by the Minister by notice in the *Gazette*.
- (2) The deeming contemplated in subsection (1) remains valid until the Regulator has decided on the licence application.
- (3) Section 34 does not apply to any project relating to the electricity generation capacity listed under “Current Programmes” in the table titled IRP1 in Schedule A to GN 25 of 29 January 2010: Determination regarding the integrated resource plan and new generation capacity, save for the electricity generation capacity listed as REFIT.

**36. Repeal of laws and savings**

- (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.
- (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*;
  - (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.
- (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*.

**37. Short title and commencement**

- (1) This Act is called the Electricity Regulation Act, 2006, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) Despite subsection (1), section 34 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	<p>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] <u>Electricity Regulation Act, 2006</u>”.</p> <p>2. The deletion of subsection 4(2).</p> <p>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 <u>Electricity Regulation Act, 2006</u>, the Gas Act or the Petroleum Pipelines Act;”.</p>

## SCHEDULE 2

## EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

1. Any generation facility [plant] constructed and operated for demonstration purposes only and not connected to:
  - (a) a transmission power system; or
  - (b) an interconnected distribution [an inter connected] power system [supply].
2. Any generation facility [plant] constructed and operated for own use, unless the generation capacity of the facility is more than 1 MW.

3.[ **Non-grid connected supply of electricity**] Any generation facility that is not connected to a transmission power system or to an interconnected distribution power system, unless:

(a) the supply of electricity from that facility is undertaken as a [except for ] commercial [use] activity; or

(b) the supply from that facility exceeds [insert] per annum.

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