

REPUBLIC OF SOUTH AFRICA

ELECTRICITY REGULATION BILL

*(As reintroduced in the National Assembly as a section 75 Bill; explanatory summary of
Bill published in Government Gazette No 27984 of 31 August 2005)
(The English text is the official text of the Bill)*

(MINISTER OF MINERALS AND ENERGY)

[B 29—2005 (Reintroduced)]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To establish a national regulatory framework for the electricity supply industry; to make the National Energy Regulator the custodian and enforcer of the national electricity regulatory framework; to provide for licences and registration as the manner in which generation, transmission, distribution, trading and the import and export of electricity are regulated; and to provide for matters connected therewith.

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

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CHAPTER I
INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**chief executive officer**” means the chief executive officer of the Regulator; 5

- “**consumer**” means a user of electricity or a service relating to the supply of electricity;
- “**customer**” means a person who purchases electricity or a service relating to the supply of electricity; 10
- “**Department**” means the Department of Minerals and Energy;
- “**distribution**” means the conveyance of electricity through a distribution power system, and “distribute” and “distributing” have corresponding meanings;
- “**distribution power system**” means a power system that operates at or below 132kV; 15
- “**distributor**” means a person who distributes electricity;
- “**generation**” means the production of electricity by any means, and “generate” and “generating” have corresponding meanings;
- “**generator**” means a person who generates electricity;
- “**integrated energy plan**” means an energy plan established by the national sphere of government to give effect to national policy; 20
- “**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;
- “**National Energy Regulator Act**” means the National Energy Regulator Act, 2004 (Act No. 40 of 2004); 25
- “**person**” includes any organ of state as defined in section 239 of the Constitution;
- “**prescribe**” means prescribe by regulation;
- “**Regulator**” means the National Energy Regulator established by section 3 of the National Energy Regulator Act; 30
- “**supply**” means trading and the generation, transmission or distribution of electricity;
- “**tariff**” means a written statement of charges, terms and conditions for services relating to electricity;
- “**trading**” means the buying or selling of electricity as a commercial activity; 35
- “**transmission**” means the conveyance of electricity through a transmission power system, and “transmit” and “transmitting” have corresponding meanings;
- “**transmission power system**” means a power system that operates above 132kV;
- “**transmitter**” means a person who transmits electricity; and
- “**this Act**” includes any regulation or rule made or issued in terms thereof. 40

Objects of Act

2. The objects of this Act are to—
- (a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in South Africa;
- (b) ensure that the interests and needs of present and future electricity customers 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; 45
- (c) facilitate investment in the electricity supply industry;
- (d) facilitate universal access to electricity; 50
- (e) promote the use of diverse energy sources and energy efficiency;
- (f) promote competitiveness and customer choice; and
- (g) facilitate a fair balance between the interests of customers, licensees, investors in the electricity supply industry and the public.

CHAPTER II

OVERSIGHT OF ELECTRICITY INDUSTRY

Regulator

3. (1) The National Energy Regulator established by section 3 of the National Energy Regulator Act is the custodian and enforcer of the regulatory framework provided for in this Act. 5

Powers and duties of Regulator

- 4.** The Regulator—
- (a) must— 10
 - (i) issue licences for—
 - (aa) the operation of generation, transmission and distribution facilities;
 - (bb) the import and export of electricity;
 - (cc) trading; and
 - (dd) any prescribed service relating to trading and the generation, 15
 - transmission and distribution of electricity;
 - (ii) regulate prices and tariffs;
 - (iii) register persons who are required to register with the Regulator where they are not required to hold a licence;
 - (iv) issue rules designed to implement the national government’s electricity 20
 - policy framework, the integrated energy plan and this Act;
 - (v) establish and manage monitoring and information systems and a national information system, and co-ordinate the integration thereof with other relevant information systems;
 - (vi) monitor performance in terms of and compliance with the national 25
 - government’s electricity policy framework, the integrated energy plan and this Act;
 - (vii) enforce performance and compliance, and take appropriate steps in the case of non-performance;
 - (b) may— 30
 - (i) mediate disputes between generators, transmitters, distributors and municipalities;
 - (ii) undertake investigations and inquiries into the activities of licensees;
 - (iii) acquire or rent fixed or movable property and dispose of it in order to 35
 - perform its functions; and
 - (iv) perform any other act incidental to its functions.

Advisory committees

5. The Regulator may appoint committees 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. 40

Customer and consumer forums

6. (1) The Regulator may establish customer or consumer forums consisting of as many members of the Regulator, employees of the Regulator and categories of customers or consumers as may be necessary to advise the Regulator on matters affecting customers or consumers in general, or a category of customers or consumers in particular. 45

(2) The Regulator may require a licensee to establish and fund a customer or consumer forum in the manner set out in the licence held by such a person.

CHAPTER III

ELECTRICITY LICENCES AND REGISTRATION

Application of Chapter

7. The provisions of this Chapter do not apply to reticulation.

Activities requiring licensing 5

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

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

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

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

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

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

Certain activities not licensed

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

Registration

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

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

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

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

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

(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 consumers, and the establishment and funding of customer and consumer awareness programmes. 45

Application for licence

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

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

- (2) Any application contemplated in subsection (1) must include—
- (a) a description of the applicant, including vertical and horizontal relationships with other persons engaged in the construction or operation of generation, transmission and distribution facilities, the import or export of electricity, trading or any other prescribed activity relating thereto; 5
 - (b) such documentary evidence of the administrative, financial and technical abilities of the applicant as may be required by the Regulator;
 - (c) a description of the proposed generation, transmission or distribution facility to be constructed or operated or the proposed service in relation to electricity to be provided, including maps and diagrams where appropriate; 10
 - (d) a general description of the type of customer to be served and the tariff and price policies to be applied;
 - (e) the plans and the ability of the applicant to comply with applicable labour, health, safety and environmental legislation, subordinate legislation and such other requirements as may be applicable; 15
 - (f) a detailed specification of the services that will be rendered under the licence;
 - (g) evidence of compliance with any integrated energy plan applicable at that point in time; and
 - (h) such other particulars as the Minister may prescribe.
- (3) (a) The Minister may prescribe requirements that have to be complied with by an applicant before the Regulator may consider an application for a licence. 20
- (b) Such requirements may relate to—
- (i) the nationality or legal status of the applicant;
 - (ii) the horizontal and vertical relationships between the applicant and persons involved in the construction and operation of generation, transmission and distribution facilities, the procurement, import and export of electricity and trading; 25
 - (iii) the adherence to applicable procurement procedures; and
 - (iv) suitability of the equipment of the licensee.

Advertising of licence application 30

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

- (2) The advertisement must state— 35
- (a) the name of the applicant;
 - (b) the objectives of the applicant;
 - (c) the place where the application will be available for inspection by any member of the public;
 - (d) the period within which any objections to the issue of the licence may be lodged with the Regulator; 40
 - (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. 45
- (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.

Information to be supplied

- 13.** Before considering an application for a licence in terms of this Act, the Regulator— 50
- (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.

Finalisation of application

- 14.** (1) The Regulator must decide on an application in the prescribed manner within 120 days—
- (a) after the expiration of the period contemplated in section 12(2)(d), if no objections have been received; or 5
 - (b) after receiving the information contemplated in section 13(b).
- (2) The Regulator must provide the applicant with a copy of its decision as well as the reasons for the decision.
- (3) The Regulator must issue separate licences for— 10
- (a) the operation of generation, transmission and distribution facilities;
 - (b) the import and export of electricity; or
 - (c) trading.
- (4) The Regulator is not obliged to issue a licence and may issue only one licence to each applicant for any of the activities contemplated in subsection (3).

Conditions of licence 15

- 15.** (1) The Regulator may make any licence subject to conditions relating to—
- (a) the establishment of and compliance with guidelines to govern relations between a licensee and its customers, including the establishment of customer forums;
 - (b) the furnishing of information, documents and details that the Regulator may require for the purposes of this Act; 20
 - (c) the period of validity of the licence in accordance with the criteria prescribed by the Minister;
 - (d) the setting and approval of 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; 25
 - (f) the format of and contents of agreements entered into by licensees;
 - (g) the regulation of the revenues of licensees;
 - (h) the planning and responsibility for the supply of electricity, including emergency plans; 30
 - (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; 35
 - (l) the right to construct and operate generation, transmission or distribution facilities, to import or export electricity, to trade or to perform prescribed activities relating thereto, including exclusive rights to do so, and conditions attached to or limiting such rights; 40
 - (m) the duty or obligation to trade, or to generate, transmit or distribute, electricity, and conditions attached to such duties or obligations;
 - (n) the termination of electricity supply to customers under certain circumstances, the duty to reconnect without undue discrimination, and conditions relating thereto; 45
 - (o) the area of electricity supply to which a licensee is entitled or bound;
 - (p) the classes of customers 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; 50
 - (s) compliance with health, safety and environmental standards and requirements;
 - (t) compliance with any regulation, rule or code made under this Act;
 - (u) compliance with energy efficiency standards and requirements, including demand-side management; 55
 - (v) the categories of customers that are contestable, and the conditions relating to such contestability;
 - (w) the undertaking of customer education programmes;
 - (x) the need to maintain facilities in a fully operational condition; 60

- (y) the period within which licensed facilities must become operational; and
- (z) any other prescribed condition.

(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. 5

Tariff principles

16. (1) A licence condition determined under section 15 relating to the setting or approval of tariffs and the regulation of revenues—

- (a) must enable an efficient licensee to recover the full cost of its licensed activities, including a reasonable margin or return; 10
- (b) must provide for or prescribe incentives for continued improvement of the technical and economic efficiency with which services are to be provided;
- (c) must give consumers proper information regarding the costs that their consumption imposes on the licensee's business;
- (d) must avoid undue discrimination between customer categories; and 15
- (e) may permit the cross-subsidy of tariffs to certain classes of customers.

(2) A licensee may not charge a customer any other tariff and make use of provisions in agreements other than that determined or approved by the Regulator as part of its licensing conditions.

(3) Notwithstanding subsection (2), the Regulator may, in prescribed circumstances, 20 approve a deviation from set or approved tariffs.

Amendment of licence

17. (1) The Regulator may vary, suspend or remove any licence condition, or may include additional conditions—

- (a) on application by the licensee; 25
- (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, 30 removing or adding any licence condition.

Revocation of licence on application

18. (1) The Regulator may revoke a licence on the application of a licensee if—

- (a) the licensed facility or activity is no longer required;
- (b) the licensed facility or activity is not economically viable; 35
- (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), 40 give the Regulator at least 12 months' notice in writing of his or her intention to cease activities, unless the Regulator determines otherwise.

(3) The Minister must prescribe the form and procedure to be followed in revoking a licence.

Contraventions of licence 45

19. (1) If it is alleged that a licensee has contravened or failed to comply with a licence condition or any provision of this Act, the Regulator may sit as a tribunal to decide on the allegation.

(2) If the tribunal finds that the allegation contemplated in subsection (1) is correct it may serve a notice on the licensee directing the licensee to comply with the licence condition or the provision of this Act, as the case may be, within a reasonable period specified in the notice. 50

(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 of a fine not exceeding R2 000 000,00 per day for each day on which the contravention or failure to comply continues.

(5) The Regulator must consider the extent of the non-compliance in deciding the amount of any penalty. 5

(6) The Minister may from time to time by notice in the *Gazette* amend the amount referred to in subsection (2) in order to counter the effect of inflation.

Order by court

20. (1) The Regulator may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if the licensee has failed to carry out the activities for which the licence was granted. 10

(2) The court before which an application is made under subsection (1) may grant or refuse the application and may make such order as to costs and for the maintenance of the licensee's services as it may regard as fair.

Renewal of licence 15

21. (1) A condition relating to the period of validity of a licence may not be amended and a licensee who wishes to continue carrying on or being involved in any activity referred to in that licence must apply for a new licence prior to that licence lapsing.

(2) The Regulator may, if the renewal will not materially affect the existing rights of any person at that point in time, authorise such deviations from the prescribed licence application procedure as it may determine. 20

Powers and duties of licensee

22. (1) A licence issued in terms of this Act empowers and obliges a licensee to exercise the powers and perform the duties set out in such licence and this Act, and no licensee may cede, transfer or delegate any such power or duty to any other person without the prior consent of the Regulator. 25

(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.

(3) A transmission or distribution licensee must, to the extent provided for in the licence, provide non-discriminatory access to the transmission and distribution power systems to third parties. 30

(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; 35

(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; 40

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

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

(5) A licensee may not reduce or terminate the supply of electricity to a customer, unless— 45

(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.

Permission to use water resources 50

23. A licensee must comply with the provisions of the National Water Act, 1998 (Act No. 36 of 1998), for the use of water resources in exercising its powers and carrying out its duties under any licence issued in terms of this Act.

Electricity infrastructure not fixtures

24. (1) Any asset belonging to a licensee that is lawfully constructed, erected, used, placed, installed or affixed to any land or premises not belonging to that licensee, remains the property of that licensee notwithstanding the fact that such an asset may be of a fixed or permanent nature. 5

(2) An asset belonging to a licensee in terms of subsection (1)—

- (a) may not be attached or taken in execution under any process of law, or be the subject of any insolvency or liquidation proceedings, instituted against the owner of the land, the landlord or the occupier of the premises concerned; 10
- (b) may not be subjected to a landlord's hypothec for rent; and
- (c) may only be validly disposed of or otherwise dealt with in terms of a written agreement with the licensee. 10

Rights over streets

25. (1) (a) A licensee may do all such things over, in or along roads or streets and associated infrastructure as may be necessary to carry out its licensed activities. 15

(b) Any activity contemplated in paragraph (a) must be undertaken subject to the right of supervision and in accordance with the plans, routes and specifications of the authority or person in control of that street, except in cases of emergency or where the authority concerned fails or refuses to co-operate with the licensee. 20

(2) A licensee may only exercise its rights in terms of subsection (1) to the extent necessary to carry out its licensed activities, and must in doing so— 20

- (a) comply with any laws or by-laws that may be applicable;
- (b) complete its activities within a reasonable time; and
- (c) repair any damage caused or reimburse the person or authority in control of that road or street for any damage caused. 25

(3) Nothing in this section may be construed as giving a licensee any rights that it does not already have in terms of its licence, or relieving a licensee from any liability in respect of any loss or damage caused by its negligence.

(4) For the purposes of this section 'street' includes any square or enclosed public place the control or care of which is vested in any person or authority. 30

Liability of licensee for damage or injury

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

Expropriation

27. (1) The State may, in order to facilitate the achievement of the objectives of this Act, expropriate land, or any right in, over or in respect of land, on behalf of a licensee in accordance with section 25 of the Constitution and section 2 of the Expropriation Act, 1975 (Act No. 63 of 1975). 40

(2) The Minister must prescribe the procedure to be followed in giving effect to subsection (1).

(3) The State may exercise the powers contemplated in subsection (1) only if—

- (a) a licensee is unable to acquire land or a right in, over or in respect of such land by agreement with the owner; and 45
- (b) the land or any right in, over or in respect of such land is reasonably required by a licensee for facilities which will enhance the electricity infrastructure in the national interest.

CHAPTER V

RESOLUTION OF DISPUTES AND REMEDIES

Resolution of disputes by Regulator

42. (1) The Regulator must, at the request of the parties to a dispute, act as mediator or settle disputes between licensees, or between a licensee or registered person and its customer, or between any person generating, transmitting, distributing, trading or providing reticulation services and its customer (notwithstanding that such person may not be a licensee), relating to any issue contemplated in this Act. 5

(2) The Regulator may appoint a suitable person to act as mediator or settle disputes 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. 10

(3) The Minister must prescribe the procedure to be followed in the mediation and settlement of disputes and the fees to be paid.

(4) The settlement of a dispute 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 settlement process, must be regarded as a decision contemplated in section 10(3) or (4) of the National Energy Regulator Act. 15

Remedies against decisions of Regulator

43. Section 10(3) of the National Energy Regulator Act applies to every decision by the Regulator taken in terms of this Act, except where this Act provides otherwise or where the Regulator sits as a tribunal, in which case section 10(4) of that Act applies. 20

CHAPTER VI

INVESTIGATIONS

Investigations

44. (1) The Regulator must, in applicable circumstances, at its own instance or on receipt of a complaint or inquiry relating to the generation, transmission, distribution, trading or reticulation of electricity, investigate complaints— 25

- (a) of discrimination regarding tariffs or conditions of access;
- (b) if a licensee is involved, of failure to abide by its licensing conditions; or
- (c) if a municipality, or a service provider acting in terms of a service delivery agreement with that municipality, is involved, of failure to comply with the reticulation services policy of the municipality or failure to comply with or contravention of national norms and standards. 30

(2) On receipt of a report under subsection (1), the Regulator may institute a formal investigation. 35

(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. 40

(4) On completion of the investigation under subsection (3) the person chairing it must submit his or her written report thereon to the Regulator.

(5) On receipt of the report, the Regulator may—

- (a) refer the report to the Director of Public Prosecutions of the area concerned; 45
- (b) if a licensee is involved, act on the matter in accordance with section 19(2); or

CHAPTER VII

GENERAL PROVISIONS

Entry, inspection and information gathering by Regulator

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

New generation capacity

46. (1) The Minister may, on the advice of the Regulator, by notice in the *Gazette*—
- (a) determine that new generation capacity is needed to ensure the continued uninterrupted supply of electricity; 20
 - (b) determine the types of energy sources from which electricity must be generated, and the percentages of electricity that must be generated from such sources;
 - (c) determine that electricity thus produced may only be sold to the persons or in the manner set out in such notice; 25
 - (d) determine that electricity thus produced must be purchased by the persons set out in such notice;
 - (e) require that new generation capacity must—
 - (i) be established through a tendering procedure which is fair, equitable, transparent, competitive and cost-effective; 30
 - (ii) provide for private sector participation.
- (2) The Minister has such powers as may be necessary or incidental to any purpose set out in subsection (1), including the power to—
- (a) undertake such management and development activities as may be necessary to facilitate the tendering process for the development, construction and commissioning of such new electricity generation capacity; 35
 - (b) purchase, hire or let anything or acquire or grant any right for or on behalf of the State or for the purpose of transferring such thing or right to a successful tenderer;
 - (c) apply for and hold such permits and authorisations as may be required by law; 40
 - or
 - (d) undertake such management activities as may be necessary or expedient for the effective establishment and operation of public or privately owned electricity generation business. 45
- (3) The Regulator, in 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. 50
- (4) In exercising the powers under this section the Minister is not bound by the State Tender Board Act, 1968 (Act No. 86 of 1968). 50

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

47. (1) The Regulator may, after consultation with—
- (a) licensees; 55
 - *****
 - (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; 5
 - (b) codes of business practice and ethics;
 - (c) performance objectives and the setting, approving and meeting of performance improvement targets;
 - (d) codes of conduct and practice relating to the establishment and operation of electricity markets, including codes governing or guiding the behaviour of persons taking part in such markets; 10
 - (e) codes of conduct and practice relating to the establishment and operation of power pools, including codes governing or guiding the conduct of persons taking part in such pools;
 - (f) codes of practice relating to the operation, use and maintenance of transmission and distribution power systems; 15
 - (g) 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— 20
- (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; 25
 - (d) trading;
 - (e) technical and safety standards;
 - (f) any other ancillary or administrative matter for which it is necessary to make rules for the proper implementation of this Act. 30
- (4) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) activities that have to be licensed or registered and the classification of licences into categories and sub-categories;
 - (b) the form and manner of applying for licences;
 - (c) publishing of advertisements by licensees and the contents thereof; 35
 - (d) the procedure to be followed in considering licence applications and any licence conditions to be imposed in addition to those required under this Act;
 - (e) the procedure to be followed by the Regulator in the amendment, revocation and renewal of licences and in the case of non-compliance with licensing conditions; 40
 - (f) the procedure to be followed for investigations;
 - (g) the procedure to be followed in directing a licensee to meet the obligations of another licensee;
 - (h) the form and manner of applying for and fees payable on application for licensing and registration; 45
 - (i) the procedure to be followed and fees to be paid in respect of mediation and the settlement of disputes;
 - (j) the procedure to be followed in inquiries and investigations, including the method of summoning witnesses, the procurement and submission of documentary and oral evidence, the onus of proof, and matters relating thereto; 50
- *****
- (m) new generation capacity;
 - (n) the types of energy sources from which electricity must be generated;
 - (o) the percentages of electricity that must be generated from different energy sources; 55
 - (p) the participation of the private sector in new generation activities;
 - (q) the setting of standards relating to health, safety and environment and the incorporation thereof into licences or national norms and standards;
 - (r) the prohibition of certain practices in the electricity supply industry; 60
 - (s) the criteria for or prohibition of cross-ownership or vertical and horizontal integration by licensees in generation, transmission and distribution assets;

- (t) 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;
 - (u) the conditions subject to which the Regulator may issue a licence;
 - (v) any other matter that may or has to be prescribed in terms of this Act; and 5
 - (w) 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; and 10
 - (b) invite public comments on the proposed regulations.

Repeal of laws and savings

- 48.** (1) Subject to subsections (2) and (3), the laws specified in Schedule 1 are hereby repealed or amended to the extent set out in the third column of that Schedule.
- (2) Anything done by the National Electricity Regulator in terms of the Electricity Act, 1987, prior to the commencement of this Act, and which may validly be done by the Regulator in terms of this Act, is deemed to have been done in terms of this Act.
- (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— 20
- (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. 25
- (4) The Minister may, after consultation with the Regulator and any person who may be affected thereby, amend Schedule 2 by notice in the *Gazette*.

Short title and commencement

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- 49.** (1) This Act is called the Electricity Regulation Act, 2005, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) Despite subsection (1), section 46 must be regarded as having come into operation on 1 December 2004.

SCHEDULE 1

REPEAL, AMENDMENT AND SUBSTITUTION OF LAWS

No and Year of Act	Short Title	Extent of repeal, amendment or substitution
Act No. 41 of 1987	Electricity Act, 1987	The repeal of the whole, with the exception of section 5B.
Act No. 84 of 1990	Kwa Zulu and Natal Joint Services Act, 1990	The amendment of Schedule 3 by the deletion of the item referring to the Electricity Act, 1987 (Act No. 41 of 1987).
Act No. 40 of 2004	National Energy Regulator Act	<p>1. The substitution in section 4(1) for paragraph (c) of the following paragraph:</p> <p>“(c) [with effect from a date determined by the Minister by notice in the Gazette] undertake the functions [of the National Electricity Regulator as] set out in section 4 of the [Electricity Act.] Electricity Regulation Act, 2005”.</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:</p> <p>“(d) materially fails to perform any duty imposed on him or her in terms of this Act, [electricity Act] the Electricity Regulation Act, 2005, the Gas Act or the Petroleum Pipelines Act;”.</p>

SCHEDULE 2

EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

1. Any generation plant constructed and operated for demonstration purposes only
2. Any generation plant constructed and operated for own use
3. Non-grid connected supply of electricity except for commercial use

MEMORANDUM ON THE OBJECTS OF THE ELECTRICITY REGULATION BILL

1. BACKGROUND

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

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

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

2. OBJECTS

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

3. DEPARTMENTS/ORGANISATIONS CONSULTED

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

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

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

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

The Bill was published in the *Government Gazette* and on the Department of Minerals and Energy website for stakeholder comment. Consultation meetings were also conducted with various national government departments and relevant stakeholders.

4. FINANCIAL IMPLICATIONS

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

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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