

REPUBLIC OF SOUTH AFRICA

ELECTRICITY REGULATION AMENDMENT BILL

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

(MINISTER OF MINERALS AND ENERGY)

[B 20B—2006]

ISBN 1-920200-16-9

No. of copies printed 1 800

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 amend the Electricity Regulation Act, 2006, so as to insert certain definitions; to make certain textual corrections; to insert a new Chapter dealing with electricity reticulation by municipalities; and to extend the Minister’s powers to make regulations; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 4 of 2006

1. Section 1 of the Electricity Regulation Act, 2006 (hereinafter referred to as the principal Act), is hereby amended by— 5

- (a) the insertion after the definition of “Minister” of the following definitions:
 - “**‘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); 10
 - ‘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;” 15

- (b) the insertion after the definition of “Regulator” of the following definitions:
 - ‘reticulation’** means trading or distribution of electricity and includes services associated therewith;
 - ‘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; 20
 - ‘service provider’** means a person or institution or any combination of persons and institutions which provide a municipal service in terms of a service delivery agreement;” 25

Amendment of section 4 of Act 4 of 2006

2. Section 4 of the principal Act is hereby amended by the substitution in subparagraph (a)(i) for item (aa) of the following item:

- “(aa) the operation of generation, transmission **[and]** , distribution or reticulation facilities;”.

Amendment of section 8 of Act 4 of 2006

3. Section 8 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraphs:

“(a) operate any generation, transmission [or], distribution or reticulation facility;”.

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Substitution of section 9 of Act 4 of 2006

4. The following section is hereby substituted for section 9 of the principal Act:

“9. The Minister may, after consultation with the Regulator and stakeholders in the advisory forum, determine by notice in the *Gazette* that any activity contemplated in section [8] 7(1) need no longer be a licensed activity from the date set out in such notice.”.

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Amendment of section 10 of Act 4 of 2006

5. Section 10 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Minister may, in consultation with the Regulator, determine by notice in the *Gazette* that any person involved in an activity relating to trading or the generation, transmission or distribution of electricity that does not require licensing in terms of section [8] 7 read with section [9] 8 must register with the Regulator.

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“(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 license at the date of a determination contemplated in section [9] 8 must be issued with a registration certificate without complying with the prescribed procedure.”.

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Amendment of section 11 of Act 4 of 2006

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6. Section 11 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) A person who has to hold a licence in terms of section [8] 7 must apply to the Regulator for such licence in the form and in accordance with the prescribed procedure.”.

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Amendment of section 14 of Act 4 of 2006

7. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) of paragraphs (a) and (b) for the following paragraphs:

“(a) after the expiration of the period contemplated in section [12] 11(2)(d), if no objections have been received; or
(b) after receiving the information contemplated in section [13] 12 (b).”

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Amendment of section 15 of Act 4 of 2006

8. Section 15 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) the period of validity of the licence in accordance with section [21] 20 ;”.

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Amendment of section 16 of Act 4 of 2006

9. Section 16 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) A licence condition determined under section [15] 14 relating to the setting or approval of prices, charges and tariffs and the regulation of revenues—”.

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Amendment of section 19 of Act 4 of 2006

10. Section 19 of Act 4 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the tribunal finds that the allegation contemplated in subsection (3) is correct it may impose a penalty of 10 per cent of the annual turnover of the licensee or R2000 000,00 (whichever is the higher amount) per day **[conimencing]** commencing on the day of receipt of the notice contemplated in subsection (2).” 5

Insertion of Chapter IV in Act 4 of 2006

11. The following Chapter is hereby inserted after section 27 and the expression “CHAPTER IV”: 10

“RETICULATION

Duties of municipalities

28. (1) If a municipality provides a reticulation service, either through the use of a service provider referred to in section 29, or by itself, that municipality must ensure that it provides this service by— 15

(2) 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; 20
- (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; 25
- (f) ensuring sustainable reticulation services through effective and efficient management and adherence to the national norms and standards contemplated in section 46;
- (g) regularly reporting and providing information to the Department of Provincial and Local Government, the National Treasury, the Regulator and customers; 30
- (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. 35

Selection and appointment of external service providers

30. (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. 40

(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; 45
 - (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. 50

Key performance indicators

32. (1) The Regulator must, after consultation with the Minister prescribe general key performance indicators in respect of the technical operational issues pertaining to reticulation systems for municipalities.

(2) The key performance indicators 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 prescribed under subsection (1).

Amendment of section 44 of Act 4 of 2006

12. Section 44 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) if a licensee is involved, act on the matter in accordance with section [19] 18(2) [; or].”

Amendment of section 47 of Act 4 of 2006

13. Section 47 of the principal Act is hereby amended by—

(a) the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(b) municipalities that reticulate electricity; and”;

(b) the substitution for subsection (4) of the following subsection:

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

(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;

(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;

(q) the conditions subject to which the Regulator may issue a licence;

(r) any other matter that may or must be prescribed in terms of this Act; and

(s) any other ancillary or administrative matter that it is necessary to prescribe for the proper implementation or administration of this Act.”

Amendment of long title of Act 4 of 2006

14. The following long title is hereby substituted for the long title of the principal Act:

“To establish a national regulatory framework for the electricity supply industry; to make the National Energy Regulator of South Africa the custodian and enforcer of the national electricity regulatory framework; to provide for licences and registration as the manner in which generation, transmission, distribution, reticulation, trading and the import and export of electricity are regulated; to regulate the reticulation of electricity by municipalities; and to provide for matters connected therewith.” 5
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“Amendment of Arrangement of Sections of Act 4 of 2006

15. The Arrangement of Sections of the principal Act is hereby amended by—

- (a) the deletion of the following:
“7. Application of Chapter;”;
- (b) the insertion after the expression of “Chapter IV” of the following: 15
“Reticulation
27. Duties of municipalities
28. Selection and appointment of external service providers
29. Key performance indicators”; and
- (c) by the renumbering of sections 42 to 49 to section 30 to 37, respectively. 20

Renumbering of certain sections in Act 4 of 2006

16. The principal Act is hereby amended by—

- (a) the substitution in paragraph (b) of section 4 for subparagraph (iv) of the following subparagraph:
“[(iv)](iii) perform any other act incidental to its functions.”; 25
- (b) the renumbering from section 8 up to and including section 27 to become section 7 up to and including section 26; and
- (c) the renumbering from section 42 up to and including section 49 to become section 30 up to and including section 37.

Short title and commencement 30

17. This Act is called the Electricity Regulation Amendment Act, 2006, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ELECTRICITY REGULATION AMENDMENT BILL

1. BACKGROUND

The Electricity Regulation Act, 2006 (Act No. 4 of 2006) (“the Act”), was adopted by Parliament in terms of the procedure laid down in section 75 of the Constitution. The Act provides for regulation of the whole electricity industry except for reticulation of electricity by municipalities. Reticulation was excluded from the Act since it falls within a functional area listed in Part B of Schedule 4 to the Constitution and must thus be dealt with in terms of section 76 of the Constitution.

It is therefore necessary to amend the Act so as to provide for the regulation of reticulation services.

2. OBJECTS

- The main object of the Bill is to insert a new Chapter into the Act dealing with the reticulation of electricity by municipalities.
- The Bill seeks to provide a framework for setting of tariffs by municipalities.
- The Bill seeks to empower the Minister to prescribe key performance indicators for municipalities in relation to reticulation services.
- The Bill also seeks to make provision regarding the relationship between municipalities and service providers who provide reticulation services on their behalf.

3. DEPARTMENTS/ORGANISATIONS CONSULTED

3.1 The following stakeholders were consulted through various meetings owing to their key role in the electricity industry:

- National Energy Regulator of South Africa
- Eskom
- Department of Provincial and Local Government
- National Treasury
- Department of Water Affairs and Forestry
- South African Local Government Association
- NEDLAC
- Competition Commission
- Department of Public Enterprises

3.2 The Bill was further published in the *Government Gazette* for public comment and the following stakeholders provided additional inputs:

- Sasol
- AMEU
- BHP Billiton
- Umhlathuze Municipality

- Energy Intensive User Group (EIUG)
- SECCP
- Chamber of Mines South Africa
- SALGA
- COSATU
- National Energy Regulator of South Africa
- Eskom

3.3 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 FOR STATE

None. The National Energy Regulator was established through the National Energy Regulator Act, 2004 (Act No. 40 of 2004), and the Bill facilitates the functions of the National Energy Regulator.

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 76 of the Constitution, since it falls within a functional area listed in Schedule 4 to the Constitution, namely Electricity and gas reticulation.
- 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.