

## **ACT**

To provide for the establishment and functions of the Electricity Control Board; and to provide for matters incidental thereto.

*(Signed by the President on 24 January 2000)*

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

**Definitions**

1. In this Act, unless the context indicates otherwise -

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

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

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

“customer” means a person supplied with electricity;

“distribution” means the furnishing of electricity to end-users;

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

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

“licence” means a licence issued under section 18;

“licensee” means the holder of a licence;

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

“Minister” means the Minister of Mines and Energy;

“prescribed” means prescribed by regulation;

“regulation” means a regulation made under section 39;

“supply” means the provision or distribution of electricity;

“this Act” includes the regulations;

“transmission” means the transmitting of electricity from an energy source or system to a place or premises from where the distribution of electricity can be effected.

## **PART I**

### **Electricity Control Board**

#### **Establishment of Electricity Control Board**

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

#### **Objects and functions of the Board**

3. (1) The objects of the Board are to exercise control over the electricity supply industry and to regulate the generation, transmission, distribution, use, import and export of electricity in accordance with prevailing Government policy so as to ensure order in the efficient supply of electricity.

- (2) In order to achieve its objects the Board -

- (a) must make recommendations to the Minister with regard to -

- (i) the issue, transfer, amendment, renewal and cancellation of licences; and

- (ii) the approval of the conditions on which electricity may be supplied by a licensee;

- (b) may, and must at the request of the Minister, advise the Minister on any matter relating to the electricity supply industry;
- (c) must, at the request of any interested party, act as mediator for the settlement of disputes between licensees or between licensees and their customers or prospective customers regarding -
  - (i) the right to the supply of electricity;
  - (ii) the quality of any such supply and the provision of services in connection therewith;
  - (iii) the installation and functioning of meters;
  - (iv) the suitability of the equipment of a licensee;
  - (v) delays in or refusal of supply by a licensee;
  - (vi) any other matter which a licensee or customer refers to the Board for mediation; and
- (d) must perform such other functions as are assigned to it by or under this Act or any other law.

(3) The Board may, for the purposes of paragraph (b) of subsection (2), carry out such investigations as it or the Minister may deem necessary or expedient.

### **Composition of the Board**

**4.** (1) The Board consists of five members who, subject to subsection (2), must be appointed by the Minister from amongst persons who have appropriate expertise and experience in one or more of the following, namely, the electricity industry, law, economics or environmental issues.

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

## **Term of office**

5. (1) Subject to subsection (2) and section 6, a member holds office for a period of four years.

(2) When the first Board is constituted in terms of this Act, three of the members must be appointed for a period of four years and the other two members for a period of two years, after which all appointments to the Board must be for a period of four years.

(3) A retiring member is eligible for re-appointment.

(4) Notwithstanding subsections (1) and (2), if a member's term of office expires before a replacement is appointed, such member shall continue in office for a further period until a replacement is appointed, but not for a period longer than three months.

## **Vacation of office and filling of vacancies**

6. (1) The office of a member becomes vacant if he or she -

(a) becomes subject to a disqualification mentioned in section 4(2);

(b) is absent from three consecutive meetings of the Board without the permission of the Board;

(c) resigns by notice in writing to the Minister; or

(d) is removed from office under subsection (2).

(2) The Minister may remove a member from office if the Minister, after affording the member an opportunity to be heard, is satisfied that the member -

(a) is incapacitated by physical or mental illness; or

(b) for any other good reason is unable or unfit to discharge the functions of a member of the Board;

(3) If a member dies or vacates his or her office before the expiration of his or her term of office, the Minister must appoint a suitable person to fill the vacancy for the remaining portion of that member's term of office.

## **Meetings of the Board**

7. (1) The chairperson of the Board must convene the first meeting of the Board and thereafter, subject to subsection (2), meetings must be held at such times and places as the Board determines, but at least one meeting must be held every three months.

(2) The chairperson of the Board may at any time, and must if so requested in writing by the Minister or by at least three members, convene a special meeting of the Board.

(3) The majority of the members shall form a quorum at a meeting of the Board.

(4) The chairperson of the Board or, in his or her absence, such other person as the members present may elect from amongst their number, must preside at a meeting of the Board.

(5) A decision of the majority of the members present at a meeting of the Board constitutes a decision of the Board and, in the event of an equality of votes, the person presiding at the meeting has a casting vote in addition to a deliberative vote.

(6) The Board may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the Board, but such person has no voting power.

(7) The Board must cause proper minutes to be kept of proceedings at its meetings.

(8) All meetings of the Board and its committees are open to the public, unless the chairperson of the Board or committee, as the case may be, in cases where he or she deems it justifiable and having given reasons therefor to persons present, orders the public to withdraw from the meeting for the duration of the discussion of a particular matter or matters on the agenda.

(9) All resolutions of the Board, except those taken at a meeting not open to the public, must be made publicly known by affixing a copy thereof to a notice board at the offices of the Board and, if the Board so decides, in any other manner as the Board may determine.

### **Committees**

**8.** (1) The Board may, from amongst its members, establish any committee -

(a) to advise the Board on any matter concerning the functions of the Board as the Board may determine; or

(b) to perform such functions of the Board as the Board may delegate to the committee.

(2) With the permission of the Board, a committee may invite any person whose presence is in its opinion desirable to attend and to participate in the deliberations of a meeting of the committee, but such person has no voting power.

### **Disclosure of interest by members**

**9.** (1) If a member or his or her spouse, or any company, close corporation or partnership of which the member or his or her spouse is a director, shareholder, member or partner, is in any way directly or indirectly interested in a contract entered, or proposed to be entered, into

by the Board or a committee, or in any other matter which is the subject of consideration by the Board or committee, and which may cause a conflict of interests in the performance of his or her duties as member, that member must -

- (a) forthwith fully disclose the nature of such interest at the meeting of the Board or committee at which such contract or other matter is the subject of consideration; and
  - (b) withdraw from the meeting so as to enable the remaining members to discuss the matter and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests.
- (2) A disclosure by a member in accordance with subsection (1), and the decision taken by the remaining members in connection therewith, must be recorded in the minutes of that meeting.
- (3) A member who knowingly fails to comply with subsection (1) is guilty of an offence and liable upon conviction to a fine not exceeding N\$ 8000 or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

### **Remuneration of members**

**10.** A member of the Board who is not in the full-time employment of the Public Service must be paid from the funds of the Board such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, determines.

### **Chief Executive Officer and other staff**

- 11.** (1) The Board must appoint a suitable person who has expertise relevant to the functions of the Board as Chief Executive Officer of the Board.
- (2) The Chief Executive Officer holds office for such period, not exceeding five years, as the Board determines upon his or her appointment, and is eligible for reappointment.
- (3) The Chief Executive Officer is responsible for the carrying out of the resolutions of the Board and manages the affairs of the Board subject to the control and directions of the Board.
- (4) The Chief Executive Officer may, subject to the directions of the Board, appoint such employees as are necessary to enable the Board to properly carry out its functions.
- (5) The Board determines the conditions of service, remuneration and other benefits of the Chief Executive Officer and other members of its staff.

## **PART II FINANCIAL PROVISIONS**

### **Funds of Board**

**12.** (1) The funds of the Board consist of -

- (a) money that may be appropriated to the Board by Parliament from time to time;
- (b) fees payable to the Board in terms of this Act;
- (c) money collected in respect of levies imposed under section 13;
- (d) money raised by way of loans with the approval of the Minister and the concurrence of the Minister of Finance;
- (e) interest on investments made under subsection (2);
- (f) donations or grants made to the Board with the approval of the Minister and the concurrence of the Minister of Finance; and
- (g) money accruing to the Board from any other source.

(2) The Board, with the approval of the Minister and the concurrence of the Minister of Finance, may invest any portion of its funds not immediately required by it.

(3) All expenses incidental to the performance of the functions of the Board must be defrayed from the funds of the Board.

### **Levies**

**13.** (1) In order to defray the expenses incurred in the performance of the functions of the Board, the Minister may by notice in the Gazette impose a levy on licensees, which may differ according to different categories of licensees or the different activities carried on by them.

(2) A notice in terms of subsection (1) -

- (a) must state the amount of the levies or the basis or method of calculation or determination of the amounts;
- (b) must specify the date on which or the periods within which the levies are payable and the manner of payment;
- (c) may stipulate that a licensee becomes liable for the payment of interest on any arrear payments of the levy and specify the rate of interest and manner of calculation thereof.

### **Financial year**

**14.** The financial year of the Board is the period of twelve months ending on 31 March in each year.

### **Accounts and audit**

**15.** (1) The Board must, in accordance with generally accepted accounting practice and procedure, cause proper books and records of account to be kept of all financial transactions, assets and liabilities of the Board.

(2) As soon as possible after the end of each financial year, the Board must have financial statements prepared for that year, consisting of a statement of income and expenditure and a balance sheet which must reflect the Board's financial position as at the end of the financial year.

(3) The Board's books and records of accounts and financial statements must be audited annually by an auditor or auditors engaged in public practice as defined in section 1 of the Public Accountants and Auditors Act, 1951 (Act No. 51 of 1951), and who must be appointed by the Board with the prior approval of the Minister.

(4) For the purpose of performing the functions in terms of this Act, an auditor of the Board has all the powers which are vested in the Auditor-General with respect to a statutory institution in terms of section 26(1) of the State Finance Act, 1991 (Act No. 31 of 1991), and which the Auditor-General would have been competent to exercise had the Auditor-General been assigned the duty to act as auditor of the Board by this Act.

(5) The auditors must prepare a report on the audit of the books and records of account and the financial statements of the Board and submit such report to the Board within four months after the end of the financial year in respect of which the audit has been carried out.

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

**16.** (1) The Board must -

(a) furnish to the Minister such information as the Minister may call for in connection with the activities and financial position of the Board; and

(b) within six months after the end of each financial year, submit to the Minister a report on its activities during that financial year, which must include -

(i) the Board's audited balance sheet and income and expenditure statement, and any notes thereon or document annexed thereto providing information required by this Act; and

(ii) the audit report of the auditors.

(2) The balance sheet and statements referred to in subsection (1)(b) must -

- (a) be in conformity with generally accepted accounting practice;
- (b) fairly present the state of affairs and activities of the Board and the results thereof; and
- (c) refer to any material matters not specifically prescribed by this Act which affect or are likely to affect the affairs of the Board, both by way of figures and a descriptive report, amplifying and explaining, where necessary, figures in the financial statements.

(3) The Minister must table the report referred to in subsection (1)(b) in the National Assembly within 21 days after the receipt thereof, if the National Assembly is then in ordinary session, or, if it is not in ordinary session, within 14 days after the commencement of its first ensuing session.

### **PART III LICENCES**

#### **Duty to obtain a licence**

**17.** (1) Subject to the provisions of this Act, no person may establish or carry on any undertaking for -

- (a) the generation of electricity;
- (b) the transmission of electricity;
- (c) the supply of electricity;
- (d) the distribution of electricity;
- (e) the importation of electricity; or
- (f) the export of electricity,

unless such person holds a licence issued under this Act that authorises the particular activity.

(2) A separate licence is required for each of the activities mentioned in subsection (1).

(3) Notwithstanding subsection (1), a licence is not required for the generation of electricity by means of a generation plant which -

- (a) has an installed capacity of less than 500 KVA; and
- (b) is used for the supply of electricity exclusively for own use by the person in control of such plant and on premises owned or occupied by that person.

## **Application for licence**

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

## **Criteria for consideration of application**

**19.** (1) The Minister, in considering an application for the issue, renewal, amendment or transfer of a licence, and the Board, in making its recommendation to the Minister on such application, must give due consideration to matters or activities which may adversely affect, or result in damage to, the environment or the rights of others, weighed against the advantages in general that may be derived from the grant of the application.

(2) Without derogating from the generality of the provisions of subsection (1), the Minister or the Board may -

- (a) request from the applicant, an environmental impact assessment study indicating the extent of any potential damage to or pollution of the environment and the steps proposed to be taken by the applicant to prevent or minimise such damage or pollution and to restore the environment generally and in terms of existing environmental legislation;
- (b) request the applicant to submit details of the technical and economic-financial resources available to the applicant to execute the work, to operate the system and to carry on the business to which the application or licence relates, substantiated by documentary proof where applicable;
- (c) take into consideration the extent to which the activities of the applicant will or may be detrimental to or adversely affect the rights and operation of other licensees or their customers in their area of operation;
- (d) take into consideration the ability of the applicant to provide an effective service to customers;
- (e) take into consideration whether the grant or refusal of the application in question is in the public interest.

### **Incomplete premises**

**20.** (1) If an application for a licence is made in respect of premises which still require work of a structural nature to be carried out, including the installation of plant and equipment, before operations under the licence can be commenced, the Minister may, upon approval of the plans in respect of such work, grant the licence subject to compliance with such conditions and requirements, and within such period, as the Minister may determine before the licence can be issued.

(2) The Board must in writing inform the applicant of the conditions and requirements imposed under subsection (1).

(3) The Minister may at any time, on application of the applicant concerned -

- (a) withdraw or amend any condition or requirement referred to in subsection (1);

- (b) extend or further extend the period referred to in that subsection;
- (c) approve an amended plan in respect of the premises.

(4) When the Board is satisfied that the premises referred to in subsection (1) have been completed in accordance with the approved plan thereof, the conditions and requirements determined by the Minister have been complied with and the premises are suitable for the purpose for which they will be used under the licence, the Board shall issue such licence.

(5) A licence granted in terms of subsection (1) shall lapse if it is not issued before the expiration of the period referred to in that subsection or any extension thereof under subsection (3)(b).

### **Duration and renewal of licences**

**21.** (1) Unless sooner cancelled under section 30, a licence remains valid for such period, not exceeding 50 years, as may be determined by the Minister and stated in the licence.

(2) A licence may be renewed from time to time for such further period as the Minister may determine.

### **Conditions of a licence**

**22.** (1) A licence is subject to such conditions as may be prescribed and to such other conditions as the Minister, on recommendation of the Board, may impose when granting an application for the issue, renewal, amendment or transfer of a licence.

(2) Without derogating from the generality of the power conferred by subsection (1), conditions prescribed or imposed under that subsection may include provisions relating to -

- (a) the provision by a licensee of institutional support, transfer of technology and the funding thereof on a specified basis;
- (b) the obligations of the licensee, upon cessation of the activities carried on under the licence concerned, with regard to the destruction, dismantling or removal of any buildings, walls, installations, equipment, structures, waste dumps or other facilities erected or used for purposes of, or in connection with, those activities, whether on the premises of the licensee or elsewhere, and the restoration of any land disturbed by such activities;
- (c) the furnishing by the licensee of acceptable security for compliance with any condition contemplated in paragraph (b).

### **Transfer of licence**

**23.** (1) A licence may not be transferred or ceded to any other person, unless the Minister, on recommendation of the Board, has granted approval therefor.

- (2) An application for the transfer of a licence must -
- (a) be made by the licensee and proposed transferee jointly;
  - (b) be submitted to the Board; and
  - (c) be advertised at the expense of the applicants,

in the prescribed manner.

(3) Any objection to the transfer of a licence must be submitted to the Board in the prescribed manner.

(4) The Board must consider an application in terms of subsection (1) and any objection thereto, and may for that purpose, at its discretion, arrange for a public hearing of the application at a suitable time and place of which not less than 14 days notice must be given to the applicants and every objector.

(5) At a hearing in terms of subsection (4), the applicants and an objector may be represented by a legal practitioner and may lead evidence in support of the application or objection.

(6) Not later than 30 days after conclusion of a hearing in terms of subsection (4) or, if no hearing was arranged, 30 days after the expiry of the period allowed for the submission of objections in terms of subsection (3), the Board must submit the application and any objection thereto, together with its recommendations thereon, to the Minister, which recommendations must include any conditions which the Board proposes should be imposed.

(7) The Minister may either grant or refuse an application.

(8) If an application for the transfer of a licence is refused the Minister must in writing inform the applicants of the reasons therefor.

### **Amendment of licence**

**24.** (1) A licence may, upon application by the licensee, and on recommendation of the Board, be amended by the Minister, but an application for an amendment which involves not more than a revision of the schedule of approved tariffs contained in the licence may be considered and decided by the Board in terms of section 25(2).

(2) An application for the amendment of a licence, not being an application solely for a revision of the schedule of approved tariffs, must -

- (a) be made and submitted to the Board; and

(b) be advertised at the expense of the applicant,

in the prescribed manner.

(3) An objection to an application in terms of subsection (2) must be submitted to the Board in the prescribed manner.

(4) The Board must consider an application in terms of subsection (2) and any objection thereto, and may for that purpose, at its discretion, arrange for a public hearing of the application at a suitable time and place of which not less than 14 days notice must be given to the applicant and every objector.

(5) At a hearing in terms of subsection (4), the applicant and an objector may be represented by a legal practitioner and may lead evidence in support of the application or objection.

(6) Not later than 30 days after conclusion of a hearing in terms of subsection (4) or, if no hearing was arranged, 30 days after the expiry of the period allowed for the submission of objections in terms of subsection (2), the Board must submit the application and any objection thereto, together with its recommendations thereon, to the Minister, which recommendations must include any conditions which the Board proposes should be imposed.

(7) The Minister may either grant or refuse the application.

(8) If an application in terms of subsection (2) is refused the Minister must in writing inform the applicant of the reasons therefor.

#### **Schedule of approved tariffs and revision thereof**

**25.** (1) Subject to subsection (3), a licensee may not levy any charge against any customer other than in accordance with the tariffs specified in the schedule of approved tariffs contained in the licensee's licence.

(2) The Board may from time to time, upon application by a licensee, revise the schedule of approved tariffs of the licence concerned and may require the licensee to submit such information as the Board may require for that purpose.

(3) The Board may, in specific circumstances and on good cause shown, approve a deviation from a schedule of approved tariffs.

### **PART IV OBLIGATIONS OF LICENSEE**

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

**26.** Subject to the availability of capacity, a licensee must supply electricity within its licensed area to every person who applies therefor and who is capable of making satisfactory arrangement for payment for such supply.

### **Changes to licensed area**

**27.** If the Board considers it to be in the public interest and necessary for the sake of rational organisation of the supply of electricity, the Board may at any time require a licensee -

- (a) to effect such changes or additions to the licensed area of the licensee as the Board may determine; or
- (b) to give up all or any part of such area to another licensee or prospective licensee as the Board may determine, subject to an agreement for the payment of just compensation by such other licensee, on the basis and in the manner approved by the Board, for the facilities given up.

### **Transmission of electricity**

**28.** A licensee who is licensed to transmit electricity may not, upon the request of another licensee, refuse that licensee the right of transmitting electricity through its electrical or transmission line against payment of compensation at a rate approved by the Board, except if such refusal is reasonably based on an insufficiency of technical availability of capacity.

### **Reduction or discontinuation of supply**

**29.** A licensee may not, except for causes beyond the control of the licensee, reduce or discontinue the supply of electricity to a customer, except if the customer -

- (a) is declared insolvent;
- (b) has failed to pay any fees or charges due in accordance with the tariffs of supply; or
- (c) has failed to comply with the conditions of supply.

### **Cancellation or suspension of licence**

**30.** (1) If at any time it appears to the Board that a licensee has failed to comply with any of the requirements of this Act or to meet any of the obligations in terms of the licence, the Board may by registered letter require the licensee to rectify the default within a specified period.

(2) If a licensee fails to comply with the requirements of a notice in terms of subsection (1), the Minister may, on recommendation of the Board, withdraw the licence, or suspend the licence on such conditions with regard to reinstatement as the Minister may determine.

(3) Steps taken under subsection (1) or (2) will not exempt the licensee concerned from civil or criminal liability in respect of an act or omission on account of which those steps were taken.

(4) The Board may cancel a licence if, subsequent to the granting of an application for the issue, renewal, transfer or amendment of such licence it is discovered that information furnished in connection with that application was incorrect or incomplete in a material respect.

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

**31.** Installations for the generation, transformation, transmission and distribution of electrical energy, including any alterations or extensions thereto, shall be built and operated with due compliance with the requirements of any other law, in particular laws relating health, safety and environmental standards.

## **PART V GENERAL**

### **Sale and supply of electricity within local authority areas**

**32.** (1) Subject to subsection (2) and the provision of the Local Authorities Act, 1992 (Act No. 23 of 1992), the sale and supply of electricity within the area of jurisdiction of a local authority council shall be under the control of that council, except to the extent that any person has acquired the right of supply within that area, whether under a licence or by agreement with the local authority council or otherwise.

(2) Notwithstanding anything to the contrary contained in any other law, the Minister may, if the Minister considers it to be in the national interest, instruct the Board to gather information in respect of the supply of electricity by a local authority council and the Board, after consultation with the local authority council concerned, may accordingly make arrangements or issue directives to the local authority for the promotion of the efficient utilisation of electricity.

### **Board's power of expropriation**

**33.** (1) Notwithstanding anything to the contrary contained in any law, a licensee may, with the approval of the Cabinet and subject to such conditions as the Cabinet may impose, by expropriation acquire any land or any right in, over or in respect of land as the licensee may require, in the public interest, for any purpose associated with the generation, transmission, distribution or supply of electricity by the licensee.

(2) The Cabinet may under subsection (1) grant approval to a licensee only if the Cabinet is satisfied, after considering a report by the Board -

- (a) that the licensee has been unable to acquire the land or right concerned on reasonable terms, other than terms relating to compensation, by agreement with the owner; and

- (b) that the land or right concerned is reasonably required by the licensee for the purposes of the undertaking carried on by the licensee; and
  - (c) that it is in the public interest that the land or right be acquired by the licensee.
- (3) In order to report to the Cabinet on the matters referred to in paragraphs (a), (b), (c) of subsection (2), the Board must -
- (a) hold a public hearing to receive evidence and collect information relevant to those matters; and
  - (b) give at least 14 days' written notice of the hearing to the licensee and to the owner concerned.
- (4) At a hearing in terms of subsection (3), the owner may raise any objection against the expropriation.
- (5) Neither the Cabinet nor the Board may make a finding regarding compensation payable to the owner and, in the event of the licensee and owner failing to reach agreement as to compensation, the compensation payable must be determined in accordance with the provisions of the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978).
- (6) If the Cabinet under subsection (1) grants approval for the expropriation of any land or right, such expropriation must be effected by the licensee in accordance with the provisions of sections 5 to 18 inclusive of the Expropriation Ordinance, 1978, and in the application of those provisions any reference -
- (a) to "the Executive Committee" and to "the Administration" must be construed as a reference to the licensee concerned; and
  - (b) to "section 2" of that Ordinance must be construed as a reference to this section.

### **Appeal against decision of Board**

**34.** (1) A licensee, local authority or customer or any number of customers purchasing 100 megawatt-hours of electricity per annum or more, or any number of customers exceeding 10, or a party to a dispute settled by the Board in terms of section 3(1)(c), may appeal against any decision of the Board to the Minister in the manner as prescribed.

(2) An appeal in terms of subsection (1) must be lodged within 30 days after the decision of the Board has been made known or otherwise brought to the notice of the appellant.

### **Inspections and returns**

**35.** Any person authorised in writing by the Board, may -

- (a) at all reasonable times enter the premises, other than a private dwelling, of any licensee for the purpose of investigating whether the provisions of this Act or any conditions attached to a licence are being complied with or for the purpose of any inspection that is incidental to the functions of the Board, and inspect any plant, machinery, books, accounts and other documents found thereat;
- (b) demand from any licensee to furnish, in such form as may be determined by the Board -
  - (i) such periodical or other returns; or
  - (ii) such particulars in respect of the licensee's undertaking,as the Board or that person may require.

### **Licensee's powers of inspection**

**36.** (1) A licensee or any person authorised in writing by a licensee may at all reasonable times enter any premises to which electricity is or has been supplied by the licensee for the purpose of -

- (a) inspecting, testing, repairing or maintaining any line, meter, fitting or apparatus of the licensee which is on or in the premises;
  - (b) ascertaining the quantity of electricity consumed on or in the premises; or
  - (c) removing any lines, meters, fittings or apparatus of the licensee if a supply to the premises is no longer required or if the licensee is entitled to cut off the supply.
- (2) A person who intends to enter any premises in terms of subsection (1) must -
- (a) if possible, make suitable arrangements with the occupant of the premises for entry before entering the premises;
  - (b) at the request of any person in charge of the premises, exhibit the written authorisation to enter the premises; and
  - (c) adhere to all reasonable security measures, if any, of the owner or occupant of the premises.

(3) Any damage caused by any entry or inspection or removal contemplated in subsection (2) must be repaired or compensated for by the licensee.

### **Powerlines, meters and other apparatus are not fixtures**

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

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

provided adequate indication is given on such premises that such licensee is the owner of such powerlines, meters, fittings, works or apparatus.

### **Offences**

**38.** (1) Any person who -

- (a) carries on any undertaking in contravention of any provision of this Act;
- (b) fails to carry out any order or decision of the Board or to comply with any condition imposed by the Board; or
- (c) being a licensee, contravenes or fails to comply with any condition applicable to the licence concerned,

is guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

(2) Any person who without lawful excuse (the proof of which shall lie upon that person) -

- (a) abstracts, branches off or diverts any electric current or causes any electric current to be abstracted, branched off or diverted;
- (b) consumes or uses any electric current knowing it to have been unlawfully abstracted, branched off or diverted; or
- (c) cuts off or damages or interferes with any apparatus for generating, transmitting or supplying electricity,

is guilty of an offence and liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment.

(3) If, in any prosecution for an offence in terms of paragraph (a) or (b) of subsection (2), it is proved that any electric current has been abstracted, branched off or diverted, it shall be

presumed, in the absence of evidence to the contrary, that the owner of any premises within which the electric current was abstracted or branched off or to which the electric current was diverted or, if the owner does not occupy the premises, the occupier thereof, abstracted, branched off or diverted the electric current, as the case may be.

## **Regulations**

- 39.** (1) The Minister may make regulations in relation to -
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
  - (b) the form and manner in which any application or objection in terms of this Act must be made;
  - (c) the fees payable in respect of any application in terms of this Act and for the issue, renewal, amendment or transfer of a licence;
  - (d) the circumstances under which licence conditions may be changed in the public interest and the procedure to be followed to effect such change;
  - (e) the duties and obligations of licensees;
  - (f) the procedure to be adopted by a licensee requiring rights of way or water rights in connection with the licensee's undertaking;
  - (g) the inspection of and enquiry into the control and operation of undertakings;
  - (h) the units or standards for the measurement of electrical energy, the verification of meters, the fees to be charged therefor and the settlement of disputes as to measurements of power and limits of error;
  - (i) the frequency, type of current and voltage of electricity generated or supplied;
  - (j) the mode of supplying electricity;
  - (k) the method of noting and conducting appeals from decisions of the Board;
  - (l) the obligation of a licensee to supply electricity to a customer and the circumstances under which the obligation will be deemed to have been waived;
  - (m) the conditions on which electricity supplied to premises may be resold to another person;
  - (n) any other matter the regulation of which, in the opinion of the Minister, is necessary or expedient to achieve or promote the objectives of this Act.

(2) Regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith or with any condition of a licence, of a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

### **Documentary evidence**

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

### **Transitional provisions**

**41.** A person who, upon the date of commencement of this Act, carries on an undertaking for the generation, transmission, distribution, import or export of electricity under any authorisation obtained in terms of the Electric Power Proclamation, 1922 (Proclamation No. 4 of 1922) may continue to carry on such undertaking for a period not exceeding 12 months, or such longer period as may be determined by the Minister by notice in the Gazette, upon expiry of which such person shall be required to be the holder of an appropriate licence issued in terms of this Act in respect of the activities carried on in such undertaking.

### **Repeal of laws**

**42.** The Electric Power Proclamation, 1922 (Proclamation No. 4 of 1922) and the Electric Power Amendment Ordinance, 1961 (Ordinance No. 7 of 1961) are repealed.

### **Short title and commencement**

**43.** This Act shall be called the Electricity Act, 2000, and shall come into operation on a date to be determined by the Minister by notice in the Gazette.

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