

REPUBLIC OF NAMIBIA

PARLIAMENT

ELECTRICITY BILL

[Bill No. -2017]

BILL

To establish a national regulatory framework for the electricity provision industry; to establish a licensing system for the generation, transmission, distribution, supply, trading, import and export of electricity; to provide for the powers and obligations of licensees; to regulate tariffs; and to provide for incidental matters.

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

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PART I
PRELIMINARY

Definitions

1. (1) In this Act, unless the context indicates otherwise –

“Authority” means the Namibia Energy Regulatory Authority established by section 3 of Namibia Energy Regulatory Authority Act;

“code” means a code made by the Authority under section 41;

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

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

“directive” means a directive given by the Authority under this Act;

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

“distribution power system” means a power system which is used to convey electricity locally and for short distances from a transmission substation or local generator to individual customers;

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

“environment” means environment as defined in section 1 of the Environmental Management Act, 2007 (Act No. 7 of 2007);

“Environmental Management Act” means the Environmental Management Act, 2007 (Act No. 7 of 2007);

“generation” means the production of electricity by way of natural or artificial processes, and “generate”, “generator” and “generating” have corresponding meanings;

“guideline” means a guideline issued by the Authority under section 41(4);

“High Court” means the High Court of Namibia as defined in section 1 of the High Court Act, 1990 (Act No. 16 of 1990);

“kVA” means kilo-Volt Amperes;

“licence” means a licence contemplated in section 8 of this Act;

“licensee” means the holder of a licence;

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

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

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

“market operator” means a person acting as a central buyer of electricity from generators and cross-border electricity providers and responsible for administering transactions in the electricity market as defined in regulations, rules or codes or as stipulated in the applicable licence;

“Minister” means the Minister responsible for energy;

“Namibia Energy Regulatory Authority Act” means the Namibian Energy Regulatory Authority Act, 2017;

“power purchase agreement” means an agreement contemplated in section 32 of this Act;

“prescribed” means prescribed by regulation, rule or code, as the case may be;

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

“prudent electricity practice” means a practice, method or procedure conforming to safety and legal requirements which is attained by the exercising of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a licensee, customer or other person engaged in the same type of activity or practice;

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

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

“regulation” means a regulation made under section 42;

“repealed Act” means the Electricity Act, 2007 (Act No. 4 of 2007), as repealed by the Namibia Energy Regulatory Authority Act;

“RMS” means root mean square;

“rule” means a rule made by the Authority under section 41 of this Act;

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

“storage of electricity” means the receipt of electricity and the storage thereof, whether electrically, chemically, electro-chemically, mechanically, thermally or in any other manner and the making thereof available for use;

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

“system operator” means a person responsible for operating the interconnected transmission power system as defined in regulations, rules or codes or as stipulated in the applicable licence;

“system and market operator” means the combination of system operator and market operator;

“this Act” includes the regulations, rules, codes and standards;

“trading” means to buy electricity or ancillary services as a commercial activity for the selling thereof to other licensees and such customers, as specified in the rules made under section 8(4);

“transmission” means the conveyance of electricity through a transmission power system excluding trading, and “transmit” has a corresponding meaning;

“transmission power system” means a power system which is used to convey electricity in bulk or over long distances from a generator to substations located near demand centres for delivery to customers or distribution licensees;

“Tribunal” means the Energy Tribunal established by section 30 of the Namibia Energy Regulatory Authority Act;

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

(2) Where, in this Act, reference is made to days within which anything is to be done, Saturdays, Sundays and public holidays must be excluded in calculating the days.

Objects of Act

- 2.** The objects of this Act are:
 - (a) To achieve the efficient, reliable, sustainable and orderly development and operation of the electricity provision industry and electricity infrastructure in Namibia;
 - (b) to ensure that the interests and needs of present and future customers are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity provision industry within the broader context of economic energy regulation in Namibia;
 - (c) to support the achievement of energy security with regard to the provision of electricity;

- (d) to facilitate investment in the electricity provision industry;
- (e) to facilitate access to electricity;
- (f) to promote the use of diverse energy sources and energy efficiency;
- (g) to promote sound, efficient and appropriate proven and new energy provision and other energy related technologies;
- (h) to promote competitiveness and customer choice; and
- (i) to facilitate a fair balance between the interests of customers, all Namibian consumers, licensees, investors and the general public in the electricity provision industry.

Objects, powers and functions of Authority

- 3.** (1) The objects, powers and functions of the Authority are:
- (a) To regulate licensees and other persons involved in, or affected by, electricity activities in a manner that maintains and improves efficiency, economy and reliability in the provision of electricity so as to, amongst others, enable all reasonable demands for electricity to be met in accordance with prevailing Government policy and having regard to the need of licensees to be able to finance the carrying out of their licensed activities;
 - (b) to act in a manner that is predictable, consistent, transparent and fair and ensures that the independence of the Authority is maintained in line with good regulatory practices;
 - (c) to issue, renew, transfer and amend licences and to suspend or cancel licences in the manner provided for this Act;
 - (d) to set, enforce and review technical, environmental, health, safety and quality standards for the electricity provision industry;
 - (e) as applicable to make, review, and enforce compliance with this Act, the regulations, the rules and the codes and issue guidelines for the electricity provision industry;
 - (f) to make and enforce directives to ensure compliance with this Act and conditions of licences issued under this Act;
 - (g) to set, review and adjust electricity tariffs and tariff structures and investigate tariff charges;
 - (h) to exercise regulatory oversight over power purchase agreements, transmission and distribution connection agreements, electricity and fuel

supply agreements, agreements relating to contracting out or assigning parts of regulated electricity undertakings or activities and any other relevant electricity related agreements as provided for in or under this Act;

- (i) to investigate complaints or disputes between parties with grievances on any matter regulated under this Act and to mediate disputes in the manner provided for in this Act read with the relevant provisions on mediation in the Namibia Energy Regulatory Authority Act;
 - (j) to advise the Minister on any matter relating to the electricity industry;
 - (k) in the event of the Tribunal having been established, to refer any matter or dispute involving an act, a directive or a decision of the Authority to the Tribunal;
 - (l) in the event of the Tribunal having been established, and any matter to be decided by the Authority under this Act appears to it to involve a point of law or to be of unusual importance or complexity, to refer such matter, after the Authority gave notice to the parties involved in such matter, to the Tribunal for a decision and the Authority must thereafter, in relation to such matter, act in accordance with the decision of the Tribunal or any decision substituted therefor on appeal to the Tribunal;
 - (m) to perform such other functions as are assigned to it by or under this Act or any other law.
- (2) (a) The Minister may, after consultation with the Authority, if deemed by the Minister to be in the public interest and necessary for the sake of the rational organisation of the provision of electricity, suspend, for such period or periods and subject to such conditions as the Minister may decide, any power, duty or function, including but not limited to the power to grant and issue licences, provided for in this Act, and applicable to the Minister, the Authority or any other person to whom this Act applies.
- (b) Prior to any such suspension becoming effective, the Minister must give notice thereof in the Gazette and such notice must specify:
 - (i) The reasons for the suspension;
 - (ii) the date upon which the suspension becomes effective, the duration thereof and the date upon which the suspension will terminate;
 - (iii) the exact nature of the power, duty or function being suspended and any other relevant details pertaining thereto;
 - (iv) any other information deemed relevant by the Minister.

PART II

NATIONAL ELECTRICITY POLICIES AND PLANS, MARKET STRUCTURE, NEW GENERATION AND ADVISORY FORUM

National Energy Policies and Plans and generation capacity

4. (1) (a) The Minister is responsible for ensuring the preparation and implementation of the National Electricity Policy and the Renewable Energy Policy, whether as separate policies or as part of the National Energy Policy, after consultation with relevant stakeholders, for the development of a national power system based on optimal utilisation of resources such as, but not limited to, coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.
- (b) The Minister must publish National Electricity Policy and the Renewable Energy Policy in the manner deemed fit by the Minister.
- (c) The Minister must, from time to time, after consultation with all relevant stakeholders, review and, if deemed necessary, revise, the National Electricity Policy and the Renewable Energy Policy.
- (2) (a) The Minister, in concurrence with the Authority, is responsible for ensuring the preparation and implementation of the National Integrated Resource Plan in order to balance electricity supply and demand in an efficient, cost-effective and secure manner and determine the optimal mix of resources.
- (b) The Minister must, prior to the publication of the National Integrated Resource Plan as contemplated in paragraph (c) of this subsection, consult the Plan with relevant stakeholders.
- (c) The Minister must publish National Integrated Resource Plan in the manner deemed fit by the Minister.
- (d) The Minister must, from time to time, in concurrence with the Authority and after consultation with all relevant stakeholders, review and, if deemed necessary, revise, the National Integrated Resource Plan.

New generation capacity

5. (1) The Minister may, in accordance with the National Electricity Policy, the Renewable Energy Policy and the National Integrated Resource Plan, make regulations as regards the manner in which, and procedures according to which, new generation capacity must be sourced and dealt with in Namibia.

(2) For purposes of this section, “new generation capacity” means any project aiming at the generation of electricity in addition to existing generation facilities, including ancillary services relating thereto, and includes an increase in the electricity generation capacity of existing generation facilities, as stated in the relevant licence, but excludes -

- (a) any generation activity where the relevant generation plant is not connected to the integrated grid system of Namibia;
- (b) any generation activity where the relevant generation plant is connected to the integrated grid system of Namibia but for which a licence is not required under this Act;
- (c) a licensed generation activity where the relevant generation plant is connected to the integrated grid system of Namibia but where the electricity generated is not, as part of the relevant licensee's normal course of business, sold to a transmission, distribution or supply licensee or in any other manner offered to a national electricity market;
- (d) any other generation activity or category of generation activities, including ancillary services relating thereto, exempted by notice in the Gazette by the Minister after consultation with the Authority and relevant stakeholders but subject to the National Integrated Resource Plan and any relevant national energy policies.

(3) In performing functions under this Act, or when issuing or amending a generation licence, relating to new generation capacity anticipated in this section, the Authority or the Minister, as the case may be, must give effect those policies, principles and procedures contained in the National Electricity Policy, the Renewable Energy Policy, any other relevant policies, the National Integrated Resource Plan, any regulations prescribed or notice issued under this section, as may be amended from time to time.

(4) (a) Subject to the National Energy Policy, the Renewable Energy Policy, any other relevant policies and the National Integrated Resource Plan and after consultation with the Authority and other relevant stakeholders, which consultation must include all proposed draft regulations and notices intended to be made under this section, the Minister may, by notice in the Gazette, from time to time determine:

- (i) The maximum new generation capacity available for allocation in order to be connected to the Namibia integrated power system;
- (ii) the manner in which such available generation capacity is to be allocated.

(b) Notwithstanding subsection (2)(b), (c) and (d), the maximum new generation capacity available for allocation, as contemplated in paragraph (a) of this subsection, applies to all generation activities, whether licensed or not licensed, in so far as it is intended to connect such generation capacity to the national grid system of Namibia.

(5) Without derogating from the general nature of subsection (1), regulations contemplated in that subsection may relate to -

- (a) the type of energy sources and type of technology from which such new generation capacity may be generated;
- (b) the generation capacity to be installed or the manner in which the generation capacity to be installed may be determined;
- (c) general regulation as regards the participation of private sector, previously disadvantaged Namibians and any other persons (whether in public or private sector) in such new generation capacity including the manner in which such participation may be obtained;
- (d) defining who the offtaker or offtakers of such new generation capacity should be subject thereto that such offtaker must be a licensee or must become a licensee;
- (e) tendering and evaluation procedures to be followed in sourcing new generation capacity subject thereto that such procedures must be fair, equitable, transparent, competitive and cost-effective and for this purpose the Minister may prescribe -
 - (i) the use any existing public procurement procedures as applied by the State or State-owned company or State-owned enterprise as defined in section 1 of the Public Enterprises Governance Act, 2006 (Act No. 2 of 2006);
 - (ii) new public procurement procedures and rules to be applied which may include independent private persons sourced to undertake such procurement;
- (f) any other matter relating to new generation which the Minister deems appropriate.

(6) Where a new generation capacity project is identified in accordance with this section, the Minister may, specifically with regard to such project, by notice in the Gazette determine -

- (a) the type of energy source and type of technology to be applied;
- (b) the generation capacity to be installed;
- (c) the required participation of private sector, previously disadvantaged Namibians and any other persons (whether in public or private sector) in such new generation capacity project including any additional requirements relating to such participation which the Minister deems appropriate;
- (d) the offtaker of such new generation capacity project;
- (e) the public procurement procedures and rules to be applied;

(f) any other matter relating to such new generation capacity project which the Minister deems appropriate.

(7) A notice contemplated in subsection (6) must, in the event of regulations having been made under this section, comply and align with such regulations.

(8) The Minister has such powers as may be necessary or incidental to any purpose set out in this section, including the power to -

(a) purchase, hire or let anything or acquire or grant any right or incur obligations for or on behalf of the State or prospective tenderers for the purpose of transferring such thing or right to a successful tenderer;

(b) apply for and hold such permits, licences, consents, authorisations or exemptions as may be required by any law, for or on behalf of the State or prospective tenderers for the purpose of transferring any such permit, licence, consent, authorisation or exemption to a successful tenderer;

(c) issue any guarantee, indemnity or security or enter into any other transaction that binds the State to any future financial commitment that is necessary or expedient for the development, construction, commissioning or effective operation of a public or privately owned electricity generation business.

(9) In exercising the powers under this section the Minister is not bound by the Public Procurement Act, 2015 (Act No. 15 of 2015).

Independent system and market operator

6. (1) The Authority may, in concurrence with the Minister and after consultation with relevant stakeholders, establish an independent system operator or market operator or system and market operator or may designate an existing licensee or other person as independent system operator or market operator or system and market operator and the Authority must, subject to the provisions of this Act, issue the relevant licence to such operator.

(2) For purposes of the establishment and operation of the independent system operator or market operator or system and market operator, the Authority may, subject to prevailing national policies, by means of rules prescribe –

(a) the type of legal personality of such operator;

(b) the powers, duties and functions of such operator;

(c) the exemption of such operator from any provisions of this Act;

- (d) the initial funding and initial assets of such operator and the manner in which such funding and assets are to be obtained, managed and expended or disposed of;
- (e) the procedures for and requirements applicable to such operator's financial, business and strategic plans;
- (f) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation and administration of such operator.

(3) The Minister, in concurrence with the Authority and after consultation with relevant stakeholders, may make policies applicable to the independent system operator or market operator or system and market operator consistent with the objects of this Act and may at any time thereafter, in concurrence with the Authority and after consultation with relevant stakeholders, amend such policies.

(4) In order to ensure the efficient introduction and functioning of an independent system operator or market operator or system and market operator, the Authority may, in accordance with section 14(3) and (4), effect such changes and additions to the conditions of a licensee as it considers necessary for this purpose.

Energy advisory forum

7. (1) The Minister may establish an energy advisory forum selected from such persons and representatives of stakeholders in the energy sector as the Minister deems appropriate (whether public or private sector).

- (2) The energy advisory forum -
 - (a) may advise the Minister on any matter relating to energy;
 - (b) may receive such allowances as the Minister may determine which allowances are payable from the budget of the Ministry responsible for energy;
 - (c) is subject to such procedural and other requirements as the Minister may from time to time determine.

(3) The Minister may designate such staff members in the Ministry responsible for energy as may be necessary to assist the energy advisory forum in the performance of its functions.

PART III ELECTRICITY LICENCES

Duty to obtain licence

8. (1) Despite any law to the contrary and subject to the provisions of this Act, no person may carry out the following activities without a licence authorising the particular activity –

- (a) the generation of electricity;
- (b) the transmission of electricity;
- (c) the distribution of electricity;
- (d) the supply of electricity;
- (e) the trading of electricity;
- (f) the storage of electricity;
- (g) the import of electricity;
- (h) the export of electricity;
- (i) system operator; or
- (j) market operator,

provided that a licence for system operator or market operator may only be issued pursuant to section 6.

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

(3) No notification, discussion or request for further information by the Authority on any matter relating to a licence shall be construed as conferring any right or expectation to an applicant or other person.

(4) As regards the trading of electricity, the Authority must, in accordance with section 41, by rule prescribe -

- (a) from where, or from whom (or from where or from whom not), electricity and ancillary services so traded may be bought or otherwise acquired;
- (b) the types of ancillary services and other activities which may, or may not, be traded by a trading licensee;
- (c) the licensees or customers, or categories of licensees or customers, to whom the trading licensee may sell electricity or ancillary services;
- (d) general conditions which, in addition to conditions contained in a trading licence, apply to a trading licensee;

- (e) any other matter which, in the opinion of the Authority, is necessary or expedient to achieve or promote the trading of electricity.

(5) If deemed to be in the public interest and necessary for the sake of the rational organisation of the provision of electricity, the Authority may in the manner it deems appropriate, whether by means of a directive, rules or any other manner authorised by or under this Act -

- (a) prohibit the contracting out or assigning by a licensee of any part of an activity specified in subsection (1) to another person;
- (b) set out or prescribe the manner in which and the conditions under which any existing or future contracting out or assigning by a licensee of any part of an activity specified in subsection (1) to another person may take place;
- (c) set out or prescribe the conditions or requirements applying to a person to whom a licensee has contracted out or assigned a part of an activity specified in subsection (1).

(6) As regards the storage of electricity, the Authority must, in accordance with section 41, by rule prescribe -

- (a) the requirements applicable to the storage of electricity;
- (b) general conditions which, in addition to conditions contained in a storage of electricity licence, apply to a storage of electricity licensee;
- (c) exemptions from the requirement to hold a licence for the storage of electricity;
- (d) any other matter which, in the opinion of the Authority, is necessary or expedient to achieve or promote the storage of electricity.

Exemptions to licence requirements

- 9.** (1) Despite section 8, a licence is not required –
- (a) for the generation of electricity in an area where no connection to the interconnected transmission power system and distribution power system is available and –
 - (i) the generation plant has an installed capacity not exceeding 500 kVA or such other higher or lower installed capacity as may be notified by the Authority by notice in the Gazette; and
 - (ii) the generated electricity is used exclusively for own consumption by the person in control of such plant and on premises owned or occupied by that person or for consumption by other persons occupying residential accommodation on the same premises;

- (b) for the generation of electricity as standby supply for consumption on the premises on which such generation plant is installed provided that such generation plant is not at any time connected to a transmission power system or a distribution power system;
- (c) for the generation of electricity from renewable energy sources where such generation plant is connected to a distribution power system and –
 - (i) such generation plant has an installed capacity not exceeding 500 kVA or such other higher or lower installed capacity as may be notified by the Authority by notice in the Gazette; and
 - (ii) the electricity generated is primarily consumed on the premises where the generation plant is installed and the remainder supplied to the licensee to whose distribution power system the generation plant is connected; and
 - (iii) such generation plant and its connection to the distribution power system fulfill the requirements of the licensee to whose distribution power system the generation plant is connected;
- (d) for the distribution and supply of electricity at low voltage –
 - (i) by a person on premises owned or occupied by that person for consumption on that premises by a person or persons occupying residential accommodation on such premises;
 - (ii) by a person in control of a high density residential housing development to other persons occupying residential accommodation within such residential housing development, provided that such distribution and supply is subject to written consent by the licensee to whose distribution power system the residential housing development is connected and such authorisation as may be prescribed by the rules including rules on the reselling of electricity;
 - (iii) by a person in control of a shopping centre, industrial development or business complex to other persons occupying sections of such shopping centre, industrial development or business complex, provided that such distribution and supply is subject to written consent by the licensee to whose distribution power system the shopping centre, industrial development or business complex is connected and such authorisation as may be prescribed by the rules including rules on the reselling of electricity;
- (e) if exempted by the Authority in accordance with this section.

(2) Any person may apply to the Authority for an exemption from section 8(1) in accordance with this section.

(3) An electricity activity exempted under this section may only be provided with due compliance with –

- (a) rules, codes or standards made or a directive given by the Authority with regard to -
 - (i) general conditions applicable to these exempted activities or categories of exempted activities;
 - (ii) charges for the provision of electricity;
 - (iii) the application of any right, duty, obligation or function attaching to a licensee by virtue of or under this Act to such exempted provision of electricity;
 - (iv) any other matter deemed relevant or, in the opinion of the Authority, expedient, in the public interest or necessary for the sake of the rational organisation of the provision of electricity; and
- (b) the requirements of any other law, in particular laws relating to health, safety and environmental standards.

(4) An application for an exemption in terms of subsection (1)(d) or (2) must be advertised, at the expense of the applicant, in the manner prescribed by the rules which rules may include, but are not limited to, rules relating to objections and public hearings.

(5) The Authority may impose such conditions to an exemption granted under subsection (4) which the Authority considers to be in the public interest and necessary for the sake of the rational organisation of the provision of electricity, including conditions –

- (a) relating to charges for the provision of electricity; and
- (b) public health, public safety or the protection of the environment.

(6) If an application for an exemption is refused, the Authority must in writing inform the applicant of the reasons for the refusal.

(7) The Authority must issue the exemption in such form as the Authority determines.

Application for licence

- 10.** (1) An application for the issue of a licence must –
 - (a) be submitted to the Authority; and

- (b) be advertised, at the expense of the applicant, in the manner prescribed by the rules.
- (2) Any objection to the issue of a licence must be submitted to the Authority in the manner prescribed by the rules.
- (3) The Authority must consider an application in terms of subsection (1) and any objection thereto, and may, for that purpose, arrange for a public hearing of the application at a suitable time and place of which not less than 10 days' notice must be given to the applicant and every objector.
- (4) At a hearing in terms of subsection (3), the applicant and an objector may be represented by a person of the applicant's or objector's choice and may lead evidence in support of the application or objection.
- (5) The Authority must consider the application and any objection thereto and not later than 20 days after conclusion of a hearing in terms of subsection (3) or, if no hearing was arranged, 20 days after the expiry of the period allowed for the submission of objections in terms of subsection (2), the Authority must decide to either grant or refuse the application for the issue of a licence.
- (6) In the event where the Authority decides to grant an application for the issue of a licence, the Authority may grant such licence subject to such conditions as the Authority deems appropriate to impose.
- (7) If an application for the issue of a licence is refused the Authority must in writing inform the applicant of the reasons for the refusal.
- (8) If an application is granted by the Authority, the Authority must issue the licence in such form as it determines, which must –
 - (a) specify the particular activity authorised by the licence;
 - (b) define the area in respect of which the licence is issued;
 - (c) specify any conditions imposed in relation to the licence, in addition to those provided for in this Act; and
 - (d) if applicable, contain a schedule specifying the approved tariffs that may be charged by the licensee for the provision of electricity to different classes of customers.

Criteria for consideration of application and environmental clearance certificates

- 11.** (1) The Authority, when considering an application for the issue, renewal, amendment or transfer of a licence, must give due consideration to –
 - (a) matters or activities which may adversely affect, or result in damage to, the rights of others or the environment and the requirements of the

Environmental Management Act and weigh these against the advantages in general that may be derived from the grant of the application;

- (b) the soundness, efficiency and appropriateness of technology involved in the application and whether such technology is new or proven technology;
 - (c) whether the relevant electricity project relating to the activity involved is of a pilot , experimental or research and development nature;
 - (d) the capacity or services being applied for and the need for such capacity or services in Namibia or in the licence area being applied for;
 - (e) such other matters as the Minister or Authority, as the case may be, may deem relevant.
- (2) Without derogating from the generality of the provisions of subsection (1), –
- (a) the Authority may request the applicant to submit –
 - (i) an environmental impact assessment study indicating the extent of any potential damage to or pollution of the environment and the steps proposed to be taken by the applicant to prevent or minimise such damage or pollution and to restore the environment generally and in terms of existing environmental legislation, subject thereto that if an environmental clearance certificate or other document or authorisation is required under the Environmental Management Act, 2007, the applicant must submit such certificate or other document or authorisation to the Authority;
 - (ii) details of the technical and economic-financial resources available to the applicant to execute the work, to operate the system and to carry on the business to which the application or licence relates, substantiated by documentary proof where applicable;
 - (b) the Authority may take into consideration –
 - (i) the extent to which the activities of the applicant will or may be detrimental to or adversely affect the rights and operation of other licensees or their customers or any other person undertaking an activity or activities relating to the provision of electricity in their area of operation;
 - (ii) the ability of the applicant to provide an effective service to customers; and
 - (iii) whether the grant or refusal of the application in question is in the public interest.

(3) Notwithstanding section 40(2) of the Environmental Management Act, an environmental clearance certificate as anticipated in subsection (2)(a)(i) may be issued, whether for a specific application or for a category of applications of activities regulated by this Act, for such longer period as the Environmental Commissioner, in concurrence with the Authority, may decide.

Where applications with regard to which certain information to be submitted is incomplete

12. (1) (a) Subject to subsection (1)(b), if an application for the issue or amendment of a licence is made when not all information required for the application is available or not all actions required to be taken have been taken or application 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 Authority may grant and issue the licence or the amendment subject to suspensive or other conditions contemplated in subsection (2).

(b) For the purposes of subsection (1)(a), the Authority may, whether in general, or for each type of activity set out in section 8(1), or for each application, determine –

- (i) the minimum information or the specific information which must be submitted;
- (ii) the minimum actions or the specific actions which must be taken; and
- (iii) the timeframe within which information must be submitted or activities be completed.

(2) The Authority may, with regard to an incomplete application contemplated in subsection (1), issue the licence subject to such suspensive and other conditions as the Authority deem appropriate including, but not limited to, conditions relating to the period within which the relevant condition requirements must be met.

(3) The Authority may, at any time, on written application of the licensee concerned –

- (a) withdraw or amend any suspensive or other condition referred to in subsections (1) and (2);
- (b) extend or further extend the period contemplated in subsection (2) subject thereto that the total period of any one, or the cumulative periods in the event of there having been more than one extension, may not exceed five years from date of issue of the licence;
- (c) approve an amended plan in respect of the premises referred to in subsection (1).

(4) A licence to which this section applies lapses if a suspensive or other condition is not met within the period stated in such condition.

Duration and renewal of licences

13. (1) Unless sooner cancelled under section 23, a licence remains valid for such period, not exceeding 50 years, as may be determined by the Authority and stated in the licence.

(2) A licence may be renewed from time to time for such further periods, not exceeding 50 years each, as the Authority may determine.

Conditions of licence

14. (1) A licence is subject to such conditions as may be prescribed by the rules and to such other conditions as the Authority 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) –

- (a) conditions prescribed or imposed under that subsection may include provisions relating to the following:
 - (i) The provision by a licensee of institutional support, transfer of technology and the funding thereof on a specified basis;
 - (ii) 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;
 - (iii) the furnishing by the licensee of acceptable security for compliance with any condition contemplated in paragraph (b);
 - (iv) prohibitions relating to the provision of electricity, including prohibitions on the trading of electricity, unless the electricity concerned is obtained under the conditions and from the person or persons determined in such licence, or sold on the conditions and to the person or persons so determined;
- (b) the Authority may, if deemed appropriate, include specific conditions to address any risks, challenges or particular circumstances or perceived risks, challenges or circumstances associated with –
 - (i) new or insufficiently proven technologies;

- (ii) pilot, experimental or research and development undertakings with regard to which a licence is to be granted.

(3) If the Authority, is satisfied that it would be in the public interest and necessary for the sake of the rational organisation of the provision of electricity to change any condition of a licence the Authority may –

- (a) after the costs involved for the licensee and the general benefits and disadvantages that may result from the change have been taken into account; and
- (b) subject to any procedures it may prescribe by the rules with regard to such change,

effect such changes to the licence conditions.

- (4) The Authority may not act under subsection (3) unless it has –
 - (a) notified the licensee in writing of its intention to act in terms of that subsection and has informed the licensee of all the relevant facts pertaining to the proposed change; and
 - (b) afforded the licensee the opportunity to make representations to it in respect of the proposed change within a reasonable time.

(5) For the purposes of subsection (4)(b), the licensee may be represented by a person of the licensee's choice and may lead evidence in support of the representations.

Transfer of licence

15. (1) A licence may not be transferred to any other person unless the Authority has granted approval therefor.

- (2) An application for the transfer of a licence must –
 - (a) be made by the licensee and proposed transferee jointly, unless one of the parties does not so participate in such application in which event the Authority may on good cause shown waive the requirement that both parties must make the application;
 - (b) be submitted to the Authority; and
 - (c) be advertised at the expense of the applicants,

in the manner prescribed by the rules.

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

(4) The Authority must consider an application in terms of subsection (1) and any objection thereto, and may, for that purpose, arrange for a public hearing of the application at a suitable time and place of which not less than 10 days' notice must be given to the applicants and every objector.

(5) At a hearing in terms of subsection (4), the applicants and an objector may be represented by a person of each applicant's or the objector's choice and may lead evidence in support of the application or objection.

(6) The Authority must consider the application and any objection thereto and not later than 20 days after conclusion of a hearing in terms of subsection (4) or, if no hearing was arranged, 20 days after the expiry of the period allowed for the submission of objections in terms of subsection (3), the Authority must decide to either grant or refuse the application for the transfer of a licence.

(7) In the event where the Authority decides to grant an application for the transfer of a licence, the Authority may grant such application subject to such conditions as the Authority deems appropriate to impose.

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

Amendment of licence

16. (1) A licence may, upon application by the licensee be amended by the Authority.

(2) This section does not apply to an application for an amendment which involves not more than a revision of the schedule of approved tariffs contained in the licence which is considered and decided in accordance with section 17.

(3) An application for the amendment of a licence must –

(a) be made and submitted to the Authority; and

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

in the manner prescribed by the rules.

(4) An objection to an application made in terms of subsection (3) must be submitted to the Authority in the manner prescribed by the rules.

(5) The Authority must consider an application made in terms of subsection (3) and any objection thereto, and may for that purpose, arrange for a public hearing of the application at a suitable time and place of which not less than 10 days' notice must be given to the applicant and every objector.

(6) At a hearing in terms of subsection (5), the applicant and an objector may be represented by a person of the applicant's or objector's choice and may lead evidence in support of the application or objection.

(7) The Authority must consider the application and any objection thereto and not later than 20 days after conclusion of a hearing in terms of subsection (5) or, if no hearing was arranged, 20 days after the expiry of the period allowed for the submission of objections in terms of subsection (4), the Authority must decide to either grant or refuse the application for the amendment of a licence.

(8) In the event where the Authority decides to grant an application for the amendment of a licence, the Authority may grant such application subject to such conditions as the Authority deems appropriate to impose.

(9) If an application in terms of subsection (3) is refused the Authority must in writing inform the applicant of the reasons of the refusal.

Schedule of approved tariffs, revision thereof and other charges by licensees

17. (1) The Authority, independently and without undue interference, determines the tariffs of licensees.

(2) Subject to subsections (5) and (7), a licensee may not levy any charge in connection with the provision of electricity against any customer, other licensee or any other person other than in accordance with the tariffs specified in the schedule of approved tariffs contained in the licensee's licence.

(3) The Authority 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 Authority may require for that purpose.

(4) For purposes of an application for the approval or revision of a schedule of approved tariffs, the Authority may arrange for a public hearing at a suitable time and place of which not less than 10 days' notice must be given to the applicant and to the public in the manner deemed fit and effective by the Authority.

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

(6) Unless the Authority considers it to be in the public interest and necessary for the sake of rational organisation of the provision of electricity, this section does not apply to a licensee licensed to export or import electricity.

(7) The Authority may exempt any charge, cost or type of cost incurred in connection with the provision of electricity by a licensee from the requirements of subsection (1) subject to such conditions as the Authority may determine.

(8) Where a charge in a licensee's schedule of approved tariffs is such that it compromises the efficient use of electricity, the Authority may, on its own accord, amend such schedule, after having considered –

- (a) the economic impact of the amendment on the licensee and the licensee's customers;
- (b) the representations made by the licensee as contemplated in subsection (9); and
- (c) the general benefits and disadvantages that may result from the amendment,

and subject thereto that such amendment will ensure the licensee's tariffs being sustainable and affordable in line with prudent electricity practices.

(9) The Authority may not act under subsection (7) unless it –

- (a) has notified the licensee in writing of its intention to act in terms of that subsection and has informed the licensee of all the relevant facts pertaining to the proposed change; and
- (b) has afforded the licensee the opportunity to make representations to it in respect of the proposed change within a reasonable time.

(10) For the purposes of subsection (9), the licensee may be represented by a person of the licensee's choice and may lead evidence in support of the representations.

(11) In the event of an amendment to an electricity levy contemplated under section 19 of the Namibia Energy Regulatory Authority Act or imposed under section 30 of this Act or imposed under the Petroleum Products and Energy Act, 1990 (Act No. 13 of 1990), such amended levy is from the date of commencement thereof applicable and payable in the manner determined under such Act despite a different levy appearing on an approved schedule of tariffs.

(12) The Authority may –

- (a) publish in the *Gazette*, any other newspaper or other type of media any application contemplated in subsection (3), including the tariffs applied for, or any approved schedule of tariffs or any other charge, levy, cost or type of cost to which this section relates;
- (b) instruct a licensee to publish in the *Gazette*, any other newspaper or other type of media an application by such licensee contemplated in subsection (3), including the tariffs applied for, or any approved schedule of tariffs or any other charge, levy, cost or type of cost to which this section relates and to carry the cost of such publication;

- (c) determine the type of information which, and the manner in which such information, must appear in the invoice of a licensee relating to the provision of electricity to any customer, other licensee or any other person.

Requirements relating to dealing with charges and keeping of records

18. (1) The Authority may investigate any charge imposed by a licensee, or any other person, in connection with the provision of electricity including the collection thereof and the manner in which such licensee or person kept or applied any income derived from such charge in order to ensure, amongst others, that such licensee or person dealt with such imposition, collection and application in a compliant and prudent manner and, if applicable, in accordance with the relevant tariff methodology applied.

(2) A licensee or person contemplated in subsection (1) must apply income derived from charges imposed in connection with the provision of electricity in such a manner to ensure that such licensee or person meets financial obligations relating to the provision of electricity and that customers, consumers or other persons affected by the operations of such licensee or person are not unduly negatively affected.

(3) The Authority may issue any such directive as it deems appropriate in order to ensure compliance with subsection (1) and (2).

(4) Any person carrying out an activity specified in section 8(1), whether such person holds a licence or not, must keep the financial and operational records relating to the relevant activity for a period of at least five years.

(5) The Authority may give such directives or prescribe such rules as the Authority deems appropriate as regards the manner in which a licensee or person to whom this section applies must keep financial, operational and other records including that nature of such records.

PART IV OBLIGATIONS OF LICENSEES

Duty of licensee to supply electricity

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

Changes to licensed area and substitution of licensee

20. (1) If the Authority considers it to be in the public interest and necessary for the sake of the rational organisation of the provision of electricity, the Authority may at any time require a licensee –

- (a) to effect such changes or additions to the licensed area of the licensee as the Authority may determine; or
- (b) to give up all or any part of such area to another licensee or prospective licensee as the Authority 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 Authority, for the facilities given up,

and subsequently the Authority must make the necessary amendments to the licensee's licence.

(2) Where the Authority refuses an application for a licence, or for the renewal, transfer or amendment of a licence, or, where the Authority under section 23, cancels or suspends the licence of a licensee, the Authority may, subject to such conditions as it may determine, authorise an appropriate licensee or a prospective licensee in writing as a substitute electricity provider to enter upon and take control of the undertaking of –

- (a) the applicant whose application has been refused; or
- (b) the licensee whose licence has been cancelled or suspended.

(3) A substitute electricity provider referred to in subsection (2) must, for the period and subject to such conditions as the Authority may determine, including but not limited to conditions relating to the remuneration of the substitute electricity provider and training of such licensee or its employees –

- (a) diligently and with reasonable care operate the undertaking for and on account of, and at the risk and reasonable expense of, that applicant or licensee;
- (b) remit –
 - (i) the balance, if any, of the net income derived from the undertaking to that applicant or licensee; or
 - (ii) such amount, if any, as the Authority may determine as being reasonable compensation to that applicant or licensee.

(4) For the purposes of subsection (2) –

- (a) the entry and taking into possession by the substitute electricity provider of the undertaking does not prejudice the security of any debenture-holder or mortgagee or his or her right of enforcing such security;
- (b) the substitute electricity provider may not restore possession of the undertaking to the applicant or licensee until such time as –
 - (i) the Authority is satisfied that the circumstances on account of which the application was refused or the licence was cancelled or

suspended no longer exist or will no longer hinder the proper functioning of the undertaking; and

- (ii) the Authority is satisfied that the applicant or licensee has satisfied or can satisfy its obligations under this Act and the conditions of its licence; and
- (iii) in the event of a cancellation, the Authority has reinstated the licence; or
- (iv) in the event of a suspension, the period of suspension has expired; or
- (v) in the event of a refusal to grant an application for the issue, renewal or amendment of a licence, a subsequent application is granted in accordance with this Act.

(5) The application of subsection (2) does not prejudice any civil claims which any customer or other person may have against the applicant or licensee arising from its failure to fulfil its obligations in terms of the conditions of its licence, if any.

(6) The Authority may not act under subsection (2) unless the Authority –

- (a) has notified the applicant or licensee in writing of its intention to act in terms of that subsection and has informed the applicant or licensee of all the relevant facts pertaining to the proposed refusal, cancellation, suspension, sale or investment, as the case may be; and
- (b) has afforded the applicant or licensee the opportunity to make representations to it in respect of the proposed refusal, cancellation or suspension, as the case may be, within a reasonable time.

(7) For the purposes of subsection (6)(b), the applicant or licensee may be represented by a person of the applicant's or licensee's choice and may lead evidence in support of the representations.

(8) A substitute electricity provider must –

- (a) at all times comply with the written terms and conditions stipulated in an agreement which must be concluded between the applicant or licensee and the substitute electricity provider regarding the operation of the undertaking, subject thereto that in the event of applicant and licensee not being able to reach agreement on the terms of such agreement, the disagreement must be referred to the Authority for its final decision; and
- (b) ensure that the assets in the undertaking of the applicant or licensee are reasonably safeguarded,

for the duration of the period for which such undertaking is so operated.

(9) For the purposes of subsections (1)(b) and (2), a prospective licensee is deemed to be a licensee in terms of this Act from the date on which such prospective licensee takes control of a part of all of the area or undertaking, of an applicant or licensee referred to in subsection (2) until such time as an appropriate licence is issued to such prospective licensee in terms of this Act.

(10) To the extent that the provisions of this section interfere with the right to property of any person as contemplated in Article 16(1) or the right to practice any profession, or carry on any occupation, trade or business as contemplated in Article 21(1)(j) of the Namibian Constitution, such interference is authorised on the grounds set out in Article 16(2) and 21(2), respectively, of the Namibian Constitution.

Third party access rights

21. (1) Irrespective of the type of electricity market model applied in Namibia, a licensee who is licensed to transmit or distribute electricity, as the case may be, must within its licensed area provide access to all existing and potential users of the transmission and distribution networks against payment of compensation at a rate included in the schedule of approved tariffs, unless the licensee's inability to transmit electricity is reasonably based on an insufficient technical availability of capacity.

(2) In the event of a dispute as to whether there is an insufficiency of technical availability of capacity, such dispute must be referred to the Authority for its decision.

Reduction or discontinuation of supply

22. (1) A licensee may not reduce or discontinue the supply of electricity to a customer, except on the following grounds –

- (a) if the customer is declared insolvent;
- (b) if the customer has failed to pay any fees, charges or other moneys due for or relating to electricity provided by such licensee to that customer;
- (c) if the customer has failed to comply with the conditions of supply; or
- (d) if so prescribed by the rules or codes or determined in a licence condition.

(2) Subject thereto that a licensee must give such reasonable notice as may be required under circumstances (and taking also into consideration the urgency of the reason therefor) of its intention to reduce or discontinue the supply of electricity to a customer, a licensee does not require a court order to reduce or discontinue the supply of electricity on a ground set out in subsection (1).

(3) A licensee may not reduce or discontinue the supply of electricity to a customer for any non-electricity related debt due to such licensee by such customer or in order to induce the customer to undertake any act or refrain from undertaking any act which does not relate to the electricity provision activities of such licensee.

(4) The Authority may by means of a directive, rule or code extend the application of this section to any person who undertakes an activity listed in section 8(1) and which person is, for whatever reason, not licensed as a licensee under this Act.

Cancellation or suspension of licence

23. (1) Without derogating from the generality of section 23 of the Namibia Energy Regulatory Authority Act, ff at any time it appears to the Authority that a licensee has failed to comply with any requirement of this Act, or a regulation, rule, code, standard or directive or to meet any obligation or condition in terms of such licensee's licence or any other law applicable to the licensee, the Authority may issue to the licensee a directive as contemplated in said section 23.

(2) Despite any provision to the contrary in this Act, and in addition to any other steps which may be taken against a licensee in terms of this Act, if a licensee fails to comply with the requirements of a directive in terms of subsection (1), the Authority may suspend the licence on such conditions with regard to reinstatement as it may determine or may cancel the licence.

(3) In addition to such other grounds as are provided for in this Act, the Authority may suspend a licence on such conditions with regard to reinstatement as it may determine or cancel a licence –

- (a) if, subsequent to the granting of an application for the issue, renewal, transfer or amendment of such licence it is discovered that information furnished in connection with that application was incorrect or incomplete in a material respect;
- (b) the licensee has ceased to conduct the licensed activities;
- (c) the licensee has not commenced licensed activities within 12 months of the issue of the licence or within such longer period as may be stipulated by the Authority or in the licence conditions.

(4) The Authority must cancel a licence if so requested by the licensee subject to such directives or conditions as it may give or impose.

(5) Where the Authority cancels a licence, the Authority may attach such conditions to such cancellation as it may deem appropriate.

Installations to comply with requirements of other laws

24. (1) Installations for the provision of electricity, including any alterations or extensions thereto, and all other electricity practices and activities by licensees, customers and other persons, must be built, operated and conducted with due diligence and in compliance with –

- (a) the requirements of applicable laws, in particular laws relating to health, safety and environmental standards; and
- (b) the requirements of rules, codes, standards of quality of electricity provision and services and prudent electricity practices.

(2) If it comes to the attention of the Authority that a licensee, customer or other person fails to comply with subsection (1), the Authority may in writing direct such licensee, customer or other person to discontinue such non-compliance.

Permission to operate under the licence of a licensee

25. (1) The Authority may in writing and subject to such conditions as it may determine, grant permission to a person to operate without a licence an undertaking contemplated in section 8(1) under the licence of a licensee, subject thereto that the relevant licensee agrees that such person can operate under its licence.

(2) Where the relevant licensee does not agree that such person can operate under its licence, the licensee must provide the Authority with its reasons for such refusal within the time frame specified by the Authority.

(3) After having considered any representations received under subsection (2), the Authority may make a final decision on the matter.

PART V TRANSFER OF ASSETS AND LOCAL GOVERNMENT ELECTRICITY RATES AND TAXES

Transfer of assets, liabilities and rights to a licensee

26. (1) Whether before or after the commencement of this Act, where a licensee (hereafter in this section called “the transferee”) takes over generation, transmission, distribution, supply, trading or system or market operator activities from another licensee or person (hereafter in this section called “the transferor), the transferor may transfer to the transferee such assets, liabilities, rights or obligations of the transferor which relate to or are connected to the delivery of electricity or rendering of electricity services as it may deem fit.

(2) Where assets contemplated in subsection (1) consist of movable assets or infrastructure or immovable assets or infrastructure, the ownership of such assets or infrastructure shall, on the date determined between the transferee and the transferor in a written agreement pertaining to such transfer, become the property of the transferee, subject thereto that –

- (a) such assets or infrastructure lawfully belonged to the transferor;
- (b) such assets or infrastructure is fully described in such agreement, including the location thereof;

- (c) in the event of immovable assets or infrastructure, subsection (8) must be complied with on, or as soon as possible after, the date determined in the written agreement pertaining to the transfer thereof, in so far as such immovable assets or infrastructure is located on surveyed land with regard to which title documents exist;
 - (d) the transferee and transferor may, subject to this Act and the laws governing property rights, include in such written agreement such conditions relating to the transfer of such assets or infrastructure as they may deem fit; and
 - (e) sections 36 and 37 apply, with the necessary changes, to assets or infrastructure transferred in terms of this section.
- (3) Subsection (2) applies, with the necessary changes, to any subsequent disposal of such assets by the transferee.
- (4) A transferor may –
- (a) subject to the consent of the creditor and transferee and such conditions as the transferee, the transferor and the creditor may agree upon, assign to the transferee any obligation of the transferor arising out of an existing agreement between the transferor and such creditor in connection with any financial obligation entered into by the transferor for any purpose related to the provision of electricity; and
 - (b) subject to the consent of the donor concerned and such conditions as the transferee, the transferor and the donor concerned may agree upon, assign to the transferee any obligation of the transferor arising out of any existing conditions stipulated by such donor in connection with any donation or grant made to the transferor for any purpose related to the provision of electricity.
- (5) The transferee shall be substituted for the transferor as a contracting party in respect of an agreement to which subsection (4) relates and which is transferred to the transferor without such substitution bringing about a novation of such agreement.
- (6) Notwithstanding any law to the contrary, but subject to subsection (7)–
- (a) no servitude or other right of any kind may be acquired by prescription in respect of land belonging to a transferor and which land is transferred to the transferee in terms of this section;
 - (b) no stamp duties, transfer duties, deed office registration fees, betterment fees, endowment fees, sales tax, land tax, sales levy or any other duty, fee, tax or levy (excluding value added tax) payable in terms of any law for the acquisition or transfer of assets or rights is payable in respect of the transfer of assets or rights by the transferee to the transferor in terms of this section;

(c) in so far as any value added tax is applicable, such tax shall be zero rated.

(7) The Minister may, after consultation with the Minister responsible for finance, by notice in the *Gazette* with regard to the application of subsection (6)(b) –

(a) specify a date on which any or all of the exemptions provided for in subsection (6)(b) shall terminate; and

(b) notwithstanding the termination thereof, provide that such exemption continues to apply to a transferee or any category of transferees for such further period as the Minister may determine in such notice.

(8) The Registrar of Deeds, or any other person in charge of any other office where a register or record is being kept of the ownership of immovable property contemplated in this section or any real right relating to such immovable property, must free of cost –

(a) upon written application and production to him or her of the deed of any such immovable property, endorse such deed to the effect that the immovable property or real right described therein vests in the transferee and must make the necessary entries in his or her registers; or

(b) in the event of applicant being unable to produce such title deed, upon written application and production by the applicant of an affidavit to the satisfaction of the Registrar of Deeds, or other person in charge of any other office contemplated hereinbefore, that possession of the title deed could not be obtained, endorse such vesting on the registry duplicate of such title deed, and if the original title deed is at any time lodged in his or her office for any purpose he or she must make a similar endorsement thereon,

and thereupon that deed or registry duplicate serves and avail for all purposes as *prima facie* proof of the title of that transferee and the transferee is entitled to deal therewith as if it had taken formal transfer or cession into its own name of such property or rights.

(9) For the purposes of subsection (8), “immovable property” and “real right” have the meanings given to it in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(10) (a) In so far as a transferor had the use of State land immediately prior to the date determined in subsection (2), the right to such use shall, on the said date, pass to the transferee.

(b) Any servitude, other real right or lease existing, immediately prior to the date determined in subsection (2), with regard to State land in favour of transferor shall on the said date pass to the transferee and the transferee has the right to use its immovable property –

(i) for the purposes for which the transferor used the said property on the date immediately prior to the said date; or

- (ii) for which it was intended to be used on that date.

Local government electricity rates

27. (1) Regional councils and local authorities (hereafter in this section called a “local government”) may receive an electricity rate imposed on customers in their jurisdictional areas and, if such electricity rate is determined and approved by the Authority, a licensee must, on behalf of the relevant local government, include in its schedule of approved tariffs an electricity rate in favour of the local government in accordance with the local government electricity rate methodology determined by the Authority.

(2) The determination of an electricity rate contemplated in subsection (1) is subject thereto that –

- (a) the electricity rate, the amount thereof, the manner of imposition and collection thereof, exemptions thereto, the persons responsible for payment thereof, including interest on late payments thereof, and the duration thereof, are as determined by the Authority;
- (b) the Authority must consult with the relevant local governments and the Minister responsible for regional and local government when it determines the local government electricity rate methodology or any change thereto;
- (c) the Authority may determine that such electricity rate must be reflected on the invoice to the customer on whom it is imposed by the licensee who is responsible to supply electricity to such customer;
- (d) the Authority may -
 - (i) distinguish between different local governments or between different classes of local governments and different amounts of electricity rates may be approved for different local governments or different classes of local governments;
 - (ii) in determining the local government electricity rate methodology, take into consideration such matters as the Authority deems relevant or appropriate to ensure that the local government electricity rate is reasonable towards customers and local government;
- (e) the primary purpose of such electricity rate is to raise additional revenue to be applied for general public purposes by a local government;
- (f) notwithstanding a licensee other than the relevant local government collecting the electricity rate –

- (i) a customer is liable towards the relevant local government for the payment of such electricity rate; and
 - (ii) such licensee may take such action as it may deem necessary, or as it may agree upon with the local government concerned, to ensure collection of such electricity rate including the discontinuation of the provision of electricity to such customer;
 - (iii) such licensee is merely the collecting agency of the electricity rate and the latter does not form part of the income of the licensee;
- (g) in the event of a licensee other than the relevant local government collecting such electricity rate, the collecting licensee must collect, and pay the full amount of, such electricity rate to the relevant local government in accordance with the manner determined by the Authority or, in the absence of such determination, an agreement reached between the parties which determination or agreement, as the case may be, must include, but is not limited to, the period within which the electricity rate must be paid over to the local government and interest on arrear payments;
- (h) the electricity rate is not subject to any form of taxation under any other law;
- (i) notwithstanding paragraph (h), in so far as value added tax is applicable to the electricity rate, such tax shall be zero rated.

(3) For the purposes of this section, a licensee includes any other person who provides electricity in the jurisdictional area of a regional council or a local authority and which person is, for whatever reason, not licensed under this Act.

Exemption from tax

- 28.** (1) Unless –
- (a) exemption is or was granted to a licensee under any other law; or
 - (b) otherwise determined by the Minister, after consultation with the Minister responsible for finance,

licensees are not exempted from income tax.

(2) In addition to income tax and any other similar exemption provided for in this Act, the Minister may, after consultation with the Minister responsible for finance, exempt licensees or any licensee or category of licensees from any other duty, fee, tax or levy payable in terms of any law.

Payment of electricity charges prior to transfer of immovable property

29. Notwithstanding any other law to the contrary, but subject to section 89(4) of the Insolvency Act, 1936 (Act No. 24 of 1936), the Registrar of Deeds may not register a transfer of any immovable property situated in Namibia unless there is produced to him or her, in the case of a registration of transfer in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a conveyancer's certificate or, in the case of a registration of transfer in terms of the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976), the document referred to in section 48 of the last-mentioned Act, certifying that all electricity charges levied by a licensee or any other person lawfully providing electricity in respect of such immovable property and due to such licensee or other person have been paid.

Electricity support levies

30. (1) Subject to subsection (6), the Authority, after consultation with the Minister, may by notice in the Gazette or by notice served on any person, whether personally or by post, impose an electricity support levy for the benefit of any electricity cost, service or activity or electricity customer or category of customers or licensee or category of licensees, on electricity which is generated, transmitted, distributed, stored, transported, supplied, provided, consumed or sold at any point or other manner in Namibia, or which is imported into or exported from Namibia.

(2) A notice referred to in subsection (1) –

(a) must state –

- (i) the amount, percentage or rate of the electricity support levy or the basis or method of calculation or determination of the electricity support levy;
- (ii) when the electricity support levy becomes effective and the date on which or the periods within which the electricity support levy is payable and the manner of payment;
- (iii) the person who is liable for the payment thereof and, in the event where the levy authorises the passing on of the levy to subsequent customers, the manner in which the levy may so be passed on and reflected on the invoices of such subsequent customers including the liability of such subsequent customers to pay such passed on levy to the person liable for payment thereof;
- (iv) if applicable, the person who is responsible for the collection thereof and the subsequent payment thereof by such collecting person to the fund or bank account anticipated in subsection (7);
- (v) in accordance with subsection (7), the fund or bank account into which the electricity support levy must be paid; and
- (vi) the times when, the manner in which, and the person to whom the electricity support levy must be paid;

- (b) may specify that the levy imposed on an energy source is simultaneously imposed upon one or more of the following persons:
 - (i) Consumers of electricity;
 - (ii) electricity service providers;
 - (iii) customers or other clients of electricity service providers;
 - (iv) any other users of electricity;
 - (c) may state, in the event of there being administrative cost involved in such collection, the manner in which such cost may be recovered, including the amount or rate at which it may be recovered, but provided that such amount or rate must be cost-reflective;
 - (d) may state the circumstances, whether specific or general, and the manner in which exemption from the payment of any electricity support levy imposed under subsection (1) may be granted which exemption may also be granted retrospectively;
 - (e) may state, with regard to the person liable for payment thereof as anticipated in paragraph (a)(iii) or the person responsible for the collection thereof as anticipated in paragraph (a)(iv), any or all of the following measures to be applied where such person pays the electricity support levy, or any part thereof, late or fails to pay the electricity levy, or any part thereof, namely -
 - (i) a penalty or interest payable, at a rate determined in the notice;
 - (ii) the imposition of a daily fine for the benefit of the funds of the Authority not exceeding N\$ 5 000 per day for the duration of such late payment or failure to pay the electricity support levy;
 - (iii) the creation of an offence punishable by way of a fine not exceeding N\$ 100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
 - (f) may state any other provision which the Authority considers necessary for the efficient administration of the imposition, payment or collection of the electricity support levy or the efficient application of this subsection.
- (3) A notice referred to in subsection (1) may impose the electricity support levy in one or more of the following forms:
- (a) A percentage of the income of the relevant electricity service provider (whether such income is derived from the whole business or a prescribed part of such business) as specified in the notice;

- (b) as a percentage of the profit of the relevant electricity service provider (whether in respect of the whole business or in respect of a prescribed portion of such business), calculated in the manner set out in the notice;
- (c) a fixed amount per year in respect of the relevant electricity services provided by the electricity service provider as specified in the notice;
- (d) a fixed or a percentage amount in respect of the units or quantities of electricity produced, generated, transmitted, distributed, stored, transported, supplied, provided, consumed or sold; or
- (e) in any other manner that is not unreasonably discriminatory.

(4) Unless specifically otherwise stated in the notice referred to in subsection (1), in the event where the notice states the person who is responsible for the collection of the electricity support levy as contemplated in subsection (2)(a)(iv), such person is liable to pay the total amount of the electricity support levy which such person should have collected, irrespective of whether the levy was collected or not.

(5) For avoidance of doubt, subsection (2)(e) applies in the same manner, with the necessary changes, to the payment of electricity support levies contemplated in subsection (4).

(6) Prior to imposing an electricity support levy under subsection (1), the Authority must –

- (a) consult with the Minister as anticipated in subsection (1);
- (b) consult with such persons or bodies as the Authority deems relevant to the introduction of a electricity support levy;
- (c) in order to maintain a reasonable stability, in real terms, in the electricity support levy, avoid in so far as possible, substantial increases such levy or the introduction of a new electricity support levy in any period of 12 consecutive months; and
- (d) consider any other matter as the Authority deems relevant.

(7) For the purposes of the collection and payment of the electricity support levy, a fund may be established or an existing fund or bank account identified, in the manner provided for in the notice and subject to such procedures and conditions as may be stated in the notice, into which electricity support levies collected under this section must be paid.

(8) In furtherance of subsection (7), the Authority must, in the notice, appoint a fund administrator and set out the conditions applicable to such fund administrator.

(9) The money available in the fund contemplated in subsection (7) must be applied for the purposes, and distributed in the manner, determined by the Authority after consultation with the Minister.

(10) The Authority may withdraw or amend an electricity support levy imposed under this section and the provisions of this section, in as far as they are applicable, apply in the same manner, with the necessary changes, to such withdrawal or amendment.

(11) For purposes of this section -

- (a) an “electricity service provider” means a person who manufactures, generates, transmits, distributes, stores, transports, supplies, provides, sells, imports or exports electricity;
- (b) “failure to pay”, without limiting the generality of this expression, includes a refusal to pay.

PART VI GENERAL

Minister may refer certain matters to Authority for reconsideration

31. (1) Where the Authority intends to act or make a decision under sections 9(1)(e), (5) and (6), 10(5) and (6), 12(1) and (2), 13, 14(1), but excluding the schedule of tariffs or conditions relating thereto, (2)(b) and (3), 15(1), (6) and (7), 16(1), (7) and (8), 20(1), (2), (3), (4) and (6), 23(1), (2), (4) and (6) and 25(1) and (3) the Authority must, within five business days of deciding on such intended act or decision, and before notifying any third parties of the intended act or decision, in writing notify the Minister of its intended act or decision in the manner agreed upon between the Minister and the Authority.

(2) A written notification contemplated in subsection (1), must contain:

- (a) The background to, and details of, the intended act or decision including any additional information the Authority may deem relevant;
- (b) the reasons for the intended act or decision;
- (c) the relevant section of this Act in terms of which, or under which, the intended act or decision will be taken;
- (d) the name or names of the person or persons to whom the intended act or decision;
- (e) such other information as the Minister may reasonably require to be included in a notification.

(3) Upon receiving a notification under this section, the Minister -

- (a) must consider the notification;
- (b) may request such additional information from the Authority or any other person as the Minister may deem necessary;
- (c) may interview the Authority or any other person relevant to the intended act or decision;
- (d) may take such other steps the Minister deems appropriate.

(4) The Minister must, within 15 days after having received a notification under subsection (1), with reasons, confirm the intended act or decision or refer the intended act or decision back to the Authority for reconsideration subject thereto that, in the event of the Minister not confirming the intended act or decision, the Minister must, amongst others, motivate that the intended act or decision does not comply or align with prevailing national policies, this Act or any other relevant law.

(5) The Minister may, if there is good reason to do so, extend the periods set out in this section, after consulting thereon with the Authority, in the event where there is no urgency attaching to the finalisation of an intended act or decision of the Authority subject thereto that in the event where the Minister fails to respond to a notification under this section within the period set out herein and do not extend such period it is deemed that the Minister confirmed the intended act or decision.

(6) If the Minister decides to refer an intended act or decision back to the Authority for reconsideration, the Minister must indicate whether he or she is of the opinion that the Authority must set aside or amend its intended act or decision or deal therewith in any other manner which the Minister deems the intended act or decision to be dealt with.

(7) Upon receiving the Minister's response as contemplated in subsections (4) and (6), the Authority must consider such response and, based on all the facts before it, decide whether to -

- (a) confirm its intended act or decision;
 - (b) accept the Minister's response;
 - (c) take such other act or make such other decision as the Authority deems appropriate.
- (8) The Authority must provide reasons for its decision under subsection (7).

(9) The Authority must keep proper record of all notifications and the Minister's responses to such notifications under this section as well as reasons provided with regard thereto which, except for confidential information, must be available to the public for inspection in the manner determined by NERA in accordance with section 16 of the Namibia Energy Regulatory Authority Act.

Authority's power to exercise regulatory oversight over electricity agreements

32. (1) Power purchase agreements, transmission and distribution agreements, connection agreements, agreements whereby electricity activities are subcontracted or assigned, electricity and generation related fuel supply agreements and any other relevant electricity related agreements may be entered into between such parties and in such manner and subject to such terms and procedures as may be imposed by licence conditions or prescribed by the rules and are subject to such regulatory oversight as deemed necessary by the Authority and in the manner determined in such licence conditions or prescribed by the rules.

(2) The Authority may, in its rules, exempt any person or category of persons or type of agreement from the requirements of subsection (1), which exemption may be specific or general.

(3) The Authority may request a party to an agreement contemplated in subsection (1) to provide it with such records, documents or other information relating to the relevant agreement as the Authority may deem necessary in order to exercise its regulatory oversight as anticipated in this section.

(4) Subject to section 46, this section applies only to agreements entered into after the commencement of this Act in so far as this section provides for matters not contained or provided for in or under the repealed Act.

Mediation of disputes and referral of unresolved disputes to Tribunal or court

33. (1) Any dispute involving an act or a decision of the Authority under this Act or any dispute under this Act between licensees, between a licensee and a customer or a prospective customer, between the Authority and any person or between any persons who are negatively affected by the application of this Act may be submitted for mediation in accordance with section 12 of the Namibia Energy Regulatory Authority Act including the rules on mediation as contemplated in that section.

(2) Subject to subsection (3) and section 17 of the Namibia Energy Regulatory Authority Act, where a Tribunal has been established under the Namibian Regulatory Authority Act, any dispute between licensees, between licensees and their customers or prospective customers, between the Authority and any person or between any persons who are negatively affected by the application of this Act may be referred by any party to such dispute to the Tribunal.

(3) The Minister may by regulation prescribe disputes which may not be referred to the Tribunal.

Expropriation

34. (1) Despite any law to the contrary, a licensee may, with the approval of the Cabinet and subject to such conditions as the Cabinet may impose, by expropriation acquire any land or any right in, over or in respect of land as the licensee may require, in

the public interest, for any purpose associated with the provision of electricity by the licensee.

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

- (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 Authority must –

- (a) hold a public hearing to receive evidence and collect information relevant to those matters; and
- (b) give at least 10 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 Authority may make a finding regarding compensation payable to the owner and, in the event of the licensee and owner failing to reach agreement as to compensation, the compensation payable must be determined in accordance with the provisions of the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978).

(6) If the Cabinet under subsection (1) grants approval for the expropriation of any land or right, such expropriation must be effected by the licensee in accordance with sections 5 to 18 inclusive of the Expropriation Ordinance, 1978, and in the application of those sections any reference –

- (a) to “the Executive Committee” and to “the Administration” are construed as a reference to the licensee concerned; and
- (b) to “section 2” of that Ordinance are construed as a reference to this section.

(7) For the purposes of this section, a licensee includes any other person who provides electricity and which person is not required to be licensed under this Act.

Provision of electricity by regional councils and local authority councils

35. (1) The provision of electricity by a regional council or local authority council must be done in accordance with this section.

(2) In the event of conflict between Regional Councils Act, or Local Authorities Act, and this Act, this Act prevails.

(3) Unless exempted under section 9, a regional council or local authority must be licensed in accordance with Part III and, once so licensed, a regional council or local authority council has all the powers regarding the provision of electricity, which are given to a licensee under this Act.

(4) A regulation or model regulation made –

(a) by a regional council under section 32(1)(a) of the Regional Councils Act;

(b) by a local authority council under section 94 of the Local Authorities Act;
or

(c) by the Minister responsible for regional and local authority councils,

which relates to the provision of electricity, is subject to this Act and any regulation, rule, code, standard or directive made under this Act and, in the event of conflict, this Act or regulation, rule, code, standard or directive made under it, prevails.

(5) Section 28(1)(nA) of the Regional Councils Act, and section 30(1)(u) of the Local Authorities Act, do not apply with regard to a charge, a fee or other moneys payable in respect of the provision of electricity or an electricity service, amenity or facility provided by a regional council or local authority council, as the case may be, subject thereto that –

(a) unless exempted, such charge, fee or other moneys appear in a schedule of approved tariff contemplated in section 17;

(b) such regional council or local authority council may, prior to the introduction of a new or amended charge, fee or other moneys, announce such new or amended charge, fee or other moneys in at least one newspaper circulating in its area;

(c) such regional council or local authority council must display or make known such charge, fee or moneys in the manner prescribed by the rules or codes; and

(d) such regional council or local authority council provides the amount of such charge, fee or moneys to any person requesting it.

(6) Where the Minister responsible for regional councils and local authority councils, under section 54A or 92 of the Local Authorities Act divests a Local Authority Council of a function relating to the provision of electricity, that Minister may only do so –

- (a) after consultation with the Authority; and
- (b) subject to this Act.

(7) Section 55(1)(a) of the Local Authorities Act applies to a local authority council only in so far as such council has control in terms of this Act over electricity provision within the local authority area concerned and the provision of electricity by a person contemplated in section 55(1)(a) is subject to the Electricity Act.

(8) Section 55(1)(b) and (c) of the Local Authorities Act applies to a local authority council only with regard to electricity assets under the control of the relevant local authority council.

(9) The power of a local authority council to enter immovable property or private land in terms of sections 90A and 91 of the Local Authorities Act for the performance of a function relating to electricity applies only –

- (a) in so far as the relevant local authority council has control over the provision of electricity within the local authority area concerned; or
- (b) if authorisation to so enter has been given to the local authority council concerned by the person so in control in terms of this Act or any other applicable law.

(10) Subsections (4), (5), (6), (7), (8) and (9) apply with the necessary changes in respect of the management and control by a regional council of an electricity activity of a settlement area under sections 30(1)(f) and (u), 54A, 55(1)(a), (b) and (c), 91 and 94 of the Local Authorities Act by virtue of section 32 of the Regional Councils Act.

(11) The Commercialisation Regulations promulgated under Government Notice No 39 of 2001, as amended by Government Notice No 114 of 2007, and the Joint Business Venture Regulations promulgated under Government Notice No 114 of 2007, do not apply to a commercialisation of, or joint venture entered into, relating solely to the electricity distribution activities of a regional council or local authority.

(12) Notwithstanding any non-compliance with a provision of the Joint Business Venture Regulations promulgated under Government Notice No 114 of 2007, a joint venture established under those Joint Venture Regulations prior to the commencement of this Act with the aim to provide electricity is deemed to have been validly established.

Licensee's powers of inspection, work and entry

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) If any cables, wires or conduits and any civil or mechanical structures (including enclosures, poles, isolators, foundations and fences) forming part of the main of a licensee for providing electricity, are placed or installed on or are laid on or across any immovable property, whether underground or overhead, the licensee concerned may authorise –

- (a) any staff member of the licensee; or
- (b) any other person,

to enter such immovable property for the purpose of performing any work in connection with the inspection, maintenance, removal, replacement or renewal of any of such works or accessories thereof.

(3) A person who intends to enter any premises or property in terms of subsection (1) or (2) –

- (a) must, except in a case of an emergency or if for other reasonable cause he or she is unable to give prior notice, give reasonable notice to the owner or occupier of the premises concerned of his or her intention to enter onto such premises and of the nature of the work to be carried out, and, if possible, make suitable arrangements with the owner or occupier of the premises for entry before entering the premises;
- (b) may be accompanied by such other persons as may be reasonably required for carrying out the work;
- (c) must, at the request of any person in charge of the premises, produce the written authorisation issued by the licensee to enter that premises;
- (d) must adhere to all reasonable security measures, if any, of the owner or occupier of the premises;
- (e) may take onto such premises such goods, equipment and materials as may be reasonably required for the purposes of carrying out the work;
- (f) may make such excavations or erect such equipment as may be reasonably required for the purposes of carrying out the work;

(g) may require from the owner or occupier of the premises to remove any tree, shrub or growth or any fence or other obstacle preventing or impeding such excavations to be made or such equipment to be erected, and, in the event of such owner or occupier refusing or failing to comply with any such request reasonably made, cause any such obstacle to be removed in such manner as such authorised person considers necessary or expedient.

(4) Any person acting under an authorisation given under subsection (1) or (2) must cause the work in question to be carried out in such a manner as to limit any damage to the premises concerned or any fixtures thereon and to cause as little inconvenience as possible to the persons occupying the premises.

(5) The licensee is, unless otherwise prescribed by the rules or codes, responsible to repair or pay compensation for any damage caused to the premises or any fixture thereon in the carrying out of work in terms of this section.

(6) For the purposes of this section, a licensee includes any other person who provides electricity and which person is not required to be licensed under this Act.

(7) To the extent that this section interferes with the right to privacy of any person, such interference is authorised on the grounds of public safety and economic well-being as contemplated in Article 13(1) of the Namibian Constitution.

Powerlines, meters and other apparatus are not fixtures

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

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

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

(2) For the purposes of this section, a licensee includes any other person who provides electricity and which person is not required to be licensed under this Act.

Non-disclosure

38. (1) A person who is or was concerned in the performance of any function in terms of this Act may not disclose any information which he or she obtained in the performance of the function except –

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

(2) Nothing in this Act shall compel the disclosure of information to which this Act relates which is classified as confidential or the disclosure of which may be injurious to Namibia's national security interest, prejudicial to the conduct of international affairs; the administration of justice or constitute an invasion of personal privacy.

Limitation of liability

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

Offences

- 40.** (1) A person who –
- (a) subject to subsection (4), contravenes or fails to comply with any provision of this Act applicable to such person, the contravention of or failure to comply with which is not elsewhere in this Act determined to be an offence;
 - (b) fails to comply with any condition or regulation, rule, code or standard; or
 - (c) being a licensee, contravenes or fails to comply with any condition applicable to the licence concerned;
 - (d) hinders, obstructs or assaults an employee of the Authority or a person performing a function or carrying out a duty in terms of or under this Act in the course of performing or carrying out his or her functions or duties under this Act;
 - (e) provides information under this Act which is false or misleading in any material particular,

commits an offence and is liable to a fine not exceeding N\$24 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(2) Any person who without a lawful reason or a defence accepted in law (the proof of which lies upon that person) –

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

commits an offence and is liable to a fine not exceeding N\$24 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.

(3) If, in any prosecution for an offence in terms of paragraph (a) or (b) of subsection (2), it is proved that any electric current has been abstracted, branched off or diverted, it is presumed, in the absence of evidence to the contrary, that the owner of any premises within which the electric current was abstracted or branched off or to which the electric current was diverted or, if the owner does not occupy the premises, the occupier thereof, abstracted, branched off or diverted the electric current, as the case may be.

(4) Unless the Authority deems it not practical under circumstances to do so or that the nature of, or the circumstances surrounding, the offence does not warrant to do so, in which case this requirement can be dispensed with, prior to any person or body charging a person under subsection (1)(a), the Authority must in writing notify such person that such person has committed an offence setting out in such notification the details of the offence and further specifying the period and manner within which such person must rectify such contravention or failure, which period, unless there is compelling reason for a shorter period, may not be less than five days.

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

Rules and codes

41. (1) Subject to this Act and in support of Government Policy, and after consultation with the Minister, the Authority may by notice in the *Gazette* make such rules and codes as it considers necessary in order to further its objects of this Act, including, rules and codes relating to –

- (a) subject to Government policy on the Namibian electricity market structure and regulations made under section 6, the establishment, operation and administration of electricity markets, and the licensees and other persons operating on such markets and any other matter relating thereto, which includes the issuing of safety code and a grid code the latter setting out the reciprocal obligations of users of the transmission and distribution networks and the operation of the interconnected power system;

- (b) subject to Government policy on the Namibian electricity market structure and regulations made under section 6, roles and responsibilities for key electricity market functions;
- (c) power system security and safety;
- (d) network connections;
- (e) network and market pricing mechanisms;
- (f) metering and the introduction and enforcement of a net metering system;
- (g) administrative matters relating to any of the matters contained in paragraph (a) to (f);
- (h) the form and manner in which any application or objection in terms of this Act must be made;
- (i) the fees payable in respect of any application in terms of this Act and for the issue, renewal, amendment or transfer of a licence;
- (j) the duties and obligations of licensees, customers and other relevant persons and the relationship between them;
- (k) the procedure to be adopted by a licensee and other persons requiring rights of way or water rights in connection with the licensee's undertaking;
- (l) any inspection by the Authority and enquiry into the control and operation of undertakings;
- (m) the units or standards for the measurement of electricity, the verification of meters, the fees to be charged therefor and the settlement of disputes as to measurements of electricity and limits of error;
- (n) the frequency, type of current and voltage of electricity provided;
- (o) the mode of providing electricity, including the quality of provision and the quality of service and safety;
- (p) installment and implementation of renewable energy technologies, the use thereof (including the placing of obligations on persons with regard thereto) and the provision of electricity therefrom and compliance with energy efficiency standards and requirements including demand-side management;
- (q) the obligation of a licensee and other persons to provide electricity to a customer and the circumstances under which the obligation is deemed to have been waived;

- (r) the conditions on which electricity supplied to premises may be resold by a customer to another person;
- (s) the breaking up and repair of roads by a licensee in its licensed area;
- (t) the exemption from any of the provisions of this Act of any person in the circumstances and on the conditions specified in the rules or codes;
- (u) the requirements for the erection and operation of any generation plant and standby generation plant;
- (v) the conditions on which electricity is provided to customers and the responsibilities of customers in respect of electricity equipment installed on premises;
- (w) the inspection by a licensee and other persons of electricity equipment installed on premises;
- (x) further circumstances under which a licensee may refuse to provide or discontinue the provision of electricity to a customer;
- (y) grounds on which a licensee may -
 - (i) terminate a contract to provide electricity to a customer;
 - (ii) may amend such contract or the licensee's electricity supply conditions and the procedures applicable thereto;
- (z) the liability of licensees, customers and other persons with regard to failure to provide electricity and breach of contract;
- (aa) good corporate governance principles and corporate structures to be complied with by applicants for licensees and licensees and principles relating to objectivity, transparency and independency;
- (bb) further grounds with regard to which a licensee may enter the premises of a customer and remove equipment and property of the licensee;
- (cc) the differentiation of charges for electricity based on the time of use or consumption thereof;
- (dd) the charging of, the rules and procedures with regard thereto and the implementation of connection charges;
- (ee) the manner of payment for electricity provided and the charging therefor by a licensee and objections thereto;

- (ff) the circumstances in which any person may be permitted to depart or deviate from any standard contemplated in section 43;
 - (gg) the determination of the manner in which and intervals within which electricity audits must be conducted and the determination of, procedures for and meeting of performance objectives key performance indicators for licensees and other persons and the monitoring thereof;
 - (hh) the requirements for and qualification, registration and accreditation of persons working on electricity equipment and infrastructure;
 - (ii) technical and safety standards;
 - (jj) in addition to rules anticipated under section 32, matters to be provided for in, and the format thereof and minimum terms to be included in power purchase agreements, transmission and distribution agreements, connection agreements, agreements whereby electricity activities are subcontracted or assigned, electricity and generation related fuel supply agreements and any other relevant electricity related agreements;
 - (kk) the prohibition of certain practices in the electricity provision industry;
 - (ll) the manner in which electricity tariffs, charges, fees or moneys for electricity or electricity services, amenities or facilities, as the case may be, must be displayed or made known to customers;
 - (mm) the manner in which a public hearing must be held, the procedures applicable to a public hearing, the powers and duties of the Authority relating to a public hearing and the rights and duties of public hearing participants;
 - (nn) any other matter which in terms of this Act is required or permitted to be prescribed by rules or codes or the regulation of which, in the opinion of the Authority, is necessary or expedient to achieve or promote the objectives of this Act.
- (2) The rules and codes may –
- (a) require acts or things to be performed or done to the satisfaction of the Authority;
 - (b) subject to section 23 of the Namibia Energy Regulatory Authority Bill, empower the Authority to issue further written directives requiring acts or things to be performed or done, prohibiting acts or things from being performed or done,

and determine periods or dates upon, within or before which such acts or things must be performed or done or may not be performed or done.

(3) (a) The rules and codes may, with regard to any person who fails to comply therewith prescribe that such person is liable to a once-off or a daily penalty, for the benefit of the funds of the Authority or the relevant customer or other person negatively affected by such failure, which once-off penalty may not exceed N\$50 000 and, in the event of a daily penalty, which daily penalty may not exceed N\$ 5 000 for each day which the failure continues.

(b) When prescribing a penalty under this subsection, the Authority must consider the extent and the gravity of the failure involved.

(4) The Authority may by notice in the *Gazette* issue guidelines to enhance and clarify the understanding, applicability and enforcement of any rule or code or any other matter related to the provision electricity or contained in this Act.

(5) Prior to consulting with the Minister under subsection (1) and the publishing of its rules or codes, the Authority must consult with the affected role players in the electricity industry with regard to the scope, content and implementation of such rules or codes in the manner which the Authority considers appropriate.

(6) The Authority must keep an updated copy of its rules, codes and guidelines at its offices, which copy may be inspected by any interested person free of charge.

(7) A rule or code made under subsection (1) may, subject to section 40(4), prescribe penalties for any contravention thereof or failure to comply therewith of a fine not exceeding N\$24 000 or imprisonment for a period not exceeding two years or both such fine and such imprisonment.

(8) A person who, subject to section 40(4), contravenes or fails to comply with any rule or code, the contravention of or failure to comply with which is not elsewhere in or under this act determined to be an offence commits an offence and is liable to a fine not exceeding N\$ 24 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Regulations

42. (1) The Minister may make regulations in relation to –

- (a) further functions, powers and duties of the Authority under this Act;
- (b) 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.

Standards on quality of electricity provision and service

43. (1) The Authority, by notice in the *Gazette*, after consultation with the Minister and such role players in the electricity industry as it may determine, may-

- (a) set standards on quality of provision of electricity and of electricity related services; or

- (b) with or without amendments incorporate any standards on quality of provision of electricity and electricity related services in its rules or codes,

and must indicate whether such standards are compulsory or not.

(2) If, because of exceptional circumstances, the Authority considers it appropriate to depart or deviate from a standard contemplated in this section, the Authority may, subject to such conditions as it may determine, authorise the departure or deviation if such departure or deviation is not in conflict with this Act.

(3) The Authority must keep in its offices a copy of the complete updated text of every standard set or incorporated under this section, and must at the request in writing of any interested person make such copy available free of charge to any such person for inspection.

(4) When setting or incorporating standards under this section, the Authority may differentiate between different licensees or different type of licensees.

(5) (a) A compulsory standard may, with regard to any person who fails to comply therewith determine that such person is liable to a once-off or a daily penalty, for the benefit of the funds of the Authority or the relevant customer or other person negatively affected by such failure, which once-off penalty may not exceed N\$50 000 and, in the event of a daily penalty, which daily penalty may not exceed N\$ 5 000 for each day which the failure continues.

- (b) When determining a penalty under this subsection, the Authority must consider the extent and the gravity of the failure involved.

(6) Whenever in any judicial proceedings the question arises whether –

- (a) any writing contains the text of any standard incorporated in the rules or codes under subsection (1), or of any amendment or substitution of any such standard; or

- (b) any writing purporting to be a statement by a person who in that statement alleges that –

- (i) he or she is an employee of the Authority; and

- (ii) a particular writing described in or attached to the statement contains the text referred to in paragraph (a), or an extract from that text, is on its mere production at those proceedings by any person *prima facie* proof of the facts stated therein.

Documentary evidence

44. In any prosecution for any offence under this Act a document which purports to be a licence, order, directive or authority issued or obtained, or regulation, rule

or code made, under this Act, or a copy of such document certified as a true copy by a person who purports to be an employee of the Authority, is, on its mere production, accepted as *prima facie* proof of the particulars mentioned therein.

Adjustment of fines and penalties

45. The Minister may, whenever deemed necessary by him or her and in concurrence with the Authority and the Minister responsible for justice, by notice in the Gazette adjust the maximum amount of a fine or penalty specified in sections 30(2)(e)(ii) and (iii), 40(1) and (2), 41(3)(a), (7) and (8) and 43(5)(a) to ensure that such fine or penalty is of such an amount to be an appropriate deterrent or punishment as regards the non-compliance or transgression to which it relates.

Savings

46. Notwithstanding the repeal of the repealed Act by the Namibia Energy Regulatory Authority Act –

- (a) anything done under the repealed Act by the Electricity Control Board as established by section 2 the repealed Act and which could have been done under a corresponding provision of this Act is deemed to have been done under that corresponding provision;
- (b) any regulation made under section 43 of the repealed Act and which could have been made under section 41 or 42 of this Act is deemed to have been made under the corresponding provision in such section 41 or 42 irrespective whether issued by the Electricity Control Board or the Minister;
- (c) anything done or made under the repealed Act and which could have been done or made under a corresponding provision of this Act is deemed to have been done or made under that corresponding provision.

Amendment of laws

47. The laws mentioned in the Schedule are amended to the extent indicated in the third column of that Schedule.

Short title and commencement

48. (1) This Act is called the Electricity Act, 2017, and, subject to subsection (2), comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) The Minister may, under subsection (1) determine different dates for different sections of this Act to come into effect.

SCHEDULE
AMENDMENT OF LAWS

(section 47)

No. and year of law	Short title	Extent of amendment
Act No. 7 of 2007	Environmental Management Act, 2007	The substitution for paragraph (h) of subsection (2) of section 27 of the following paragraph:
		“electricity generation, transmission and distribution;”.
Government Gazette 1617 of 1 August 1997, Government Notice 156 of 1997	Regulations relating to health and safety of employees at work, 1997	The substitution in regulation 14 for paragraph (c) of the definition of "factory" of the following paragraph”
		“electricity is generated in terms of an electricity licence issued under the Electricity Act, 2013;”.