

THE ELECTRICITY ACT, 2007

Date of commencement: 1st March, 2007

Date of assent: 20th November, 2006

Arrangement of Sections

PART I

PRELIMINARY

1. Short title.
2. Interpretation.

PART II

REGULATION OF THE ELECTRICITY SUPPLY INDUSTRY

3. Power system activities to be carried out under licence.
4. Generation licence.
5. Special provisions for hydropower plants.
6. Transmission licence.
7. System operator licence.
8. Distribution licence.
9. Supply licence.
10. Import and export licence.
11. Separate and combined licences.
12. Duration of licences.
13. Offence for operating without a licence.

PART III

APPLICATION FOR AND ISSUING OF LICENCE

14. Application for and issuing of licences.
15. Conditions of licence.
16. Transfer of licences.
17. Revocation and amendment of licences.
18. Renewal of licences.
19. Non-compliance with licensing conditions.
20. Expiration of a licence.
21. Guidelines and by-laws.
22. Exemption from obligation to apply for and hold licence.

PART IV

DUTIES OF LICENSEES

23. Duties of licensees.

PART V

COMMON CARRIERS AND CAPACITY VARIATIONS

24. Common carriers and capacity variations.

PART VI

TENDERING FOR NEW CAPACITY

25. Tendering – Generalities.
26. The award of contracts.
27. Criteria for the selection of a candidate or a tenderer.
28. Legal remedies – Review of decisions and compensation.

PART VII

MISCELLANEOUS PROVISIONS

29. Obligation to provide information for supervision of the contract.
30. Right of access to information and non-disclosure obligation.
31. Penal provision.

PART VIII

TARIFFS

32. Tariffs.

PART IX

PROMOTION OF ACCESS TO ELECTRICITY

33. Rural electrification as priority for power sector policy.
34. Preparation of Rural Electrification Plan.
35. Connection targets as performance indicator for distribution companies.
36. Provision for co-ordination of Rural Access Fund.
37. Rural electrification data base.
38. Publishing of tariffs.

PART X

TRANSITIONAL PROVISIONS

39. Right to licence of existing operators.

PART XI

RESOLUTIONS OF DISPUTES

40. Resolution of disputes.

PART XII

THE ELECTRICITY DISPUTES TRIBUNAL

41. Establishment of Tribunal.
42. Appointment, tenure and qualification of the members.
43. Disqualification for membership.
44. Resignation or removal of members.
45. Declaration of interest.
46. Operations and procedures.
47. Funds of the Tribunal.
48. Jurisdiction.
49. Judgments and appeals.
50. Powers of Tribunal.
51. Registry.

PART XIII

GENERAL PROVISIONS

52. Termination of supply.
53. Use of meters.
54. Acquisition of land.
55. Works and access rights.
56. Power to cut trees, enter on land, etc.
57. Moving of lines, etc.
58. Power to break up roads, etc.
59. Alteration of pipes, etc.
60. Works which affect other lawful works.
61. Health, safety and environmental matters.
62. Other agreements.
63. Application of Mines, Works and Machinery Act, 1960.

PART XIV

MISCELLANEOUS AND SUPPLEMENTAL

64. Licensee's lines not subject to execution, etc.
65. Stamp duty.
66. Powers of Minister.
67. Regulations.

- 68. Savings.
- 69. Repeal.
- Schedule I
- Schedule II

An Act to reform and consolidate the law regulating the generation, distribution and supply of electricity and to provide for matters incidental thereto.

PART I
PRELIMINARY

Short title.

- 1. This Act may be cited as the Electricity Act, 2007.

Interpretation.

- 2. In this Act, unless the context otherwise indicates —

“Authority” means the Energy Regulatory Authority established under the Energy Regulatory Authority Act, 2007;

“candidates” means persons who have submitted a request for participation in an invitation to tender;

“case of emergency”, with reference to a right of entry on or to land or premises conferred under this Act, means a case in which the person requiring entry to the land or premises in question has reasonable cause to believe that circumstances exist which are likely to endanger life or property, and that immediate entry to such land or premises is necessary to verify the existence of those circumstances or to ascertain their cause or to effect a remedy;

“common carrier” means an electricity transmission or distribution line;

“consumer” means a person supplied or entitled to be supplied with electricity by any licensee or supplier;

“contract of supply” means a contract between the operator of an electricity undertaking and any other person for the supply of electricity to that person;

“contractors” means those who sell, rent, or with some other similar means supply goods or carry out services or works in accordance with a procurement contract;

“designated area” means an established human settlement hierarchy or framework within a national or regional development plan or similar settlement or plan;

“distribution” means the ownership, operation, management or control of distribution facilities for the movement or delivery of electricity to consumers, and “distribute” or “distributing” have corresponding meanings;

- “distribution facilities” means electrical facilities operated at distribution voltage and used for the movement or delivery of electricity;
- “distribution line” means any cable or overhead line for the distribution or reticulation of electricity from an electricity undertaking to a consumer, together with any transformers, switchgear or other works necessary to, and used in connection with, such cable or overhead line, and the buildings such part thereof as may be required to accommodate such transformers, switchgear and other works;
- “distributing main” means the portion of any main which is used for the purpose of giving origin to service lines for the purpose of general supply;
- “distribution voltage” means any voltage below the minimum transmission voltage;
- “distributor” means a person distributing electricity;
- “electrical fittings” means electric lines, fittings, apparatus and appliances designed for use by consumers of electricity for lighting, heating, motive power and other purposes for which electricity can be used;
- “electrical plant” means any electrical line, plant, equipment, apparatus and appliance used for the purposes of generation, transmission or distribution of electricity, but does not include electrical fittings;
- “electrician” means any person who installs, maintains or repairs electrical plant or electrical fittings on the premises of licensees or consumers;
- “electricity” means electrical energy or electrical power when generated, transmitted, distributed or supplied or used for any purpose except for the transmission of any communication or signal;
- “electricity undertaking” means any installation for the generation, transmission, distribution or supply of electricity which is owned or operated by a licensee, and “electricity undertaker” bears a corresponding meaning;
- “electric line” means a wire or wires, conductor or other means used for the purpose of conveying, transmitting or distributing electricity with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same or any part thereof, any apparatus connected therewith for the purpose of conveying, transmitting, distributing or transforming electricity and any pole, standard, guard, stay-wire, danger plate or other apparatus or appliance required in connection therewith;
- “emergency works” means works whose execution at the time when they are executed are requisite —
- (a) in order to put an end to, or to prevent the arising of, circumstances then existing or imminent which are calculated to cause danger to persons or property, interruption of a supply or service afforded by a licensee or substantial loss to such licensee; or
 - (b) in order to enable a licensee to afford a supply of electricity or a service to satisfy an obligation created by this or any other Act with-

in a time fixed by or under such Act, and in relation to works comprising items whereof some fall within it and such others of them as cannot be reasonably severed therefrom;

“financial year” means the financial year of a licensee;

“fund” means the Rural Access Fund established under section 35;

“general supply” means the supply of electricity to consumers in general and includes, unless otherwise specially agreed with an urban authority, the supply of electricity to public lamps, traffic signals, traffic bollards or other traffic signs or apparatus maintained and controlled by such authority, but does not include the supply of electricity to a consumer or consumers in particular under special agreement;

“generation” means the production of electricity in generating stations regardless of how such stations are fuelled or driven, and “generate” and “generating” have corresponding meanings;

“generator” means a person generating electricity;

“generating station” means any station for generating electricity including any building, plant and machinery used for the purpose and all accessories necessarily incidental thereto, together with the site thereof, and any site intended to be used for such a station;

“grid code” means a national grid code or similar regulation of national application prescribed by the authority, relating to the planning, scheduling or dispatch of electrical energy in Swaziland;

“inspector of machinery” means an inspector appointed as such under the Mines, Works and Machinery Act, No. 61 of 1960;

“land” includes land covered by buildings and land covered by water;

“licensee” means the holder of a licence granted or deemed to be granted by the Authority under the Energy Regulatory Authority Act, 2007 for the generation, transmission, distribution and supply of electricity;

“main” means any electric line through which electricity may be supplied or be intended to be supplied by a licensee for the purposes of general supply;

“mini-hydro” means a small scale power generating system that harnesses the power of falling water (1–15 MW);

“minimum transmission voltage” means thirty-three kilovolts or such other voltage as the Authority may, by regulation, determine to be the minimum voltage at which an electrical facility in Swaziland is generally operated when used to deliver electricity in bulk;

“Minister” means the Minister responsible for Energy Affairs;

“Ministry” means the Ministry responsible for Energy Affairs;

“minor works” means works executed solely for the purpose of erecting or placing service lines (not being works which relate to the placing or intended placing of a service line or a part of a service line for a continuous length of one hundred meters or more in or along a public road) or works executed solely for the purpose of maintaining, repairing or altering electric lines or apparatus;

“occupier” includes the person receiving or entitled to receive the rents payable by a lodger or tenant, whether on his own account or as agent for any other person entitled or interested therein;

“off-grid” means electricity network not connected to the main national electricity supply grid network;

“owner” means —

- (a) the person or persons in whom from time to time is vested the legal title to any immovable property;
- (b) in any case where the property has been leased for 10 years or more the lessee of such property;
- (c) in any case where the legal administration of such property is vested in a person as trustee, executor, curator, assignee or administrator of such property, the person in whom the legal administration is so vested;
- (d) in any case where the owner as above described is absent, the agent or person receiving the rent of the property in question;

“owner”, “occupier” or “person” in the case of a firm or partnership includes all or any one or more of the members of such firm or partnership, and in the case of a company or any body of persons not being a firm or partnership in the ordinary meaning of these terms, the secretary or manager of such company or body of persons, or should there be no secretary or manager, then any member of the board of directors, managing board or committee of such company or body of persons;

“person” includes statutory and governmental bodies and institutions;

“premises” means any building, room, tenement, hut, shed, tent or other structure, above or below the ground, together with the land upon which the same is situated and any adjoining land used in connection therewith, and any land without buildings or tents, and includes any vehicle or conveyance, and includes open air premises;

“procurement” means purchase, rental or corresponding transactions in respect of goods, services and works in all parts of the electricity supply industry and in particular in power generation;

“rated generating capacity”, in relation to installed generating plant, means the designed maximum continuous output of the generating plant;

“road” means any road, whether public or private, together with the kerbs, storm water drains and supporting banks thereof, and any street, square, court, alley,

lane, bridge, footway, trace, track, path, passage or highway, whether a thoroughfare or not;

“roadworks” means the reconstruction, widening, diversion or alteration of the level of any road or part thereof or any alteration in the relative widths of the carriageways or footways thereof;

“service line” means any electric line through which electricity may be supplied or be intended to be supplied by a licensee to a consumer either from any main or directly from the premises of the licensee;

“supply” means the purchase and sale of electricity and activities or services associated therewith, and “supplying” has a corresponding meaning;

“supplier” means a person supplying electricity;

“Swaziland Electricity Board” means the Swaziland Electricity Board (SEB), established in terms of the Electricity Ac, No. 10 of 1963 (as amended), or any successor in title to the Swaziland Electricity Board;

“system operator” means a person designated to operate the power system as described in section 7 and in accordance with the grid code;

“tenderers” means those who submit a tender;

“this Act” includes the regulations, guidelines and rules made under this Act;

“transmission” includes the ownership, operation, management or control of transmission facilities for whatever purpose, and “transmit” and “transmitting” have corresponding meanings;

“transmission facilities” means electrical facilities, including but not limited to electrical circuits, transformers, and substations operating above a voltage of thirty-three kilovolts but does not include —

- (a) electrical circuits forming the immediate connection between generation facilities and the transmission grid and to the extent that those circuits are owned by a generator and are directly associated with the generation facilities; or
- (b) specified facilities operating at or above minimum transmission voltage if the Authority, upon application by a licensee, determines that those facilities should be owned and operated by a distribution licensee;

“transmitter” means a person transmitting electricity;

“Tribunal” means the Electricity Disputes Tribunal established under section 41; and

“value of the supply” means the amount of electricity supplied by a licensee to any consumer or the maximum power demand of a consumer in any given period.

PART II

REGULATION OF THE ELECTRICITY SUPPLY INDUSTRY

Power system activities to be carried out under licence.

3. (1) Persons generating, transmitting, distributing or supplying electricity, or importing electricity into or exporting electricity from Swaziland, are obliged to hold licences issued by the Authority and shall be subject to the provisions of their licence, the by-laws and procedures of the Authority, and the requirements of any energy sector laws.
- (2) The power system activities for which a licence is required are —
 - (a) generation of electricity;
 - (b) transmission of electricity;
 - (c) performing the function of integrated power system operator;
 - (d) distribution of electricity;
 - (e) supplying of electricity;
 - (f) off-grid and mini-grid supplies of electricity; and
 - (g) importing electricity into or exporting electricity from Swaziland.
- (3) Any person who wishes to erect and establish any works —
 - (a) which will be rated at the site where it is to be installed at a capacity of one hundred or more kilowatts, for generating, transmitting, transforming, converting or distributing electricity; or
 - (b) the plant of which is rated at the site where it is installed at a capacity of less than one hundred kilowatts and which is used for the generation, transmission, distribution, or supply of electricity for the use of any other person, whether or not it is for the operators own use,

shall do so in accordance with regulations made under this Act, and shall comply with any requirement of the Minister or the Authority for the purpose of facilitating co-ordination with existing or future electricity undertakings.

(4) Notwithstanding the provisions of subsections (1) and (2), or the provisions of the Energy Regulatory Authority Act, 2007, a person carrying on or involved in an activity specified in Schedule II need not apply for or hold a licence.

Generation licence.

4. A person shall not construct, own or operate a generating station as referred to in section 3(3) without a generation licence issued under this Act.

Special provisions for hydropower plants.

5. (1) On the expiry of a licence for a hydropower plant with a generation capacity exceeding 10 megawatts, the plant, including all existing installations, property and rights needed for power generation, shall be transferred to the Government.
- (2) The power plant and installations transferred under subsection (1) shall be operational and well maintained at the time of transfer.

(3) On the transfer under subsection (1), the power plant, including all installations, property and rights required for power generation shall be dealt with by the Government in any manner it deems appropriate.

(4) This section does not apply where fifty percent or more of the power plant, or of the company which owns the power plant, is owned by the Government.

Transmission licence.

6. (1) No person shall construct, own or operate an installation for the transmission of electricity without a transmission licence granted by the Authority.

(2) A holder of a transmission licence shall provide access to all existing and potential users of the transmission network on the payment of fees and other charges for network services, as may be approved by the Authority.

(3) A holder of a transmission licence shall work in close co-operation with the System Operator.

(4) A licensee shall provide the Authority with such information as the Authority may prescribe to enable the Authority to approve the fees and charges under subsection (1).

System operator licence.

7. (1) The Authority shall designate a person holding a transmission licence to be a System Operator and license that person —

(a) to co-ordinate the power supply system to obtain instantaneous balance between generation and consumption of electricity;

(b) to be responsible for dispatching generation installations;

(c) to co-ordinate transmission outages;

(d) to plan and monitor the import and export of electricity;

(e) to prepare forecasts of capacity requirements;

(f) to develop and co-ordinate generation and transmission maintenance schedules;

(g) to decide how much backup capacity is needed and how to obtain it;

(h) to prepare contingency plans that can be immediately implemented if a major generating or transmission facility fails;

(i) to make by-laws, with the approval of the Authority, for the dispatch of generating installations;

(j) to perform such other functions as may be prescribed by the Authority in the licence or by regulations.

(2) The system operator shall not, in the performance of functions, show undue preference to any person or execute any kind of undue discrimination of any parties affected by the decisions of the system operator.

(3) The system operator shall recover all reasonable costs connected to the execution of the functions under this section, with the approval of the Authority.

(4) All licensees shall comply with the decisions of the system operator in connection with the execution of functions under this Act or regulations made under this Act.

Distribution licence.

8. (1) A person shall not distribute electricity without a distribution licence granted by the Authority.
- (2) The area of distribution shall be defined in the licence.
- (3) To allow third party access to distribution networks —
- (a) a holder of a distribution licence shall provide access to all existing and potential users of the distribution network on the payment of fees and other charges for network services, as may be approved by the Authority;
- (b) a licensee shall provide the Authority with such information as the Authority may prescribe to enable the Authority to approve the fees and charges under paragraph (a);
- (c) where a holder of a distribution licence cannot, due to any reason other than lack of capacity or technical conditions, allow access to the distribution system, a consumer may apply to the Authority for permission to access the distribution system and construct an electric supply line to his premises;
- (d) the Authority may, upon receipt of an application under paragraph (c), order —
- (i) the holder of a distribution licence to allow the consumer to connect to the distribution system on such terms and conditions as the Authority may prescribe; and
- (ii) the method through which the consumer may recover his costs for constructing the electric supply line, and access by other consumers to the electric supply line; and
- (e) where a connection is made to the distribution system on the application of the distribution licence holder, the Authority may direct the owner of the line constructed under paragraph (c), to transfer the ownership of the line to the distribution licence holder on such terms, including terms as to compensation, as may be agreed between the distribution licence holder and the consumer.
- (4) The quality of distribution services shall be in accordance with standards prescribed by the Authority.
- (5) A distribution licensee shall not be licensed to build, own or operate a generating station for sale of electricity for a combined total in excess of twenty percent (20%) of its demand requirements.
- (6) Subsection (5) shall not come into force until a date to be determined by the Minister by notice in the Gazette.

Supply licence.

9. The supply of electricity shall be subject to a supply licence granted by the Authority.

Import and export licence.

10. (1) A person shall not import or export electricity without an export or import licence as the case may be, granted by the Authority.

(2) An agreement in principle for the import or export of electricity shall accompany an application for a licence under subsection (1).

Separate and combined licences.

11. Separate or combined licences may be issued by the Authority to a particular generator, transmitter, system operator, distributor or supplier of electricity.

Duration of licences.

12. (1) Generation licences may not be issued by the Authority for a period exceeding 40 years; transmission and system operator licences may not be issued by the Authority for a period exceeding 30 years; and distribution and supply licences may not be issued by the Authority for a period exceeding 25 years.

(2) The Authority may, with the approval of the Minister, issue generation, transmission, distribution or supply licences for periods longer than those set out in subsection (1).

Offence for operating without a licence.

13. (1) A person who —

- (a) generates, transmits, acts as system operator, or distributes electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) sells electricity to any premises; or
- (c) exports or imports electricity,

except under the authority of or under an exemption given under this Act, commits an offence.

(2) The offender is liable on conviction to a fine payable to the Authority of not less than 50,000 Malagasy, or imprisonment for a period not exceeding twenty-four months or both.

PART III

APPLICATION FOR AND ISSUING OF LICENCE

Application for and issuing of licences.

14. (1) Any person obliged to hold a licence shall apply to the Authority for a licence.

(2) The Authority may prescribe in the by-laws published in the Gazette —

- (a) the procedure to be followed in applying for and considering an application for a licence under subsection (1); or
- (b) the definition of categories of licensees.

Conditions of licence.

15. (1) The Authority may make a licence granted under section 14(1) subject to any condition deemed appropriate for serving the purposes of this Act.

(2) Without derogating from the general nature of subsection (1), conditions relating to licences may include —

- (a) the establishing and complying with guidelines to govern relations between a licensee and its consumers;
- (b) the referring of disputes arising from the licence to the Authority for resolution;
- (c) penalties, including monetary penalties, for non-compliance with licensing conditions;
- (d) the furnishing of information, documents and details which the Authority may require for the purposes of this Act;
- (e) the period of validity of the licence;
- (f) the approval of tariffs, prices and charges;
- (g) the quality of supply and service;
- (h) the setting, approving and meeting of performance targets, including the monitoring thereof;
- (i) the ceding, transference or encumbrance of licences;
- (j) the transfer of assets, rights and obligations;
- (k) the area of service of a regulated undertaking; and
- (l) technical standards.

(3) Notwithstanding the provisions of subsections (1) and (2), any condition relating to the approval of tariffs, prices or charges shall be imposed with due regard to —

- (a) financial sustainability of licensees;
- (b) cost of service;
- (c) quality of service;
- (d) equity and fairness;
- (e) consistency of adjustments;
- (f) affordability; and
- (g) price stability.

(4) A licensee may not charge a consumer any other tariff, price or charge than that forming part of the conditions of the licence.

Transfer of licences.

16. (1) Neither a licence nor rights or privileges under that licence shall be assigned or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Authority, and such consent shall not be unreasonably withheld.

(2) A change, transfer or acquisition of control of the licensee shall not occur without the prior written consent of the Authority.

(3) A transfer of control of the licensee shall be deemed to occur upon the acquisition or accumulation by any person or an affiliated group of persons —

- (a) of fifty percent (50%) or more of the voting stock of the licensee; or

- (b) of a percentage of any voting stock of the licensee which is larger than any other block of voting stock that is held by any one person or an affiliated group of persons.
- (4) Notwithstanding the provisions of subsection (3) —
 - (a) the transfer upon death of the shares of a deceased shareholder;
 - (b) the transfer of the shares of a shareholder —
 - (i) to the members of the immediate family of the shareholder; or
 - (ii) to a trust benefiting the members of the immediate family of the shareholder;
 - (c) the transfer of the shares of a shareholder to persons designated in the will of a deceased person; or
 - (d) the acquisition or accumulation of shares in an employee pension fund or other similar fund,

shall not be deemed to be a change, transfer or acquisition of control under this Act.

Revocation and amendment of licences.

- 17. (1) The Authority may revoke a licence or a condition of a licence —
 - (a) on application;
 - (b) with the permission of a licensee; or
 - (c) upon material non-compliance by a licensee with a licence or a condition of the licence.
- (2) The Authority may amend a licence or a condition of a licence —
 - (a) on application;
 - (b) with the permission of the licensee;
 - (c) upon non-compliance by a licensee with a licence or a condition of that licence; or
 - (d) if it is deemed necessary to further the purposes of this Act.
- (3) The Authority shall by rule in the Gazette prescribe the procedure to be followed in revoking or amending a licence under subsection (1) or (2).
- (4) When the Authority amends a licence or a condition of a licence under subsection (2), it may include or amend any licensing condition referred to in section 15(1) and (2).

Renewal of licences.

- 18. (1) A condition relating to the period of validity of a licence may not be amended and a licensee who wishes to continue carrying on or to be involved in licensed undertaking shall apply for a new licence when the licence lapses.
- (2) The Authority shall prescribe the procedure to be followed in the renewal of a licence under subsection (1).

Non-compliance with licensing conditions.

19. (1) Where a licensee fails to adhere to the licence, the conditions on which it was granted, or the provisions of the sector Act, the Authority may serve on the licensee a notice in writing to rectify such deficiency within the period the Authority may determine, failing which the Authority may —

- (a) impose such penalties as may be provided for in the by-laws or the licensing conditions of such licensee;
- (b) amend the licence;
- (c) revoke the licence; or
- (d) direct any other licensee to meet the obligations of the licensee.

(2) When the Authority directs a licensee to meet the obligations of another licensee under subsection (1)(d) it may include or amend any licensing condition referred to in section 15(2) as well as conditions relating to —

- (a) the long-term sustainability of the licensee meeting the obligations of another licensee;
- (b) the entering into and taking possession of the undertaking of that other licensee;
- (c) the operating of the business of the other licensee on behalf and at the risk and expense of that licensee;
- (d) the paying of expenditure to cover expenses and losses caused in meeting the obligations of that licensee; and
- (e) the taking over of any assets of the licensee.

(3) Notwithstanding the provisions of subsection (2) —

- (a) the security of any debenture holder or mortgagee or the right of enforcing that security, is not affected; and
- (b) any civil claim which any person may have against a licensee arising from that licensee's failure to comply with the licensing conditions, is not precluded.

(4) The Authority shall by rule in the Gazette prescribe the procedure to be followed in imposing penalties, amending or revoking a licence or directing a licensee to meet the obligations of another licensee under subsection (1).

Expiration of a licence.

20. (1) When a licence expires and has not been renewed or transferred, the Authority may order the licensee to dismantle and remove all plant, equipment and facilities used in the licensee's business, and reinstate the land to the satisfaction of the Authority within two years from the date of expiry of the licence.

(2) The Authority may call upon the licensee to provide security to an amount and in the form acceptable to the Authority.

(3) The Minister may in the interests of the Government exempt the licensee from dismantling and removing all or any facilities as envisaged in subsection (1).

Guidelines and by-laws.

21. (1) The Authority may, after consultation with —

- (a) the Minister;
- (b) licensees; and
- (c) such other interested persons as may be deemed necessary,

make guidelines and publish by-laws for the proper administration of this Act.

(2) Without derogating from the general nature of subsection (1), guidelines may relate to —

- (a) the relationship between licensees and consumers;
- (b) codes of business practice and ethics;
- (c) performance objectives and the setting, approving and meeting of performance targets; and
- (d) any other matter the Authority deems appropriate for serving the purposes of this and the sector Act.

(3) Without derogating from the general nature of subsection (1), the Authority make by-laws relative to —

- (a) any issues relating to section 21(2);
- (b) the proceedings to be followed at meetings of the Authority;
- (c) the keeping of records and the giving of reasons by the Authority;
- (d) ensuring fair administrative action by the Authority in the exercise of its discretion and in particular the right of interested parties to be heard;
- (e) the classification of categories of licences;
- (f) the form and manner of licence applications;
- (g) the publishing of notices by licensees and the contents thereof;
- (h) the procedure to be followed in considering licence applications;
- (i) the procedure to be followed in the amendment, revocation and renewal of licences and in the non-compliance with licensing conditions;
- (j) penalties for the non-compliance with licensing conditions;
- (k) the procedure to be followed in directing a licensee to meet the obligations of another licensee;
- (l) the procedure to be followed and fees to be paid in arbitration and mediation proceedings;
- (m) the summoning of witnesses and the procedure to be followed in enquiries and investigations;
- (n) the rendering of information and returns;
- (o) the standards relating to quality of supply and service;
- (p) any other matter that may or has to be prescribed, determined or provided for in this Act or the energy laws.

(4) The Authority may make by-laws to establish a grid code.

(5) The Authority may direct any person or category of persons by notice in writing to comply with or refrain from doing something which has to be complied with or should be refrained from being done under this Act, within the time period set out in the notice.

Exemption from obligation to apply for and hold licence.

22. (1) Any person who generates, transmits or distributes electricity for own use approved and authorised by the Authority is exempted from the obligation to apply for and hold a licence under this Act.

(2) Any person who sells less than 1 GWh of electricity per annum to customers where the conditions relating to the supply of electricity thus sold and the tariffs charged are not less favourable than the conditions of supply and tariffs that would have been applicable if those customers were directly supplied with electricity by the licensee who sells electricity to the person supplying the customers with electricity under this exemption is exempt from applying for and holding a licence under this Act.

(3) Off-grid and mini-grid supply schemes may be specifically exempted by the Minister in terms of section 67(1)(j), from applying for and holding a licence under this Act.

PART IV

DUTIES OF LICENSEES

Duties of licensees.

23. (1) Every operator of an electricity undertaking shall supply electricity to every consumer who is in a position to make satisfactory arrangements for payment under a contract of supply with that operator, and is primarily in a designated area.

(2) Where an operator of an electricity undertaking unduly delays or refuses to supply any applicant with electricity, the consumer may appeal to the Authority, which shall determine the conditions under which the operator shall undertake such supply.

(3) A person who is supplied with electricity from an operator of an electricity undertaking shall not be entitled to a standby supply of electricity from the operator in respect of any premises unless that person has agreed to pay, and has given security to pay, such minimum annual sum as will give to the operator a reasonable return (which return will be determined by the Authority) on any capital expenditure and any other standing charges which may be incurred in meeting the maximum demand for the premises.

(4) An operator of an electricity undertaking shall test any installation of an applicant for a supply of electricity to ensure the safety of the installation and the users.

(5) If an operator is not satisfied with the safety of an installation, the operator is not obliged to supply electricity.

PART V

COMMON CARRIERS AND CAPACITY VARIATIONS

Common carriers and capacity variations.

24. (1) The Minister may, by proclamation in the Gazette, declare any transmission or distribution line to be a common carrier for the purposes of this Act.

(2) A transmission or distribution line that is declared, under subsection (1), to be a common carrier may, subject to any regulations made under this Act, and any requirements made by the Minister and the Authority under section 3(3), be used for the purposes of an electricity undertaking on such terms and conditions as may be agreed between the operator of the electricity undertaking and the owner or person in control of the transmission or distribution line concerned, or in default of such agreement, as may be determined by the Authority with the consent of the Minister.

(3) If any electricity undertaking wishes to increase or decrease its rated generating capacity by more than five percent (5%), or its contractual rights to purchase, transmit and or wheel power from outside Swaziland, or its contractual rights to sell or wheel power to consumers outside Swaziland, that undertaking shall apply to the Minister for approval and shall submit to the Minister a full report on its proposals.

(4) If any electricity undertaking wishes to expand its transmission system by more than fifteen percent (15%) per annum of its existing capital investment in such system, it shall apply to the Minister for approval and shall submit to the Minister a full report on its proposals.

(5) The Minister shall, in considering any application under this section, have regard to the terms of any relevant international agreement.

(6) The Minister may, after considering the report submitted under this section, and after consulting with the Authority, approve or refuse the application.

PART VI

TENDERING FOR NEW CAPACITY

Tendering – Generalities.

25. (1) The Authority in co-operation with Minister shall prepare calls for tender for new capacity construction in the areas of power generation, transmission and distribution as considered necessary in the light of mid- to long-term demand developments.

(2) The Authority shall launch tender procedures for the procurement of any new capacity and examine and review, in close co-operation and consultation with the Minister, any bids received under those procedures or otherwise.

(3) The calls for tender shall specify in sufficient detail the size of the project, its input fuel where appropriate, environmental specifications as needed, as well as any other information necessary.

The award of contracts.

26. (1) Advantage shall be taken, in contract procedures, of existing possibilities of competition.

(2) Regardless of the value of the procurement, a tender notice shall be published or a sufficient number of tenders, which is in proportion to the size and quality of the procurement, shall be otherwise invited.

(3) If in a procurement that is lower than the threshold, a supplier other than those who have been invited to tender wishes to submit a tender, that supplier shall be entitled to receive a tender without causing delay to the procurement.

(4) A contract may be awarded without an invitation to tender only for special reasons, such as, among others, urgent need for new capacity or small value of the procurement.

(5) The award of contracts (power purchase agreements) shall be carried out by the Authority according to the procedure and criteria laid out in regulations developed by the Authority and approved by the Minister.

Criteria for the selection of a candidate or a tenderer.

27. (1) Candidates or tenderers who do not fulfil technical, economic or other conditions for performance of the contract or who have failed to pay taxes or social security contributions in Swaziland or in the country where the contractor has established a head office (country of establishment) may be excluded from an invitation to tender.

(2) A candidate or tenderer excluded from an invitation to tender shall be informed of the reasons for the exclusion, if a request is made.

(3) The candidates and tenderers shall be treated on an equal and impartial basis at all stages of the award procedure whether the candidate or tenderer is a community or an institution owned by the contracting entity.

(4) The procurement shall be effected as economically as possible.

(5) The contract shall be awarded to the tender with the lowest price or to the one that is most economically advantageous as a whole, taking into account the criteria set out under subsection (1).

(6) Tenderers shall be selected and contracts shall be awarded according to the schedule set out in regulations by the Authority.

Legal remedies – Review of decisions and compensation.

28. (1) Decisions made under section 25(2) may be brought on review before the Electricity Disputes Tribunal.

(2) Any person who has occasioned harm to a candidate, tenderer or contractor by a procedure contrary to this Act or to provisions or regulations issued in pursuance of this Act shall be obliged to pay damages for the harm caused.

(3) In a claim for damages representing the costs of participating in an award procedure, the candidate or tenderer shall, in order to be awarded damages, be required only to prove that —

(a) the procedure followed was contrary to this Act or to provisions or to regulations issued in pursuance of this Act; and

(b) the candidate or tenderer would have had an actual chance of being awarded the contract if the correct procedure had been followed.

PART VII
MISCELLANEOUS PROVISIONS

Obligation to provide information for the supervision of the contract.

29. The contracting entities shall provide the authorities in Swaziland with statistical and other information on the different stages of the contract award procedure to the extent determined by the Ministry responsible for Finance.

Right of access to information and non-disclosure obligation.

30. Any person who, in the performance of functions referred to in this Act, has gained knowledge of trade or professional secrets or other similar facts which might cause economic damage to the party concerned, may not disclose or use those secrets or facts without legal right or consent of the concerned.

Penal provision.

31. Any person who contravenes section 30 commits an offence, and is liable to conviction to a fine of not exceeding fifty thousand Emalangeni (E50 000-00), or to imprisonment for a period not exceeding twenty-four months or both.

PART VIII
TARIFFS

Tariffs.

32. (1) The following activities are subject to tariff regulation —
- (a) generation and trading, in respect of which licences are required pursuant to this Act, and where the Authority considers regulation of prices necessary to prevent abuses of market power; and
 - (b) transmission, distribution and system operation, in respect of which licences are required under this Act.
- (2) An application for a licence for the activities referred to in subsection (1) shall contain —
- (a) a proposal for terms of supply and for fixing the tariffs including total tariff revenues;
 - (b) the structure of calculation of tariffs; and
 - (c) information about existing and planned investments and present and future quantity of electricity transmitted, distributed or sold.
- (3) A proposal under subsection (2) shall be in accordance with principles prescribed by the Authority under subsections (4) to (6).
- (4) Prices for the activities referred to in subsection (1) shall be regulated by the Authority according to one or more of the following tariff methodologies which shall —
- (a) allow a licensee that operates efficiently to recover the full costs of its business activities, including a reasonable return on the capital invested in business;

- (b) provide incentives for the continued improvement of the technical and economic efficiency with which the services are provided;
- (c) provide incentives for the continued improvement of quality services;
- (d) give to consumers proper signals regarding the costs that their consumption imposes on the business of the licensee; or
- (e) avoid undue discrimination between consumers and consumer categories.

(5) The Authority shall take into account any subsidy provided by the Rural Access Fund, if such a fund is created, or by any other source, whether direct or by way of favourable financing terms, or in any other manner, in establishing the tariff methodologies.

(6) Notwithstanding the provisions of subsection (4), the Authority may establish tariff methodologies that reflect the terms and conditions of a contract between licensees or between a licensee and one or more eligible customers.

(7) Notwithstanding paragraph (e) of subsection (4), in establishing tariff methodologies the Authority may differentiate among consumers on the basis of differences in total electricity consumption, the time periods on which electricity is consumed, load factors, power factors, voltage levels, location within the country and other such criteria as may affect the cost of providing a service and may allow a lifeline tariff for some consumers.

(8) Before approving a tariff methodology, the Authority shall give notice in the official Gazette of the proposed establishment of a tariff methodology, indicating the period within which objections or representations in connection with that methodology may be made to the Authority.

(9) In preparing a tariff methodology, the Authority shall —

- (a) consider any representations made by licence applicants, other licensees, consumers, eligible customers, consumer associations, associations of eligible customers and such other persons as the Authority may consider necessary or desirable;
- (b) obtain evidence, information or advice from any person who, in the opinion of the Authority, possesses expert knowledge which is relevant in the preparation of the methodology.

(10) Any fines or penalties levied against a licensee in terms of this Act or any other law or regulation shall not be rechargeable to the customers of that licensee.

PART IX

PROMOTION OF ACCESS TO ELECTRICITY

Rural electrification as priority for power sector policy.

33. (1) The Government shall undertake to promote, support and provide rural electrification programmes through public and private sector participation in order to —

- (a) achieve equitable regional distribution access to electricity;
- (b) maximise the economic, social and environmental benefits of rural electrification subsidies;
- (c) promote expansion of the grid and development of off-grid electrification; and

- (d) stimulate innovations among suppliers.

Preparation of Rural Electrification Plan.

34. (1) The Minister shall prepare a sustainable and co-ordinated Rural Electrification Strategy and Plan for Swaziland for the approval of Cabinet.

(2) The Minister shall, once in each year, submit to Parliament, an annual report on the progress and achievement of the Plan, which shall contain information relating to —

- (a) the expansion of the grid;
- (b) the renewable energy power generation for sale to the grid and for mini-grids;
- (c) the installation of solar photo voltaic systems for isolated settlements that cannot be economically connected to the grid.

(3) The Minister shall periodically evaluate the impact of the rural electrification programme.

(4) The Minister may, from time to time, with the approval of Cabinet, amend the Rural Electrification Strategy and Plan.

Connection targets as performance indicator for distribution companies.

35. (1) Distribution companies when presenting their tariff proposals to the Authority for approval shall present a five-year expansion plan which includes targets for the number of new connections to be achieved.

(2) Failure to reach agreed connection targets shall be subject to the payment of fines fixed by the Authority, as a minimum reflecting the cost to the distribution company for not providing electrification service.

Provision for co-ordination of Rural Access Fund.

36. (1) In case the Government decides to establish a donor-supported Rural Access Fund (RAF), providing grant support to co-fund priority investments increasing the access of the rural population to basic infrastructure services, such as electricity and telecommunications, the Minister in consultation with the Authority shall develop a policy for how the funds from the Rural Access Fund are to be used in conjunction with the connection targets fixed in the tariff approval procedures.

(2) The moneys of the Fund shall consist of —

- (a) moneys appropriated by Parliament;
- (b) any surplus made from the operations of the Authority and declared to the Minister responsible for Finance;
- (c) a levy on transmission bulk purchases of electricity from generation stations to be determined by the Minister with the approval of Cabinet; and
- (d) donations, gifts, grants and loans acceptable to the Minister and the Minister responsible for Finance.

(3) The Minister shall —

- (a) administer the Fund in accordance with this Act;
- (b) develop criteria for eligibility to receive financial support from the Fund;

- (c) define the subsidy level that will provide maximum access to electricity; and
- (d) carry out any other functions necessary for promoting rural electrification.

(4) The Minister shall, by statutory instrument, make regulations for the management of the Fund.

Rural electrification data base.

37. The Ministry shall maintain a national rural electrification data base to assist in the monitoring of progress and establishment of the targets of rural electrification.

Publishing of tariffs.

38. The Authority in agreement with the Minister, may impose on the system operator the requirement to publish standardised tariffs based on the avoided cost of the system for sales to the grid of electricity generated by the renewable energy systems of up to a maximum capacity of twenty megawatts.

PART X

TRANSITIONAL PROVISIONS

Right to licence of existing operators.

39. (1) Upon the commencement of this Act —

- (a) any licence granted under the provisions of the Electricity Act, No. 10 of 1963 by the Swaziland Electricity Board shall be deemed to be a licence issued by the Authority as contemplated in the Energy Regulatory Authority Act, 2007; and
- (b) any generator, transmitter, distributor or supplier not in possession of a licence contemplated in paragraph (a) shall, whether exempted to hold a licence or not, be deemed to be the holder of a temporary licence.

(2) Notwithstanding anything to the contrary contained in the Electricity Act, No. 10 of 1963, any licence contemplated —

- (a) in subsection (1)(a) shall be deemed to be subject to the conditions under which it was issued prior to the commencement of this Act;
- (b) in subsection (1)(a) or (b) shall be deemed to incorporate the schedule of standard prices applied by the generator, transmitter, distributor or supplier concerned; and
- (d) in subsection (1)(a) or (b) shall be valid for a maximum period of eighteen months from the date of commencement of this Act.

(3) A licence shall lapse one year after the date of commencement of this Act if the generator, transmitter, distributor or supplier concerned has not, within that time, applied for a new licence under the provisions of this Act.

PART XI

RESOLUTION OF DISPUTES

Resolution of disputes.

40. (1) The Authority shall, if requested by a party to a dispute, act as arbitrator in disputes between licensees or between a licensee and its consumer relating to —
- (a) the right to the supply of the goods and services provided by the regulated undertaking;
 - (b) the duty to supply the goods and services provided by the regulated undertaking;
 - (c) the tariffs, prices or charges at which the regulated goods or services are supplied, following the terms and procedures established for this in the sector Act;
 - (d) delays in or refusal to supply regulated goods or services; and
 - (e) the quality of regulated goods or services and the provision of services in connection with those goods and services.
- (2) The Authority may act as mediator in any other matter in respect of which a licensee or consumer requests the Authority to act as such.
- (3) The Authority may, on approval of the parties involved, appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a person so appointed is deemed to be an action or decision of the Authority.
- (4) The Authority shall by rule in the Gazette prescribe the procedure to be followed and mediation and arbitration fees to be paid in mediating and arbitrating disputes.
- (5) The decision of the Authority in arbitrating a dispute, including a decision as to costs, is final and binding on the disputing parties.

PART XII

THE ELECTRICITY DISPUTES TRIBUNAL

Establishment of Tribunal.

41. There is established the Electricity Disputes Tribunal made up of five members as follows —
- (a) Chairperson and Vice-Chairperson; and
 - (b) three other members.

Appointment, tenure and qualification of members.

42. (1) The Chairperson and Vice-Chairperson shall be persons who qualify to be judges of the High Court and shall be appointed by the Minister on the recommendation of the Judicial Service Commission.
- (2) The three other persons of the Tribunal shall be appointed by the Minister on the recommendation of the Civil Service Commission.

(3) The members of the Tribunal may be appointed on a part-time or full-time basis for a term of not more than five years renewable only once and on such other conditions as may be contained in the letter of appointment.

(4) A person appointed to the Tribunal shall be of high moral character and proven integrity and be experienced in at least one of the following areas —

- (a) the generation, transmission or distribution of electricity;
- (b) legal practice or public administration;
- (c) public finance or economics;
- (d) the energy industry; or
- (e) environment.

Disqualification for membership.

43. (1) A person shall not be appointed a member of the Tribunal or be requested to give technical advice to the Tribunal if that person —

(a) is —

- (i) a shareholder;
- (ii) a member of a board;
- (iii) an employee; or
- (iv) the holder of a licence,

of any entity engaged in providing services to the electricity industry likely to cause a conflict of interest;

- (b) is an undischarged bankrupt or has made any arrangements with the creditors;
- (c) is incapacitated by mental or physical illness;
- (d) has been convicted of any offence involving moral turpitude; or
- (e) is otherwise unable or unfit to discharge the functions of member of the Tribunal or to give technical advice.

(2) A person who is appointed a member of the Tribunal shall, before assuming the duties of his office, take and subscribe the Oath of Allegiance and the Judicial Oath in the Second Schedule to the Constitution.

(3) This section applies to all members of the Tribunal.

Resignation or removal of members.

44. (1) A member of the Tribunal may resign from office by notice in writing delivered to the Minister.

(2) The Minister may, in consultation with the Judicial Service Commission, remove from office a member of the Tribunal who —

- (a) is unable to perform the functions of the office due to infirmity of body or mind;
- (b) misbehaves or conducts himself or herself in a manner unbecoming of the office of member of the Tribunal;
- (c) is incompetent;

- (d) becomes an undischarged bankrupt;
- (e) fails to disclose to the Tribunal any interest in any contract or matter before the Authority in accordance with section 43(1); or
- (f) is convicted of an offence and sentenced to imprisonment for six months or more by a competent court in Swaziland or elsewhere.

Declaration of interest.

45. Where a member of the Tribunal as constituted for the purposes of a proceeding has any interest, pecuniary or otherwise, that could conflict with the proper performance of the functions of the member, that member shall disclose the interest to the parties to the proceeding and shall not take part in the proceeding or exercise any powers in relation to the matter to which the proceeding relates.

Operations and procedures.

46. (1) The Tribunal shall have a seal which shall be judicially noticed.
- (2) The seal of the Tribunal shall be affixed by or with the authority of the Tribunal to such documents as are required by direction of the Chairperson to be sealed with the seal of the Tribunal.
- (3) Subject to this Act, the Chairperson is responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal.
- (4) The Chairperson shall give directions relating to —
- (a) the arrangement of the business of the Tribunal;
 - (b) the places at which the Tribunal may sit generally; and
 - (c) the procedure of the Tribunal at a particular place.
- (5) The times and places of the hearings of the Tribunal shall be determined by the Chairperson with a view to securing a reasonable opportunity for applicants to appear before the Tribunal with as little inconvenience and expense as is practicable.
- (6) The Tribunal shall be constituted for a proceeding when three of the members are present, one of whom shall be the Chairperson or Vice-Chairperson.
- (7) The Chairperson shall preside at all sittings of the Tribunal, and in the absence of the Chairperson the Vice-Chairperson shall preside.
- (8) The Tribunal may seek technical advice from persons whose specialised knowledge or experience may assist the Tribunal in its proceedings.
- (9) A person giving technical advice shall cease to advise the Tribunal if that person —
- (a) is subsequently disqualified from appointment in accordance with section 43(1);
 - (b) fails to disclose to the Tribunal any interest in the electricity sector or in a contract or other matter before the Authority or the Tribunal;
 - (c) subsequently acquires any interest in the electricity sector.
- (10) A member of the Tribunal or a person giving technical advice to the Tribunal shall be paid an allowance that may be determined by the Minister.

Funds of the Tribunal.

47. The funds of the Tribunal shall consist of —
- (a) moneys appropriated by Parliament for enabling the tribunal to perform its functions;
 - (b) grants or donations from sources acceptable to the Minister and the Minister responsible for Finance.

Jurisdiction.

48. (1) The Tribunal shall have jurisdiction to hear and determine all matters referred to it, relating to the electricity sector.
- (2) For the avoidance of doubt, the jurisdiction of the Tribunal does not include the trial of any criminal offence or the hearing of any dispute that a licensee and any other party may have agreed to settle in accordance with their agreement.
- (3) The Tribunal shall in the exercise of its jurisdiction under this Act have all the powers of the High Court.

Judgments and appeals.

49. (1) The Tribunal may, of its own motion or upon application by an aggrieved party, review its own judgments and orders.
- (2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of the High Court.
- (3) Any person aggrieved by a decision of the Tribunal may, within thirty days from the date of the decision or order, appeal to the High Court.
- (4) The law applicable to appeals from the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to appeals from the Tribunal to the High Court.
- (5) Except in the case of an appeal under this section it shall not be lawful for any court or tribunal to entertain any action or proceeding of any nature for the purpose of questioning any judgment, finding, ruling, order or proceeding of the Tribunal.
- (6) A person aggrieved by the decision of the High Court under this section may, within thirty days of the date of the decision, appeal to the Supreme Court.

Powers of the Tribunal.

50. (1) The Tribunal shall meet as and when there is need to exercise its jurisdiction under this Act.
- (2) A decision of the Tribunal shall be binding if it is supported by a majority of the members.
- (3) A witness before the Tribunal shall have the same immunities, obligations and privileges as a witness before the High Court.
- (4) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice.
- (5) Except as prescribed in this Act, the Tribunal may regulate its own procedure.

Registry.

51. (1) The Tribunal shall have a Registrar who shall be a person qualified to be a Registrar of the High Court and who shall be appointed by the Minister in consultation with the Judicial Services Commission.

(2) The Registrar shall be responsible for the day to day administration of the Tribunal, the keeping of a public record of the deliberations of the Tribunal and the processing of the papers of the Tribunal.

(3) The Tribunal shall have a Registry and such other staff as may be necessary for the proper functioning of the Registry.

PART XII
GENERAL PROVISIONS

Termination of supply.

52. (1) A licensee or supplier shall not, except for reasons beyond its control, reduce or discontinue the supply of electricity to a consumer unless —

- (a) the consumer is declared insolvent;
- (b) the consumer has failed to pay the agreed charges after having been given notice as set out in the conditions of supply;
- (c) the consumer fails to comply with any other conditions of supply;
- (d) the consumer sells or for other consideration disposes of electricity supplied to him by a licensee without a licence granted in terms of this Act;
- (e) the consumer fraudulently abstracts or diverts electricity supplied to him by a licensee or supplier;
- (f) the consumer interferes with or attempts to interfere with any plant or equipment of the licensee or supplier used for supplying electricity to the consumer; or
- (g) the consumer has failed to comply with any existing health, safety and environmental legislation.

(2) Where a licensee is authorised under subsection (1) to discontinue a supply of electricity, the licensee or supplier may cut or disconnect any electric line through which supply is provided, and may refuse to reconnect such supply until —

- (a) the matter complained of has been rectified to the satisfaction of the licensee or supplier or the sums due to the licensee or supplier have been paid as the case may be; and
- (b) there have been paid to it —
 - (i) any expenses incurred by it in cutting off the supply;
 - (ii) any expenses reasonably likely to be incurred by it in re-connecting the supply;
 - (iii) a deposit, as determined by the licensee or supplier, or such increase in the deposit already held by the licensee or supplier for security for the due payment of the electricity account of the consumer; and

- (iv) any prescribed fees.

Use of meters.

53. (1) The value of supply shall be ascertained by means of an appropriate meter or appropriate meters fixed and connected with the service lines in such manner as may be prescribed by rule of the Authority.

(2) The register of such a meter shall be *prima facie* evidence in the absence of fraud of the value of supply.

(3) The Authority shall by rule published in the Gazette prescribe —

- (a) the acceptable technical standards and performance criteria for meters, including the limits of error of those meters;
- (b) the requirement of meters to be sealed by licensees, and the characteristics of those seals;
- (c) the obligation of consumers to pay for their meters and the reasonable charge thereof;
- (d) the testing of meters for accuracy, the obligation of the consumer to pay for that testing, and the rights of the consumer if the accuracy of the meter falls outside of the prescribed limits of error; and
- (e) the procedures to be followed for the removal of meters, the adjustment of meters or the alteration of meters, including the procedure to be followed by licensees in giving notice to customers to enable such work to take place.

Acquisition of land.

54. Where a generation licensee, transmission licensee or a distribution licensee, or a proposed licensee for generation, transmission or distribution services, requires any land in connection with its obligations under its licence or a proposed licence, and it has failed to acquire such land with agreement of the landowner(s), such licensee may acquire the land in terms of the Acquisition of Property Act, 1961.

Works and access rights.

55. (1) A licensee may, subject to the provisions of this Act, do the following —

- (a) place an electric line below ground across any land, and above ground across any land not covered by any buildings; and
- (b) for the purpose of supplying electricity to the occupier of premises which consist of a part and not the whole of a building, place an electric line or meter in, through or across any stair, passage or court providing a common means of access to the building, or elsewhere in or upon the building; and
- (c) utilise any land, building, wall or bridge for the support of an electric line; and
- (d) place any electrical plant on any land not covered by any buildings.

(2) At least thirty days before exercising any of the powers referred to in subsection (1), a licensee shall serve notice in writing of its intentions to do so upon the owner or

occupier of the land, building, wall or bridge on, in or in respect of, which the power is to be exercised.

(3) Where a licensee serves a notice under subsection (2) the licensee shall cause a plan to be prepared sufficiently indicating the manner in and extent to which the power to which the notice relates is to be exercised; and any plan so prepared shall, at a place to be specified in the notice, be open to inspection at all reasonable times by or on behalf of any person on whom the notice has been served.

(4) Where a person served with a notice under subsection (2) fails to give consent to the exercise of the power to which the notice relates within fourteen days of the service of the notice or attaches to the consent any terms or conditions to which the licensee objects, the Authority may give its consent to the exercise of the power, either unconditionally or subject to such terms and conditions not being monetary terms or conditions as to compensation, and the licensee may thereafter exercise the power accordingly.

(5) Where a licensee under the provisions of this section places any electric line or electrical plant in, on, over, along, across or in the vicinity of any road, railway, water-course, dam or airfield, that licensee shall place that electrical line or electrical plant so as not to hinder, obstruct, or interfere with the passage along that road or railway or the use of that dam or airfield.

(6) The Authority may, at the request of a licensee or supplier, serve notice in writing to the owner or occupier of the land prohibiting the erection of any building or structure or the planting of any tree or the doing of any other act whatsoever, which in the opinion of the Authority may interfere in any way with the exercise of any power by the licensee or supplier.

(7) Any works shall comply with legislation under the Swaziland Environmental Authority.

(8) For purposes of this section, a chief or other similar traditional authority shall be deemed to be an occupier of the Swazi Nation Land under his jurisdiction.

Power to cut trees, enter on land, etc.

56. (1) A licensee, by its duly authorised servants or agents, may enter upon any land or premises at all reasonable times and remain there as long as may be necessary for the purpose of effectually doing any act or thing as may reasonably be necessary for the purpose of any survey or preliminary investigation incidental to the exercise of any power or the performance of any duty of the licensee, or for carrying into effect any of the objects of this Act and for any of the said purposes and for the protection of the works executed thereon to cut down, burn or clear away from the vicinity thereof, to such extent as may be necessary, any trees, shrubs, hedges, brushwood or grass and any other kind of vegetation growing upon any such land so entered upon.

(2) The power to enter any land or premises under subsection (1) shall include power to pass over or through any land or premises where it is necessary to do so in order to reach some other land or premises on or in respect of which it is intended to do any thing, carry out any purpose or exercise any power conferred upon a licensee by this Act.

(3) The powers under this section if exercised for the purpose of carrying out any surveys and investigations shall include power to dig or bore into the subsoil.

(4) In exercise of powers under this section, except in a case of emergency or for the purpose of inspecting, maintaining, preventing interference with the safe and proper operation

of, or repairing any of the electric lines or installations of a licensee, the licensee shall serve notice in writing of its intentions upon the occupier or controlling authority of the land, building, or other structure on, in or in respect of which the power is to be exercised.

(5) If the person served with a notice under subsection (4) fails to give consent to the exercise of the power to which the notice relates within seven days of the service of the notice or attaches to the consent any terms or conditions to which the licensee objects, the Authority may give consent to the exercise of the power, subject to such terms and conditions (not being pecuniary terms or conditions as to compensation except in so far as may be authorised by this Act) as it deems fit, and the licensee may thereupon exercise the power accordingly.

(6) In exercise of powers under this section and under sections 55, 57, 58, 59 and 60, the licensee shall do as little damage as may be practicable and make reasonable compensation to any interested person for all damage sustained by that person by reason or in consequence of the exercise of those powers.

(7) Notwithstanding the provisions of subsection (6) —

(a) compensation shall not be payable in respect of a tree, shrub, hedge, brushwood or grass or any other kind of vegetation cut down, burnt or cleared away by the licensee under this Act, where that tree, shrub, hedge, brushwood, grass or other kind of vegetation was not in existence at the time of the placing of the electric line on account of which the cutting, burning or clearing away was carried out;

(b) compensation shall not be payable in respect of the removal, demolition or cutting down as the case may be of any building, structure or tree or the taking of any of the other steps referred to in section 58(6).

(8) The amount of compensation under subsection (6) shall in the event of disagreement be determined by arbitration.

Moving of lines, etc.

57. (1) The Authority may make an order requiring a licensee to alter the position of any of its electric lines or any pole, strut or other support for an electric line, which has been placed on or in or affixed to any land, building, wall or bridge.

(2) An order of the kind mentioned in this section may —

(a) be made either of the motion of the Authority or on the application of the owner, occupier or controlling authority of the land, building, wall or bridge to which it relates; and

(b) be made subject to such terms and conditions (but subject to paragraph (c) not being pecuniary terms or conditions as to compensation) as the Authority deems fit; and

(c) where it is not made of the motion of the Authority, contain provisions requiring the person on whose application it is made to refund to the licensee the whole or a specified part of the cost of carrying out the order.

Power to break up roads, etc.

58. (1) Subject to this Act, a licensee may, for the purpose of constructing, erecting, placing, maintaining, repairing, altering or removing electric lines or apparatus —

- (a) open and break up the soil and pavement of any road or bridge; or,
- (b) open or break up any sewer, drain or tunnel under any road or bridge.

(2) The licensee, before executing any works (not being emergency works or minor works) which necessitate the exercise of any of the powers mentioned in subsection (1) shall

- (a) send to the person having the management or control of any road, bridge, sewer, drain or tunnel likely to be affected by the exercise of that power (hereinafter in this section and in section 59 referred to as the “authorised person”) notice in writing of the intention of that licensee to execute such works together with a plan for the execution of the works; and
 - (b) furnish the authorised person with such other information as it may reasonably require in connection with the proposed works.
- (3) Where the authorised person —
- (a) disapproves a plan sent to it under subsection (2); or
 - (b) fails to come to a decision on the plan within sixty days of receiving it; or
 - (c) approves the plan subject to modifications or conditions to which the licensee objects,

the Authority may, on the application of the licensee, approve the plan, subject to such conditions (not being pecuniary conditions or conditions as to compensation) or modifications as it thinks fit.

(4) The licensee shall not begin any works to which this section applies (other than emergency works) unless —

- (a) in cases where it is required to furnish the authorised person with a plan of the works, the plan has been approved under this section by the authorised person or the Authority, as the case may be, and the licensee has, after such approval, given the authorised person notice of not less than seven days of the intention of the licensee to begin the works; and
 - (b) in the case of minor works, the licensee has given the authorised person notice of not less than seven days of the intention of the licensee to begin the works.
- (5) Where it executes works to which this section applies, the licensee shall —
- (a) execute the works (not being emergency works or minor works) in accordance with the plan approved under this section by the authorised person or the Authority, as the case may be; and
 - (b) carry on and complete the works with all such dispatch as is reasonably practicable; and
 - (c) except in the case of emergency works or minor works, afford the authorised person reasonable facilities for supervising the opening and breaking up, the reinstatement of, roads, bridges, sewers, drains and tunnels; and
 - (d) ensure at its own expense that —
 - (i) so long as a road or bridge is open or broken up it is adequately protected and guarded, and lighted in such manner as to give warning to the public during the hours of darkness; and

- (ii) no greater width or length of a road or bridge than is reasonably necessary is open or broken up at any time; and
 - (iii) there is no greater obstruction of traffic on any road or bridge than is reasonably necessary; and
 - (e) reinstate and make good any road or bridge, broken or opened up in connection with the works, and keep the same in good repair for three months after reinstatement and making good, and, for such further time, if any, not exceeding six months in all, as the soil broken up shall continue to subside; and
 - (f) reinstate and make good any sewer, drain or tunnel opened or broken up in connection with the works.
- (6) In the case of works to which this section applies which are emergency works, the licensee —
- (a) may execute the works without submitting a plan for the works to the authorised person; and
 - (b) shall as soon as may be after such execution furnish the authorised person with a plan for the works.
- (7) Where an authorised person —
- (a) objects to any works executed by the licensee which have been executed in contravention of any provision of subsections (2), (3) and (4), or which are emergency works; or
 - (b) complains that the licensee has failed or is failing to fulfil any obligations imposed upon it under subsection (5),

the authorised person may, after giving the licensee notice of the objection or complaint and an opportunity to enter into an agreement with it for meeting the objections or complaint, refer the matter to the Authority, which may approve the works or uphold the complaint or give such other directions (including directions for the works to be altered or for reinstatement to be carried out by the licensee at its own expense or by the authorised person at the licensee's expense) as the authorised person thinks fit.

Alteration of pipes, etc.

59. (1) A licensee may by notice in writing call upon any authorised person permanently or temporarily to alter at the expense of the licensee the position of any pipe, wire, or drain (except a main drain) controlled by the authorised person which is likely to interfere with the exercise of the powers of the licensee under this Act.

(2) The authorised person may in like manner call upon the licensee permanently or temporarily to alter at the expense of the authorised person the position of any electric line or apparatus of the licensee which may interfere with the exercise of the lawful powers of that authorised person.

(3) Where the party on which a notice has been served under this section does not within a reasonable time agree to carry out the alteration called for by the notice, the Authority on the application of the party serving the notice may, and subject to such terms and conditions as the Authority thinks fit, (not being pecuniary terms or conditions as to compensation), authorise the party serving the notice to make the alteration at the expense of the party serving the notice.

(4) Where the Authority is satisfied that as a result of the exercise of lawful powers by the authorised person it is necessary for the licensee to move any of its electric lines or apparatus, the Authority may on the application of the licensee require the authorised person to defray the cost of that removal.

(5) In this section “main drain” means a sewer or drain used for the drainage of two or more buildings which are not in the same curtilage.

Works which affect other lawful works.

60. (1) Where, in exercise of its powers, the works of a licensee are likely to affect any lawfully placed sewer, drain, pipe or wire belonging to or controlled by an authorised person, or where, in exercise of any lawful powers in relation to the laying of a sewer, drain, pipe or wire, the works of any authorised person are likely to affect any lawfully placed electric line, distributing main or apparatus belonging to the licensee, then subject to the provisions of this section, the party executing the works in this section referred to as the “user” shall —

- (a) not begin any works until it has given to the party controlling or owning the sewer, drain, pipe, wire, line, distributing main or apparatus likely to be affected by such works (in this section referred to as the “owner”) notice of the intention of the user to execute the works, including a plan showing the nature of the works and the place where the user intends to execute the works, and until seven days have expired from the date on which notice was given; and
- (b) during the execution of any works, give to the owner reasonable facilities for supervising the execution of the works; and
- (c) in the execution of any works, comply with any requirements as to the nature of the works or as to the things to be done or avoided in the execution of the works which is made by the owner and compliance which is reasonably necessary for the protection of any sewer, drain, pipe, wire, line, distributing main or apparatus for the access thereto and is reasonably practicable having regard to the time when the requirement is made; and
- (d) in the case of any works which include tunnelling or boring under any sewer, drain, wire, line or apparatus, secure that there is proper temporary support for the sewer, drain, pipe, wire, line or apparatus during the execution of the works and that a permanent foundation is provided for these works; and
- (e) in the case where the user is the licensee and the works include the laying of an electric line crossing or near any sewer, drain, pipe or wire, secure that such electric line is so laid as not to be capable of touching such sewer, drain, pipe or wire and is effectively insulated; and
- (f) in the case where the user is an authorised person and the works include the laying of a sewer, drain, pipe or wire across or near any electric line, secure that such sewer, drain, pipe or wire is so laid as not to be capable of touching such electric line, and is effectively insulated.

(2) Subsection (1)(a), (b) and (c) shall not apply in the case of minor works.

(3) In the case of emergency works the user shall be deemed to have complied with the requirements of subsection (1) if —

- (a) the user takes all reasonably practicable steps towards satisfying those requirements as are consistent with meeting the circumstances for which those works are required; and
- (b) the user supplies the owner as soon as practically possible with information reasonably sufficient to indicate the nature of the works which it has executed.

(4) Where the owner complains that the user has failed or is failing to fulfil any obligation imposed upon the user under this section, the owner may, after giving the user notice of the complaint and an opportunity to enter into an agreement with the owner for meeting it, refer the matter to the Authority who may dismiss the complaint or give such directions on the complaint (including directions for works to be executed or for works already executed to be altered either by the user at its own expenses or by the owner at the user's expense) as the Authority thinks fit.

Health, safety and environmental matters.

61. Installations for the generation, transmission, distribution and supply of electricity, as well as alterations or extensions to existing installations, shall be built and operated in accordance with legislation on health, safety and environmental standards.

Other agreements.

62. (1) An agreement may not contravene any —
- (a) provision of this Act; or
 - (b) rule or directive made or issued under this Act.

Application of Mines, Works and Machinery Act, 1960.

63. Where an inspector of machinery, acting in terms of the Mines, Works and Machinery Act, 1960, tests electrical installations or machinery of a licensee, the licensee shall be held responsible for any interruption in the supply of electricity which may be occasioned by or required by the inspector of the machinery for the purpose of the test.

PART XIII

MISCELLANEOUS AND SUPPLEMENTAL

Licensee's lines not subject to execution, etc.

64. (1) Notwithstanding the provisions of any law, any electrical plant or electrical fittings belonging to a licensee which are placed in or upon any premises not in the possession of the licensee for the purpose of supplying electricity under this Act —
- (a) shall not be subject to attachment at the suit of any person, nor be subject to a hypothec for rent, nor be subject to attachment or seizure by the trustee of an insolvent person in whose possession they may be; and
 - (b) shall at all times continue to be the property of and removable by the licensee, whether or not they are fixed or fastened to any part of the premises in or upon which they are placed or to the soil under such premises.

(2) Nothing in this section shall affect the amount of the assessment for rating of any premises on which any electrical plant or electrical fittings belonging to a licensee are fixed.

(3) The fact that a consumer has paid to a licensee the cost, or a sum representing the cost, of providing any electrical line or has otherwise paid any sum to the licensee to meet the capital cost or part of the capital cost of providing him with a supply of electricity shall not confer upon the consumer any right of property or ownership in any electrical plant or electrical fittings of the licensee.

Stamp duty.

65. Electricity shall be deemed to be goods, or merchandise for the purpose of exemption (a) of Item 2 of the Schedule to the Stamp Duties Act, No. 38 of 1931.

Powers of Minister.

66. (1) The Minister has the following powers in terms of this Act —
- (a) to set out requirements obliging licensees to facilitate co-ordination with existing or future electricity undertakings in terms of section 3(3)(b) of this Act;
 - (b) to make regulations to give effect to any provision of this Act; and
 - (c) to amend Schedule II of this Act by adjusting the criteria for exemption from the requirements of licensees to hold licences.

Regulations.

67. (1) The Minister may make regulations, in consultation with the Authority, to give effect to any of the provisions of this Act and without prejudice to the generality of such power may make regulations —
- (a) for securing that the distribution and supply of electricity are regular, safe and efficient;
 - (b) for protecting the public in so far as practicable from any personal injury, fire or other dangers arising from the use of electricity;
 - (c) for prioritisation of fuels and technologies for electricity supply;
 - (d) prescribing anything (including fees) to be prescribed under this Act;
 - (e) prohibiting, controlling or restricting the importation, disposal, sale or exposure for sale of defective or dangerous electrical fittings;
 - (f) providing for the registration and control of electricians;
 - (g) for the testing of meters and the adjustment of accounts where meters are found to be defective;
 - (h) prescribing the rate of interest, or a mechanism to determine the rate of interest, to be charged by licensees and suppliers on the late payment of electricity accounts, and the rate of interest, or a mechanism to determine the rate of interest, payable by licensees or suppliers on deposits held by such licensees on behalf of customers;

- (i) prescribing reconnection fees to be payable by consumers to licensees and suppliers to reconnect the supply of electricity after such supply has been terminated in terms of section 52(1);
 - (j) for the regulation of off-grid and mini-grid supplies of electricity, including the economic and technical regulation of such supplies, and the granting of an exclusive right to a particular licensee or supplier to supply electricity by way of off-grid and mini-grid supplies in respect of particular geographic areas of Swaziland;
 - (k) for the exemption of any off-grid and mini-grid supply schemes from the regulatory requirements as set out in paragraph (j);
 - (l) prescribing fees or levies payable by licensees, suppliers, end-users of electricity or customers for the funding of rural electrification programmes, renewable energy programmes, energy efficiency programmes, and demand side management programmes as approved by the Minister;
 - (m) providing for matters incidental to and connected with the matters mentioned in the preceding paragraphs.
- (2) Without prejudice to the generality of subsection (1) —
- (a) regulations made under the provisions of subsection (1)(a) may empower the licensee to discontinue the supply of electricity to a consumer, a licensee or a person whose electrical plant or electrical fittings are in the opinion of the licensee defective or dangerous;
 - (b) regulations made under the provisions of subsection (1)(b) may prescribe a fee to be charged by a licensee for inspecting electrical plant in connection with an application for or the grant of a licence, and may authorise such inspection;
 - (c) regulations made under the provisions of subsection (1)(c) may —
 - (i) prohibit, control or restrict the importation, disposal, sale or exposure for sale of any electrical fittings unless it conforms with such standards or descriptions as are specified in those regulations; and
 - (ii) empower a court to seize and dispose of any electrical fittings in respect of which any person has been convicted of an offence under the provisions of those regulations; and
 - (d) regulations made under the provisions of subsection (1)(d) may contain provision for —
 - (i) establishing a register of electricians;
 - (ii) admitting persons to and removing persons from the register;
 - (iii) prohibiting unregistered persons from working as electricians;
 - (iv) issuing licences to registered electricians; and
 - (v) charging fees for an admission to the register and the issue of a licence.

Savings.

68. Anything done in terms of the provisions of the Electricity Act, 1963, prior to the commencement of this Act, and which may be done in terms of the provisions of this Act is deemed to have been done in terms of this Act.

Repeal.

69. The Electricity Act, No. 10 of 1963 is hereby repealed.

SCHEDULE I
AMENDMENT OF LAWS

Repeal the Whole Act

SCHEDULE II

EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

1. Any person who generates, transmits or distribute electricity for the use of that person approved and authorised by the Authority.
2. Any person who sells less than 1 GWh of electricity per annum to customers: Provided that the condition relating to the supply of electricity thus sold and the tariffs charged are not less favourable than the conditions of supply and tariffs that would have been applicable if such customers were directly supplied with electricity by the licensee who sells electricity to the person supplying such customers with electricity under this exemption.
3. Off-grid and mini-grid supply schemes specifically exempted by the Minister in terms of section 67(1)(j).

