

(1 January 2025 – to date)

[This is the **current** version and applies as from 1 January 2025, i.e. the date of commencement of the Electricity Regulation Amendment Act 38 of 2024 – to date]

ELECTRICITY REGULATION ACT 4 OF 2006

Government Notice 660 in Government Gazette 28992, dated 5 July 2006.

Commencement date: 1 August 2006 – unless otherwise indicated, [Proc. R30, Gazette No. 9057, dated 21 July 2006]

as amended by:

Electricity Regulation Amendment Act 28 of 2007 – Government Notice 23 in Government Gazette 30676, dated 21 January 2008. Commencement date: 1 May 2008 [Proc. No.R15, Gazette No. 30995, dated 18 April 2008].

Government Notice 1231 in Government Gazette 41237 dated 10 November 2017. Commencement date: 10 November 2017.

Government Notice 402 in Government Gazette 43151 dated 26 March 2020. Commencement date: 26 March 2020.

Government Notice 751 in Government Gazette 45023 dated 20 August 2021. Commencement date: 20 August 2021. (A duplication of this notice was published under GN 737 of 12 August 2021)

Government Notice 1000 in Government Gazette 45266 dated 5 October 2021. Commencement date: 5 October 2021.

Government Notice 2875 in Government Gazette 47757 dated 15 December 2022. Commencement date: 15 December 2022.

Government Notice 2935 (Correction Notice) in Government Gazette 47877 dated 17 January 2023.

Electricity Regulation Amendment Act 38 of 2024 - Government Notice 5139 in Government Gazette 51100 dated 20 August 2024. Commencement date (save for amendments to the definitions of "reticulation" and "distribution power systems" in section 1 of that Act): 1 January 2025 [Proc. No. 236 in Government Gazette 51778 dated 18 December 2024]

(English text signed by the President)
(Assented to 27 June 2006)

ACT

To amend the Electricity Regulation Act, 2006 so as to delete, amend, and insert certain definitions; to provide for the application of the Act; to provide for the National Energy Regulator to consider applications for licences and the issue of licences; to provide for revocation and deregistration of licences; to provide for additional electricity, new generation capacity and electricity infrastructure; to provide for the establishment, duties, powers and functions of the Transmission System Operator SOC Ltd and transitional measures; to provide for an open market platform that allows for competitive electricity trading; to assign the duties, powers and functions of the Transmission System Operator SOC Ltd to the National Transmission Company South Africa SOC Ltd; to provide for delegation and assignment; to provide for offences and penalties; and to provide for matters connected therewith.

(Long title substituted by section 13 of Act 28 of 2007)

(Long title substituted by section 32 of Act 38 of 2024)

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

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CHAPTER I INTERPRETATION

1. Definitions

In this Act, unless the context indicates otherwise -

“ancillary services” means those services necessary to support the continuous and secure operation of an electric power system and necessary to maintain reliable operations of the national transmission power system and interconnected distribution power systems, including, but not limited to, those services necessary for voltage and reactive power control, automatic generation control, frequency control and black start capabilities;

(Definition of “ancillary services” inserted by section 1(a) of Act 38 of 2024)

“balance responsible” means taking physical and financial responsibility for maintaining real-time balancing at specified metering points by submitting forecasts and participating in the energy market;

(Definition of “balance responsible” inserted by section 1(a) of Act 38 of 2024)

“balance responsible party” means a licensed or registered generator, distributor or trader that is responsible for balance responsible activities, and which is accountable through the balancing mechanism for deviations;

(Definition of “balance responsible party” inserted by section 1(a) of Act 38 of 2024)

“balancing mechanism” means a mechanism used by the system operator to balance the supply and demand of electricity in real time on the power system by cost effective dispatching of generation and demand resources;

(Definition of “balancing mechanism” inserted by section 1(a) of Act 38 of 2024)

“central purchasing agency” means the entity assigned to fulfil the role of the wholesale buyer to maintain system integrity during, and after, the transition to a competitive electricity market;

(Definition of “central purchasing agency” inserted by section 1(a) of Act 38 of 2024)

“chief executive officer”

(Definition of “chief executive officer” deleted by section 1(b) of Act 38 of 2024)

“customer” means a person who purchases electricity or a service relating to the supply of electricity;

“Department” means the department responsible for mineral resources and energy;

(Definition of “Department” inserted by section 1(c) of Act 38 of 2024)

“Director-General” means the Director-General of the Department;

(Definition of “Director-General” inserted by section 1(c) of Act 38 of 2024)

“direct supply agreement” means an agreement for the sale of electricity between a generation licensee or registrant or trader, acting in its capacity as such, and a customer, whether such electricity is supplied directly or through a transmission power system or a distribution power system, provided that the customer is not a transmitter, distributor or system operator or trader;

(Definition of “direct supply agreement” inserted by section 1(c) of Act 38 of 2024)

“dispatching” means the scheduling, coordination and management of the flow of electricity produced by generation facilities into and out of a transmission power system or an interconnected distribution power system, including scheduling, coordinating and managing the start-up and shut-down of those facilities, and ‘dispatch’ has a corresponding meaning;

(Definition of “dispatching” inserted by section 1(c) of Act 38 of 2024)

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

“distribution licensee” means a holder of a licence to operate a distribution power system;

(Definition of “distribution licensee” inserted by section 1(d) of Act 38 of 2024)

“distribution power system” means a power system that operates at or below 132kV;

“distributor” means a person who distributes electricity;

“end user” means a user of electricity who consumes such electricity;

(Definition of “end user” substituted by section 1(f) of Act 38 of 2024)

“generation” means the production of electricity by any means, and “generate” and “generating” have corresponding meanings;

“generation licensee” means a holder of a licence to operate a generation facility in terms of section 4(a)(i)(aa);

(Definition of “generation licensee” inserted by section 1(g) of Act 38 of 2024)

“generator” means a person who generates electricity;

“independent power producer” means any person in which an organ of state does not hold a direct or indirect controlling interest, which undertakes or intends to undertake the development of new generation capacity or the generation of electricity pursuant to a section 34 determination;

(Definition of “independent power producer” inserted by section 1(h) of Act 38 of 2024)

“integrated resource plan” means an indicative, forward-looking plan for electricity generation, which reflects national policy on electricity planning, which plan specifies the types of energy sources and technologies from which electricity may be generated and indicates the amount of electricity that is to be generated from each of such sources or technologies

(Definition of “integrated resource plan” substituted by section 1(i) of Act 38 of 2024)

“interconnected distribution power system” means a distribution power network that is interconnected to a transmission power system;

(Definition of “interconnected distribution power system” inserted by section 1(j) of Act 38 of 2024)

“legacy independent power producer contract” means a power purchase agreement that has been concluded prior to the launch of the competitive electricity market;

(Definition of “legacy independent power producer contract” inserted by section 1(j) of Act 38 of 2024)

“licence” means a licence issued under this Act;

(Definition of “licence” inserted by section 1(j) of Act 38 of 2024)

“market operator” means a person licensed to operate a trading platform for power market participants and who takes no ownership of the energy traded;

(Definition of “market operator” inserted by section 1(j) of Act 38 of 2024)

“market transaction” means a transaction that occurs in a competitive environment, either on a competitive trading platform or bilaterally;

(Definition of “market transaction” inserted by section 1(j) of Act 38 of 2024)

“licensee” means the holder of a licence granted or deemed to have been granted by the Regulator under this Act;

“Minister” means the Minister of Mineral Resources and Energy;

(Definition of “Minister” substituted by section 1(k) of Act 38 of 2024)

“multi-market” means a hybrid market model accommodating market transactions, physical bilateral transactions and regulated transactions;

(Definition of “multi-market” inserted by section 1(l) of Act 38 of 2024)

“Municipal Finance Management Act” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

(Definition of “Municipal Finance Management Act” inserted by section 1(a) of Act 28 of 2007)

“Municipal Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

(Definition of “Municipal Structures Act” inserted by section 1(a) of Act 28 of 2007)

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

(Definition of “Municipal Systems Act” inserted by section 1(a) of Act 28 of 2007)

“municipality” means a category of municipality that has executive authority over and the right to reticulate electricity within its area of jurisdiction in terms of the Municipal Structures Act;

(Definition of “municipality” inserted by section 1(a) of Act 28 of 2007)

“National Energy Regulator Act” means the National Energy Regulator Act, 2004 (Act No 40 of 2004);

“national transmission power system” means the interconnected transmission power system used for the transmission of electricity produced by generation facilities for purposes of the supply of electricity to customers within and outside South Africa, above 132kV;

(Definition of “national transmission power system” inserted by section 1(m) of Act 38 of 2024)

“new generation capacity” means additional electricity capacity, including capacity derived from new generation facilities, the expansion of existing facilities, or existing facilities not previously connected to the national transmission power system, or an interconnected distribution power system, other than—

- (a) the capacity of generation facilities for own use;
- (b) the capacity of generation facilities that supply electricity to end users pursuant to direct supply agreements;
- (c) the capacity of generation facilities referred to in item 1 of Schedule 2 to the Act; and
- (d) the capacity of generation facilities for export, which have been approved by the Minister;

(Definition of “new generation capacity” inserted by section 1(m) of Act 38 of 2024)

“**person**” includes any organ of state as defined in section 239 of the Constitution;

“**physical bilateral transaction**” means a transaction entered into by generators, customers and traders for energy production which involves the conclusion of a power purchase agreement to meet demand and supply as required by the system operator;

(Definition of “physical bilateral transaction” inserted by section 1(n) of Act 38 of 2024)

“**power market participants**” means participants that meet the qualifying criteria set, and choose to participate, in the market platform established by the market operator;

(Definition of “power market participants” inserted by section 1(n) of Act 38 of 2024)

“**power purchase agreement**” means an agreement between a generator and a buyer, for the sale and purchase of electricity or electricity generation capacity;

(Definition of “power purchase agreement” inserted by section 1(n) of Act 38 of 2024)

“**prescribe**” means prescribe by regulation or rule;

“**registrant**” means a person registered with the Regulator in terms of section 9;

(Definition of “registrant” inserted by section 1(p) of Act 38 of 2024)

“**regulated transaction**” means a transaction that requires regulatory approval or oversight, specifically where the exercise of market power is likely or evident (for example, network charges);

(Definition of “regulated transaction” inserted by section 1(p) of Act 38 of 2024)

“**price**” means a charge for electricity to an end-user or customer reflecting the cost to serve that end-user or customer and may include a tariff determined by the Regulator, and a surcharge, tax, levy or duty imposed by a municipality in terms of section 229 of the Constitution of the Republic of South Africa, 1996;

(Definition of “price” substituted by section 1(o) of Act 38 of 2024)

“**Regulator**” means the National Energy Regulator established by section 3 of the National Energy Regulator Act;

“**reticulation**” means trading or distribution of electricity and includes services associated therewith;

(Definition of “reticulation” inserted by section 1(b) of Act 28 of 2007)

“**service delivery agreement**” means an agreement between a municipality and an institution or person providing electricity reticulation, either for its own account or on behalf of the municipality;

(Definition of “service delivery agreement” inserted by section 1(b) of Act 28 of 2007)

“service provider” means a person or institution or any combination of persons and institutions which provide a municipal service in terms of a service delivery agreement;

(Definition of “service provider” inserted by section 1(b) of Act 28 of 2007)

“supply” means trading, system operation, export and import and the generation, transmission or distribution of electricity;

(Definition of “supply” substituted by section 1(q) of Act 38 of 2024)

“system operation” means the operation of the national transmission power system in real time, including dispatching, scheduling of transmission and ancillary services, generation outage coordination, transmission congestion management and coordination, and such other activities as may be required for the reliable and efficient operation of the national transmission power system;

(Definition of “system operation” inserted by section 1(r) of Act 38 of 2024)

“system operator” means the person who is responsible for system operation;

(Definition of “system operator” inserted by section 1(r) of Act 38 of 2024)

“tariff” means a charge to a customer or end user in respect of a licensed activity or registered activity, other than a surcharge, tax, levy or duty imposed by a municipality in terms of section 229 of the Constitution of the Republic of South Africa, 1996;

(Definition of “tariff” substituted by section 1(s) of Act 38 of 2024)

“trader” means a person who trades in electricity;

(Definition of “trader” inserted by section 1(t) of Act 38 of 2024)

“trading” means the wholesale or retail buying and selling of electricity, and ‘trade’ has a corresponding meaning;

(Definition of “trading” substituted by section 1(u) of Act 38 of 2024)

“trading platform” means a platform where power market participants conduct trade;

(Definition of “trading platform” inserted by section 1(v) of Act 38 of 2024)

“transmission” means the conveyance of electricity through a transmission power system, excluding system operation and trading, and ‘transmit’ and ‘transmitting’ have corresponding meanings;

(Definition of “transmission” substituted by section 1(w) of Act 38 of 2024)

“transmission development plan” means the plan for the development of the national transmission power system referred to in sections 34(6)(b) and 35(3A);

(Definition of “transmission development plan” inserted by section 1(x) of Act 38 of 2024)

“transmission power system” means a network for the conveyance of electricity which operates above a nominal voltage of 132kV including assets that are approved by the Regulator to be part of the transmission power system;

(Definition of “transmission power system” substituted by section 1(y) of Act 38 of 2024)

“Transmission System Operator SOC Ltd” means a juristic person established in terms of section 34A(1);

(Definition of “Transmission System Operator SOC Ltd” inserted by section 1(z) of Act 38 of 2024)

“transmitter” means a person who manages and maintains a transmission power system;

(Definition of “transmitter” substituted by section 1(zA) of Act 38 of 2024)

“this Act” includes any regulation or rule made or issued in terms thereof; and

(Definition of “this Act” substituted by section 1(zA) of Act 38 of 2024)

“vertically integrated licensee” means a person who holds one or more of the licences listed in section 4(a)(i), but excludes a person who only holds licences in terms of section 4(a)(i)(bb) and (cc); and

(Definition of “vertically integrated licensee” inserted by section 1(zB) of Act 38 of 2024)

“vesting contract” means a contract or other financial arrangement between the National Transmission Company South Africa SOC Ltd and an Eskom generator or a distribution licensee, as the case requires, for the sale of a specified amount of electricity at a price determined by the Regulator as a mechanism to facilitate the transition to a competitive market.

(Definition of “vesting contract” inserted by section 1(zB) of Act 38 of 2024)

2. Objects of Act

The objects of this Act are to -

- (a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in the Republic of South Africa;

(Section 2(a) substituted by section 2 of Act 38 of 2024)

- (b) ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic;

- (c) facilitate investment in the electricity supply industry;

- (d) facilitate universal access to electricity;

- (e) promote the use of diverse energy sources and energy efficiency;
- (f) promote competitiveness and customer and end user choice; and
- (g) facilitate a fair balance between the interests of customers and end users, licensees, investors in the electricity supply industry and the public.

2A. Application of Act

- (1) This Act is applicable to the generation, transmission, distribution, reticulation, system operation, trading, and import and export, of electricity activities, and to persons undertaking such activities.
- (2) The Act is not applicable to the operation of generation facilities with or without battery storage—
 - (a) for the sole purpose of providing standby or back-up electricity;
 - (b) where the facility, irrespective of capacity (megawatts), does not have a point of connection to the facility; or
 - (c) with a capacity of not more than 100 kilowatts, which complies with the code, has a point of connection and is subject to the distributor's prescribed conditions relating to the continued use of the point of connection.
- (3) For the purposes of subsection (2), the Regulator shall prescribe the manner in which the distributor shall keep a register of each facility.

(Section 2A inserted by section 3 of Act 38 of 2024)

CHAPTER II OVERSIGHT OF ELECTRICITY INDUSTRY

3. Regulator

- (1) The National Energy Regulator established by section 3 of the National Energy Regulator Act is the custodian and enforcer of the regulatory framework provided for in this Act.
- (2) The Regulator has regulatory authority over persons undertaking activities, which are subject to this Act and has the powers to issue, amend, withdraw, suspend and revoke licences and determine the registration, revocation and deregistration of persons or activities in accordance with this Act.

(Section 3 substituted by section 4 of Act 38 of 2024)

4. Powers and duties of Regulator

The Regulator -

(a) must -

(i) consider applications for licences and may issue licences for—

(aa) the operation of generation, transmission or distribution facilities;

(bb) the import and export of electricity;

(cc) trading;

(dd) market operator; or

(ee) system operator,

subject to the provisions of section 7;

(Section 4(a)(i) amended by section 2 of Act 28 of 2007)

(Section 4(a)(i) substituted by section 5(a) of Act 38 of 2024)

(ii) set and approve prices and tariffs in a manner prescribed by a rule;

(Section 4(a)(ii) substituted by section 5(b) of Act 38 of 2024)

(iii) register persons who are required to register with the Regulator where they are not required to hold a licence;

(iv) issue rules designed to implement the national government's electricity policy framework, the integrated resource plan and this Act;

(v)

(aa) establish and manage monitoring and information systems and a national information system, relating to matters within the Regulator's jurisdiction; and

(bb) co-ordinate the integration thereof with other relevant information systems;

(Section 4(a)(v) substituted by section 5(c) of Act 38 of 2024)

Note - Numbering as published in the Gazette.

(vii) enforce performance and compliance with this Act and licence conditions imposed by the Regulator in terms of this Act, and take appropriate steps in the case of non-performance or non-compliance;

(Section 4(a)(vii) substituted by section 5(d) of Act 38 of 2024)

- (viii) exercise any power or perform any duty conferred or imposed on it under this Act or any other law;

(Section 4(a)(viii) added by section 5(e) of Act 38 of 2024)

- (b) may—

- (i) mediate and arbitrate, as the case requires, disputes between generators, transmitters, distributors, traders, resellers, the transmission system operator and licensees or customers or end users excluding disputes between registrants and their customers;

- (ii) undertake investigations and inquiries into the activities of licensees and other matters contemplated in this Act;

- (iiA) at its own instance, or following an investigation of a complaint—

- (aa) determine whether any person is engaged in an activity requiring a licence in terms of section 7, or registration in terms of section 9, without that person holding a licence or registration certificate in respect of that activity; and

- (bb) direct any person engaged in an activity requiring a licence in terms of section 7 or registration in terms of section 9, who is not in possession of the necessary licence or registration certificate, to cease such activity; or

- (iii) perform any other act incidental to its functions.

(Section 4(b) amended by section 16(a) of Act 28 of 2007)

(Section 4(b) substituted by section 5(f) of Act 38 of 2024)

5. Advisory forums

The Regulator may appoint forums consisting of as many members of the Regulator, employees of the Regulator and other persons as may be necessary to advise the Regulator in general or on a particular matter.

6. Customer and end user forums

- (1) The Regulator may establish customer or end user forums consisting of as many members of the Regulator, licensees, employees of the Regulator and categories of customers or end users as may be necessary to advise the Regulator on matters affecting customers or end users in general, or a category of customers or end users in particular.

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

(Section 6(2) substituted by section 6 of Act 38 of 2024)

CHAPTER III

ELECTRICITY LICENCES AND REGISTRATION

7. Activities requiring licensing

- (1) Subject to sections 8 and 9, no person may, without the appropriate licence issued by the Regulator in accordance with this Act or, unless authorised in terms of a licence condition contemplated in section 14(1)(t)—

- (a) operate any generation, transmission or distribution facility;
- (b) import or export any electricity;
- (c) be involved in trading;
- (d) be a market operator; or
- (e) engage in system operation.

(Section 7(1) substituted by section 7 of Act 38 of 2024)

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

(3)

- (a) Nothing in this Act precludes a potential licensee from discussing the contemplated operation of generation, transmission and distribution facilities, the import or export of electricity, trading, or any other activity relating thereto, prior to filing a licence application with the Regulator.
- (b) The Regulator must furnish an applicant contemplated in paragraph (a) with all information necessary to facilitate the filing of an application for a licence.

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

(Section 8 renumbered to 7 by section 16(b) of Act 28 of 2007)

8. Certain activities not licensed

The Minister may, after consultation with the Regulator and stakeholders in the advisory forum referred to in section 5, determine by notice in the *Gazette* that any activity contemplated in section 7(1), need no longer be a licensed activity, from the date set out in such notice.

(Section 9 substituted by section 3 and renumbered to section 8 by section 16 of Act 28 of 2007)

(Section 8 substituted by section 8 of Act 38 of 2024)

9. Registration

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

(Section 9(1) substituted by section 4 of Act 28 of 2007)

(Section 9(1) substituted by section 9(a) of Act 38 of 2024)

- (2) Any person who has to register with the Regulator must do so in the form and in accordance with the prescribed procedure, and an application for registration must be accompanied by the prescribed registration fee: Provided that any person holding a valid licence at the date of a determination contemplated in section 8 must be issued with a registration certificate without complying with the prescribed procedure.

(Section 9(2) substituted by section 4 of Act 28 of 2007)

- (3)
- (a) On receipt of an application in terms of subsection (2) the Regulator must forthwith register the applicant for the activities set out in a certificate of registration to be provided to such a person.
 - (b) The Regulator may refuse to register such a person or activity -
 - (i) if the application is not made within the prescribed period or is not accompanied by the prescribed registration fee; or
 - (ii) if the application is contrary to the objectives of this Act.
- (4) The Regulator may make registration subject to -
- (a) adherence to the provisions of this Act;
 - (b) conditions relating to the supply of information to the Regulator, the dissemination of information to customers or end users, and the establishment and funding of customer and end user awareness programmes;

(Section 9(4)(b) amended by section 9(b) of Act 38 of 2024)

- (c) compliance with the technical codes that may be applicable from time to time;
(Section 9(4)(c) added by section 9(c) of Act 38 of 2024)
- (d) compliance with regulatory requirements necessary for the sustained operation of the national transmission power system and interconnected distribution power systems; and
(Section 9(4)(d) added by section 9(c) of Act 38 of 2024)
- (e) payment of fees imposed by licensees for granting registrants access to their network.
(Section 9(4)(e) added by section 9(c) of Act 38 of 2024)
(Section 10 renumbered to 9 by section 16(b) of Act 28 of 2007)

10. Application for licence

- (1)
 - (a) A person who has to hold a licence in terms of section 7 must apply to the Regulator for such licence in the form and in accordance with the prescribed procedure.
(Section 11(1)(a) substituted by section 5 of Act 28 of 2007)
 - (b) Such an application must be accompanied by the prescribed application fee.
- (2) Any application contemplated in subsection (1) must include -
 - (a) a description of the applicant, including its vertical and horizontal relationships with other persons engaged in the operation of generation, transmission and distribution facilities, the import or export of electricity, trading, market operation, system operation or any other prescribed activity relating thereto;
(Section 10(2)(a) substituted by section 10(a) of Act 38 of 2024)
 - (b) such documentary evidence of the administrative, financial and technical abilities of the applicant as may be required by the Regulator;
 - (c) a description of the proposed generation, transmission or distribution facility to be constructed or operated or the proposed service in relation to electricity to be provided, including maps and diagrams where appropriate;
 - (d) a general description of the type of customer to be served and the tariff and price policies to be applied;
 - (e) the plans and the ability of the applicant to comply with applicable labour, health, safety and environmental legislation, subordinate legislation and such other requirements as may be applicable;

- (f) a detailed specification of the services that will be rendered under the licence;
- (g) evidence of compliance with any integrated resource plan applicable at that point in time or provide reasons for any deviation for the approval of the Minister; and
- (h) such other particulars as the Regulator may prescribe by a rule.

(Section 10(2)(h) substituted by section 10(b) of Act 38 of 2024)

- (3) The applicant may request the confidential treatment of commercially sensitive information contained in an application for a licence and, subject to the concurrence of the Regulator, such information may be withheld from publicly available copies of the licence application.

(Section 10(3) added by section 10(c) of Act 38 of 2024)

(Section 11 renumbered to 10 by section 16(b) of Act 28 of 2007)

11. Advertising of licence application

- (1) When application is made for a licence the Regulator must, in writing, direct, the applicant to publish a notice of the application, in at least two official languages as envisaged in section 6 of the Constitution of the Republic of South Africa, 1996, for a period of 30 days, in newspapers or other media, as the Regulator may specify, circulating nationally and in the area of the proposed activity.

(Section 11(1) substituted by section 11(a) of Act 38 of 2024)

- (2) The advertisement must state -

- (a) the name of the applicant;
- (b) the objectives of the applicant;
- (c) the place where the application will be available for inspection by any member of the public;
- (d) the period within which any objections to the issue of the licence may be lodged with the Regulator;
- (e) the address of the Regulator where any objections may be lodged;
- (f) that objections must be substantiated by way of an affidavit or solemn declaration; and
- (g) such other particulars as may be prescribed.

- (3)

(Section 11(3) deleted by section 11(b) of Act 38 of 2024)

- (4) The Regulator must, within 30 days from the date of expiry of the period contemplated in subsection (2)(d), consider objections to the application contemplated in subsection (1) and make its decision available to the public, together with its reasons for such decision.

(Section 11(4) substituted by section 11(c) of Act 38 of 2024)
(Section 12 renumbered to 11 by section 16(b) of Act 28 of 2007)

12. Information to be supplied

Before considering an application for a licence in terms of this Act, the Regulator -

- (a) must, if objections have been received, within 30 days from the date of expiry of the period contemplated in section 11(2)(d), furnish the applicant with all substantiated objections in order to allow the applicant to respond thereto; and

(Section 12(a) substituted by section 12 of Act 38 of 2024)

- (b) may request such additional information as may be necessary to consider the application properly.

(Section 13 renumbered to 12 by section 16(b) of Act 28 of 2007)

13. Finalisation of application

- (1) The Regulator must make a decision to grant or refuse an application in the prescribed manner within 60 days—

(Words preceding section 13(1)(a) substituted by section 13(a) of Act 38 of 2024)

- (a) after the expiration of the period contemplated in section 11(2)(d), if no objections have been received; or

(Section 13(1)(a) substituted by section 6 of Act 28 of 2007)

- (b) after receiving the response of the applicant as contemplated in section 12(a) or after receiving the information contemplated in section 12(b), whichever is the later date.

(Section 13(1)(b) substituted by section 6 of Act 28 of 2007)

(Section 13(1)(b) substituted by section 13(b) of Act 38 of 2024)

- (2) The Regulator must provide the applicant with a copy of its decision as well as the reasons for the decision.

- (3) The Regulator must issue separate licences for the activities listed in section 4(a)(i).

(Section 13(3) substituted by section 13(c) of Act 38 of 2024)

- (4)

(Section 13(4) deleted by section 13(d) of Act 38 of 2024)

(Section 14 renumbered to 13 by section 16(b) of Act 28 of 2007)

14. Conditions of licence

- (1) The Regulator may make any licence subject to conditions relating to -
- (a) the establishment of and compliance with directives to govern relations between a licensee and its customers or end users, including the establishment of customer or end user forums;
(Section 14(1)(a) substituted by section 14(a) of Act 38 of 2024)
 - (b) the furnishing of information, documents and details that the Regulator may require for the purposes of this Act;
 - (c) the period of validity of the licence in accordance with section 20;
(Section 15(1)(c) substituted by section 7 of Act 28 of 2007)
 - (d) the setting or approval of prices, charges, rates and tariffs charged by licensees;
(Section 14(1)(d) substituted by section 14(b) of Act 38 of 2024)
 - (e) the methodology to be used in the determination of rates and tariffs which must be imposed by licensees;
 - (f) the contents of agreements entered into by licensees and their customers;
(Section 14(1)(f) substituted by section 14(c) of Act 38 of 2024)
 - (g) the regulation of the revenues of licensees;
 - (i) the setting, approving and meeting of performance improvement targets, including the monitoring thereof through certificates of performance;
 - (j) the quality of electricity supply and service;
 - (k) the cession, transfer or encumbrance of licences, including the compulsory transfer of a licence to another person under certain conditions, and terms and conditions relating thereto;
 - (l) the right to operate generation, transmission or distribution facilities, to import or export electricity, to trade, to perform market operation, to undertake system operation or to perform prescribed activities relating thereto, including exclusive rights to do so, and conditions attached to or limiting such rights;
(Section 14(1)(l) substituted by section 14(d) of Act 38 of 2024)

- (m) the duty or obligation to trade, or to generate, transmit or distribute, import or export electricity, or to engage in market operation or system operation and conditions attached to such duties or obligations;

(Section 14(1)(m) substituted by section 14(d) of Act 38 of 2024)

- (n) the termination of electricity supply to customers and end users under certain circumstances, the duty to reconnect without undue discrimination, and conditions relating thereto;

- (o) the area of electricity supply to which a licensee is entitled or bound;

- (p) the classes of customers and end users to whom electricity may or must be supplied;

- (q) the persons from whom and to whom electricity must or may be bought or sold;

- (r) the types of energy sources from which electricity must or may be generated, bought or sold;

- (s) compliance with health, safety and environmental standards and requirements;

- (t) compliance with any regulation, rule or code made under this Act;

- (tA) allowing the licensee to sub-contract the performance of the licensed functions, including allowing for the licensee to subcontract the maintenance and operation of the generation, transmission or distribution facilities

(Section 14(1)(tA) inserted by section 14(e) of Act 38 of 2024)

- (u) compliance with energy efficiency standards and requirements, including demand-side management;

- (w) the undertaking of customer or end user education programmes;

- (x) the need to maintain facilities in a fully operational condition;

- (y) the period within which licensed facilities must become operational; and

- (z) any other ancillary or incidental condition specified by the Regulator.

(Section 14(1)(z) substituted by section 14(f) of Act 38 of 2024)

- (2) The Regulator may, as part of a licence condition imposed under subsection (1), prohibit a licensee from performing or force a licensee to perform any act set out in such licence.

- (3) The Regulator may, at any time during the license period, amend, vary or add any licence condition.

(Section 14(3) inserted by section 14(g) of Act 38 of 2024)

(Section 15 renumbered to 14 by section 16(b) of Act 28 of 2007)

15. Tariff principles

- (1) The Regulator, when subjecting a licence to conditions relating to the setting or approval of prices, charges and tariffs charged by licensees as contemplated in section 14(1)(d)—
- (a) must enable an efficient licensee to recover the full cost of the licensed activity;
 - (aA) must allow for a reasonable return proportionate to the risk of the licensed activity;
 - (b) may provide for or prescribe incentives for continued improvement of the technical and economic efficiency with which services are to be provided:

Note – Numbering as published in the Gazette.

- (d) must avoid undue discrimination between customer categories;
- (e) may permit the cross-subsidy of tariffs to certain classes of customers; and;
- (f) may have regard to the need to ensure security of supply, the diversity of supply and to promote renewable energy.

(Section 15(1) amended by section 8 of Act 28 of 2007)

(Section 15(1) substituted by section 15(a) of Act 38 of 2024)

- (1A) Tariff determinations must take into account all planned projects reflected in the integrated resource plan and the transmission development plan insofar as these projects shall impact on the costs of the licensee, for the period during which the tariff shall apply.

(Section 15(1A) inserted by section 15(b) of Act 38 of 2024)

- (1B) In the case of vertically integrated licensees, the Regulator must set or approve separate tariffs for each of the licensed activities listed in section 4(a)(i).

(Section 15(1B) inserted by section 15(b) of Act 38 of 2024)

- (2) A licensee may not charge a customer any tariff other than the tariff set or approved by the Regulator as, or in accordance with, a licence condition.

(Section 15(2) substituted by section 15(c) of Act 38 of 2024)

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

- (4) Notwithstanding subsection (2), a licensee may charge a customer a tariff which has not been set or approved by the Regulator where such tariff is charged pursuant to a direct supply agreement or arises as an outcome of a competitive market.

(Section 15(4) added by section 15(d) of Act 38 of 2024)

(Section 16 renumbered to 15 by section 16(b) of Act 28 of 2007)

16. Amendment of licence

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

- (a) on application by the licensee;
- (b) with the permission of the licensee;
- (c) upon non-compliance by a licensee with a licence condition;
- (d) if it is necessary for the purposes of this Act; or
- (e) on application by any affected party.

- (2) The Regulator must prescribe the procedure to be followed in varying, suspending, removing or adding any licence condition.

(Section 16(2) substituted by section 16 of Act 38 of 2024)

(Section 17 renumbered to 16 by section 16(b) of Act 28 of 2007)

17. Revocation of licence on application

- (1) The Regulator may revoke a licence on the application of a licensee if -

- (a) the licensed facility or activity is no longer required;
- (b) the licensed facility or activity is not economically viable;
- (c) another person is willing and demonstrably able to assume the rights and obligations of that licensee in accordance with the requirements and objectives of this Act, and a new licence is issued to such a person; or
- (d) conditions of a licence are not met.

- (2) A licensee must, in the circumstances contemplated in subsection (1)(a) and (b), give the Regulator at least 12 months' notice in writing of its intention to cease activities, unless the Regulator determines otherwise.

(Section 17(2) substituted by section 17 of Act 38 of 2024)

- (2A) The Regulator may—

- (a) if it is alleged in terms of section 18(1) read with section (3A)(d), or
- (b) on its own assessment,

revoke a license if a licensee has contravened or failed to comply with a license condition or any provision of this Act.

(Section 17(2A) inserted by section 17 of Act 38 of 2024)

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

(Section 17(3) substituted by section 17 of Act 38 of 2024)

(Section 18 renumbered to 17 by section 16(b) of Act 28 of 2007)

17A. Revocation and deregistration

- (1) The Regulator may vary, suspend or remove any registration on receipt of an application by a registrant or on application by a third party or upon violation of the applicable regulatory requirements.
- (2) The Regulator may revoke a registration under the following circumstances:
- (a) On application by a registrant;
 - (b) where the facility is no longer required; or
 - (c) when the conditions for registration as contemplated in section 9(4) are not met.
- (3) A registrant must, in the circumstances contemplated in subsection (2)(a), give the Regulator at least six months' notice, in writing, of its intention to cease activities, unless the Regulator determines otherwise.

(Section 17A inserted by section 18 of Act 38 of 2024)

18. Contraventions of licence

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

- (2) If the tribunal finds that the allegation contemplated in subsection (1) is correct it may serve a notice on the licensee directing the licensee to comply with the licence condition or the provision of this Act, as the case may be, within a reasonable period specified in the notice.
- (3) If it is alleged that the licensee has failed to comply with a notice in terms of subsection (2) the Regulator may sit as a tribunal to decide on that allegation.
- (3A) If the tribunal finds that the allegation contemplated in subsection (3) is correct it may:
- (a) serve a notice on the licensee directing the licensee to comply with the licence condition;
 - (b) impose a penalty contemplated in subsection (4) or any other penalty it deems appropriate;
 - (c) recommend the amendment of a licence condition; or
 - (d) recommend the revocation of the licence.
- (Section 18(3A) inserted by unknown section of Act 38 of 2024)*
- (4) If the tribunal finds that the allegation contemplated in subsection (3) is correct it may impose a penalty of 10 per cent of the annual turnover of the licensee or R2 000 000,00 (whichever is the higher amount) per day commencing on the day of receipt of the notice contemplated in subsection (2).
- (Section 19(4) substituted by section 9 of Act 28 of 2007)*
- (5) The Regulator must consider the extent of the non-compliance in deciding the amount of any penalty.
- (6) The Minister may from time to time by notice in the *Gazette* amend the amount referred to in subsection (4) in order to counter the effect of inflation.
- (7) The Regulator must prescribe tribunal rules or procedures.
- (Section 18(7) inserted by unknown section of Act 38 of 2024)*
(Section 19 renumbered to 18 by section 16(b) of Act 28 of 2007)

19. Order by court

- (1) Notwithstanding the provision of section 18(1), the Regulator may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there is any urgent ground justifying such suspension or revocation.
- (Section 19(1) substituted by unknown section of Act 38 of 2024)*
(Section 20 renumbered to 19 by section 16(b) of Act 28 of 2007)

20. Renewal of licence

- (1) Any generation, transmission or system operation licence issued in terms of this Act is valid for a period of 20 years or such lesser period as the Regulator may determine.
- (2) Any distribution, trading, import or export, market operation or system operation licence issued in terms of this Act is valid for the period determined by the Regulator.
- (3) A licensee may apply for the renewal of its licence
- (4) The Regulator may set different licence conditions upon renewal of a licence subject to the provisions of this section.
- (5) A licensee may not assign, cede or transfer a licence to another party without the written consent of the Regulator.

(Section 21 renumbered to 20 by section 16(b) of Act 28 of 2007)

(Section 20 substituted by section 19 of Act 38 of 2024)

21. Powers and duties of licensee

- (1) Subject to a licence condition imposed in terms of section 14(1)(t), a licence issued in terms of this Act empowers and obliges a licensee to exercise the powers and perform the duties set out in such licence and this Act, and no licensee may cede, transfer or assign any such power or duty to any other person without the prior written consent of the Regulator.

(Section 21(1) substituted by section 20(a) of Act 38 of 2024)

- (2) A licensee may not discriminate between customers or classes of customers regarding access, tariffs, prices and conditions of service, except for objectively justifiable and identifiable differences approved by the Regulator.
- (3) A transmission or distribution licensee must, to the extent provided for in the licence, provide non-discriminatory access to its transmission or distribution power system to third parties.

(Section 21(3) substituted by section 20(b) of Act 38 of 2024)

- (3A) The system operator shall not discriminate between different generators or customers in relation to dispatching or balancing the system, except for objectively justifiable and identifiable reasons approved by the Regulator.

(Section 21(3A) inserted by section 20(c) of Act 38 of 2024)

- (4) Access in terms of subsection (3) must be provided on the conditions set out in the licence of such transmitter or distributor, which may relate to—

(Words preceding section 21(4)(a) substituted by section 20(d) of Act 38 of 2024)

- (a) the circumstances under which access must be allowed;

- (b) the circumstances under which access may be refused;
- (c) the strengthening or upgrading of the transmission or distribution power system in order to provide for access, including contributions towards such strengthening or upgrading by the potential users of such systems, if applicable;

(Section 21(4)(c) substituted by section 20(e) of Act 38 of 2024)

- (d) the rights and obligations of other existing or new users regarding the use of such power systems;

- (e) compliance with any rule or code; or

(Section 21(4)(e) substituted by section 20(f) of Act 38 of 2024)

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

(Section 21(4)(f) substituted by section 20(f) of Act 38 of 2024)

- (4A) Third party access to the transmission and distribution power system must be based on published tariffs, applicable to all eligible customers, and applied objectively and without discrimination between the system users.

(Section 21(4A) inserted by section 20(g) of Act 38 of 2024)

- (4B) A transmission or distribution licensee may refuse access only where it lacks the necessary capacity, with written reasons given for such refusal.

(Section 21(4B) inserted by section 20(g) of Act 38 of 2024)

- (4C) Any party requesting information on the network capacity and measures that would be necessary to reinforce the network, may be charged a reasonable fee for the costs of providing such information.

(Section 21(4C) inserted by section 20(g) of Act 38 of 2024)

- (4D) Transmission and distribution licensees shall procure the energy they use to cover energy losses and reserve capacity in their system according to transparent, non-discriminatory and market-based procedures.

(Section 21(4D) inserted by section 20(g) of Act 38 of 2024)

- (4E) Rules adopted by the Transmission System Operator SOC Ltd for balancing the national transmission power system and the interconnected distribution power systems, including the rules for charging system users of their networks for energy imbalance, shall be objective, transparent and non-discriminatory.

(Section 21(4E) inserted by section 20(g) of Act 38 of 2024)

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

- (a) the customer is insolvent;
- (b) the customer has failed to honour, or refuses to enter into, an agreement for the supply of electricity; or
- (c) the customer has contravened the payment conditions of that licensee.

(Section 22 renumbered to 21 by section 16(b) of Act 28 of 2007)

22. Powers of entry and inspection

- (1) Any person authorised, in writing, thereto by a licensee may at all reasonable times enter any premises to which electricity is or has been supplied by such licensee, in order to inspect the lines, meters, fittings, works and apparatus belonging to such licensee, or for the purpose of ascertaining the quantity of electricity consumed, or where a supply is no longer required, or where such licensee may cut off the supply, for the purpose of removing any lines, meters, fittings, works and apparatus belonging to such licensee.

(Section 22(1) substituted by section 21 of Act 38 of 2024)

- (2) Any person wishing to enter any premises in terms of subsection (1) shall -
 - (a) if possible, make the necessary arrangements with the legal occupant of the premises before entering such premises and shall adhere to all reasonable security measures, if any, of the occupant or owner of the premises;
 - (b) exhibit his authorization at the request of any person materially affected by his activities.
- (3) Damage caused by such entry, inspection or removal shall be repaired or compensated for by the licensee.

(Section 23 renumbered to 22 by section 16(b) of Act 28 of 2007)

23. Electricity infrastructure not fixtures

- (1) Any asset belonging to a licensee that is lawfully constructed, erected, used, placed, installed or affixed to any land or premises not belonging to that licensee, remains the property of that licensee notwithstanding the fact that such an asset may be of a fixed or permanent nature.
- (2) An asset belonging to a licensee in terms of subsection (1) -
 - (a) may not be attached or taken in execution under any process of law, or be the subject of any insolvency or liquidation proceedings, instituted against the owner of the land, the landlord or the occupier of the premises concerned;

- (b) may not be subjected to a landlord's hypothec for rent; and
- (c) may only be validly disposed of or otherwise dealt with in terms of a written agreement with the licensee.

(Section 24 renumbered to 23 by section 16(b) of Act 28 of 2007)

24. Rights over roads or streets

(Heading of section 24 substituted by section 22(a) of Act 38 of 2024)

(1)

- (a) A licensee may do all such things over, in or along roads or streets and associated infrastructure as may be necessary to carry out its licensed activities.
- (b) Any activity contemplated in paragraph (a) must be undertaken subject to the right of supervision and in accordance with the plans, routes and specifications of the authority or person in control of that road or street, except in cases of emergency or where the authority concerned fails or refuses to co-operate with the licensee.

(Section 24(1)(b) substituted by section 22(b) of Act 38 of 2024)

- (2) A licensee may only exercise its rights in terms of subsection (1) to the extent necessary to carry out its licensed activities, and must in doing so -
 - (a) comply with any laws or by-laws that may be applicable;
 - (b) complete its activities within a reasonable time; and
 - (c) repair any damage caused or reimburse the person or authority in control of that road or street for any damage caused.
- (3) Nothing in this section may be construed as giving a licensee any rights that it does not already have in terms of its licence, or relieving a licensee from any liability in respect of any loss or damage caused by its negligence.
- (4) For the purposes of this section 'street' includes any square or enclosed public place the control or care of which is vested in any person or authority.

(Section 25 renumbered to 24 by section 16(b) of Act 28 of 2007)

25. Liability of licensee for damage or injury

In any civil proceedings against a licensee arising out of damage or injury caused by induction or electrolysis or in any other manner by means of electricity generated, transmitted or distributed by a

licensee, such damage or injury is deemed to have been caused by the negligence of the licensee, unless there is credible evidence to the contrary.

(Section 26 renumbered to 25 by section 16(b) of Act 28 of 2007)

26. Expropriation

- (1) The State may, in order to facilitate the achievement of the objectives of this Act, expropriate land, or any right in, over or in respect of land, on behalf of a licensee in accordance with section 25 of the Constitution and section 2 of the Expropriation Act, 1975 (Act No 63 of 1975).
- (2) The Minister must prescribe the procedure to be followed in giving effect to subsection (1).
- (3) The State may exercise the powers contemplated in subsection (1) only if -
 - (a) a licensee is unable to acquire land or a right in, over or in respect of such land by agreement with the owner; and
 - (b) the land or any right in, over or in respect of such land is reasonably required by a licensee for facilities which will enhance the electricity infrastructure in the national interest.

(Section 27 renumbered to 26 by section 16(b) of Act 28 of 2007)

CHAPTER IV RETICULATION

27. Duties of municipalities

Each municipality must exercise its executive authority and perform its duty by -

- (a) complying with all the technical and operational requirements for electricity networks determined by the Regulator;
- (b) integrating its reticulation services with its integrated development plans;
- (c) preparing, implementing and requiring relevant plans and budgets;
- (d) progressively ensuring access to at least basic reticulation services through appropriate investments in its electricity infrastructure;
- (e) providing basic reticulation services free of charge or at a minimum cost to certain classes of end users within its available resources;

- (f) ensuring sustainable reticulation services through effective and efficient management and adherence to the national norms and standards contemplated in section 35;
- (g) regularly reporting and providing information to the Department responsible for Provincial and Local Government, the National Treasury, the Regulator and customers;
(Section 27(g) substituted by section 23 of Act 38 of 2024)
- (h) executing its reticulation function in accordance with relevant national energy policies; and
- (i) keeping separate financial statements, including a balance sheet of the reticulation business.
(Section 27 inserted by section 10 of Act 28 of 2007)

28. Selection and appointment of external service providers

- (1) A municipality must comply with Chapter 8 of the Municipal Systems Act and this Act prior to entering into a service delivery agreement with a service provider.
- (2) A service delivery agreement entered into by a municipality with an external service provider must comply with the Municipal Systems Act, the Municipal Finance Management Act and this Act.
- (3) The Minister may make regulations relating to-
 - (a) the criteria, in addition to those provided for in the Municipal Systems Act, against which service delivery mechanisms must be assessed;
 - (b) matters which must be provided for in service delivery agreements; and
 - (c) compulsory or standard provisions that must be included in the service delivery agreements.
(Section 28 inserted by section 10 of Act 28 of 2007)

29. Key performance indicators

- (1) The Regulator must, after consultation with the Minister prescribe general key performance indicators in respect of the technical operational issues pertaining to reticulation systems for municipalities.
- (2) The key performance indicators prescribed under subsection (1) may differentiate between categories and types of municipalities.
- (3) Management key performance indicators set by a municipality in accordance with Chapter 6 of the Municipal Systems Act must include the general key performance indicators prescribed under subsection (1).
(Section 29 inserted by section 10 of Act 28 of 2007)

CHAPTER V RESOLUTION OF DISPUTES AND REMEDIES

30. Resolution of disputes by Regulator

- (1) The Regulator must, in relation to any dispute arising out of this Act -
- (a) if it is a dispute between licensees, act as mediator or arbitrator if so requested by both parties to the dispute;
(Section 30(1)(a) substituted by section 24(a) of Act 38 of 2024)
- (b) if it is a dispute between a customer or end user on the one hand and a licensee, registrant or a person who trades on the other hand, settle that dispute by such means and on such terms as the Regulator thinks fit.
(Section 30(1)(b) substituted by section 24(a) of Act 38 of 2024)
- (2) The Regulator may appoint a suitable person to act as a mediator or arbitrator on its behalf, and any action or decision of a person so appointed is deemed to be an action by or decision of the Regulator.
(Section 30(2) substituted by section 24(b) of Act 38 of 2024)
- (3) The Regulator must prescribe, by a rule, the procedure to be followed in a mediation and an arbitration and the fees to be paid.
(Section 30(3) substituted by section 24(c) of Act 38 of 2024)
- (4)
(Section 30(4) deleted by section 24(d) of Act 38 of 2024)
- (5) When acting as arbitrator, the Regulator or the person contemplated in subsection (2) must issue a decision on the matter, in writing, and such decision is binding on the parties to the dispute.
(Section 30(5) added by section 24(e) of Act 38 of 2024)
(Section 42 renumbered to 30 by section 16(c) of Act 28 of 2007)

31. Remedies against decisions of Regulator

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

(Section 43 renumbered to 31 by section 16(c) of Act 28 of 2007)

CHAPTER VI INVESTIGATIONS

32. Investigations

- (1) The Regulator must, in applicable circumstances, at its own instance or on receipt of a complaint relating to generation, transmission, distribution, trading, market operation or system operation, investigate complaints and prepare a preliminary report in respect of—
 - (a) alleged discrimination regarding tariffs or conditions of access; and
 - (b) if a licensee is involved, an alleged failure to abide by its licensing conditions.
(Section 32(1) substituted by section 25 of Act 38 of 2024)
- (2) On receipt of a report under subsection (1), the Regulator may institute a formal investigation.
- (3) Upon instituting a formal investigation under subsection (2) -
 - (a) the Regulator may appoint a person to chair the investigation and as many persons as may be necessary to assist with the investigation;
 - (b) the person appointed under paragraph (a) and the persons assisting him or her may summon witnesses and conduct the investigation in the prescribed manner.
- (4) On completion of the investigation under subsection (3) the person chairing it must submit his or her written report thereon to the Regulator.
- (5) On receipt of the report, the Regulator may -
 - (a) refer the report to the Director of Public Prosecutions of the area concerned;
 - (b) if a licensee is involved, act on the matter in accordance with section 18(2).
(Section 44(5)(b) substituted by section 11 of Act 28 of 2007)
(Section 44 renumbered to 32 by section 16(c) of Act 28 of 2007)

CHAPTER VII GENERAL PROVISIONS

33. Entry, inspection and information gathering by Regulator

- (1) For the purposes of this Act, any person authorised thereto in writing by the Regulator may -

- (a) at all reasonable times enter any property on which any activity relating to the supply of electricity is taking place, or is suspected to be taking place, to inspect any facility, equipment, machinery, book, account or other document relating to electricity found thereat; and

(Section 33(1)(a) substituted by section 26(a) of Act 38 of 2024)

- (b) require any person to furnish to the Regulator such information, returns or other particulars as may be necessary for the proper application of this Act.

- (2) The Regulator may require that the accuracy of any information, return or particular furnished under subsection (1) be verified on oath or by way of solemn declaration.

- (3) A person authorised by the Regulator must on request show his or her authorisation.

(Section 45 renumbered to 33 by section 16(c) of Act 28 of 2007)

34. Additional electricity, new generation capacity and electricity transmission infrastructure

(Heading of section 34 substituted by section 27(a) of Act 38 of 2024)

- (1) The Minister may, in the event of the failure of a market, or in the event of an emergency, or for the purposes of ensuring security of energy supply in the national interest, after consultation with the Regulator and the Minister of Finance, by notice in the *Gazette*, make a determination—

(Words preceding section 34(1)(a) substituted by section 27(b) of Act 38 of 2024)

- (a) that additional electricity or new generation capacity is needed to ensure the optimal supply of electricity;

(Section 34(1)(a) substituted by section 27(c) of Act 38 of 2024)

- (b) that new electricity transmission infrastructure is needed to ensure the optimal supply of electricity;

(Section 34(1)(b) substituted by section 27(c) of Act 38 of 2024)

- (c) determine that electricity thus produced may only be sold to the persons or in the manner set out in such notice;

- (d)

(Section 34(1)(d) deleted by section 27(d) of Act 38 of 2024)

- (e)

(Section 34(1)(e) deleted by section 27(d) of Act 38 of 2024)

- (2) A determination referred to in subsection (1)(a) must include provisions dealing with—

- (a) the extent of the new generation capacity required to be established, or electricity required to be produced, pursuant to such determination;
- (b) the types of energy sources or technologies from which the electricity may be generated and an indication as to the amount of electricity that may be generated from each of such sources or technologies;
- (c) whether the generator or generators shall be independent power producers or an organ of state;
- (d) whether the electricity so produced, or a stated portion thereof, must be purchased by a person designated in the determination as the buyer of such electricity;
- (e) whether the electricity so produced, or a stated portion thereof, may only be sold to the buyer referred to in paragraph (d);
- (f) where applicable, the conducting of the procurement process for the acquisition of the electricity so produced; and
- (g) the extent to which the new generation capacity contemplated in paragraph (a) may be established by independent power producers and the electricity so produced supplied to customers pursuant to multiple supply agreements.

(Section 34(2) substituted by section 27(e) of Act 38 of 2024)

- (3) A determination referred to in subsection (1)(b) may include provisions dealing with—
 - (a) the nature, type and extent of the required electricity transmission infrastructure;
 - (b) whether or not the person who shall manage, maintain or operate the required electricity transmission infrastructure (or engage in any combination of these activities), shall be an organ of state;
 - (c) whether the person who constructs, manages, maintains or operates the required electricity transmission infrastructure shall own that infrastructure;
 - (d) whether the electricity transmission infrastructure, or the electricity supplied by means of such infrastructure, shall be purchased or used by a person designated in the determination as the buyer or user;
 - (e) whether the electricity transmission infrastructure, or electricity supplied by means of the infrastructure, may only be sold to or used by the buyer or user referred to in paragraph (d); and

- (f) where applicable, the conducting of the procurement process for the establishment of the required electricity transmission infrastructure.

(Section 34(3) substituted by section 27(f) of Act 38 of 2024)

- (4) A determination referred to in subsection (1) may include provisions dealing with any ancillary matter that is necessary or desirable to facilitate the procurement of electricity, new generation capacity or electricity transmission infrastructure, as the case may be.

(Section 34(4) substituted by section 27(f) of Act 38 of 2024)

- (5) A determination contemplated in subsection (1)(a) may be combined with a determination contemplated in subsection (1)(b).

(Section 34(5) added by section 27(g) of Act 38 of 2024)

- (6) In making a determination in terms of this section, the Minister—

- (a) must have regard to the content of the integrated resource plan and the transmission development plan, as the case may be; and
- (b) may deviate from the integrated resource plan or transmission development plan in an emergency or if it is necessary to do so in the national interest.

(Section 34(6) added by section 27(g) of Act 38 of 2024)

- (7) Prior to deviating from the integrated resource plan or transmission development plan as envisaged in subsection (6)(b), the Minister must publish a notice in the Gazette, inviting the public to comment on the proposed deviation.

(Section 34(7) added by section 27(g) of Act 38 of 2024)

- (8) If it is reasonable and justifiable in the circumstances, the Minister may depart from the provisions of subsection (7).

(Section 34(8) added by section 27(g) of Act 38 of 2024)

- (9) The Minister has such powers as may be necessary or incidental to giving effect to a determination referred to in subsection (1)(a) or (1)(b), including the power to—

- (a) undertake such management and development activities, including entering into contracts, as may be necessary to prepare and conduct procurement processes for the development, construction, commissioning and operation of electricity generation facilities and electricity transmission infrastructure;
- (b) purchase, hire or let anything or acquire or grant any right or incur obligations for or on behalf of the State or prospective participant in any relevant procurement process for the purpose of transferring such thing or right to a successful participant; and

- (c) subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), 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 public or privately owned generation facilities or electricity transmission infrastructure.

(Section 34(9) added by section 27(g) of Act 38 of 2024)

- (10) The Regulator, in exercising its powers and performing its functions under this Act—

- (a) is bound by any determination made by the Minister in terms of subsection (1)(a) or (b); and
- (b) may issue a licence or registration certificate for the activities listed in section 4(a)(i) in the absence of a determination made by the Minister in terms of subsection (1)(a) or (1)(b).

(Section 34(10) added by section 27(g) of Act 38 of 2024)

- (11) In exercising the powers under this section the Minister is not bound by the State Tender Board Act, 1968 (Act No. 86 of 1968).

(Section 34(11) added by section 27(g) of Act 38 of 2024)

- (12) A determination contemplated in this section may establish an energy infrastructure project, which includes not only new generation capacity and new electricity transmission infrastructure, but also other interconnected or related infrastructure, installations, buildings, structures, facilities, systems, services or processes, including gas infrastructure, in which case, subsections (3) and (9) shall, with the necessary changes, apply to such infrastructure, installations, buildings, structures, facilities, systems, services or processes.

(Section 34(12) added by section 27(g) of Act 38 of 2024)

- (13) The Regulator must, in respect of an energy infrastructure project contemplated in subsection (12), exercise its powers and perform its functions under this Act and any other statute in a coordinated and integrated manner.

(Section 34(13) added by section 27(g) of Act 38 of 2024)

- (14) The Minister may, in writing, direct the Regulator to conclude a memorandum of understanding with any other regulator in order to facilitate the coordinated establishment of an energy infrastructure project contemplated in subsection (12).

(Section 34(14) added by section 27(g) of Act 38 of 2024)

- (15) For purposes of this section, 'electricity transmission infrastructure' means transmission facilities or any other electricity infrastructure designated by the Minister by notice in the Gazette for this purpose, excluding electricity generation facilities.

(Section 34(15) added by section 27(g) of Act 38 of 2024)

(Section 46 renumbered to 34 by section 16(c) of Act 28 of 2007)

(Commencement date of section 46:1 December 2004)

34A. Establishment, duties, powers and functions of Transmission System Operator SOC Limited

- (1) Subject to section 35C(1), the Minister of Public Enterprises must establish a juristic person to be known as the “Transmission System Operator SOC Limited” in order to provide an open market platform that shall allow for competitive electricity trading.
- (2) The duties, powers and functions of the Transmission System Operator SOC Limited referred to in subsection (1) shall include the following:
 - (a) To be a transmitter;
 - (b) system operation;
 - (c) to be a market operator; and
 - (d) to be a central purchasing agency.

(Section 34A inserted by section 28 of Act 38 of 2024)

34B. Powers and functions of transmitter, system operator, market operator and central purchasing agency

- (1) A transmitter must—
 - (a) implement infrastructure plans for the transmission network, incorporating the capacity and demand and outlook to ensure reliable grid services to generators and customers;
 - (b) maintain and operate the transmission grid and coordinate outages;
 - (c) develop and implement transmission use of system charges and transmission charges subject to the approval of the Regulator;
 - (d) provide non-discriminatory access to the transmission power system to third parties; and
 - (e) develop the transmission development plan.
- (2) A system operator must—
 - (a) operate the integrated power system in a safe, secure, efficient and sustainable way;

- (b) plan in respect of the development, strengthening, upgrading and refurbishment of the national transmission power system;
 - (c) perform forecasting and dispatch scheduling; and
 - (d) co-operate with the Minister and any person acting as a procurer in terms of section 34, to facilitate the establishment of any new generation capacity or electricity transmission infrastructure, or acquisition of electricity, that is the subject of a section 34 determination.
- (3) A market operator must—
- (a) provide for a transparent, non-discriminatory trading platform, approved by the Regulator, for power market participants to trade;
 - (b) develop a market code and rules, including qualifying criteria for power market participants approved by the Regulator; and
 - (c) the market code shall include, but is not limited to, provisions related to the following:
 - (i) The different types of markets necessary to ensure effective and secure operation of the industry including both physical and financial transactions between power market participants in the appropriate timescales, to enable the market transactions and regulated transactions;
 - (ii) the method of operation, as well as development of systems, processes and procedures for the implementation of these markets;
 - (iii) provisions for reconciliation in order to identify imbalances between scheduled and actual production, the consumption of electricity by power market participants, and the allocation of costs of remedial action and penalties where applicable;
 - (iv) the qualifying criteria for power market participants, including financial and prudential requirements;
 - (v) governance of the market code, including mechanisms for power market participants and stakeholders to propose changes to the code; and
 - (vi) any other aspects necessary for effective and efficient market operation.
- (4) A transparent, non-discriminatory trading platform and trading mechanism for power market participants referred to in subsection (3)(a) is envisaged to be a competitive multi-market structure, which provides for market transactions, physical bilateral transactions and regulated transactions.

(5) A central purchasing agency must—

- (a) conclude and enter into transaction agreements as may be necessary for the procurement of electricity, including sufficient capacity and energy supply;
- (b) in line with the Republic's international obligations, agreements and undertakings—
 - (i) conclude electricity import agreements that ensure a reliable and stable supply of electricity for customers within the Republic; and
 - (ii) conclude electricity export agreements, having regard to the interests of the Republic over the long term;
- (c) in relation to regulated transactions—
 - (i) be the buyer for existing Independent Power Producer power purchase agreements, as well as new Independent Power Producer power purchase agreements, as required by Ministerial determination;
 - (ii) conclude power purchase agreements with each Eskom generator to cover capacity payments and ancillary services for a period approved by the Regulator;
 - (iii) conclude vesting contracts with Eskom generators and distribution licensees, as the case requires, approved by the Regulator, to manage the transition to a competitive market; and
 - (iv) trade all energy purchased under the legacy independent power producer contracts and act as the balance responsible party on behalf of the legacy independent power producer contracts.

(Section 34B inserted by section 28 of Act 38 of 2024)

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

(1) The Regulator may, after consultation with -

- (a) licensees;
- (b) municipalities that reticulate electricity; and

(Section 47(1)(b) inserted by section 12(a) of Act 28 of 2007)

- (c) such other interested persons as may be necessary,

make guidelines and publish codes of conduct and practice, or make rules by notice in the *Gazette*.

- (2) Without derogating from the general nature of subsection (1), guidelines and codes of conduct and practice may relate to -
- (a) the relationship between licensees and customers and end users;
 - (c) performance objectives and the setting, approving and meeting of performance improvement targets;
 - (d) the security, operation, use and maintenance of transmission and distribution power systems;
(Section 35(2)(d) substituted by section 29(a) of Act 38 of 2024)
 - (e) any other ancillary or administrative matter appropriate for the proper implementation of this Act.
- (3) Without derogating from the general nature of subsection (1), rules may relate to -
- (a) the keeping of information, the rendering of returns and the period for and format in which information must be kept, as well as the persons or institutions it must be rendered to;
 - (b) standards of quality of supply and service;
 - (c) the security, operation, use and maintenance of transmission and distribution power systems;
(Section 35(3)(c) substituted by section 29(b) of Act 38 of 2024)
 - (d) trading;
 - (e) technical and safety standards;
 - (f) the form and manner of applying for licences;
 - (g) publishing of advertisements by licensees and the contents thereof;
 - (h) the form and manner of applying for and the fees payable on application for licensing and registration;
 - (i) the fees to be paid in respect of mediation, arbitration and the settlement of disputes;
(Section 35(3)(i) substituted by section 29(c) of Act 38 of 2024)
 - (j) the setting of a framework for the determination of the period of validity of licences, criteria for the transfer and renewal of licences and the transfer or use of assets on a licence lapsing, including the ownership thereof;

- (k) any other ancillary or administrative matter for which it is necessary to make rules for the proper implementation of this Act.

- (3A) The Regulator must, after consultation with the Minister, make rules regarding the content of the transmission development plan, including rules relating to the inclusion in the plan of an analysis of grid connection capacity, reasonable timelines for the expansion and strengthening of the national transmission power system and the estimated cost of the transmission development, strengthening, upgrading and refurbishment envisaged in the plan.

(Section 35(3A) inserted by section 29(d) of Act 38 of 2024)

- (4) The Minister may, by notice in the *Gazette*, make regulations regarding -
 - (a) activities that must be licensed or registered and the classification of licences into categories and sub-categories;
 - (b) norms and standards relating to quality of supply;
 - (c) ancillary or administrative matters that are necessary to prescribe for effective reticulation services;
 - (d) compulsory national norms and standards for reticulation services;
 - (e) general key performance indicators in respect of technical operational issues pertaining to reticulation;
 - (f) the criteria, in addition to those provided for in the Municipal Systems Act, against which service mechanisms must be assessed;
 - (g) matters which may be provided for in the service delivery agreement;
 - (h) the compulsory or standard provisions that must be included in the service delivery agreement;
 - (i) the inspection of and enquiry into the control and operation of any licensed, registered or reticulation-related activity;
 - (j) new generation capacity;
 - (k) types of energy sources from which electricity must be generated;
 - (l) the percentages of electricity that must be generated from different energy sources;

(m) the participation of the private sector in new generation activities;

(n)

(Section 35(4)(n) deleted by section 29(e) of Act 38 of 2024)

(o) the prohibition of certain practices in the electricity supply industry;

(p) the criteria for or prohibition of cross-ownership or vertical and horizontal integration by licensees in generation, transmission and distribution assets;

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

(r) norms and standards for the setting of reticulation tariffs, in consultation with the Minister of Finance;

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

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

(Section 47(4) substituted by section 12(b) of Act 28 of 2007)

(5) Before promulgating regulations contemplated in subsection (4), the Minister must -

(a) consult with the Regulator;

(b) invite public comments on the proposed regulations; and

(c) duly consider the comments received.

(Section 47 renumbered to 35 by section 16(c) of Act 28 of 2007)

35A. Delegation and assignment

(1) The Minister may, subject to such conditions he or she may impose, in writing, delegate any power conferred on him or her under this Act, except a power to make regulations, and may assign any duty so imposed on him or her, to the Director-General or any other officer in the Department.

(2) The Minister is not divested of any power or exempted from any duty delegated or assigned in terms of subsection (1).

(3) The Minister may at any time—

(a) amend or withdraw a delegation or assignment made in terms of subsection (1); or

(b) subject to subsection (4), withdraw or amend any decision made by a person exercising a power or performing a duty delegated or assigned in terms of subsection (1).

(4) A decision made by a delegatee or assignee may not be withdrawn in terms of subsection (3)(b) where it confers a right or entitlement on any third party.

(Section 35A inserted by section 30 of Act 38 of 2024)

35B. Offences and penalties

(1) Any person who—

(a) contravenes the provisions of section 7(1);

(b) fails to comply with a direction issued in terms of section 4(b)(iiA)(bb);

(c) obstructs or hinders any person authorised in terms of section 33(1) in the exercise of powers under section 33;

(d) makes any false or misleading statement to the Regulator in connection with any matter contemplated in this Act; or

(e) without lawful authority, damages, removes or destroys any transmission, distribution or reticulation cable, equipment or infrastructure, shall be guilty of an offence.

(2) Any person who is convicted of an offence by a court of law referred to in subsection (1) shall be liable to a fine not exceeding R1 000 000,00 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

(3) Despite anything to the contrary contained in any other law, a Magistrates Court has jurisdiction to impose any penalty provided for in this Act.

(4) Any person who, in any manner, without lawful authority, acquires or receives into his possession from any other person transmission, distribution or reticulation cable, equipment or infrastructure without having reasonable cause for believing, at the time of such acquisition or receipt, that such transmission, distribution or reticulation cable, equipment or infrastructure is the property of the person from whom he acquires or receives it or that such person has been duly authorized by the owner thereof to deal with it or dispose of it, shall be guilty of an offence.

(5) Any person who is convicted of an offence referred to in subsection (4) shall be liable to a fine not exceeding R5 000 000,00 or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.

(Section 35B inserted by section 30 of Act 38 of 2024)

35C. Transitional provisions

- (1) From the effective date of this Act, until the date that the Transmission System Operator SOC Limited referred to in section 34A(1) is established, which period shall not be longer than five years, the National Transmission Company South Africa SOC Limited—
 - (a) is for all purposes deemed to be the Transmission System Operator SOC Ltd;
 - (b) must perform the duties, powers and functions of the Transmission System Operator SOC Ltd; and
 - (c) in exercising its duties, must do so in a manner that is independent and ensures fair and equitable treatment of all system users.
- (2) During the period of transition referred to in subsection (1), the Regulator shall exercise regulatory oversight and facilitate the transition to a competitive market.
- (3) Notwithstanding the provisions of subsection (1), the Regulator must, subject to the conditions determined by the Regulator, upon application by the National Transmission Company South Africa SOC Limited and after satisfying itself regarding the appropriateness thereof, issue the relevant licence to the National Transmission Company South Africa SOC Limited for the performance of the duties, powers and functions of the Transmission System Operator SOC Ltd as provided for in section 34A(2).

(Section 35C inserted by section 30 of Act 38 of 2024)

36. Repeal of laws and savings

- (1) Subject to subsections (2) and (3), the laws specified in Schedule 1 are hereby repealed or amended to the extent set out in the third column of that Schedule.
- (2) Anything done by the National Electricity Regulator in terms of the Electricity Act, 1987, prior to the commencement of this Act, and which may validly be done by the Regulator in terms of this Act, is deemed to have been done in terms of this Act.
- (3) Licences issued in terms of the Electricity Act, 1987, or that are deemed to have been issued in terms thereof prior to the commencement of this Act, continue in force as if they had been issued in terms of this Act: Provided that -
 - (a) such licences lapse on a date determined by the Minister by notice in the *Gazette*;

- (b) the Regulator is obliged to issue substituting licences to the licensees concerned, in accordance with this Act, prior to such licences lapsing; and
 - (c) conditions imposed in terms of substituting licences issued under paragraph (b) may not be more onerous in their application than those of the licences they replace.
- (4) The Minister may, after consultation with the Regulator and any person who may be affected thereby, amend Schedule 2 by notice in the *Gazette*.

(Section 48 renumbered to 36 by section 16(c) of Act 28 of 2007)

37. Short title and commencement

- (1) This Act is called the Electricity Regulation Act, 2006, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
- (2) Despite subsection (1), section 34 must be regarded as having come into operation on 1 December 2004.

(Section 49(2) substituted by section 14 of Act 28 of 2007)

(Section 49 renumbered to 37 by section 16(c) of Act 28 of 2007)

SCHEDULE 1

REPEAL, AMENDMENT AND SUBSTITUTION OF LAWS

No and Year Act	Short Title	Extent of repeal, of amendment or substitution
Act No 41 of 1987	Electricity Act, 1987	The repeal of the whole, with the exception of section 5B
Act No 84 of 1990	KwaZulu and Natal Joint Services Act, 1990	The amendment of Schedule 3 by the deletion of the item referring to the Electricity Act, 1987 (Act No 41 of 1987).
Act No 40 of 2004	National Energy Regulator Act	<ol style="list-style-type: none"> The substitution in section 4(1) for paragraph (c) of the following paragraph: “(c) [with effect from a date determined by the Minister by notice in the <i>Gazette</i> undertake the functions [of the National Electricity Regulator as] set out in section 4 of the [Electricity Act] Electricity Regulation Act, 2006”. The deletion of subsection 4(2) The substitution in section 7(1) for paragraph (d) of the following paragraph: “(d) materially fails to perform any duty imposed on him or her in terms of this Act, [Electricity Act] the <u>Electricity Regulation Act, 2006</u>, the Gas Act or the Petroleum Pipelines Act;”.

SCHEDULE 2

EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

1. For purposes of items 2 to 6 any word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context indicates otherwise -
 - 1.1 **“Capacity”** means, in respect of a Unit or the Facility, at any time and from time to time, the output power (expressed in megawatts or MW) of such Unit or the Facility, as the case may be;
 - 1.2 **“Code”** means the Distribution Code, the Transmission Grid Code, or any other Code, approved by the Regulator;
 - 1.3 **“Connection Agreement”** means an agreement detailing the conditions under which the Distributor or Transmitter intends to connect the customer or any other connection such as an Embedded Generator;
 - 1.4 **“Delivery Point”** means the physical point or points, situated on the Site of the Facility, where the energy output is to be delivered by the generator;
 - 1.5 **“Demonstration Purposes”** means the Facility constructed for the purpose to prove or test
 - 1.5.1 technical viability;
 - 1.5.2 commercial technical viability,within a specified time period;
 - 1.6 **“Embedded Generator”** means a legal entity that either operates one or more Unit or Units that is connected to the distribution system, or that desires to connect one or more Unit or Units to the distribution system;
 - 1.7 **“Facility”** means the generation or distribution facility or energy storage as applicable, located at the Site and comprising all plant, machinery and equipment, all associated buildings, structures, roads on the Site that are not national, provincial or municipal roads, and other appurtenances, together with all required interfaces to be constructed for the safe, efficient and timely operation of that facility and, for the avoidance of doubt, excluding the transmission connection works or distribution connection works, as the case may be;
 - 1.8 **“Point of Connection”** means the electrical node on a distribution or transmission system where a customer’s assets are physically connected to the licensed Distributor’s or Transmitter’s assets;

1.9 **“Property”** means:

1.9.1 a farm, agricultural holding, erf, or sectional title unit; and

1.9.2 a building located on that farm, agricultural holding, erf, or sectional title unit, notwithstanding that the building extends beyond the boundary of that farm, agricultural holding, erf, or sectional title unit;

1.10 **“Reseller”** means a person or entity registered by the Regulator who purchases electricity from a trading licensee in order to sell such electricity to a customer;

1.11 **“Site”** means part of the Property upon which the Facility is to be constructed and operated;

1.12 **“Unit”** means a separate electricity generating unit or section (comprising multiple units) forming part of the Facility, which is or are capable of generating and delivering energy to the Delivery Point, and “Units” means all or any combination of them; and

1.13 **“Wheeling”** means conveyancing of electricity from the Point of Connection to a point of consumption through a third-party transmission or distribution network.

Activities exempt from licensing and registration

2. The following activities are exempt from the requirement to apply for, and hold a licence under the Act and these activities are not required to be registered with the Regulator -

2.1 The operation of a generation Facility with or without energy storage for the sole purpose of providing standby or back-up electricity in the event of, for a duration no longer than, an electricity supply interruption.

2.2 The operation of any generation Facility with or without energy storage irrespective of capacity (MW), where the Facility does not have a Point of Connection.

2.3 The generation Facility is operated to supply electricity to one or more customers and there is no Wheeling of that electricity.

2.4 The operation of a Facility with a capacity of no more than 100 kilowatts which complies with the Code and has a Point of Connection, the Distributor has prescribed the conditions relating to the continued use of the Point of Connection; and the Regulator has prescribed the manner in which the Distributor shall keep a register of each Facility.

Activities exempt from licensing, but which must comply with the Code and must be registered with the Regulator

3. The following activities are exempt from the requirement to apply for and hold a licence under the Act, but these activities, excluding activities listed in 2 above, must comply with the Code and must be registered with the Regulator -
 - 3.1 The operation of any generation Facility with or without energy storage, irrespective of size or capacity, with a Point of Connection on the transmission or distribution power system, in circumstances where -
 - 3.1.1 the generation Facility is operated to supply electricity to one or more customers by Wheeling and the generator has entered into a Connection agreement with the holder of the transmission or distribution licence in respect of the power system over which the electricity is to be wheeled; or
 - 3.1.2 the generation Facility has a Point of Connection but does not export nor import any electricity onto or from the transmission or distribution power system.
 - 3.2 The operation of a distribution Facility up to the Point of Connection that connects the generation Facility where there is conveyancing of electricity through the transmission or distribution power system.
 - 3.3 The operation of a generation Facility with or without energy storage for Demonstration purposes only, whether or not the Facility is connected to a transmission or distribution power system and where the Facility will be in operation for not more than **36 months**.
 - 3.4 The continued operation of an existing generation Facility with or without energy storage which, immediately prior to the date of commencement of this Schedule, was exempt from the requirement to apply for and hold a licence under the Act, must register with the Regulator within six months of commencement of this Schedule subject to the generation Facility having complied with the Code and being connected to the transmission or distribution power system.
 - 3.5 The selling of electricity by a Reseller in circumstances where-
 - 3.5.1 the price charged by the Reseller to customers does not exceed the tariff that would have been charged to such customers for the electricity if it had been purchased from the Distributor for the area in which the electricity is supplied to the customer, and
 - 3.5.2 the Reseller has entered into either a service delivery agreement in accordance with the Municipal Systems Act (where the licensed Distributor is a municipality) or a similar agreement with the Distributor (where the licensed Distributor is not a municipality) that regulates the relationship between the Reseller and the Distributor and the obligations of

the Reseller in respect of the quality of supply to customers, and the Regulator has ratified the general terms and conditions of such service delivery agreement.

- 3.6 Save for the licensing requirements, a registered generator shall comply with all applicable legislative and regulatory requirements necessary for the sustained operation of the national interconnected power system.

Revocation and deregistration

4. The Regulator may vary, suspend or remove any registration on receipt of an application by a registrant or on application by a third party or upon violation of the regulatory requirements to comply with the Code.
5. The Regulator may revoke a registration under the following circumstances:
- 5.1 On application by a registrant, or
- 5.2 When the facility is no longer required.
6. A registrant must, in the circumstances contemplated in item 5.1 give the Regulator at least 6 months' notice in writing of his or her intention to cease activities, unless the Regulator determines otherwise.

(Schedule 2 substituted by GN 1231 of 10 November 2017)

(Schedule 2 substituted by GN 402 of 26 March 2020)

(Schedule 2 substituted by GN 751 of 20 August 2021)

(Schedule 2 substituted by GN 1000 of 5 October 2021)

(Schedule 2 substituted by GN 2875 of 15 December 2022)

(Schedule 2 substituted (Correction Notice) by GN 2935 dated 17 January 2023)