

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**INDEPENDENT SYSTEM AND
MARKET OPERATOR BILL**

[B 9—2012]

(As agreed to by the Portfolio Committee on Energy (National Assembly))

[B 9A—2012]

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AMENDMENTS AGREED TO

INDEPENDENT SYSTEM AND MARKET OPERATOR BILL

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CLAUSE 1

1. On page 3, from line 37, to omit the definition of “**ancillary services**” and to substitute with the following definition:

“ ‘**ancillary services**’ means services supplied to the ISMO by generators, distributors or end-use customers, necessary for the reliable and secure transport of power from generators to distributors and other customers;”.

2. On page 4, after line 5, to insert the following definition:

“ ‘**dispatch**’ means the scheduling, coordination and management of the flow of electricity produced by generation facilities or consumed by the demand-side resource into and out of the transmission power system, including the start-up and shut-down of those facilities;”.

3. On page 4, after line 15, insert the following definition:

“**expansion plan** means a plan for development of the transmission network”.

4. On page 4, from line 22, to omit the definition of “**integrated power system**” and to substitute with the following definition:

“ ‘**integrated power system**’ means a power system that is interconnected to a generation facility, transmission power system and distribution power system;”.

5. On page 4, after line 35, to insert the following definition:

“ ‘**market operation**’ means purchase of power from generation and sale to ISMO customers at a wholesale price;”.

6. On page 4, in line 48, to omit the definition of “**System Operator**” and to substitute with the following definition:

“ ‘**system operations**’ means operations of the integrated power system in real time which includes electricity dispatch.”.

7. On page 4, after line 55, to insert the following definition:

“ ‘**transmitter**’ means the owner of a transmission power system;”.

CLAUSE 2

1. On page 5, in line 10, to omit “maintenance and”.
2. On page 5, in line 14, omit “electricity dispatch and”.

CLAUSE 4

1. On page 5, in line 44, after “plan” to insert “whose input must be duly considered by the transmitter”.
2. On page 5, in line 45, to omit “and expansion,”.
3. On page 5, in line 46, to omit “act as a System Operator and”.
4. On page 5, in line 56, to omit “schedules” and to substitute “rules”.
5. On page 6, in line 33, to omit “and”.
6. On page 6, in line 36, to omit “schedules and costing” and to substitute “rules and costing; and”.
7. On page 6, after line 36, to add the following paragraph:

“(u) order the interruption of supply to preserve the system integrity in times of power shortage.”.
8. On page 6, in line 37, to omit “As a market operator” and to substitute “In relation to market operation”.
9. On page 6, in line 38, to omit paragraph (a) and to substitute:

“(a) buy electricity from a generator or external trader in line with Government policy;”.
10. On page 6, from line 44, to omit paragraph (d) and to substitute with the following paragraph:

“(d) procure electricity on such terms and conditions as may be agreed upon by the parties—

 - (i) from licensees with the exception of licensees exempted from selling electricity to ISMO in terms of the Electricity Regulation Act; and
 - (ii) consistent with the integrated resource plan and in terms of procurement processes contained in the Electricity Regulation Act;”.
11. On page 7, in line 2, to substitute “MW” with “MegaWatt”.
12. On page 7, after line 24, to add the following subclause:

“(4) ISMO may, with the concurrence of the Minister, perform such other functions as may be necessary to give effect to or are ancillary to its functions as set out in subsections (1) to (3).”.

CLAUSE 6

1. Clause rejected.

CLAUSE 11

1. On page 8, in line 41, to omit “Minister” and to substitute “Board”.

CLAUSE 13

1. On page 9, from line 9, to omit subclause (1) and to substitute with the following subclause:

“(1) For the purposes of appointing the non-executive members, the Minister must, by notice in at least two newspapers and in the *Gazette*, invite interested persons to submit applications, or interested parties to nominate a candidate, within the period and in the manner mentioned in the notice.”.
2. On page 9, in line 18, to omit “and geographic areas of the Republic”.
3. On page 9, in line 22, to omit “The Minister and”.
4. On page 9, from line 46, to omit paragraph (a) and to substitute with the following paragraph:

“(a) Any vacancy occurring in the Board in terms of section 14, must be filled in the manner provided for in this section within six months of such vacancy occurring.”.

CLAUSE 14

1. On page 10, in line 1, after “**vacancies**” to insert “**of Board**”.

CLAUSE 15

1. On page 10, in line 19, to omit “may” and to substitute “must”.
2. On page 10, in line 23, after “court”, to insert “of law”.

CLAUSE 17

1. On page 11, line 30, to omit “seventy percent” and to substitute “fifty percent plus one”.

CLAUSE 18

1. On page 11, from line 41, to omit “with the concurrence of the Minister,”.
2. On page 11, in line 44, to omit “and”.
3. On page 11, in line 45, after “Committee” to insert “;and”.
3. On page 11, after line 45, to add the following paragraph:

“(d) Risk Committee.”
4. On page 11, from line 56, to omit subclause (4).

CLAUSE 19

1. On page 12, in line 5, to omit “seventy five percent” and to substitute “two thirds”.

CLAUSE 20

1. On page 12, from line 30, to omit subclause (1) and to substitute:
 - “(1) The Board must—
 - (a) with the approval of the Minister, appoint a chief executive officer; and
 - (b) appoint a chief financial officer, to ensure that ISMO meets its objects.”.
2. On page 12, in line 33, after “media” to insert “and consider applications received”.

CLAUSE 21

1. On page 12, in line 40, to omit “chief financial officer”.
2. On page 12, in line 41, beginning of the paragraph, to substitute “are” with “is”.
3. On page 12, from line 51, to omit:

“with the concurrence of the Minister, the Minister acting after consultation with the Minister of Finance” and to substitute “in line with the remuneration guidelines for state owned companies as approved by Cabinet.”.

CLAUSE 22

1. On page 13, in line 2, after “Minister” to insert “in the case of a chief executive officer”.

CLAUSE 23

1. On page 13, after line 28, to add the following subclause:

“(3) The Minister may extend the period of referred to in subsection (1) for a further period not exceeding six months if the Minister is satisfied that such an extension is justified.”.

CLAUSE 24

1. On page 13, line 40, to omit “and” and to substitute “or”.

CLAUSE 31

1. On page 15, in line 19, after “the” to insert “Minister in consultation with the”.

CLAUSE 35

1. On page 16, in line 48, to omit “an” and to substitute “a”.

CLAUSE 37

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause to follow clause 36:

“Intervention by Minister

37. (1) The Minister may direct ISMO to take any action specified by the Minister if ISMO—

- (a) is in financial difficulty or is being mismanaged;
- (b) fails to perform its functions effectively or efficiently;
- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act;
- (d) has failed to comply with any law or any policy envisaged in this Act.

(2) directive contemplated in subsection (1) must state—

- (a) the reason for issuing the directive;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.

(3) If ISMO fails to comply with the directive contemplated in subsection (1) within the stated period, the Minister may dissolve the Board—

- (a) after having given the Board a reasonable opportunity to be heard; and
- (b) after having afforded the Board a hearing on any submissions received.

(4) If the Minister dissolves the Board, the Minister—

- (a) may appoint an administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine.

(5) The costs associated with the appointment of an administrator must be borne by ISMO as prescribed by the Minister.

(6) The Minister must—

- (a) review the performance of ISMO regularly whilst it is under administration; and
- (b) within three months of appointing the administrator, table a report on his or her findings in the National Assembly.

(7) The Minister must, as soon as it is feasible but not later than six months after the dissolution of the Board, appoint a new Board as contemplated in chapter 3.

(8) The appointment of the administrator terminates when the Board members have been replaced in terms of subsection (7).

(9) Notwithstanding subsections (1) to (8), the Minister may dissolve the Board, on good cause shown and subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), if the Minister loses confidence in the Board.

(10) Notwithstanding this section, the Minister retains the right at any time to approach a competent court for relief in any matter he or she considers appropriate in furtherance of this Act.

CLAUSE 38

1. On page 18, from line 11, to omit paragraph (b) and to substitute:

“(b) fails to give data or information, or gives false or misleading data or information when required to do so in terms of section 35;”.

2. On page 18, omit line 14, to omit paragraph (c) and to substitute:

“(c) fails to comply with a reasonable directive issued by an administrator appointed by the Minister in terms of section 36;”.

CLAUSE 39

1. On page 18, after line 30, to insert the following:

“(a) criteria to be used by the Minister in determining customers to whom ISMO may sell electricity, to whom ISMO must sell electricity, or who may purchase electricity directly from generators, including technical criteria, financial criteria and criteria of national importance or from a security perspective;
 (b) the transfer of customers and related rights and obligations from Eskom Holdings or other suppliers to ISMO, including the compulsory transfer of customer contracts, the handling of existing long term contracts, the splitting of contracts between energy and wheeling, and matters associated therewith;
 (c) the transfer of assets, rights, obligations and staff, excluding transmission;
 (d) the transfer of functions, including the timelines within which ISMO must assume the execution thereof;”.
2. On page 18, on line 37, to omit “and its subsidiaries”.
3. On page 18, from line 39, to omit subclause (3) and to substitute with the following subclause:

“(3) When making or amending the regulations contemplated in subsection (1), the Minister must—
 (a) invite public comment and duly consider comments prior to finalising the regulations; and
 (b) table the regulations in Parliament before publishing the final version in the *Gazette*.”

CLAUSE 40

1. On page 18, in line 48, to omit, “on the effective date and”.
2. On page 18, in line 53, after the word “Eskom”, to insert “holdings”.

3. On page 19, in line 2, after “out”, to insert “in”.
4. On page 20, from line 9, to omit subclause (9) and to substitute:

“(9) When an employee of Eskom Holdings becomes an employee of ISMO in terms of subsection (5) or (7), section 197 the Labour Relations Act, 1995 (Act No. 66 of 1995) applies.

CLAUSE 41

1. On page 20, from line 31, to omit subclauses (1), (2) and (4) and to substitute with the following subclauses, respectively:

“(1) From the effective date, ISMO is responsible for the functions listed in section 4: Provided that the execution thereof by ISMO may be assumed in an phased manner, as determined by the Minister by notice in the *Gazette*.

(2) ISMO must enter into a contractual arrangement with Eskom for the execution of such of its functions contemplated in section 4 as the parties may agree upon.

(4) The Minister may, in consultation with Cabinet, determine by notice in the *Gazette* the date for transferring the functions referred to in subsection (2) to ISMO.”.