

REPUBLIC OF SOUTH AFRICA

ELECTRICITY REGULATION AMENDMENT BILL

(As introduced in the National Assembly as section 76 Bill, explanatory summary of Bill published Gazette No. of 2022) (The English text of the Bill is the official text of the Bill)

(MINISTER OF MINERAL RESOURCES AND ENERGY)

[B — 2022]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

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 and transitional measures; to provide for an open market platform that will allow for competitive electricity trading; to assign the duties, powers and functions of the Transmission System Operator 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

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

Amendment of section 1 of Act 4 of 2006, as amended by section 1 of Act 28 of 2007

1. Section 1 of the Electricity Regulation Act, 2006 (hereinafter referred to as "the principal Act"), is hereby amended—

(a) by the insertion before the definition of "chief executive officer" of the following definitions:

“**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;

“**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;

“**balance responsible parties**” means licensed or registered generators, distributors or traders which are responsible for balance responsible activities and shall be accountable through the balancing mechanism for deviations;

“**balancing mechanism**” means the platform for the settlement of electrical energy operating in real-time with the system operator

issuing dispatch instructions to dispatchable generating units and demand side resources to ensure supply and demand on the transmission and distribution system are in balance in real-time;"

'central purchasing agency' means an entity assigned to fulfil the role of the wholesale buyer to maintain system integrity during the transition to a competitive electricity market;"

(b) by the deletion of the definition of "chief executive officer";

(c) by the insertion before the definition of "customer" of the following definitions:

'Constitution' means the Constitution of the Republic of South Africa, 1996;"

(d) by the insertion after the definition of "customer" of the following definitions:

'Department' means the department responsible for mineral resources and energy;

'Director-General' means the Director-General of the Department;

'direct supply agreement' means an agreement for the sale of electricity between a generation licensee 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 generator, transmitter, distributor, system operator or trader;

'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;”;

- (e) by the substitution for the definition of "distribution power system" of the following definition:

‘distribution power system’ means a **[power system that]** network for the conveyance of electricity which operates at or below a nominal voltage of 132kV;”;

- (f) by the insertion after the definition of "distribution power system" of the following definition:

‘distribution licensee’ means a holder of a licence to operate a distribution facility.”;

- (g) by the substitution for the definition of "end user" of the following definition:

‘end user’ means a user of electricity **[or a service relating to the supply of]** who consumes such electricity;”;

- (h) by the insertion after the definition of "generation" of the following definition:

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

- (i) by the insertion after the definition of "generator" of the following definitions:

‘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;";

- (j) by the substitution for the definition of "integrated resource plan" of the following definition:

'integrated resource plan' means **[a resource]** an indicative, forward-looking plan [established by the national sphere of government to give effect to] 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;";

- (k) by the insertion after the definition of "integrated resource plan" of the following definitions:

'interconnected distribution power system' means a distribution power system that is interconnected to a transmission power system either directly or through interconnection to a distribution power system where the latter system is directly or indirectly interconnected to a transmission power system;

'legacy independent power producer contract' means power purchase agreements that have been concluded prior to the launch of the competitive electricity market;

'licence' means a licence issued under this Act;

'market operator' means an entity assigned to offer trading platform and serves as a trading mechanism for power market participants;

'market participants' means participants which meet the qualifying criteria set for, and choose to participate on, the market platform established by the market operator;

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

(l) by the substitution for the definition of "Minister" of the following definition:

'Minister' means the Minister of **[Minerals]** Mineral Resources and Energy;"

(m) by the insertion before the definition of "municipality" of the following definition:

'multi-market' means a hybrid market model accommodating market transactions, physical bilateral transactions and regulated transactions;"

(n) by the insertion after the definition of "National Energy Regulator Act" of the following definitions:

'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 across the territory of the Republic;

'new generation capacity' means additional electricity capacity, including capacity derived from new generation facilities, an 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; and

(d) the capacity of generation facilities for export, which have been approved by the Minister;

'NERSA' means the National Energy Regulator of South Africa established in terms of section 3 of the National Energy Regulator Act;

'own use', in the context of a generation facility, means a facility that generates electricity that is used by the operator or owner of that facility but which may also export electricity to a distributor pursuant to an agreement entered into with such distributor;"

(o) by the insertion after the definition of "person" of the following definitions:

'physical bilateral transaction' means a transaction for the physical transfer of energy between two parties, in which the path of the energy remains inside the central purchasing agency borders;

'power purchase agreement' means an agreement between a generator and a buyer for the sale and purchase of electricity or electricity generation capacity;"

(p) by the deletion of the definition of "price".

(q) by the insertion after the definition of "prescribe" of the following definition:

'registrant' means a person registered with the Regulator in terms of section 9.

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

(r) by the substitution for the definition of "supply" of the following definition:

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

(s) by the insertion after the definition of "supply" of the following definitions:

'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;

'system operator' means the person who is responsible for system operation;"

(t) by the substitution for the definition of "tariff" of the following definition:

'tariff' means a charge [for electricity] to a customer 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;"

(u) by the insertion after the definition of "tariff" of the following definition:

'trader' means a person who trades in electricity;"

(v) by the substitution for the definition of "trading" of the following definition:

'trading' means the wholesale or retail buying **[or]** and selling of electricity **[as a commercial activity]**, and "trade" has a corresponding meaning;"

(w) by the insertion after the definition of "trading" of the following definition:

'trading licensee' means a holder of a licence to trade in terms of section 4(a)(i)(gg);"

(x) by the substitution for the definition of "transmission" of the following definition:

'transmission' means the conveyance of electricity through a transmission power system excluding system operation and trading, and 'transmit' and 'transmitting' have corresponding meanings;"

(y) by the substitution for the definition of "transmission power system" of the following definition:

'transmission power system' means a **[power system that]** network for the conveyance of electricity which operates above a nominal voltage of 132kV;"

(z) by the insertion after the definition of "transmission power system" of the following definition:

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

(Za) by the substitution for the definition of "transmitter" and "this Act" of the following definitions:

'transmitter' means a person who **[transmits electricity]** manages and maintains a transmission power system; [and]";

'this Act' includes any regulation or rule made or issued in terms thereof[.]; and

(Zb) by the insertion after the definition of "this Act" of the following definitions:

'vertically integrated licensee' means a person who holds licences listed in more than one of the subparagraphs of section 4(a)(i)(aa) but excludes a person who only holds licences in terms of section 4(a)(i)(bb) and (cc);

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

Amendment of section 2 of Act 4 of 2006

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in **[South Africa]** the Republic;".

Insertion of section 2A in Act 4 of 2006

3. The following section is hereby inserted in the principal Act after section 2:

“Application of Act

2A. (1) This Act is applicable to the generation, transmission, distribution, reticulation, system operation, trading, the 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 no 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.”

Substitution of section 3 of Act 4 of 2006

4. The following section is hereby substituted for section 3 of the principal Act:

"Regulator

3. (2) The Regulator has regulatory authority over persons undertaking activities, and 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."

Amendment of section 4 of Act 4 of 2006, as amended by section 2 of Act 28 of 2007

5. Section 4 of the principal Act is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of the following words:
 "The Regulator—";
- (b) by the addition in paragraph (a) subparagraph (i) of the following:
 "(a) must—
 (i) consider applications for **[licenses]** licences and may issue licences for—

(dd) market operator;

(ee) system operator.

subject to the provisions of section 7;";

(c) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:

"(ii) **[regulate prices and]** set and approve tariffs;";

(d) by the deletion of subparagraph (a)(iv);

(e) by the substitution in paragraph (a) for subparagraph (v) of the following subparagraph:

"(v) establish and manage—

(aa) monitoring and information systems relating to matters within the Regulator's jurisdiction; and

(bb) a national information system, and co-ordinate the integration thereof with other relevant information systems;";

(f) by the substitution in paragraph (a) for subparagraph (vii) of the following subparagraph:

"(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;"

(g) by the insertion in paragraph (a) after subparagraph (vii) of the following subparagraph:

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

(h) by the substitution for paragraph (b) of the following paragraph:

"(b) may—

(i) mediate and, or, arbitrate disputes between generators, transmitters, distributors, traders, the transmission system operator and any other licensee or customer, customers or end users;

(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."

Amendment of section 6 of Act 4 of 2006

6. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Regulator **[must]** 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."

Amendment of section 7 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

7. Section 7 of the principal Act is hereby amended—

(b) by the substitution for subsection (1) of the following subsection:

"(1) Subject to section 8 or section 9, [N]no person may, without [a] 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)—

(b) import or export any electricity; **[or]**

(c) be involved in trading~~].~~;

(d) be a market operator; or

(e) engage in system operation.";

Amendment of section 8 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

8. The following section is substituted for section 8 of the principal Act:

"Certain activities not licensed

8. 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."

Amendment of section 9 of Act 4 of 2006, as amended by section 4 of Act 28 of 2007

9. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(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."; and

(b) by the insertion after subsection (4) (b) of section 9 of the following subsection:

"(c) compliance with the technical codes that may be applicable from time to time;

(d) compliance with regulatory requirements necessary for the sustained operation of the national transmission power system and interconnected distribution power systems;

(e) payment of fees imposed by licensees for granting registrants access to their network."

Amendment of section 10 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

10. Section 10 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(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;"

(b) by the substitution in subsection (2) for paragraphs (c) and (d) of the following paragraphs respectively:

- "(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;"

(c) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

- "(f) a detailed specification of the services that will be rendered under the licence; and";

(d) by the substitution in subsection (2) for paragraph (h) of the following paragraph:

- "(h) such other particulars as the **[Minister]** Regulator may prescribe.";
- and

(e) by the insertion after subsection (2) of the following subsection:

- "(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."

Amendment of section 11 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

11. Section 11 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) When application is made for a licence the Regulator **[may require that]** must, in writing, direct the applicant to publish a notice of the application in appropriate newspapers or other appropriate media circulating in the area of the proposed activity in at least two official languages, for a specific period in newspapers or appropriate media as the Regulator may specify."; and

(b) by the deletion of subsection (3).

(c) by the substitution for subsection (4) of the following subsection:

"(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.";

Amendment of section 12 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

12. Section 12 of the principal Act is hereby amended by the substitution for subsection (a) of the following subsection:

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

Amendment of section 13 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

13. Section 13 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Regulator must **[decide on]** grant or refuse an application in the prescribed manner within **[120]** 60 days—";

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

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

(c) by the substitution for subsection (3) of the following subsection:

"(3) The Regulator must issue separate licences for [—

(a) **the operation of generation, transmission and distribution facilities;**

(b) **the import and export of electricity; or**

(c) **trading]** the activities listed in subparagraphs (aa) to (ee) of section 4(a)(i)."; and

(d) by the deletion of subsection (4).

Amendment of section 14 of Act 4 of 2006, as amended by section 7 of Act 28 of 2007

14. Section 14 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(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;"

(b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

"(d) the setting **[and]** or approval of **[prices, charges, rates and]** tariffs charged by licensees;"

(c) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) the **[format of and]** contents of agreements entered into by licensees and their customers;"

(d) by the substitution in subsection (1) for paragraphs (l) and (m) of the following paragraphs respectively:

"(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;

(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;"

(e) by the substitution in subsection (1) for paragraph (t) of the following paragraph:

"(t) **[compliance with any regulation, rule or code made under this Act]** allowing the licensee to sub-contract the performance of the licensed functions, including allowing for the licensee to sub-contract the maintenance and operation of the generation, transmission or distribution facilities;" and

(f) by the substitution in subsection (1) for paragraph (z) of the following paragraph:

"(z) any other ancillary or incidental condition **[prescribed]** specified by the Regulator."

Amendment of section 15 of Act 4 of 2006, as amended by section 7 of Act 28 of 2007

15. Section 15 of the principal Act is hereby amended by—

(a) by the substitution of subsection (1) for the following subsection:

"(1) **[A licence condition determined under section 14 relating to the setting or approval of prices, charges and]** The Regulator, in setting and approving tariffs [and the regulation of revenues] as contemplated in sections 14(1)(d)—

(a) must enable an efficient licensee to recover the full cost of **[its] the** licensed **[activities] activity [, including a reasonable margin or return];**

(aA) must allow for a reasonable return commensurate with the risk of the licensed activity;

- (b) **[must]** may provide for or prescribe incentives for continued improvement of the technical and economic efficiency with which services are to be provided;
- (d) must avoid undue discrimination between customer categories; **[and]**
- (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 and diversity of supply and to promote renewable energy.";
- (b) by the insertion after subsection (1) of the following subsections:
- "(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.
- (1B) In the case of vertically integrated licensees, the Regulator must set or approve separate tariffs for each of the licensed activities listed in the sub-paragraphs of section 4(a)(i).";
- (c) by the substitution for subsection (2) of the following subsection:
- "(2) A licensee may not charge a customer any **[other]** tariff **[and make use of provisions in agreements]** other than **[that determined or approved by the Regulator as part of its licensing conditions]** the tariff set or approved by the Regulator as, or in accordance with, a licence condition."; and
- (d) by the insertion after subsection (3) of the following subsection:

"(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.

Amendment of section 16 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

16. Section 16 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The **[Minister]** Regulator must prescribe the procedure to be followed in varying, suspending, removing or adding any licence condition."

Amendment of section 17 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

17. Section 17 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections respectively:

"(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 **[his or her]** its intention to cease activities, unless the Regulator determines otherwise.

(3) The **[Minister]** Regulator must prescribe the form and procedure to be followed in revoking a licence."

Insertion of section 17A in Act 4 of 2006

18. The following section is hereby inserted in the principal Act after section 17:

"Revocation and deregistration

17A. (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; or

(b) 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 6 months written notice of its intention to cease activities, unless the Regulator determines otherwise.

Amendment of section 20 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

19. Section 20 of the principal Act is hereby amended by the substitution of the following section:

"Renewal of licence

20. (1) Any generation or transmission licence issued in terms of this Act is valid for a period of 15 years or such **[longer]** period as the Regulator may determine.

(2) Any distribution, **[or] 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 **[his or her] its** licence.

(4) **[An application for renewal must be granted, but the]** The Regulator may set different licence conditions upon renewal of a licence.

(5) A licensee may not assign, cede or transfer a licence to another party without the written consent of the Regulator.".

Amendment of section 21 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

20. Section 21 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) **[A]** 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.";

(b) by the substitution for subsection (3) of the following subsections:

"(3) A transmission or distribution licensee must, to the extent provided for in the licence, provide non-discriminatory access to **[the] its** transmission **[and]** or distribution power **[systems] system** to third parties."

(c) by the insertion after subsection (3) of the following subsection:

"(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.

(d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

"Access in terms of subsection (3) must be provided on the conditions set out in the licence of such transmitter or distributor, **[that] which** may relate to—";

(f) by the substitution in subsection (4) for paragraph (c) of the following paragraph:

"(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;"

(g) by the substitution in subsection (4) for paragraphs (e) and (f) of the following paragraphs respectively:

"(e) compliance with any rule[,] or code [**or practice made by the Regulator**]; or

(f) the [**fees**] tariffs that may be charged by a licensee for the use of such power system.";

(h) by the insertion after subsection (4) of the following subsections:

(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 system users.

(4B) A transmission or distribution licensee may refuse access only where it lacks the necessary capacity, with written reasons given for such refusal, and that any party requesting information on network capacity and measures that would be necessary to reinforce the network may be charged a reasonable fee reflecting the cost of providing such information.

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

Amendment of section 22 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

21. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(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."

Amendment of section 24 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

22. Section 24 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"24. Rights over roads or streets"; and

(b) by the substitution for subsection (1) of the following subsection:

"(1) (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."

Amendment of section 27 of Act 4 of 2006, as amended by section 10 of Act 28 of 2007

23. Section 27 of the principal Act is hereby amended by the substitution for paragraph (g) of the following paragraph:

"(g) regularly reporting and providing information to the Department of **[Provincial and Local Government]** Cooperative Governance and Traditional Affairs, the National Treasury, the Regulator and customers;"

Amendment of section 30 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

24. Section 30 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs respectively:

"(a) if it is a dispute between licensees, act as mediator or arbitrator if so requested by both parties to the dispute;

(b) if it is a dispute between a customer or end user on the one hand and a licensee, registrants[,] or a person who trades[, **generates, transmits, or distributes electricity**] on the other hand, settle that dispute by such means and on such terms as the Regulator thinks fit.";

(b) by the substitution for subsection (2) of the following subsection:

"(2) The Regulator may appoint a suitable person to act as mediator or arbitrator on its behalf and any action or decision of a person so appointed is deemed to be an action by or decision of the Regulator.";

(c) by the substitution for subsection (3) of the following subsection:

"(3) The **[Minister]** Regulator must prescribe the procedure to be followed in **[the]** a mediation and an arbitration and the fees to be paid.";

(d) by the deletion of subsection (4); and

(e) by the insertion after subsection (4) of the following subsection:

"(5) When acting as arbitrator, the Regulator or the person contemplated in subsection (2) must issue a decision on the matter, and such decision is binding on the parties to the dispute."

Amendment of section 32 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

25. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Regulator must, in applicable circumstances, at its own instance or on receipt of a complaint **[or inquiry]** relating to **[the]** generation, transmission, distribution, **[or]** trading, market operation or system operation, investigate complaints and prepare a preliminary report in respect of—

- (a) **[of]** alleged discrimination regarding tariffs or conditions of access;
- and
- (b) if a licensee is involved, **[of]** an alleged failure to abide by its licensing conditions**;** **or** .".

CHAPTER VII
GENERAL PROVISIONS

Amendment of section 33 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

26. Section 33 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(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"; and

(b) by the insertion after subsection (3) of the following subsection:

"(4) No information obtained by the Regulator in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or proprietary nature may be made public or otherwise disclosed to any person without the consent of the person to whom that information relates, except in terms of an order of the High Court."

Amendment of section 34 of Act 4 of 2006, as amended by section 16 of Act 28 of 2007

27. Section 34 of the principal Act is hereby amended—

(a) by the substitution of the heading of the following heading:

"34. Additional electricity, [New] new generation capacity and electricity transmission infrastructure";

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(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, [in] after consultation with the Regulator and the Minister of Finance, by notice in the *Gazette*, make a determination—

(c) by the substitution in subsection (1) for paragraphs (a) and (b) for the following paragraphs:

“(a) **[determine]** that additional electricity or new generation capacity is needed to ensure the **[continued uninterrupted]** optimal supply of electricity;

(b) **[determine the types of energy resources from which]** that new electricity [must be generated, and the percentages of electricity that must be generated from such sources] transmission infrastructure is needed to ensure the optimal supply of electricity;”;

(d) by the deletion in subsection (1) of paragraphs (d) and (e);

(e) by the substitution of subsection (2) of the following subsection:

"(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 thus 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 thus 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 thus 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 thus produced supplied to customers pursuant to multiple supply agreements.";

(f) by the substitution of subsections (3) and (4) of the following subsections:

“(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.

(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.”;
and

(g) by the addition after subsection (4) of the following subsections:

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

(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.

(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.

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

(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;

(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.

(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 (1)(b), and

(b) may issue a licence or registration certificate for the activities listed in subparagraphs (aa) to (gg) of section 4(a)(i) in the absence of a determination made by the Minister in terms of subsection (1)(a) or (1)(b).";

(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).

(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, the provisions of subsections (3) and (9) shall, with the necessary changes, apply to such infrastructure, installations, buildings, structures, facilities, systems, services or processes.

(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.

(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).

(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."

Insertion of sections 34A in Act 4 of 2006

28. The following section is hereby inserted in the principal Act after section 34:

Establishment, Duties, Powers and Functions of the Transmission System Operator and transitional measures

34A. (1) The Minister of Public Enterprises will establish a juristic person to be known as the "Transmission System Operator SOC Limited" in order to provide an open market platform that will 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) transmitter;
- (b) system operation;
- (c) market operator, and
- (d) central purchasing agency.

(3) A transmitter must—

(a) implement infrastructure plans for the transmission network, incorporating the capacity and demand 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; and

(d) provide non-discriminatory access to the transmission power system to third parties.

(4) 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) 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."

(5) 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.

(c) The market code will 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 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 and consumption of electricity by market participants, and the allocation of costs of remedial action and penalties where applicable;

(iv) the qualifying criteria for market participants, including financial and prudential requirements;

(v) governance of the market code, including mechanisms for market participants and stakeholders to propose changes to the code; and

(vi) any other aspects necessary for effective and efficient market operation.

(6) A transparent, non-discriminatory trading platform and trading mechanisms for power market participants referred to in subsection (5)(a) is envisaged to be a competitive multi-market structure which provides for market transactions, physical bilateral transactions and regulated transactions.

(7) 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 IPP power purchase agreements as well as new IPP 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 remaining life of plant;

(iii) conclude vesting contracts with Eskom generators and, or, distribution licensees to manage the transition to a competitive market; and

(iv) trade all energy purchased under the legacy IPP contracts and act as the balance responsible party on behalf of the legacy IPP contracts;

(8) From the date this Act comes into effect until the date the Transmission System Operator SOC Limited mentioned in subsection (1) is established, which period shall not last longer than five (5) years, the “National Transmission Company South Africa SOC Limited”—

(a) is for all purposes deemed to be the Transmission System Operator;

(b) must perform the duties, powers and functions of the Transmission System Operator; 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.

(9) During the period of transition referred to in subsection (8), the Regulator shall exercise regulatory oversight and facilitate the transition to a competitive market.

(10) Notwithstanding the provisions of subsection (8), the Regulator must, after application by the National Transmission Company South Africa SOC Limited and satisfying itself as to the appropriateness thereof, issue the relevant licence or licences to the National Transmission Company South Africa SOC Limited for the performance of the duties, powers and functions of the Transmission System Operator provided for in subsections (2), (3), (4), (5) and (7) subject to the conditions determined by the Regulator.

Amendment of section 35 of Act 4 of 2006

29. Section 35 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

- “(d) **[codes of practice relating to]** the security, operation, use and maintenance of transmission and distribution power systems;
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
- “(c) the security, operation, use and maintenance of transmission and distribution power systems;”
- (c) by the substitution in subsection (3) for paragraph (i) of the following paragraph:
- “(i) the fees to be paid in respect of mediation, arbitration and the settlement of disputes;”;
- (d) by the insertion after subsection (3) of the following subsection:
- “(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.”;
- (e) by the deletion in subsection (4) of paragraph (n).

Insertion of sections 35A and 35B in Act 4 of 2006

- 30.** The following section is hereby inserted in the principal Act after section 35:

"Delegation and assignment

35A. (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.;

Offences and penalties

35B. (1) Any person who wilfully—

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

(b) fails to comply with a direction issued in terms of section 4(2)(c)(ii);

(c) obstructs or hinders any person authorised in terms of section 33(1) in the exercise of his or her 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 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.

Amendment of long title of Act 4 of 2006, as amended by section 13 of Act 28 of

2007

31. The following long title is hereby substituted for the long title of the principal 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 and transitional measures; to provide for an open market platform that will allow for competitive electricity trading; to assign the duties, powers and functions of the Transmission System Operator 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.”.

Amendment of Arrangement of Sections in Act 4 of 2006

32. The Arrangement of Sections after the long title of the principal Act is hereby amended by—

(a) by the insertion after "2. Objects of Act" of the following:

"2A. Application of Act";

(b) by the insertion after "17. Revocation of licence on application " of the following:

"17A. Revocation and deregistration";

(c) by the substitution for "24. Rights over streets" of the following:

"24. Rights over roads or streets";

(d) by the substitution for "34. New generation capacity" of the following:

"34. Additional electricity, [New] new generation capacity and electricity transmission infrastructure";

(e) by the insertion after "34. Additional electricity, new generation capacity and electricity transmission infrastructure " of the following:

"34A. Establishment, Duties, powers and functions of the Transmission System Operator and transitional measures;"

(f) by the insertion after "35. Regulations, rules, guidelines, directives and codes of conduct and practice" of the following:

"35A. Delegation and assignment

35B. Offences and penalties"

Short title and commencement

33. This Act is called the Electricity Regulation Amendment Act, 2022, and comes into operation on a date determined by the President.