

**CHAPTER 13:19**  
**ELECTRICITY ACT**

*Act 4/2002, 3/2003, 6/2005 (s. 20).*

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**To provide for the establishment of the Zimbabwe Electricity Regulatory Commission; to provide for its functions and management; to provide for the licensing and regulation of the generation, transmission, distribution and supply of electricity; to provide for the repeal of the Electricity Act [Chapter 13:05] and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement: 1st August, 2003.]

## PART I

### PRELIMINARY

#### 1 Short title and date of commencement

This Act may be cited as the Electricity Act [Chapter 13:19].

#### 2 Interpretation

(1) In this Act—

“affiliate”, in relation to a licensee, means any holding company or subsidiary of the licensee or any subsidiary of a holding company of the licensee, within the meaning of subsidiary as defined in section 143 of the Companies Act [Chapter 24:03] and includes (unless the Commission decides to the contrary) an entity in which the licensee owns or controls, directly or indirectly, ten *per centum* or more of the voting securities of such entity;

“ancillary services” means those functions necessary for the reliable operation of a power system, which may include, but are not limited to, services that would provide or permit the following—

- (a) facilities scheduling, control and dispatch;
- (b) reactive power and voltage control;
- (c) frequency regulation;
- (d) operating power reserves;

“Authority” means the Zimbabwe Electricity Supply Authority established in terms of the Electricity Act [Chapter 13:05];

“bulk supply licence” means a licence to supply electricity to one or more licensees for resale referred to in subsection (4) of section *forty-three* ;

“code of conduct” means any rules established by the Commission governing behaviour, relationships and practices between licensees and their affiliates and between licensees themselves;

“Commission” means the Electricity Regulatory Commission established in terms of section *three*;

“Competition and Tariff Commission” means the Competition and Tariff Commission established in terms of the Competition Act, [Chapter 14:28];

“consumer” means any end-user of electricity who is a customer of a licensee and includes, for purposes of filing a complaint with the Commission, or for any other reason that the Commission may determine, a person who is temporarily disconnected or who has applied for, but has yet to receive, an electricity service or is otherwise without an electricity service;

“control area” means a transmission system, or interconnected transmission systems and interconnected generating units, bounded by metering and telemetry equipment that permits a system operator to apply a generation control scheme in order to—

- (a) match the electrical output of the generating stations within the control area and energy purchased from entities outside the control area, with the load within the control area;
- (b) maintain scheduled interchange with other control areas, within the limits of good utility practice;
- (c) maintain the frequency of the control area’s electric power systems within reasonable limits in accordance with good utility practice;

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- (d) maintain power flows on transmission facilities within appropriate limits to preserve reliability;
- (e) provide sufficient generating capacity to maintain operating reserves in accordance with good utility practice;

"customer", in relation to a licensee, means a consumer of any service provided by such licensee under a contractual or other arrangement with such consumer;

"deemed licensee" means a person deemed in terms of section *seventy-five* to be licensed in terms of this Act;

"distribution," in relation to electricity, means the delivery of electricity to consumers;

"distribution system" means the facilities, consisting wholly or mainly of electric lines used for the distribution of electricity from grid supply points to the point of delivery to consumers, and includes any electrical plant and meters operated in connection with the distribution of electricity, but does not include any part of a transmission system;

"electric power system" means any system that enables the generation, transmission, distribution and supply of electricity;

"electricity industry" means the persons who in Zimbabwe are engaged in the business of providing electricity services or operating electric power systems;

"electricity service" means any service consisting of, the generation, transmission, distribution and supply of electricity;

"electricity undertaking" means any undertaking which engages in the business of generating, transmitting, distributing, or supplying electricity;

"generating station" means a station for generating electricity, including buildings, plant and machinery and all accessories used for that purpose and the site to be used for the station or accessories;

"generation" means the production at a generating station of electric power, energy and other generation products such as, but not limited to, reactive power;

"generation licence" means a licence referred to in section *forty-two*;

"grid code" means instructions, rules, procedures or guidelines for the operation and planning of an interconnected power system and accounting requirements relating thereto;

"independent transmission facility" means any transmission facility referred to in subsection (3) of section *forty-three*, that is built, owned and maintained by an independent transmission licensee, and which may include but not be limited to a transmission facility between two transmission grids; between two points on a single transmission grid; between a generating station and a transmission grid; or between a distribution system and a transmission grid;

"independent transmission licence" means a transmission licence issued in terms of subsection (3) of section *forty-three* to a company that is not an affiliate of a primary transmission licensee;

"licence" means a generation, transmission, bulk supply, distribution or retail supply licence issued by the Commission in terms of section *forty-six*;

"licensee" means any person who holds a licence issued in terms of this Act;

"lifeline tariff" means a tariff set by the Commission with prices that incorporate cross subsidies by other customers and which may be enjoyed by such group of consumers as the Commission may designate;

"local authority" means a municipal council, town council, rural district council, local board or provincial authority;

"market power" means the ability of a seller or group of sellers to profitably maintain prices above competitive levels, or to maintain prices while reducing the quality of product or service provided, for a significant period of time;

"Minister" means the Minister of Mines and Energy, or any other Minister to whom the President may from time to time assign the administration of this Act;

"owner," in relation to land or premises, means –

- (a) the person registered in the Deeds Registry as the owner of land or premises; or
- (b) in the case of land vested in the President, other than—
  - (i) Communal Land;
  - (ii) forest land; or
  - (iii) land referred to in paragraph (e);the Minister responsible for the management or administration of the land; or
- (c) in the case of Communal land, the Minister responsible for the administration of the Communal Land Act [*Chapter 20:04*]; or
- (d) in the case of forest land, the Forestry Commission; or
- (e) any person who lawfully holds or occupies land, including State land, in accordance with an agreement or an enactment under which he is entitled to obtain title to the land on the fulfilment of conditions prescribed in the agreement or enactment;

and includes—

- (i) the legal representative of an owner referred to in paragraph (a) or (e); and
- (ii) the liquidator of a company which is an owner referred to in paragraph (a) or (e) and which is in liquidation;

“prices” means the prices, rates, tolls and charges that apply to a service provided by a licensee;

“primary transmission licence” means a transmission licence issued in terms of subsection (1) and (2) of section *forty-three*;

“retail supply licence” means a licence to supply electricity to one or more consumers referred to in subsection (3) of section *forty-four*;

“Rural Electrification Fund” and “Rural Electrification Fund Board” means the Fund and Board established in terms of the Rural Electrification Fund Act [*Chapter 13:20*] (No. 3 of 2002);

“street” means any street, highway or road, or any part of a street, highway or road, whether or not at any time it has been declared to be a road in terms of the Roads Act [*Chapter 13:18*], and includes—

- (a) any bridge, ferry or pontoon over which such street, highway or road passes; and
- (b) any drift in the line of such street, highway or road; and
- (c) any approach, culvert, cutting, dam, ditch, drain, embankment, fence, grid, guard, kerb, parapet, subway or other work or thing belonging to or connected with or forming part of such street, highway or road; and
- (d) any sanitary lane or private street;

“supply” means the sale or trading of electricity, and “supplier” shall be construed accordingly;

“tariff” means a tariff approved by the Commission in terms of section *fifty-three* that specifies the prices and terms and conditions under which any electricity service is to be provided;

“trading” means any form of marketing, brokering or intermediation in the sale or purchase of electricity, whether or not such trading entails the purchase of electricity for resale, and whether or not title is taken to the electricity sold or transferred;

“transmission” means the conveyance of electric power and energy over a transmission system;

“transmission licence” means a primary or independent transmission licence;

“transmission system” means a system consisting wholly or mainly of high voltage electric lines for the conveyance of electricity within an electricity undertaking or from one electricity undertaking to another, including any transmission lines, transformers, switchgear and other works necessary for and used in connection with such electrical equipment, and such buildings as may be required to accommodate the transformers, switchgear and other works;

“Zambezi River Authority” means the Authority referred to in the Zambezi River Authority Act [*Chapter 20:23*].

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## PART II

### ESTABLISHMENT, FUNCTIONS AND POWERS OF ELECTRICITY REGULATORY COMMISSION

#### 3 Establishment of Commission

There is hereby established a Commission, to be known as the Electricity Regulatory Commission, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

#### 4 Objects and functions of Commission

(1) Subject to this Act, the Commission shall have the following principal objects—

- (a) to create, promote, and preserve efficient industry and market structures for the provision of electricity services, and to ensure the optimal utilisation of resources for the provision of such services;
- (b) to maximise access to electricity services by promoting and facilitating consumer connections to distribution systems in both rural and urban areas;
- (c) to ensure that an adequate supply of electricity is available to consumers;
- (d) to ensure that the prices charged by licensees are fair in the light of the need for prices to be sufficient to allow licensees to finance their activities and obtain reasonable earnings for their efficient operation;
- (e) to ensure safety, security, reliability, and quality of service in the production and delivery of electricity to consumers;
- (f) to ensure that regulation is fair and balanced for licensees, consumers, investors and other stakeholders in the electricity industry.

(2) For the furtherance of the objects referred to in subsection (1), the Commission shall perform the following functions—

- (a) promote and implement competition and private sector participation, when and where feasible;

- (b) establish or approve appropriate operating codes; grid codes and safety, security, reliability and quality standards;
- (c) establish appropriate consumer rights and obligations regarding the provision and use of electricity services;
- (d) license and regulate persons engaged in the generation, transmission, distribution and supply of electricity;
- (e) aid and advise stakeholders in the electricity sector in matters related to the generation, transmission, distribution and supply of electricity;
- (f) advise consumers regarding the efficient use of electricity;
- (g) advise the Minister on matters related to electricity systems and services;
- (h) participate internationally in matters related to electricity services;
- (i) arbitrate and mediate disputes among licensees and between licensees and consumers;
- (j) issue guidelines on such matters within its sphere of competence as it determines will be in the public interest;
- (k) undertake such other thing which it considers is necessary or convenient for the better carrying out of or giving effect to the objects of the Commission.

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(3) Subject to this Act, the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the First Schedule, either absolutely or conditionally and either solely or jointly with others.

(4) In the discharge of its functions, the Commission shall consult from time to time, to the extent the Commission considers appropriate, such persons or groups of persons who are or are likely to be affected by the decisions or orders of the Commission including licensees, the Rural Electrification Fund Board, the Zambezi River Authority, consumers of electricity, potential investors in electricity services and other interested parties.

(5) Subject to this Act, the Commission shall not, in the lawful exercise of its functions under this Act, be subject to the direction or control of any person or Authority.

### PART III

#### ELECTRICITY REGULATORY COMMISSION

#### 5 Commissioners

(1) Subject to subsection (2), the Commission shall consist of not less than five and not more than seven Commissioners, of whom at least three shall be full-time Commissioners, appointed in terms of this Act by the President after consultation with the Minister.

(2) The President shall appoint Commissioners from a list of names submitted to him by the Minister:

Provided that the Minister shall submit not more than two names for each position or vacancy in the Commission to be filled.

(3) In appointing Commissioners the President shall endeavour to secure that they are chosen from the public and private sectors, and, in particular, that at least two members are chosen for their experience or professional qualifications in the following fields or areas of competence—

- (a) the generation, transmission or distribution of electricity;
- (b) law, accountancy, economics, finance or administration.

#### 6 Terms of office and conditions of service of Commissioners

(1) Subject to this Part, a Commissioner shall hold office for a period of three years.

(2) A Commissioner shall continue in office after the expiry of his term until he has been reappointed or his successor has been appointed:

Provided that a Commissioner shall not hold office in terms of this subsection for longer than six months.

(3) Subject to section *fourteen*, a Commissioner shall hold office on such terms and conditions as the President may fix in relation to Commissioners generally.

(4) A Commissioner whose term of office has expired is eligible for reappointment:

Provided that no Commissioner may be reappointed for a third term in office.

(5) The terms and conditions of office of a Commissioner shall not, without the Commissioner's consent, be altered to his detriment during his tenure of office.

#### 7 Disqualifications for appointment as Commissioner

(1) A person shall not be appointed as a Commissioner and no person shall be qualified to hold office as a Commissioner who—

- (a) is neither a citizen of Zimbabwe nor permanently resident in Zimbabwe; or
- (b) has a financial interest in any business connected with the generation, transmission, distribution and supply of electricity, or is engaged in any activity connected with any electricity service or electric power system, or is married or connected to or associated with a person who has such an interest or is

engaged in such an activity, unless the President is satisfied that the interest or activity is indirect and passive and will not interfere with the person's impartial discharge of his duties as a Commissioner; or

- (c) has, in terms of a law in force in any country—
- (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
  - (ii) made an assignment to, or arrangement or composition with, his creditors which has not been rescinded or set aside; or
- (d) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—
- (i) in Zimbabwe, of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

and sentenced to a term of imprisonment imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon.

(2) A person who is —

- (a) a member of Parliament; or
- (b) a member of two or more other statutory bodies;

shall not be appointed as a Commissioner nor shall he be qualified to hold office as a Commissioner.

(3) For the purposes of paragraph (b) of subsection (2) a person who is appointed to a council, board or other authority which is a statutory body or which is responsible for the administration of the affairs of a statutory body shall be regarded as a member of that statutory body.

## 8 Vacation of office by Commissioner

A Commissioner shall vacate his office and his office shall become vacant—

- (a) three months after the date upon which he gives notice in writing to the Minister of his intention to resign, or on the expiry of such other period of notice as he and the Minister may agree; or
- (b) on the date he begins to serve a sentence of imprisonment imposed without the option of a fine—
  - (i) in Zimbabwe, in respect of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would constitute an offence;

or

- (c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of subsection (1) of section *seven*, or in terms of subsection (2) of that section, to hold office as a Commissioner; or
- (d) if he is required in terms of section *nine* to vacate his office.

## 9 Dismissal or suspension of Commissioners

(1) The President may require a Commissioner to vacate his office if the Commissioner—

- (a) has, subject to subsection (3), been found to have conducted himself in a manner that renders him unsuitable as a Commissioner, including a contravention of section *fourteen* or subsection (2) of section *thirty-one*; or
- (b) has failed to comply with any term or condition of his office fixed by the President in terms of subsection (3) of section *six*; or
- (c) is mentally or physically incapable of efficiently carrying out his functions as a Commissioner.

(2) The President, on the recommendation of the Minister, may suspend a Commissioner—

- (a) whom he suspects on reasonable grounds of having been guilty of conduct referred to in paragraph (a) of subsection (1); or
- (b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that Commissioner is so suspended he shall not carry out any functions as a Commissioner.

(3) A Commissioner suspended in terms of paragraph (a) of subsection (2) shall be given notice in writing at the time of the suspension of the grounds for the suspension and the Minister shall, within fourteen days of such notice, set up a board of inquiry of not more than three persons chaired by a person who has held or holds office as a judge to inquire into the question of the removal of the Commissioner.

(4) A board appointed under subsection (3) shall have the same rights and powers as Commissioners under the Commissions of Inquiry Act [*Chapter 10:07*].

(5) After due inquiry a board appointed under subsection (3) must report its findings in writing to the President together with its recommendation as to whether or not the Commissioner must be removed from office.

(6) A Commissioner removed in terms of this section shall not be eligible for reappointment nor may he serve the Commission in any other capacity.

## 10 Filling of vacancies on Commission

Subject to section *five*, on the death of or vacation of office by a Commissioner, the President shall appoint a qualified person to fill the vacancy.

## 11 Chairman and vice-chairman of Commission

(1) The President shall designate one of the Commissioners as chairman of the Commission and another Commissioner as vice-chairman of the Commission.

(2) The vice-chairman of the Commission shall perform the chairman's functions whenever the chairman is for any reason unable to perform them.

(3) The chairman or vice-chairman of the Commission may at any time resign his office as such upon one month's notice in writing to the Minister.

(4) Whenever the office of chairman or vice-chairman of the Commission falls vacant, the President shall select another Commissioner to fill the vacancy within three weeks.

## 12 Meetings and procedure of Commission

(1) The Commission shall meet for the dispatch of business as often as is necessary or expedient and, subject to this section, may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit.

(2) The chairman or, in his absence, the vice-chairman of the Commission shall preside at all meetings of the Commission.

(3) Subject to section *fourteen*, at all meetings of the Commission each Commissioner present shall have one vote on each question before the Commission and, in the event of an equality of votes, the chairman of the Commission shall have a casting vote in addition to a deliberative vote.

(4) The Commission may conduct its business through circulars to all the Commissioners:

Provided that, if a Commissioner requires that a matter be placed before all the Commissioners, this subsection shall not apply to such matter.

## 13 Remuneration and expenses of Commissioners

(1) Commissioners shall be paid from the funds of the Commission—

(a) such remuneration, if any, as the Minister may from time to time fix for such Commissioners; and

(b) such allowances, if any, as the Minister may from time to time fix to meet any reasonable expenses incurred by such Commissioners in connection with the business of the Commission.

(2) The remuneration of a Commissioner shall not, without the Commissioner's consent, be altered to his detriment during his tenure of office.

## 14 Commissioners to disclose certain connections and interests

(1) In this section—

"relative", in relation to a Commissioner, means the Commissioner's spouse, child, parent, brother or sister.

(2) If —

(a) a Commissioner —

(i) knowingly acquires or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or

(ii) owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner; or

(iii) knows or has reason to believe that a relative of his—

A. has acquired or holds a direct or indirect pecuniary interest in any matter that is under consideration by the Commission; or

B. owns any property or has a right in property or a direct or indirect pecuniary interest in a company or association of persons which results in the Commissioner's private interests coming or appearing to come into conflict with his functions as a Commissioner;

or

(b) for any reason the private interests of a Commissioner come into conflict with his functions as a Commissioner;

the Commissioner shall forthwith disclose the fact to the Commission.

(3) A Commissioner referred to in subsection (2) shall take no part in the consideration or discussion of, or vote on, any question before the Commission which relates to any contract, right, immovable property or interest referred to in that subsection.

(4) A Commissioner who contravenes subsection (2) or (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 20 of Act 6 of 2005]

## **15 Validity of decisions and acts of Commission**

(1) No decision or act of the Commission or act done under the direction of the Commission shall be invalid on the ground that—

- (a) the Commission consisted of fewer than the minimum number of persons prescribed in subsection (1) of section *five*; or
- (b) a disqualified person acted as a Commissioner at the time the decision was taken or act was done or authorised.

(2) If a Commissioner referred to in section *fourteen* takes part in the consideration of a matter in which his private interests are in conflict with his functions as Commissioner or if a decision or act would, but for subsection (1), be invalid the other Commissioners shall vote to determine whether or not to ratify any such decision or action as soon as possible after they become aware that the decision or action was taken in the circumstances described in section *fourteen* or subsection (1).

## **16 Proceedings of Commission**

(1) The Commission shall be entitled to conduct its proceedings, consultations and hearings at its headquarters or at any other place in Zimbabwe.

(2) The manner in which the Commission shall discharge its functions and conduct its proceedings, consultations and hearings, including procedures for the participation of licensees, customers and other persons, shall be as prescribed in regulations made in terms of section *sixty-five*.

## **17 Decisions and orders of Commission to be in writing**

(1) The chairman of the Commission shall ensure that every decision and order by the Commission-

- (a) contains the reasons for the decision or order;
- (b) is properly recorded in writing;
- (c) is made available to all parties interested in the decision or order and may be obtained or inspected by members of the public at reasonable times and places.

(2) Every recommendation, declaration, decision or order of the Commission if purporting to be signed by a person describing himself as the chairman of the Commission, shall, unless the contrary is shown, be deemed to be made by the Commission and to have been so signed, and may be proved by the production of a certified copy thereof.

## **18 Commission to give notice to interested parties**

Where the Commission is required or otherwise decides to hold a hearing, all persons having an interest in such matter shall, as far as reasonably practicable, be notified of the questions at issue and given facilities for making representations.

## **19 Commission to consult experts on technical questions**

When any matter arises which entails the consideration of any professional or technical question, the Commission may consult such persons as may be qualified to advise thereon.

## **PART IV**

### **HEARINGS BY COMMISSION**

## **20 Hearings by Commission**

The Commission may hold a hearing into any matter, which under this Act or any other enactment it is required or permitted to consider or on which it is required or permitted to take any action.

## **21 Questions of law may be referred to High Court**

(1) If any question of law arises in the course of a hearing under this Part, the Commission may, on its own initiative or at the request of any interested party to the hearing, reserve that question for the decision of the High Court.

(2) Where a question has been reserved in terms of subsection (1), the Commission shall state the question in the form of a special case and file it with the Registrar of the High Court.

(3) The procedure to be followed on a special case stated in subsection (2), and the powers of the High Court in regard to it, shall be as set out in the High Court Act [*Chapter 7:06*] and rules made under that Act in regard to special cases.

## **22 Powers of Commission to summon witnesses and to take evidence at hearings**

(1) For the purpose of any hearing, the Commission shall have the same powers as a magistrates court to summon witnesses, to cause the oath to be administered to them, to examine them and to call for the production of documents.

(2) A subpoena for the attendance of a witness or for the production of any book, document or record before the Commission shall be signed and issued by the chairman of the Commission, and shall be served in the same manner as a subpoena for the attendance of a witness at a criminal trial in a magistrates court.

(3) Any person subpoenaed to give evidence or to produce any book, document or record or giving evidence before the Commission shall be entitled to the same privileges and immunities as if he were subpoenaed to attend or were giving evidence at a trial in a magistrates court.

### **23 Penalty for witness failing to attend hearing or give evidence or produce documents**

(1) Any person who has been subpoenaed to give evidence or to produce any book, document or record at a hearing of the Commission and who-

- (a) fails, without reasonable excuse, to attend in obedience to the subpoena; or
- (b) at the hearing-
  - (i) refuses without reasonable excuse to be sworn as a witness; or
  - (ii) having been sworn, refuses without reasonable excuse to answer fully and satisfactorily any question lawfully put to him, not being a question he may refuse to answer in terms of subsection (3) of section *twenty-two*; or
  - (iii) refuses, without reasonable excuse, to produce any such book, document or record, he is lawfully required to produce;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 20 of Act 6 of 2005]

### **24 Penalty for giving false evidence at hearing**

Any person who, after having been duly sworn, wilfully gives false evidence before the Commission, knowing such evidence to be false or not knowing or believing it to be true, may be charged with perjury.

## **PART V**

### **FINANCIAL PROVISIONS**

### **25 Annual programmes and budgets of Commission**

(1) On or before the beginning of every financial year the Commission shall prepare and submit to the Minister a budget showing the expenditure which the Commission proposes to incur in respect of that financial year.

(2) During any financial year the Commission may prepare and submit to the Minister a supplementary budget relating to expenditure which—

- (a) was not, for good reason, provided for in the annual budget; or
- (b) was inadequately provided for in the annual budget due to unforeseen circumstances.

(3) A supplementary budget shall be deemed to form part of the annual budget of the Commission for the financial year to which it relates.

(4) The Commission may vary a budget prepared under this section:

Provided that no variation may be made which has the effect of increasing the total amount of expenditure provided for in the budget.

### **26 Funds of Commission**

The funds of the Commission shall consist of—

- (a) fees, charges and other income accruing to the Commission from the issuing of licences and the doing of things by it in terms of this Act; and
- (b) levies, together with any interest or surcharge payable thereon, collected in terms of Part VI; and
- (c) such other moneys as may vest in or accrue to the Commission, whether in the course of its operations or otherwise.

### **27 Surplus funds of Commission to be appropriated to Rural Electrification Fund**

Any surplus of income over expenditure at the end of the Commission's financial year shall be appropriated to the Rural Electrification Fund.

### **28 Financial year of Commission**

The financial year of the Commission shall be the period of twelve months ending on the 31st December in each year or such other period as the Minister may, by notice in a statutory instrument, determine.

### **29 Accounts of Commission**

(1) The Commission shall ensure that proper accounts and other records relating to such accounts are kept in respect of all the Commission's activities, funds and property, including such particular accounts and records as the Minister may require.

(2) Not later than three months after the end of each financial year of the Commission, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year.

### 30 Audit of Commission's accounts

(1) Subject to the Audit and Exchequer Act [*Chapter 22:03*], the Commission shall appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) The accounts kept by the Commission in terms of subsection (1) of section *twenty-nine* shall be examined by the auditors appointed in terms of subsection (1).

(3) The auditors appointed in terms of subsection (1) shall make a report to the Commission and the Minister on the statement of accounts prepared in terms of subsection (2) of section *twenty-nine* and such report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's affairs.

(4) The Minister may require the Commission to obtain from its auditors appointed in terms of subsection (1) such other reports, statements or explanations in connection with the Commission's operations, funds and property as the Minister may consider necessary, and the Commission shall forthwith comply with any such requirement.

### 31 Powers of auditors

(1) An auditor referred to in section *thirty* shall be entitled at all reasonable times to require to be produced to him all accounts and other records relating to such accounts which are kept by the Commission or its agents and to require from any Commissioner or employee or agent of the Commission such information and explanations as in the auditor's opinion are necessary for the purposes of his audit.

(2) Any Commissioner or employee or agent of the Commission who fails without just cause to comply with a requirement of an auditor in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection as amended by section 20 of Act 6 of 2005]

## PART VI

### LEVIES

### 32 Imposition of levies

(1) Subject to this Part, the Commission, with the approval of the Minister, may by notice in a statutory instrument impose one or more levies on licensees.

(2) In a statutory instrument referred to in subsection (1), the Commission may prescribe—

- (a) the persons responsible for the payment of the levy; and
- (b) the persons responsible for the collection and remittal of the levy; and
- (c) the manner and times at which the levy shall be paid, collected and remitted; and
- (d) the imposition of interest and additionally, or alternatively, a surcharge if the levy is not paid within the time prescribed; and
- (e) the books and records to be kept and the returns and information to be furnished to the Commission or any other person for the purpose of the levy.

(3) Any statutory instrument made in terms of this section shall be laid before Parliament as soon as may be after it has been published and, if a resolution is passed within the next fourteen days on which Parliament has sat next after the statutory instrument is laid before it requesting the Commission to rescind or vary the statutory instrument, it shall forthwith be rescinded or varied, as the case may be, by further statutory instrument but without prejudice to the validity of anything previously done thereunder.

### 33 Withdrawal, suspension or increase of levy

Without derogation from section 21 of the Interpretation Act [*Chapter 1:01*], the Commission, with the approval of the Minister, may by notice in statutory instrument—

- (a) withdraw any levy; or
- (b) suspend any levy in whole or in part; or
- (c) increase the rate or incidence of any levy;

Provided that subsection (3) of section *thirty-two* shall apply to a statutory instrument increasing the rate or incidence of any levy.

### 34 Recovery of unpaid levies

A levy and any interest or surcharge connected therewith shall be a debt due to the Commission and any amount of levy or any such interest or surcharge thereon that is not paid, collected or remitted may be recovered by the Commission by proceedings in a court of competent jurisdiction.

## PART VII

### MISCELLANEOUS PROVISIONS RELATING TO COMMISSION

#### 35 Minister may give policy directions

The Minister may give directions to the Commission relating to the policy the Commission has to observe in the exercise of its functions including, in particular, directions relating to tariffs chargeable by licensees.

#### 36 Execution of contracts and instruments by Commission

Any agreement, contract or instrument approved by the Commission may be entered into or executed on behalf of the Commission by any persons generally or specially authorised by the Commission for that purpose.

#### 37 Reports of Commission

(1) In addition to any report which the Commission is required to submit to the Minister in terms of this Act or the Audit and Exchequer Act [*Chapter 22:03*], the Commission—

- (a) shall submit to the Minister such other reports as the Minister may require; and
- (b) may submit to the Minister such other reports as the Commission considers advisable.

(2) The Minister shall, within six months of the end of the Commission's financial year, lay before Parliament a report submitted to him by the Commission in terms of subsection (1), together with the statement of accounts and auditor's report for the preceding financial year of the Commission referred to in sections *twenty-nine* and *thirty*.

#### 38 Staff of Commission

(1) The Commission shall employ such persons as it considers expedient for the better exercise of its functions.

(2) The Commission may assign to its staff such of its functions as the Commission thinks fit.

(3) Any assignment of functions in terms of subsection (2) may be made either generally or specially and subject to such reservations, restrictions and exceptions as the Commission may determine, and may be revoked by the Commission at any time.

(4) Anything authorised or required by or under this Act to be done by the Commission, other than the making of an order in terms of subsection (3) of section *fifty*, may be done by any member of the staff of the Commission who has been authorised either generally or specifically by the Commission for that purpose.

#### 39 Exemption from liability for Commission

No liability shall attach to the Commission or to any employee of the Commission or to a Commissioner for any loss or damage sustained by any person as a result of the *bona fide* exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the Commission or any Commissioner:

Provided that this section shall not be construed so as to prevent any person from recovering compensation for any loss or damage sustained by him which was caused by negligence or wilful default.

## PART VIII

### LICENCES

#### 40 Licensing requirement

(1) No person, except in terms of the appropriate licence issued under this Act, shall in Zimbabwe operate an electricity undertaking which generates, transmit, distributes, or supplies electricity in excess of 100 kilowatts (kW), or such other amount as the Commission may from time to time prescribe by notice in a statutory instrument.

(2) The Commission may issue a temporary licence to any person for a period not exceeding one year if it determines that it is necessary in the public interest to do so.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 20 of Act 6 of 2005]

#### 41 General duties of licensees

(1) In the discharge of its duties, a licensee shall comply with the provisions of its licence, any regulations made in terms of section *sixty-five* and any grid code, code of conduct and other requirements issued by the Commission from time to time.

(2) Subject to the terms and conditions of its licence, it shall be the duty of each licensee to provide its licensed services efficiently and to plan, develop, construct, operate, and maintain an efficient and economical electric power system.

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## **42 Generation licence**

(1) Subject to this Act and such terms and conditions as the Commission may fix in the licence, a generation licence shall authorise the licensee to construct, own, operate and maintain a generation station for purposes of the generation and supply of electricity.

(2) Subject to this Act and the terms and conditions of its licence, the holder of a generation licence may supply electricity to any transmission, distribution or supply licensee who purchases electricity for resale and, with the approval of the Commission, to any one or more consumers:

(3) For purposes of subsection (2), a “holder of a generation licence” includes a generating company outside Zimbabwe that is entitled under an arrangement approved by the Commission or permitted by a licence issued to another licensee, to sell power to Zimbabwean licensees or consumers without a licence from the Commission.

## **43 Transmission and bulk supply licences**

(1) Subject to such terms and conditions as the Commission may fix in the licence, a primary transmission licence shall authorise the licensee to do any one or more of the following as may be specified in the licence—

- (a) to carry on grid construction, operation, and maintenance of transmission facilities within Zimbabwe;
- (b) to carry on the operation of an electric power system including, but not limited to, the following—
  - (i) generation scheduling, commitment and dispatch;
  - (ii) transmission scheduling and generation outage co-ordination;
  - (iii) transmission congestion management;
  - (iv) power pooling;
  - (v) international transmission co-ordination;
  - (vi) procurement and scheduling of ancillary services and system planning for long term capacity;
  - (vii) such other activities as may be required for the reliable and efficient operation of an electric power system.
- (c) to operate a power exchange including—
  - (i) energy accounting and settlement;
  - (ii) establishing and maintaining standards and protocols for the setting of electricity prices;
  - (iii) publishing prices and other market information;
  - (iv) such other activities as may be required for a reliable and efficient power exchange.

(2) The Commission may, should it determine that it is in the public interest, require that separate primary transmission licences be issued in respect of the functions identified in paragraph (a), (b), and (c) of subsection (1).

(3) Subject to such terms and conditions as the Commission may fix in the licence and to such agreements, if any, with other licensees or consumers or both, the Commission may issue one or more independent transmission licences in addition to any primary licence which shall authorise the licensee to construct, own, operate and maintain independent transmission facilities:

Provided that, unless specified to the contrary in the independent transmission licence, the licensee shall not have electric power system operation responsibilities in terms of paragraph (b) of subsection (1).

(4) Subject to such terms and conditions as the Commission may fix in the licence, a bulk supply licence shall authorise the licensee to purchase electric power for the purpose of reselling it in bulk to one or more transmission or other licensees and for that purpose, to engage in the purchasing, selling and trading of electricity.

(5) A primary transmission licensee may have the obligation to purchase power for the purpose of reselling in bulk to one or more licensees, and such bulk supply shall be provided pursuant to a bulk supply licence issued by the Commission.

(6) The Commission shall require, among other things, that the bulk supply licensee in terms of subsection (5) purchase power in an open, transparent, and competitive manner, subject to the review of the Commission, unless the circumstances require otherwise and the Commission allows or requires an alternative method.

## **44 Distribution and retail supply licences**

(1) Subject to such terms and conditions as the Commission may fix in the licence, a primary distribution licence shall authorise the licensee to construct, operate and maintain a distribution system and facilities including any of the following services as may be specified in the licence—

- (a) the connection of customers for the purpose of receiving a supply of electricity;
- (b) the installation, maintenance and reading of meters, billing and collection;
- (c) such other distribution service as may be prescribed for the purposes of this section.

(2) Subject to such terms and conditions as the Commission may fix in the licence, the Commission may issue an independent distribution licence in addition to a primary distribution licence.

(3) Subject to such terms and conditions as the Commission may fix in the licence, a retail supply licence shall authorise the licensee to provide a supply of electricity to its customers and, for that purpose, to engage in the purchasing, selling and trading of electricity;

(4) A distribution licensee may be required to provide a supply of electricity to its distribution customers, and such supply shall be provided pursuant to a retail supply licence issued by the Commission.

(5) A retail supply licensee in terms of subsection (3) shall purchase power for resale from a bulk supply licensee and may, with the prior approval of the Commission, purchase power from other sources, and all purchases of power by the licensee shall be done in an open, transparent and competitive manner, subject to the review of the Commission, unless the circumstances require otherwise and the Commission allows or requires an alternative method.

(6) Upon the licensing of one or more independent distribution licensees, or one or more retail supply licensees, the Commission may require that the primary distribution licensee be a default service provider to its distribution customers pursuant to a default service supply licence issued by the Commission, and that service shall be available to customers-

- (a) who have not selected another supplier, including new customers;
- (b) whose alternative supplier fails to meet its service obligations;
- (c) who, but for the default service provider, would be without a supply of electricity;

Provided that, in any instance in which the customer does not have a supply of electricity because of the customer's failure to meet his obligations, the default licensee shall be entitled to take such steps, as approved by the Commission, as may be appropriate in the circumstances before providing such service

#### **45 Restrictions on licensees**

(1) A licensee shall not assign or transfer his electricity undertaking, or any part thereof, by way of sale, mortgage, lease, exchange or otherwise without the prior consent of the Commission:

Provided that, should the Commission determine that in any instance the circumstances so require, it may establish licence terms and conditions providing its specific or general consent for any or all of the foregoing.

(2) No licensee shall, without the prior written consent of the Commission, acquire by purchase or otherwise, or affiliate with, the licence or undertaking of any other licensee or person: that is in the business of electricity generation, transmission, distribution or supply:

Provided that the Commission may as part of its consent impose conditions such as, but not limited to, adherence to any code of conduct.

#### **46 Licence applications**

(1) An application for a licence shall be made to the Commission in the form and manner prescribed and be accompanied by the prescribed fee, if any, and such information or documents as may be prescribed or as it may require, including information concerning any tariff required in terms of section *fifty-three*.

(2) An applicant for a licence who is an affiliate of a body corporate which has applied for or holds another such licence shall disclose such interest to the Commission in his application.

(3) For purposes of subsection (2), an "affiliate of a licensee" includes a generating company outside Zimbabwe that is entitled, under an arrangement approved by the Commission or permitted by a licence issued to another licensee, to sell power to Zimbabwean licensees or consumers without a licence from the Commission.

(4) Deemed licensees shall submit applications for licences to the Commission within one year of the appointment of the Commission or such other later date as may be determined by the Commission for any one or more deemed licensees.

Provided that the Commission may not extend the date for any such application to a date later than two years from the effective date of this Act.

(5) Subject to subsection (7) if on consideration of an application in terms of subsection (1) the Commission is satisfied that—

- (a) the applicant will comply with such of the provisions of this Act, and any codes, standards, regulations and licence terms and conditions as apply to the electricity service or electric power system he intends to provide or operate; and
- (b) the grant of the licence does not infringe the rights of a prior licensee; and
- (c) the grant of the licence is in the public interest or, in the case of an applicant referred to in subsection (2), the grant of the licence is not detrimental to the public interest;

the Commission shall issue the appropriate licence to the applicant.

(6) Within thirty days after the issue of a licence referred to in subsection (5) the licensee shall, at his own expense, cause the licence to be published in a newspaper circulating in the area in which he intends to operate as a licensee.

(7) If on consideration of an application in terms of subsection (1), the Commission is not satisfied as to the matters referred to in subsection (5), it shall refuse to issue a licence to the applicant concerned:

Provided that—

- (a) before refusing to issue a licence on the ground that it is not satisfied as to the matters referred to in subsection (4), the Commission shall notify the applicant in writing that it proposes to refuse the

application and of its reasons for doing so, and shall afford the applicant an adequate opportunity to make representations in the matter;

(b) within ten days after deciding to refuse to issue a licence on any ground, the Commission shall notify the applicant in writing of its decision and of the reasons for it.

(8) The period between the Commission's receipt of an application in terms of subsection (1) and all documents and information submitted in support of it, and the date on which it notifies the applicant of its decision or proposed decision in terms of subsection (5) or (7), as the case may be, shall not exceed six months unless the applicant consents to an extension of the period.

(8) Notwithstanding subsections (1) to (7) of this section, the Commission may establish simplified procedures for undertakings and businesses that are limited in size and scope so as to expedite the application and licensing process.

#### **47 Terms and conditions of licences**

(1) A licence shall be issued subject to such terms and conditions as may be prescribed or as the Commission may reasonably determine in circumstances such as the size and scope of the undertaking or business, whether it is to be a monopoly or competitive service, whether the service is to be provided pursuant to a contract between the parties, and whether the service is to be provided to a consumer or to another licensee:

Provided that in the case of a licensee whose services are provided pursuant to a contract such as a power purchase agreement, the Commission may incorporate in the licence the contractual obligations of the licensee or declare the terms and conditions of the contract to be the terms and conditions of the licence or part thereof.

(2) In the case of a licence issued to an applicant referred to in subsection (2) of section *forty-six*, the licence may be issued subject to the condition that the licensee shall divest himself within a specified time of any holding of shares in another licensee or such other conditions, including adherence to any code of conduct, that the Commission determines to be in the public interest.

(3) In issuing or renewing a distribution licence, the Commission may impose a condition requiring the licensee to make such reasonable provision as may be specified by the Commission in the licence for the facilitation of rural electrification in the proximity of the service.

(4) Without derogation to the generality of subsection (1), the terms and conditions of a licence may require the licensee to:

- (a) enter into agreements on specified terms with other persons for the provision of or use of electric lines and associated equipment operated by the licensee;
- (b) purchase power and other resources in an economical and transparent manner;
- (c) refer disputes for arbitration, mediation, or determination by the Commission.

(5) A licence may require the licensee to provide information on a periodic basis, in such form and detail as the Commission may determine.

(6) Unless expressly indicated in the licence, the grant of a licence shall not hinder or restrict the grant of a licence to another person for a like purpose and in the absence of such express indication, the licensee shall not claim any exclusivity:

Provided that the Commission may allow a licensed activity to be exclusive for all or part of the period of the licence, for a specific purpose, for a geographical area, or for some combination of the foregoing.

(7) A licence may contain terms and conditions for the licence to cease to have effect or to be modified or amended by the Commission in such circumstances as may be specified in the licence or as may be determined by the Commission.

(8) As a condition of its licence, every licensee shall, unless expressly exempted by its licence, prepare and submit to the Commission each year an annual statement of accounts in such form, and containing such particulars as the Commission may require.

(9) The Commission shall include in each licence such details as it determines are required regarding the rights and obligations of the licensee, and their devolution at the end of its licence term.

(10) A licence shall be valid for a period of up to, but not exceeding, thirty years as may be determined by the Commission:

Provided that the Commission may extend the period of a licence, taking into account the nature of the undertaking or business, for an additional period not exceeding twenty years should it determine that it is in the public interests to do so.

#### **48 Renewal of licences**

(1) Subject to this Act, the holder of a licence may apply for its renewal before it expires.

(2) An application for the renewal of a licence shall be made to the Commission in the form and manner and within the period prescribed, and be accompanied by the prescribed fee, if any.

(3) Section *forty-six* shall apply, *mutatis mutandis*, to the renewal of licences.

#### **49 Amendment of licences**

(1) Subject to this section, the Commission may at any time amend a licence or any term or condition of a licence—

- (a) to correct any manifest error in the licence; or
- (b) if the licensee requests the amendment; or
- (c) if the amendment is pursuant to a condition of the licence imposed in terms of subsection (7) of section *forty-seven* or subsection (5) of section *fifty-one*.

(2) Where a licensee makes an application for the amendment of his licence, he shall publish a notice of the proposed alterations or amendments to his licence in such manner and with such particulars as may be specified by the Commission stating the period within which objections or representations in connection with the amendments may be made to the Commission and the Commission shall not amend any licence until all objections received by it have been considered.

(3) In the case of an application proposing alterations or amendments to a licence of a licensee who provides services to an area covering a cantonment; aerodrome or camp or any building or place occupied by the Government for defence purposes, the Commission shall obtain the consent of the Government before making the alteration or amendment to the licence.

(4) Before making an alteration or amendments in a licence otherwise than in terms of paragraph (a) or (b) of subsection (1), the Commission shall publish the proposed alterations or amendments stating the period within which objections or representations may be made to the Commission and the Commission shall consider all such objections or representations.

#### **50 Enforcement of licences**

(1) Without derogation from its powers in terms of section *fifty-one*, where the Commission is satisfied that a licensee is contravening, has contravened or is likely to contravene any of the conditions of his licence, the Commission may serve upon the licensee an order—

- (a) requiring the licensee to do, or not to do, such things as are specified in the order for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the licence; and
- (b) stipulating the period within which any requirement referred to in paragraph (a) shall be commenced and completed;

and notice of the order shall be published by the Commission in such manner as it considers appropriate to draw the attention of other persons affected or likely to be affected by the contravention or threatened contravention of the licence.

(2) Before serving an order in terms of subsection (1), the Commission shall serve a notice upon the licensee concerned—

- (a) specifying the grounds upon which the order is to be issued and what the Commission considers is required for the purpose of rectifying or avoiding any contravention or threatened contravention of any condition of the licence; and
- (b) stipulating the maximum period that the Commission considers reasonable for the implementation of any requirement it proposes to order; and
- (c) calling upon the licensee, if he wishes to make representations, to make them to the Commission within such period from the date of service of the notice as it shall specify.

(3) After considering any representations made in terms of paragraph (c) of subsection (2), the Commission may serve, or refrain from or defer serving, an order in terms of subsection (1), or serve an order on different terms.

(4) An order served in terms of subsection (1) may specify a penalty for each day that the licensee subjected to the order is in default of compliance with the order, not exceeding the period and amount prescribed.

(5) The obligation to comply with an order served in terms of subsection (1) is a duty owed to any person who may suffer loss or damage by a contravention of it.

(6) Civil proceedings for specific performance, an interdict, damages, the recovery of any penalty imposed in terms of subsection (4) or other appropriate relief in respect of any contravention or threatened contravention of an order served in terms of subsection (1) may be brought against the licensee concerned by the Commission and, additionally, or alternatively, by any person referred to in subsection (5).

(7) The amount of any penalty imposed in terms of subsection (4) shall form part of the funds of the Commission.

#### **51 Cancellation of licences**

(1) On its own initiative or upon receiving a complaint from—

- (a) any consumer of electricity services, association of such consumers or association of traders or industrialists;
- (b) any company or person involved in the generation, transmission, distribution or supply of electricity;

the Commission may inquire into the conduct or functioning of any licensee in carrying out his obligations under the Act or regulations made in terms of section *sixty-five* or the terms and conditions of his licence.

(2) Subject to subsection (3), the Commission may, after an inquiry, whether or not conducted in the form of a hearing in terms of Part IV, cancel any licence if in its opinion-

- (a) the licence was issued through fraud or the misrepresentation or non-disclosure of a material fact by the licensee; or
- (b) the licensee has wilfully or unreasonably contravened any provision of this Act that is applicable to him; or
- (c) the licensee has failed to comply with any term or condition of the licence, the breach of which is expressly declared by such licence to render it liable to cancellation; or
- (d) the financial position of the licensee is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by his licence:

Provided that the Commission must, before deciding to cancel the licence in terms of this paragraph, determine that the licensee will not be able to resolve its financial problems within a reasonable time, given the circumstances.

(3) Before cancelling a licence in terms of subsection (1), the Commission shall notify the licensee in writing of its intention to cancel the licence concerned and the reasons for doing so, and may allow the licensee an opportunity to make representations in the matter, or to demonstrate that circumstances have changed so that cancellation may no longer be warranted.

(4) If, at the conclusion of the inquiry in terms of subsection (2), the Commission is satisfied for any reason specified in subsection (2) that it is in the public interest that the licence concerned should be cancelled, the Commission may, by notice in writing to the licensee, cancel the licence or proceed in terms of subsection (5), or take such other action as it considers appropriate.

(5) Instead of cancelling a licence, the Commission may allow the licence to remain in force subject to such further terms and conditions as it may deem necessary to impose, and such terms and conditions shall form part of the licence.

(6) In the event that the Commission decides to cancel a licence, it shall serve on the licensee a notice of cancellation fixing the date on which the cancellation shall take effect and the Commission shall make such interim arrangements in regard to the undertaking of the licensee for maintaining continuity in the provision of its electricity service as the Commission may consider appropriate.

## **52 Pricing methodology and accounting procedures**

(1) The Commission shall prepare a pricing methodology for use by the Commission in setting prices and accounting procedures that licensees will use when providing financial and other information to the Commission.

(2) In preparing the pricing methodology and accounting procedures, referred to in subsection (1), the Commission shall-

- (a) consult licensees, the Rural Electrification Fund Board, the Zambezi River Authority and such persons as it considers necessary or expedient to consult;
- (b) obtain evidence, information or advice from any person who, in the Commission's opinion, possesses expert knowledge which is relevant in the preparation of the methodology or procedures.

(3) On completion of the pricing methodology and accounting procedures, referred to in subsection (1), the Commission shall give notice in the Gazette and in a newspaper with wide circulation, of the places at which the pricing methodology and accounting procedures will be publicly exhibited and the period not being less than thirty days after the publication of the notice in the Gazette, within which objections or representations in connection with the same may be made to the Commission;

(4) If, after the period specified in a notice in terms of subsection (3)-

- (a) no objections or representations have been received in response to the notice, the Commission may confirm the pricing methodology and the accounting procedures referred to in subsection (1); or
- (b) objections or representations have been received in response to the notice, the Commission shall consider all the objections and representations and may either-
  - (i) confirm the pricing methodology and accounting procedures referred to in subsection (1); or
  - (ii) carry out such further consultations as it considers necessary.

(5) The Commission shall fix the date on which the pricing methodology and the accounting procedures referred to in subsection (1) shall come into operation and it shall cause notice to be given in the Gazette of that date.

(6) If it appears to the Commission that the pricing methodology or accounting procedures that have come into operation in terms of subsection (5) should be materially changed, the Commission shall give notice in the Gazette and in a newspaper with wide circulation of the proposal to change the methodology or accounting procedures and of the places at which the proposed changes are exhibited and the period not being less than thirty

days after the publication of the notice in the Gazette, within which objections or representations in connection with the proposal may be made;

(7) After taking into account any objections or representations received in response to a notice in terms of subsection (6), the Commission may confirm the proposed changes to the methodology or accounting procedures and shall thereafter incorporate such changes.

(8) Every person upon whom any function has been conferred or imposed in connection with setting prices and tariffs and submitting information to the Commission shall be bound by a pricing methodology or accounting procedure that has come into operation in terms of subsection (5).

### **53 Electricity tariffs and prices**

(1) No prices or tariffs in connection with the provision of an electricity service or operation of an electric power system by a licensee or proposed licence shall have effect unless such prices or tariffs have been approved or, in the case of any service determined by the Commission after consultation with the Minister, fixed by the Commission in terms of this section.

(2) An application for the fixing or approval of prices and tariffs shall be made by a licensee or proposed licensee to the Commission in the form and manner prescribed or together with the application for the licence, as the case may be.

(3) The Commission shall, subject to the following principles, fix or approve prices and tariffs for licensees with a view to—

- (a) enabling an efficient licensee to recover the full costs of its business activities, including a reasonable return;
- (b) providing incentives for the continued improvement of the technical and economic efficiency with which the services are provided;
- (c) protecting consumers while keeping them informed about the cost their consumption imposes on the licensee's business;
- (d) avoiding undue discrimination between customers and customer categories;
- (e) phasing out or substantially reducing cross subsidies.

(3) The application of the principles in subsection (2) shall not preclude the Commission from allowing a lifeline tariff for some customers.

(4) The application of the principle in subsection (3) shall not preclude the Commission from allowing a lifeline tariff for some customers.

(5) The Commission shall take into account any subsidy provided by the Rural Electrification Fund or from any other source, whether direct or by way of favourable financing terms or in any other manner, in the fixing or approving of prices and tariffs.

(6) Notwithstanding subsection (3), the Commission shall have the authority to approve prices and tariffs that are established pursuant to the terms and conditions of a contract between licensees or between a licensee and one or more customers.

(7) For the purposes of subsection (6), "prices and tariffs that are established pursuant to a contract" includes methods and formulas which allow for the calculation of prices and tariffs.

(8) Notwithstanding paragraph (d) of subsection (3), in fixing or approving prices and tariffs the Commission may differentiate among consumers on the basis of differences in total electricity consumption, the time periods on which electricity is consumed, load factor, power factor, voltage levels, and other such criteria as affect the cost of providing a service.

(9) Any fines or penalties levied against a licensee in terms of this Act or any other law or regulation shall not be chargeable to the licensee's customers.

(10) An applicant for approval of prices and tariffs shall publish notice of his application in a manner to be determined by the Commission, and the applicant shall publish notice of the prices and tariffs approved by the Commission in such manner as the Commission may determine.

(11) Every licensee shall keep at his office a current copy of the prices and tariffs as approved by the Commission and, make a copy available for inspection on request by any person free of any charge during the licensee's normal working hours.

(12) The Commission shall render its decision on an application for tariffs within four months of the date of the application unless the applicant consents to a longer period.

### **54 Special provisions relating to transmission and distribution licensees**

(1) Subject to this section and to such exceptions or conditions as the Commission may include in the relevant licence, the Commission may apply any of the provisions of the Second Schedule to a transmission or distribution licensee:

Provided that the licensee concerned shall not be released from any duty attaching to or connected with any right or power so applied.

(2) The Commission shall not act in terms of subsection (1) unless it is satisfied, upon representations made by the licensee or proposed licensee concerned, that the electricity transmission or distribution concerned is not otherwise practicable.

(3) Without derogation from the generality of subsection (1), the exceptions and conditions there mentioned shall include such exceptions and conditions as appear to the Commission to be necessary or expedient for the purpose of securing—

- (a) that the physical environment is protected;
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary;
- (c) that funds are available for meeting any liabilities which may arise from the exercise of any rights or powers applied in terms of subsection (1).

(4) Any person who is aggrieved by any decision of the Commission made in terms of subsection (1) may appeal against such decision in terms of section *sixty-four*.

#### **55 Use of certain conduits for electricity purposes**

(1) In this section—

“authority” includes a local authority and statutory body;

“conduit” includes a tunnel or subway;

“relevant conduit” means—

- (a) a water main or any other conduit maintained by a water authority for the purpose of conveying water from one place to another; or
- (b) a public sewer.

(2) The functions of an authority with control of a relevant conduit shall include the power-

- (a) to carry out, or to authorise any person to carry out, any works in relation to that conduit for or in connection with the installation, maintenance, adjustment, repair or alteration of apparatus for purposes connected with the transmission or distribution of electricity; and
- (b) to keep the electricity apparatus installed in that conduit or to authorise any other person to keep that apparatus so installed; and
- (c) to authorise any person to enter that conduit to inspect electricity apparatus kept installed there; and
- (d) to enter into agreements on such terms including terms as to the payments to be made to the authority as it thinks fit, in connection with the doing of anything authorised by or under this section; and
- (e) to carry on an ancillary business consisting in the making and carrying out of such agreements.

(3) Where any enactment expressly or impliedly imposes any limitation on the use to which a relevant conduit may be put, that limitation shall not have effect so as to prohibit the doing of anything authorised by or under this section.

(4) Where the doing by an authority with control of a public sewer of anything authorised by this section would, apart from this subsection, constitute a contravention of any obligation imposed (whether by virtue of any conveyance or agreement or otherwise) on a licensee, the doing of that thing shall not constitute such a contravention to the extent that it consists in, or in authorising, the carrying out of works or inspections, or keeping of apparatus, wholly inside a public sewer.

(5) Subject to subsections (3) and (4), subsection (2) is without prejudice to the rights of any person with an interest in land on, under or over which a relevant conduit is situated.

#### **56 Notice of construction of railways and telecommunication works and control of other works**

(1) Any person who desires to construct or extend any railway or any works for telecommunications shall—

- (a) give one month’s notice in writing to the Commission of his intention to commence such construction or extension; and
- (b) furnish the Commission with a plan of the proposed railway or works, together with the particulars showing the manner and position in which the railway or works are intended to be constructed or extended and carried on and such further information as the Commission may require:

Provided that this subsection shall not apply to the construction or extension of such railway or telecommunication works as may be prescribed.

(2) If it appears to the Commission that—

- (a) the operation of or the equipment to be used in connection with a railway or works referred to in subsection (1) is likely to affect injuriously or interfere with the work or maintenance of electricity lines or the carrying on by a licensee of an electric power system; or
- (b) any electricity line is being affected injuriously or interfered with by the construction or operation of or the equipment used in connection with—
  - (i) a railway or work referred to in subsection (1); or
  - (ii) any railway works or other operations whatsoever;

the Commission shall notify in writing the person constructing or operating the railway or works of the action which that person is required to take in order to remedy or prevent the injury or interference.

(3) A person referred to in subsection (2) who, after receipt of a notice in terms of that subsection, proceeds with the construction or operation of the equipment concerned or continues to operate the railway or works without complying with the terms of that notice shall be liable for all loss and damage caused to any licensee by his failure to comply with the terms of that notice.

## PART IX

### CONSUMER PROTECTION AND LICENSEE PERFORMANCE STANDARDS

#### 57 Consumer protection standards

(1) The Commission shall require the licensees to develop and submit to the Commission for its review, the following-

- (a) customer service standards;
- (b) customer complaint handling standards and procedures;
- (c) codes of practice for the provision of assistance to special needs customers, such as the blind, disabled, elderly or severely ill;
- (d) procedures for dealing with, and assisting where necessary, customers who have difficulty paying bills;
- (e) procedures for applying for an electricity service;
- (f) procedures for disconnecting non-paying customers or customers in breach of any other terms and conditions of an applicable tariff or contract;
- (g) the information to be provided to consumers and the manner of its dissemination;

(2) The Commission may, develop model consumer protection standards providing for the matters referred to in subsection (1), and, if so, shall refer such model standards to the Rural Electrification Fund Board, for its comments and to any other persons it considers necessary or expedient to consult.

(3) Model standards shall be published in such manner as the Commission deems fit.

#### 58 Performance standards and codes

(1) The Commission shall require every licensee to develop and submit to the Commission for its review the following—

- (a) standards of overall performance in connection with the provision of electricity supply services and in connection with the promotion of the efficient use of electricity by consumers;
- (b) such grid codes, technical codes and manuals as may be required for the safe, reliable, and efficient operation of the electric power system of the licensee;
- (c) such other standards, codes, or manuals as the Commission may require.

(2) The Commission may, develop model standards, codes and manuals in relation to the matters referred to in subsection (1), and shall refer such model standards, codes and manuals to the Rural Electrification Fund Board for its comments, and to any other persons it considers necessary or expedient to consult..

(3) Model standards, codes and manuals shall be binding on licensees and shall be published in such manner as the Commission deems fit.

(4) Different standards, codes or manuals may be determined for different licensees under this section.

## PART X

### COMPETITION AND MARKET POWER

#### 59 Regulated services: competition and market power

(1) The Commission shall have the ongoing responsibility to monitor whether electricity services are being provided competitively and in particular shall determine whether any electricity service in respect of which prices or tariffs are fixed by the Commission in terms of section *fifty-three* (hereafter in this section referred to as a “regulated service”) can be provided competitively, and to provide a report on these matters, at least annually, to the Minister.

(2) Upon a finding by the Commission that it is in the public interest, that a regulated service should be freed from price or tariff regulation by the Commission, the Commission may, subject to the approval of the Minister, determine when and under what circumstances such service should be deregulated:

Provided that nothing in this section shall be construed to exempt such service from being licensed in terms of this Act.

(3) This section shall not be construed to limit the Commission’s authority to determine whether to restrict the introduction of competition to certain geographical areas or to certain licensees or customers on a temporary or permanent basis.

(4) Notwithstanding a determination that a regulated service can be provided competitively, the Commission may require that default service in terms of this Act continue to be offered by a licensee on a regulated basis.

(5) The Commission shall determine the pre-conditions and any transitional arrangements required for a regulated service to be offered competitively, including, but not limited to, codes of conduct, rules regarding

access to information, access to the electric system, and constraints against undue price discrimination in the offering of services.

(6) The Commission shall have the ongoing responsibility to monitor electricity undertakings and markets to determine whether there is, or may be, market power; for which purpose the Commission shall be entitled to—

- (a) require information from licensees;
- (b) undertake inquiries and hearings;
- (c) establish or contract with an independent entity to provide monitoring services for the purpose of this subsection.

(7) The Commission shall be required to provide to the Competition Commission and Tariff Commission any information or evidence of the presence of, or the possible development of, market power in the operation of the licensed undertakings or electricity markets.

(8) In the event that the Commission determines that there is any problem related to the development or unfair exercise of market power, it may—

- (a) issue such cease and desist orders as may be required upon the licensee or licensees concerned ;
- (b) levy monetary penalties upon the licensee or licensees concerned;
- (c) refer the matter to the Competition and Tariff Commission for investigation:

Provided that the Commission shall not utilise the powers in terms of paragraphs (a) or (b) except with the concurrence of the Competition and Tariff Commission.

(9) The Commission shall have the ongoing responsibility to consider issues associated with the competitive provision of electricity services and the prevention or mitigation of market power in its decisions and orders regarding matters such as, but not limited to, licence applications, the grant of licences, licence terms and conditions, the setting of prices and tariffs; and whether or not to approve a merger, acquisition or affiliation.

## PART XI

### OFFENCES

#### 60 False statements and declarations

Any person who, before the Commission or in any application for a licence under this Act, makes any statement which he knows to be false or does not have reasonable grounds to believe to be true shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section as amended by section 20 of Act 6 of 2005]

#### 61 Other offences

(1) Any person who—

- (a) fails or refuses to furnish a return or to supply information in the manner and in the time prescribed or furnishes a false or incomplete return or supplies false or incomplete information; or
- (b) wilfully delays or obstructs an inspector or police officer in the exercise of the powers or duties conferred or imposed upon him by or under this Act; or
- (c) fails or refuses, without reasonable cause, to give information to an inspector or a police officer when required to do so in terms of section *sixty-two* or gives false or incomplete information; or
- (d) fails to comply with any requirement contained in a notice served on him in terms of section *sixty-two* or with a requirement made by an inspector or police officer in terms of that section; or
- (e) wilfully destroys, injures or removes the equipment or apparatus of a licensee; or
- (f) contravenes subparagraph (1) of paragraph 10 of the Second Schedule;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 20 of Act 6 of 2005]

## PART XII

### GENERAL

#### 62 Inspections

(1) The Commission may appoint persons employed by it to be inspectors for the purposes of this Act and shall furnish each person so appointed with a certificate stating that he has been appointed as an inspector.

(2) An inspectors shall, in addition to any other functions that may be assigned to them by the Commission, be responsible for inspecting electricity undertakings to ensure the safety of operations and to investigate accidents.

(3) Subject to subsection (9), an inspector or a police officer may at all reasonable times enter premises—

- (a) of a licensee; or
- (c) on which he has reasonable cause to suspect an offence against this Act has been committed;

and shall have power to make such examination, inspection and inquiry and do such things as may appear to him necessary for ascertaining whether compliance has been made with this Act.

(4) Subject to subsection (6), all books, records, accounts and documents required to be kept by a licensee in terms of this Act shall be open to inspection at all reasonable times by an inspector or by a police officer.

(5) Subject to subsection (6), an inspector may inspect at all reasonable times a any generating station or equipment or apparatus or premises worked or used by or in the possession or under the control of a licensee.

(6) The powers of entry and inspection conferred by this section shall only be exercised with the consent of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence in terms of this Act or for the obtaining of evidence relating to such an offence or for the prevention or curtailment of conditions that may have an adverse effect on public health or safety.

(7) An inspector or police officer may, in the exercise of the powers conferred upon him by this section, seize any equipment, apparatus, book, record or document which he has reasonable cause to suspect will afford evidence of the commission of an offence against this Act and may retain it for so long as may be necessary for the purpose of any examination, investigation, trial or inquiry.

(8) An inspector may, in the exercise of the powers conferred upon him by this section, order a person referred to in subsection (5) to cease any activity, pending inquiry by the Commission, which is not in accordance with this Act or as the case may be, the terms and conditions of his licence.

(9) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon him by this section, exhibit the certificate issued to him in terms of subsection (1).

### **63 Dispute resolution**

(1) In the event of a dispute between licensees, the parties shall first attempt to resolve the dispute themselves.

(2) Where the licensees fail to resolve their dispute, one or more of the parties to the dispute may petition the Commission providing relevant documentation concerning—

- (a) the issues in dispute; and
- (b) the position of each of the parties with respect to these issues; and
- (c) the areas of agreement between the parties if any.

(3) The other parties to the dispute shall be afforded an opportunity by the Commission to respond to the petition and to provide any other information which may assist in the resolution of the dispute.

(4) The Commission after holding a hearing on the dispute in terms of Part IV, shall make its determination in the matter.

### **64 Appeals**

(1) Subject to this section, any person who is aggrieved by—

- (a) a decision of the Commission not to issue a licence; or
- (b) any term or condition of a licence issued to him, or a refusal by the Commission to specify a term or condition in a licence; or
- (c) a refusal by the Commission to renew a licence; or
- (d) any amendment of a licence or a refusal by the Commission to amend a licence; or
- (e) the cancellation of a licence; or
- (f) the grant or refusal by the Commission to grant any approval or authority in terms of this Act; or
- (g) the determination of disputes between licensees by the Commission; or
- (h) a decision of the Commission with respect to prices or tariffs; or
- (i) any other decision of the Commission;

may, appeal to the Administrative Court.

(2) For the purpose of determining an appeal noted in terms of subsection (1), the Administrative Court may require the Commission to furnish it with the reasons for the decision or action that is the subject of the appeal and a copy of any evidence upon which the reasons are based.

(3) An appeal in terms of subsection (1)—

- (a) shall not have the effect of suspending the decision or order appealed against;
- (b) shall be made in the form and manner and within the period prescribed in rules of court.

(4) For the purpose of determining an appeal in terms of subsection (1) the President of the Administrative Court shall be assisted by two assessors having ability or experience in the field of electricity.

(5) On an appeal in terms of subsection (1), the Administrative Court may confirm, vary or set aside the decision or action appealed against and may make such order, whether as to costs or otherwise, as the court thinks just.

(6) Prior to making an appeal in terms of subsection (1), an aggrieved person may, if the decision or action was taken on the basis of a manifest error, within ten days of being notified of the decision or action, request the Commission to reconsider the decision or action.

## **65 Regulations**

(1) The Minister may, after consultation with the Commission, make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which, in the opinion of the Commission, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for any or all of the following—

- (a) the administration of the affairs of the Commission, including, *inter alia*, the manner of holding of meetings, hearings and proceedings, arbitration and mediation proceedings, the conduct of inquiries and investigations, the rules by which evidence shall be taken at hearings, and, generally the conduct of its business;
- (b) the duties, powers, rights, and obligations of a licensee;
- (c) the procedure for applying for licences, and requirements with respect to the information and documentation to be submitted by applicants;
- (d) the procedure for amending or cancelling licences;
- (e) the determination of the standards of performance that will be required from licensees;
- (f) the information that will be required from licensees and the manner and form in which it shall be provided;
- (g) the method and manner by which will be determined the prices and tariffs that may be charged by licensees for their services;
- (h) fees, levies, and other charges that may be payable in terms of this Act by licensees or consumers;
- (i) the regulation of investments, assets and properties, and the interest in such assets and properties, held in connection with the electricity industry;
- (j) customer-related matters, such as complaint handling procedures, practices concerning customers with difficulties paying bills, and connection and disconnection procedures;
- (k) the resource procurement policies of, and the associated contracting by, the licensees, including, as may be applicable, the review and approval of same;
- (l) the regulatory treatment of rural electric schemes and investments;
- (m) procedures for addressing licensee mergers, acquisitions, affiliate relationships and transactions related thereto;
- (n) procedures for market power monitoring, and mitigation;
- (o) the terms and conditions for the provision of system access by transmission and distribution licensees to other licensees or entities;
- (p) fines and penalties that may be payable in terms of this Act;
- (q) such other regulations as may be required.

(3) Regulations made in terms of subsection (1) may provide for the imposition of penalties not exceeding level five or, in default of payment, imprisonment for a period not exceeding six months or to both such fine and such imprisonment for contravention of the regulations.

[Subsection as amended by section 20 of Act 6 of 2005]

## **66 Disclosure of confidential information and use of information acquired by inspectors, etc., for personal gain**

(1) If an inspector or Commissioner or employee of the Commission in the course of his duties as such acquires information relating to the financial affairs of any person, or to any commercial secret, he shall not for personal gain make use of such information, nor disclose it to any other person except—

- (a) for the purpose of legal proceedings under this Act or any other law; and
- (b) to the extent that it may be necessary to do so for the purpose of this Act or any other law, to another inspector or Commissioner or employee of the Commission.

(2) No inspector or Commissioner or employee of the Commission shall, for personal gain, make use of any information acquired by him in the course of his duties as such for a period of five years after the date on which he ceased to be an inspector, Commissioner or employee.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to the forfeiture of any proceeds accruing to him on account of the contravention and to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection as amended by section 20 of Act 6 of 2005]

## PART XIII

### TRANSITIONAL PROVISIONS; REPEALS AND SAVINGS

#### 67 Interpretation of Part XIII

(1) In this Part —

“appropriate successor company” means the successor company to the Authority or, where more than one successor company is formed, the successor company licensed to operate any of the services of generation transmission distribution and supply carried on by the Authority immediately before the fixed date, or any company formed to undertake the purchase, manufacture, maintenance and repair of equipment and apparatus used by any such company, as the case may be;

“securities”, in relation to the appropriate successor company, includes shares, debentures, bonds and other securities of the successor company, whether or not constituting a charge on the company’s assets;

“transfer date” means the date fixed by the Minister in terms of subsection (1) of section *seventy* or where two or more such dates are so fixed, the first such date.

#### 68 Formation of successor companies

(1) The Minister shall, not later than six months after the fixed date, take such steps as are necessary under the Companies Act [*Chapter 24:03*] to secure the formation of one or more of the following companies limited by shares, which shall be the successor company or successor companies to the Authority—

- (a) a company to take over the electricity generation plants of the Authority;
- (b) a company to take over the transmission system of the Authority;
- (c) a company to take over from the Authority the distribution and supply of electricity;
- (d) such other companies as the Minister may approve;
- (e) a company to hold the shares of the State in the companies referred to in paragraphs (a) to (d).

[Section substituted by section 2 of Act 3 of 2003]

#### 69 Initial and future shareholding in successor companies

(1) All the members of an appropriate successor company on its incorporation shall be persons nominated by the Minister, with the approval of the President, and shall hold their shares on behalf of the State.

(2) All the shares initially issued to members of the appropriate successor company on its incorporation shall be held by those members on behalf of the State.

(3) The interest of the State in the successor companies referred to in paragraphs (b), (c) and (e) of section *sixty-eight* shall not be diluted.

(4) The interest of the State in the successor companies referred to in paragraphs (a) and (d) of section *sixty-eight*—

- (a) shall not be diluted by the sale, transfer or disposal of shares initially issued to the State in terms of subsection (2) or the sale or transfer of any other securities issued to the State in terms of section *seventy-one*;
- (b) may, subject to paragraph (a), be diluted to the extent and in the manner approved by the Cabinet.

(5) For the purposes of this section—

“dilute”, in relation to the interest of the State in a successor company, means any sale, transfer or disposal of shares or securities in that company that will result in the State holding—

- (a) less than one hundred *per centum* of shares or securities in the successor company; or
- (b) shares representing less than one hundred *per centum* of the share capital of the successor company; or
- (c) shares of a value less than one hundred *per centum* of the share capital of the successor company; or
- (d) shares entitling the State to less than one hundred *per centum* of the votes in the affairs of the successor company.

[Section substituted by section 2 of Act 3 of 2003]

#### 70 Transfer of assets and liabilities of Corporation to successor company

(1) Subject to subsection (2), the Minister, in consultation with the Board of the Authority, shall by written notice fix the date on which the assets and liabilities of the Authority shall be transferred to the appropriate successor company:

Provided that the Minister may fix different dates for the transfer of different assets and liabilities.

(2) On the relevant transfer date, every asset and liability of the Authority which the Minister has directed shall be transferred to the appropriate successor company shall vest in that company.

(3) All bonds, hypothecations, deeds, contracts, instruments, documents and working arrangements that subsisted immediately before the relevant transfer date and to which the Authority was a party shall, on and after that date, be as fully effective and enforceable against or in favour of the appropriate successor company as if, instead of the Authority, the appropriate successor company had been named therein.

(4) It shall not be necessary for the Registrar of Deeds to make any endorsement on title deeds or other documents or in his registers in respect of any immovable property, right or obligation which passes to the appropriate successor company under this section, but the Registrar of Deeds, when so requested in writing by the successor company concerned in relation to any particular such property, right or obligation, shall cause the name of the successor company to be substituted, free of charge, for that of the Authority on the appropriate title deed or other document or in the appropriate register.

(5) Any licence, permit or authority held by the Authority under any enactment immediately before the relevant transfer date shall continue in force on and after that date as if it had been issued or granted to the appropriate successor company to which it was transferred, in terms of subsection (3), and may be amended, renewed or terminated accordingly.

(6) Any cause of action or proceeding which existed or was pending by or against the Authority immediately before the relevant transfer date may be enforced or continued, as the case may be, on and after that date by or against the appropriate successor company in the same way that it might have been enforced or continued by or against the Authority had this Act not been passed.

(7) Any guarantee or suretyship which was given or made by the Government or any other person in respect of any debt or obligation of the Authority and which was effective immediately before the transfer date of the principal debt or obligation shall remain fully effective against the guarantor or surety on and after that date in relation to the repayment of the debt or the performance of the obligation, as the case may be, by the appropriate successor company to which the principal debt or obligation was transferred.

#### **71 Issue of securities in consideration for transfer of assets**

(1) In consideration for the transfer of the assets of the Authority to the appropriate successor company by virtue of section *seventy* the successor company, if so required by the Minister, shall issue such securities as the Minister may direct—

- (a) to the Minister or a person nominated by the Minister; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to a person referred to in paragraph (a).

(2) Securities issued pursuant to a direction under subsection (1)—

- (a) shall be issued or allotted at such times and on such terms and conditions as the Minister may direct; and
- (b) shall be regarded as fully paid and treated for the purposes of the Companies Act [*Chapter 24:03*] as if they had been paid up by virtue of the payment to the appropriate successor company of their nominal value in cash.

(3) Any dividends or other moneys received by the Minister or by any other person on behalf of the State in right of or on the disposal of any security or right acquired by virtue of this section shall be paid into the Consolidated Revenue Fund.

(4) Stamp duty shall not be chargeable under the Stamp Duties Act [*Chapter 23:09*]—

- (a) in respect of any security issued in compliance with a direction under subsection (1); or
- (b) where any convertible securities were issued in compliance with a direction under subsection (1), in respect of the exercise of the conversion rights attached to any such security.

(5) The Minister shall not—

- (a) give a direction under subsection (1) at a time when the appropriate successor company has ceased to be wholly owned by the State; or
- (b) exercise any power conferred on him by this section, or dispose of any security issued or allotted to him pursuant to this section, or dispose of any right in such a security, except after consultation with the Minister responsible for finance.

#### **72 Conversion of loans transferred to successor companies**

(1) In this section—

“transferred loan” means any moneys lent to the Authority by the State, the liability to repay which vests in the appropriate successor company by virtue of subsection (2) of section *seventy-one*.

(2) The appropriate successor company, if directed to do so by the Minister, shall issue such securities as the Minister may require—

- (a) to the Minister or a person nominated by the Minister; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to a person referred to in paragraph (a);

up to an amount equal to the amount of any transferred loan.

(3) The issue of securities in terms of subsection (2) shall have the effect of extinguishing by novation the transferred loan in respect of which the securities were issued, up to the nominal value of the securities.

(4) Subsections (2) to (5) of section *seventy-one* shall apply, *mutatis mutandis*, to the issue of securities under this section and to the rights of holders of such securities.

### **73 Transfer of employees to successor company and conditions of service of transferred employees**

(1) With effect from the transfer date every person, employed by the Authority immediately before that date shall be transferred to the service of the appropriate successor company on terms not less favourable than those enjoyed by him immediately prior to his transfer.

Until such time as conditions of service are drawn up by the appropriate successor company—

- (a) the terms and conditions of service applicable to employees of the Authority shall continue to apply to every person transferred to the appropriate successor company as if every such person were still in the service of the Authority; and
- (b) an employee may be permitted to continue to contribute towards a pension he was contributing to when he was in the service of the Authority.

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### **74 Minister may give directions to Authority**

(1) Notwithstanding anything to the contrary in the Electricity Act [Chapter 13:05], the Minister may give the Board of the Authority directions in writing in order to ensure the proper transfer of the assets and liabilities of the Authority to the appropriate successor company, and the Board shall without delay comply with every such direction.

(2) Without derogation from subsection (1), directions given under that subsection may provide for—

- (a) the cessation of all or any of the functions of the Authority and any person;
- (b) the termination of any contract entered into between the Authority and any person:

Provided that no such direction shall authorise the Authority to commit an unlawful breach of any such contract;

- (c) the production of any report and the provision of any information concerning the conduct of the Authority or the Board of the Authority or anything done by or on behalf of the Authority or the Board of the Authority;

### **75 Successor company deemed to be licensed**

(1) Notwithstanding any other provision of this Act the appropriate successor company or any subsidiary company formed by it for the purpose shall be deemed to be the holder of—

- (a) a generation licence issued in terms of this Act and authorising the company to provide and operate the same generation services and systems that it provided and operated immediately before the fixed date;
- (b) transmission licence issued in terms of this Act and authorising the company to provide and operate the same transmission services and systems it provided and operated immediately before the fixed date;
- (c) a distribution licence issued in terms of this Act and authorising the company to provide and operate the same distribution services that it operated and immediately before the fixed date.

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(2) The Commission shall without delay cause the relevant licences to be issued to the companies referred to in subsection (1) and those licences may be renewed, amended, suspended or cancelled in all respects as if they had been issued in terms of Part VIII of the Act.

### **76 Repeal of Cap. 13:05**

When the President is satisfied that the assets and liabilities of the Authority have been transferred to the appropriate successor company and that nothing remains to be done under this Part he shall, by notice in a statutory instrument, repeal the Electricity Act [Chapter 13:05].

### **77 Savings and transitional provisions**

(1) Any regulations, by-laws or notices which, immediately before the fixed date, were in force under the Electricity Act [Chapter 13:05] shall continue in force, *mutatis mutandis*, as if they had been made in terms of this Act, and may be amended or repealed accordingly.

(2) Any licence, certificate, authority or permit which was issued in terms of the Act referred to in subsection (1) and which had effect immediately before the fixed date shall continue to have effect, *mutatis mutandis*, for the remainder of its period of validity as if it had been issued under the appropriate provision of this Act.

(3) Any price, levy or surcharge which, immediately before the fixed date, was chargeable within any area in respect of the supply of electricity to consumers or to any particular consumer or any undertaking shall, on and after the fixed date and until alternative provision is made in terms of this Act, continue to be chargeable in respect of the supply of electricity, to those or similar consumers by a licensee or other undertaking which supplies electricity within the area concerned.

(4) Whenever, on or after the fixed date, the Commission approves any price or tariff of standard prices for the supply of electricity in terms of this Act, the Commission may direct the undertaking concerned to vary or withdraw any price, levy or surcharge referred to in subsection (3).

(5) Subject to this Act, any right in or over land or water which, immediately before the fixed date, vested in any undertaking in terms of the former Act or any enactment repealed by the former Act shall, on and after the fixed date, continue to vest in the undertaking concerned as if it had been acquired in terms of this Act.

(6) Subject to this Act, any permission granted, direction given or other thing whatsoever made, done or commenced which, immediately before the fixed date, had or was capable of acquiring force and effect in terms of the former Act shall, on and after the fixed date, continue to have, or, as the case may be, to be capable of acquiring, force and effect as if it had been granted, given, made, done or commenced, as the case may be, terms of the equivalent provision of this Act.

### **FIRST SCHEDULE (Section 3)**

#### ANCILLARY POWERS OF COMMISSION

1. To acquire by lease, purchase, or otherwise, immovable property and to construct buildings thereon.
2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, necessary or convenient for the performance of its functions.
3. To maintain, alter and improve property acquired by it.
4. To mortgage or pledge any assets or part of any assets and, with the approval of the Minister, to sell, exchange, let, dispose of, turn to account or otherwise deal with any assets or part of any assets which are not required for the exercise of its functions for such consideration as the Commission may, with the approval of the Minister, determine.
5. To open bank and building society accounts in the name of the Commission and to draw, make, accept, endorse, discount, execute and issue for the purposes of its functions, cheques, promissory notes, bills of exchange, bills of lading, securities and other instruments.
6. To insure against losses, damages, risks and liabilities which it may incur.
7. To enter into contracts and suretyships or give guarantees in connection with the exercise of its functions and to modify or rescind such contracts or rescind suretyships or guarantees.
8. With the approval of the Minister, to enter into, renew, cancel or abandon arrangements with any government or electricity regulating authority, local or otherwise, that may seem conducive to the exercise of its functions or any of them and to obtain from such government or authority rights, privileges and concessions which the Commission thinks desirable to obtain and carry out, exercise and comply with such arrangements, rights, privileges and concessions.
9. With the approval of the Minister, to raise loans or borrow money in such amounts and for such purposes and under such conditions as may be approved by the Minister.
10. To employ, upon such terms and conditions as the Commission may think fit, such persons as may be necessary for conducting its affairs, and suspend or discharge any such persons.
11. Subject to section 39 of the Audit and Exchequer Act [*Chapter 22:03*], to pay such remuneration and allowances and grant such leave of absence and to make such gifts and pay bonuses and the like to its employees as the Commission thinks fit.
12. To provide pecuniary benefits for its employees on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for its employees and their dependants any or all of the pecuniary benefits to which this paragraph relates.
13. With the approval of the Minister, to purchase, take in exchange, hire and otherwise acquire land or dwellings for use or occupation by its employees.
14. To construct dwellings, outbuildings or improvements for use or occupation by its employees on land purchased, taken in exchange, hired or otherwise acquired by the Commission.
15. To sell or let dwellings and land for residential purposes to its employees.
16. With the approval of the Minister, to guarantee loans to its employees or their spouses for the purchase of dwellings or land for residential purposes, the construction of dwellings and the improvement of dwellings or land which are the property of its employees or their spouses.
17. To provide security in respect of loans guaranteed in terms paragraph 16 by the deposit of securities.
18. With the approval of the Minister, to make loans to any employee of the Commission—
  - (a) for the purpose of purchasing vehicles, tools or other equipment used by him in carrying out his duties; or
  - (b) not exceeding three months' salary or wages payable to him, for any purpose; on such security as the Commission considers adequate.
19. To do anything for the purpose of improving the skill, knowledge or usefulness of its employees, and in that connection to provide or assist other persons in providing facilities for training, education and research and to pay for the aforesaid, where necessary.
20. To provide such services as the Commission considers could properly be provided by the Commission.

21. With the approval of the Minister, to provide financial assistance to any person, association, organization or institution whose activities are such as to be, in the opinion of the Commission, of benefit to the Commission.
22. Generally, to do all such things as may be necessary, conducive or incidental to the exercise of the powers and the performance of the functions of the Commission under this Act or any other enactment.

## SECOND SCHEDULE (Section 54)

### RIGHTS, POWERS AND DUTIES OF TRANSMISSION OR DISTRIBUTION LICENSEES

#### *Interpretation*

1. In this Schedule—

“licensee” means a transmission or distribution licensee referred to in subsection (1) of section *fifty-four*.

#### *Compulsory acquisition of rights in or interests over land for transmission or distribution purposes*

2.(1) Subject to subparagraph (3), a licensee may, with the approval of the Commission and the Minister responsible for lands and subject to such conditions as that Minister may impose, compulsorily acquire any servitude or other interest in or right over land required—

- (a) for the purposes of constructing or maintaining a transmission or distribution line and the buildings and exchanges and other apparatus connected therewith; and
- (b) for an access road to a site referred to in paragraph (a) or for the construction and use of such road; and
- (c) any land or interest in or right over land required for the erection of power lines and for the maintenance and inspection of such lines.

(2) The Commission and the Minister responsible for lands shall not grant approval in terms of subparagraph (1) except after consideration of the following reports, namely—

- (a) a report by the licensee concerned that—
  - (i) the licensee is unable to acquire the land, interest or right upon reasonable terms by agreement with the owner; and
  - (ii) it is necessary that the land, interest or right be acquired by the licensee for a purpose referred to in subsection (1);

and

- (b) a report by the Ministry responsible for the environment made on behalf of the licensee by a person qualified to make such reports assessing the anticipated impact on the environment of any works to be undertaken for a purpose referred to in subparagraph (1), and recommending any measures to be taken to assess, prevent or minimize such impact.

(3) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the exercise by a licensee of his powers in terms of subsection (1).

#### *Use of buildings and structures to support transmission / distribution lines, etc.*

3.(1) Subject to this paragraph, a licensee may, on one month’s written notice to the owner or occupier of the building or structure concerned, attach wires, stays or any other kind of support to any building or other structure for the purpose of facilitating or constructing a transmission or distribution line.

(2) If the owner or occupier of any land objects to the exercise of the powers referred to in subparagraph (1), he may lodge written notice of his objection and his reasons therefor with the licensee concerned and, on receipt of such objection, the licensee shall refer the matter to the Commission, whose decision shall be final:

Provided that an objection shall be lodged within one month of receipt of the notice given in terms of subparagraph (1).

(3) Before making any decision or order in terms of subparagraph (2), the Commission shall give to all parties concerned a reasonable opportunity of making representations, either in person or in writing.

(4) Before carrying out any work under, over or along any land reserved for railway purposes, other than maintenance and repair work, a licensee shall give notice in writing to the National Railways of Zimbabwe of the work he intends to carry out.

#### *Entry upon land for transmission or distribution purposes*

4. When, in accordance with this Schedule, a licensee has been permitted to occupy or use any land or has placed a transmission or distribution line in position, he shall be entitled to reasonable access to such land or line for the purpose of carrying on his operations on the land or of maintaining, removing, repairing or replacing the line.

#### *Removal of transmission or distribution lines*

5.(1) If it is necessary to alter or remove a transmission or distribution line owing to any work or operations on the part of the State or a local authority or other person, the cost of the alteration or removal shall be borne by the State or the local authority or other person concerned.

(2) If a building is about to be erected on any land and any transmission or distribution line passing under or over the land will interfere with building operations, the licensee concerned shall, within one month of being required in writing to do so, undertake such alteration or deviation of the line as may be necessary to remove the interference.

(3) If a licensee is satisfied that any alteration or deviation of a transmission or distribution line that is desired for any reason, other than that mentioned in subparagraph (2), is possible, necessary or expedient, the licensee shall, within one month of being required in writing to do so, undertake the alteration or deviation, and the cost of carrying out any such alteration or deviation shall be borne by the person at whose request it is made.

(4) If by reason of—

- (a) any excavation, blasting, mining or quarrying operations; or
- (b) deposits of mining debris or the making of drains, railways or other cuttings or any other operations; or
- (c) fumes or effluent from any factory or other such premises; or
- (d) the construction of any dam;

any transmission or distribution line is damaged or, in the opinion of the licensee who erected it, the safety or stability of any line is endangered or likely to be adversely affected, the licensee may repair, deviate or alter the line and the cost of such repair, deviation or alteration shall be borne by the person by whom or on whose behalf the operations referred to in paragraph (a) or (b) were conducted, the premises referred to in paragraph (c) were operated or the dam was constructed, as the case may be:

Provided that, where the alterations or deviations which are necessary or expedient are, in the opinion of the licensee extensive, the licensee may charge the person concerned such proportion of the cost of the alteration or deviation as the licensee, with the consent of the Commission, considers fair or reasonable.

*Erection of gates for access to transmission or distribution lines*

6.(1) If a fence on any land, including State land, makes it impossible or inconvenient for a licensee to gain access to his transmission or distribution line, the licensee may, at his own expense, erect and maintain a gate in that fence.

(2) A licensee who has erected a gate in terms of subparagraph (1) shall provide a lock for the gate and supply a key for the lock to the owner or occupier of the land on which the gate is erected.

(3) Any person intending to erect a fence that would render it impossible or inconvenient for a licensee to obtain access to his transmission or distribution line shall give the licensee one month's notice in writing of his intention to erect the fence.

*Trees obstructing transmission or distribution lines*

7.(1) Trees or undergrowth which, in the opinion of a licensee, obstruct or interfere with or are likely to interfere with the working or maintenance of any transmission or distribution line shall, on fourteen days' notice by the licensee and to such extent as the licensee may consider necessary, be cut down or trimmed—

- (a) by the authority responsible for the care and management of the land, road or street concerned, where the trees or undergrowth are growing on State land, other than State land which has been leased, or on Communal Land or on a road or street;
- (b) by the owner or occupier of the land, concerned, in any other case.

(2) If the authority, owner or occupier referred to in subparagraph (1) objects to the exercise of the powers referred to in that subparagraph, he may lodge written notice of his objection and his reasons therefor with the licensee concerned and, on receipt of such objection, the licensee shall refer the matter to the Commission, whose decision shall be final:

Provided that an objection shall be lodged within fourteen days of receipt of the notice given in terms of subparagraph (1)

(3) Before making any decision or order in terms of subparagraph (2), the Commission shall give to all parties concerned a reasonable opportunity of making representations, either in person or in writing.

(4) The Commission shall uphold an objection made in terms of subparagraph (2) if it is shown to its satisfaction that the obstruction to or interference or likely interference with the transmission line in question can be avoided without cutting down or trimming any trees or undergrowth and without unreasonable extra cost to the licensee.

(5) The reasonable expenses incurred in cutting down or trimming trees or undergrowth in terms of subparagraph (1) shall be borne by the licensee concerned.

(6) Subject to this paragraph, if the authority, owner or occupier referred to in subsection (1) fails to comply with a notice given by the licensee in terms of that subparagraph, the licensee may enter upon the land, road or street, as the case may be, in question and cut down or trim the trees or undergrowth to the extent he considers necessary.

(7) Notwithstanding subparagraph (1), if the working of any transmission or distribution line is actually interfered with or endangered by any trees or undergrowth, the licensee concerned may remove the interference or danger without giving the notice required by subparagraph (1).

*Laying of transmission or distribution lines under streets, etc.*

8.(1) A licensee may construct and maintain a transmission or distribution line under any street, road or footpath, and may alter or remove any such line:

Provided that before doing so the licensee shall give reasonable notice to the authority or person that owns or has the care and management of the street, road or footpath concerned.

(2) In the exercise of the powers conferred by subparagraph (1), the licensee may break or open up any street, road or footpath and alter the position thereunder of any pipe, other than a telecommunication line, main sewer, main drain or gas main, and of any electric cable other than an electric main:

Provided that no alteration in the position of any such pipe or cable shall be made except under the supervision of a person appointed by the person to whom the pipe or cable belongs or by whom it is used, unless no such person is appointed or the person so appointed fails to supervise at the time specified in the notice for the commencement of the work or discontinues supervision during the work.

*Powers to be exercised with care and compensation for damage*

9.(1) In the exercise of the powers conferred by this Schedule, a licensee shall—

- (a) cause as little detriment and inconvenience and do as little damage as possible; and
- (b) pay compensation to any person who suffers loss or deprivation of rights through the exercise of the powers conferred by this Schedule; and
- (c) if so requested by the Commission, commission a report referred to in paragraph (b) of subparagraph (2) of paragraph 2 before exercising any powers conferred by paragraphs 3 to 8

(2) Parts V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the payment of compensation in terms of subparagraph (1):

Provided that any reference in Part VIII of that Act to the date of the publication of a preliminary notice in the *Gazette* shall be construed as a reference to the date of the exercise by the licensee concerned of the powers referred to in subparagraph (1).

(3) On completion of any work in connection with the construction, maintenance or repair of a transmission or distribution line in the exercise of the powers conferred by this Schedule, the licensee concerned shall promptly restore the surface of any street, road, footpath, land or railway affected thereby as nearly as reasonably possible to the same condition as that in which it was before the work was commenced.

(4) While any street, road or footpath is opened, broken up or otherwise obstructed by the exercise of the powers conferred by this Schedule, the licensee concerned shall cause the obstruction to be fenced or guarded and, during the night, lighted.

*Height and depth of transmission or distribution lines*

10.(1) Aerial transmission or distribution wires and cables shall be carried over land at such height from the surface of the ground as may be prescribed.

(2) An underground transmission or distribution line that is not carried in a pipe or duct shall be placed such distance below the surface of the ground as may be prescribed.

(3) If the owner or occupier of any land is obstructed in the use of the land because a transmission or distribution line is insufficiently high, the licensee concerned shall, subject to paragraphs 5 and 7, take such steps as may be necessary for the removal of the obstruction.

*Acquisition of right or interest in communal land*

11. Notwithstanding anything to the contrary in this Schedule, no right over or interests in communal land, shall be acquired, whether compulsorily or by agreement, otherwise than in accordance with the Communal Land Act [*Chapter 20:04*].

*Licensee to authorise persons for purposes of Second Schedule*

12. The licensee shall furnish every person authorised by him to exercise any of the powers conferred by this Schedule with a certificate signed by or on behalf of the licensee stating that the person has been so authorised, and such person shall produce such certificate at the request of any person affected by the exercise of the said powers.