

ELECTRICITY SUPPLY (AMENDMENT) ACT, 2016

No. 14



of 2016

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and Commencement
2. Interpretation
3. Licensing requirements
4. Acquisition of land for electricity
5. Wayleaves over land
6. Breaking up of streets
7. Prevention of obstruction of transmission line
8. Rights of entry
9. Lines, meters and other apparatus not to be fixtures
10. Liability of licensee for damage or injury
11. Notice of certain accidents
12. Inquiries
13. Powers of entry, inspection and calling for returns
14. Appointment of inspectors
15. Regulations
16. Repeal and savings
17. Transitional provisions

An Act to make provision for the licensing and control of undertakings for the generation and supply of electricity and for matters connected therewith and incidental thereto.

Date of Assent: 26.09.16

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

Short title and commencement 1. This Act may be cited as the Electricity Supply (Amendment) Act, 2016, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation 2. In this Act, unless the context otherwise requires —

Act No. 13 of 2016 “Authority” means the Botswana Energy Regulatory Authority established under the Botswana Energy Regulatory Authority Act;

“bulk supply” means the wholesale supply of electricity to any one or more customers or consumers in or outside Botswana as provided in terms of a supply licence;

“consumer” means the end-user of electricity;

“customer” means a person that buys and sells electricity for the purpose of resale;

“distribution” means the conveyance and delivery of electricity through or over a distribution power system;

“distribution power system” —

(a) means the facilities, consisting wholly or mainly of electric lines used for the distribution of electricity from the grid supply points to the point of delivery to the consumer; and

(b) includes any electrical plant and meters operated in connection with the distribution of electricity, but does not include any part of a transmission system and shall, without limiting the generality of the foregoing, include a power system operating at or below 66 kV;

“electricity undertaking” means any undertaking which engages in the business of generation, transmission, distribution or supply of electricity;

“export” means the sale of electricity to any person outside Botswana;

“generation” means the production of electricity by any means;

“import” means the purchase of electricity from outside of Botswana to any person inside Botswana;

“licence” means a licence issued in accordance with section 3 of this Act;

“licensee” means any person who holds a licence issued under this Act;

“local authority” means a city council, a town council, a township authority, a district council, a sub-district council or an administrative authority;

“retail supply” means the retail supply of electricity to any consumer as provided in terms of a supply licence;

“supply” means the bulk or retail supply of electricity;

“transmission” means the conveyance of electricity through or over a transmission power system;

“transmission line” —

(a) means any cable or overhead line used for from one undertaking to another or from an undertaking to a consumer; and

(b) includes any transformers, switchgear and other works necessary to and used in connection with the cable or overhead line, and the buildings or a part thereof as may be required to accommodate such transformers, switchgear and other works; and

“transmission power system” —

- (a) 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;
- (b) includes any transmission lines, transformers, switchgear and other works necessary for and used in connection with electrical equipment, and buildings as may be required to accommodate the transformers, switchgear and other works; and
- (c) includes, without limiting the generality of the foregoing, a power system operating at or above 132 kV.

3. (1) A person shall not —

- (a) generate, supply, transmit, distribute, export, or import electricity;
- (b) use, work or operate or permit to be used, worked or operated any plant, apparatus or works designed for the supply or use of electricity; or
- (c) supply, to or for the use by any other person, electricity from any plant, apparatus or works designed for the supply or use of electricity;

except in terms of a licence issued by the Authority and expressly authorising such generation, supply, transmission, distribution, export, import, use, work or operation.

(2) Notwithstanding the provisions of subsection (1), a person shall not require a licence in respect of any installation not exceeding 100 kilowatt capacity which is situated entirely on the owner's own property or property occupied by him and is used by the owner to operate plant used solely by him, and for lighting any house, office or other building, and where no public supply of electricity is available.

(3) An application for a licence shall be in such form and manner as may be prescribed under the Botswana Energy Regulatory Authority Act.

4. (1) The President may acquire, in accordance with the Acquisition of Property Act, land or rights over land as the President may consider necessary for any purpose associated with the generation or supply of electricity by a licensee, which purpose shall, for the purposes of that Act, be deemed to be a public purpose.

(2) Before acting under subsection (1), the President shall be satisfied that —

- (a) the licensee concerned has taken all reasonable steps to acquire, on reasonable terms by agreement with the owner, the land which the licensee wishes to use, and has been unable to do so; and

(b) the acquisition of such land is necessary for the purposes of an undertaking carried on by the licensee concerned.

(3) The President may, under such conditions as the President considers it necessary, permit the use by the licensee concerned of any land which the President has acquired under subsection (1), except that —

(a) the land shall not be used by the licensee for any purpose other than the purpose for which it was acquired under subsection (1); and

(b) the land or a part thereof shall revert, as the President may determine, to the use and absolute control of the President, if it or any part of it is used for any purpose other than the purpose for which it was acquired under subsection (1).

(4) Any compensation payable under the Acquisition of Property Act in respect of land or rights over land acquired under subsection (1) shall be paid by the licensee concerned, either in whole or in part, as the President may direct.

5. (1) A licensee may place a transmission line, other than land covered by buildings —

(a) above or below ground; or

(b) into, out of or across any land.

(2) Before placing any transmission line in position in accordance with the provisions of subsection (1), the licensee shall serve notice of his or her intention, together with a description of the transmission line proposed to be placed —

(a) on the owner of the land and on any person lawfully occupying it; or

(b) on the local or other authority concerned, if the transmission line is to be placed on a street:

Provided that, if the owner or such person is not resident and has no representative within Botswana, no such notice need be served on him or her.

(3) If within 28 days of the service of a notice, referred to in subsection (2), the person to whom the notice has been given objects, or attaches to his or her consent any term or condition to which the licensee objects, the licensee may refer the matter to the Authority for a decision, and the Authority may make such order as it considers appropriate, and any question concerning an amount of compensation shall be decided in accordance with regulations made by the Minister under section 15.

(4) A licensee shall not lay down or place any transmission line into, through, or against any building, or in any land covered with buildings, without the consent of the owner and lawful occupier thereof:

Provided that, where the consent of the owner or person lawfully occupying the land is being unreasonably withheld, the licensee may refer the matter to the Authority for a decision.

Wayleaves
over land

(5) A licensee may, with the consent of the Authority, where the Authority, under subsection (4), is of the opinion that the consent is being unreasonably withheld, place an overhead line and any support, stay or strut required for the sole purpose of supporting the overhead line on or over any land or building and the Authority shall determine the amount of compensation or of annual rental, or of both, which shall be paid to such owner or such person by the licensee.

(6) If the owner of or person lawfully occupying any land on or over which any transmission line has been placed, or, in the case of a street, the local or other authority concerned, requires the position of such transmission line to be changed, the Authority may, by notice in writing, order the licensee to alter the position of such transmission line, subject to such conditions as, failing agreement between the parties, may be specified by the Authority.

(7) Before making any decision or order in terms of this section, the Authority shall give to all parties concerned, an opportunity of making representations, either in person or in writing.

6. (1) A licensee who has acquired the right to place or has placed a transmission line across, along, under or over any street in accordance with this Act, may break up such street and may erect transmission lines across, along, under or over such street and may from time to time repair, alter or remove any such transmission lines:

Provided that the local authority having the control of such street shall have prior right to open up and make good such street at a reasonable charge to the licensee and with reasonable dispatch.

(2) A licensee shall give the local authority concerned notice, in writing, of his or her intention to exercise powers conferred by this section, not less than 30 days before the licensee exercises any such power, except in case of emergency when the licensee shall give such notice as soon as possible after the emergency has arisen, and the licensee shall likewise give notice to the owners of the water pipes, telephone cables and other installations likely to be affected by the licensee's exercise of such power.

(3) The powers conferred upon a licensee under this section shall, except in case of emergency, be exercised only under the superintendence of the local authority concerned and according to such specifications and such plan showing the route as may be approved by that local authority or, if any dispute arises respecting such specifications, plan or route, as may be approved by the Authority:

Provided that if the said local authority fails to exercise the rights of superintendence after notice under this section has been given, the licensee may exercise such powers without such superintendence.

(4) Whenever a licensee carries out any work authorised by this section he or she shall —

- (a) comply with any bye-laws or regulations of the local authority concerned;
 - (b) complete that work within reasonable time and, if so required by the local authority concerned, reinstate and make good the street opened or broken up and remove the rubbish occasioned thereby; and
 - (c) while the street is opened or broken up or obstructed, cause the works to be at all times fenced and guarded and, during the night, adequately lighted.
- (5) If a licensee fails to carry out any duty imposed upon him or her by subsection (4), the local authority concerned may cause any work delayed or omitted to be executed at the expense of the licensee.
- (6) A licensee shall pay to the local authority concerned the costs reasonably and necessarily incurred by it in exercising any superintendence under this section.
- (7) Nothing contained in this section shall be construed as relieving a licensee from any liability in respect of any loss or damage caused in the exercise of his or her powers under this section or by his or her failure to comply with the provisions of this section, for which loss or damage the licensee shall pay fair and reasonable compensation.
- (8) For the purposes of this section "street" includes any road, square, or open or enclosed public place, the control or care of which is vested in any local or Government authority.

7. (1) Where trees or undergrowth obstruct or interfere with the construction, working, maintenance, repair, replacement, protection, superintendence or removal of any transmission line, any person who has acquired a right in terms of section 5, or by agreement with the owner, in respect of the land on which such trees or undergrowth are situated may give the owner or lawful occupier of such land not less than 14 days notice of his or her intention to cut down or trim such trees or undergrowth and after the expiry of such notice may carry out such intention:

Prevention of
obstruction of
transmission
line

Provided that, if immediate action is required to protect any transmission line from damage by trees or undergrowth such person may, without notice, cut down or trim the trees or undergrowth in such a manner as may be necessary to protect the transmission line.

(2) A person shall not erect any building or structure on any land on which a transmission line has been lawfully constructed in such a position or in such a manner as to be likely to interfere with the supply of electricity through the transmission line or in such a position that an existing transmission line could constitute a hazard to occupants of the building or structure, without the permission of the licensee having control of the transmission line.

Rights
of entry

(3) If a person erects a building or structure, contrary to subsection (2), the licensee may apply to the Authority for an order authorising the licensee to remove or adjust the building or structure, and the Authority, after making such inquiry as it may consider necessary, may make such order as it considers appropriate.

8. (1) Where, in accordance with the provisions of section 4 or section 5, or in accordance with an agreement entered into with the owner of the land concerned, a licensee has been permitted to use any land or has placed a transmission line in position, he or she shall be entitled to reasonable access to such land or transmission line for the purpose of carrying on his or her operations on such land or for maintaining, removing, repairing, or replacing such transmission line.

(2) A licensee or any person authorised in writing by him or her may, at all reasonable times, enter any premises to which electricity is or has been supplied by such licensee or for which a supply has been requested —

- (a) to inspect or maintain the lines, meters, fittings, works and apparatus belonging to such licensee;
- (b) to ascertain that the consumer's installation and apparatus is in a proper condition, or for the purpose of ascertaining the quantity of electricity consumed; or
- (c) for the purpose of removing any lines, meters, fittings, works and apparatus belonging to such licensee, where a supply is no longer required, or where such licensee may cut off the supply.

(3) In the exercise of a right of entry under this section, the licensee shall cause as little inconvenience and damage as possible, and shall make fair and reasonable compensation for any such damage caused, and in default of agreement between the parties, the amount and application of such compensation shall be determined in accordance with regulations made by the Minister under section 15.

Lines, meters
and other
apparatus
not to be
fixtures

9. (1) Any lines, meters, fittings, works or apparatus belonging to a licensee and lawfully placed in or upon any premises not in the licensee's ownership shall, whether or not fixed to any part of such premises, remain the property of and be removable by such licensee and shall be immune from landlord's hypothec and from execution levied or attachment laid on property of the owner or occupier of such premises.

(2) For the purposes of this section and section 8 (2), lines, meters, fittings and apparatus disposed of by a licensee on terms of payment by instalments shall, until such instalments have been paid in full, be deemed to belong to the licensee.

Liability
of licensee
for damage
or injury

10. (1) In any proceedings against any licensee arising out of damage or injury caused by induction or electrolysis or otherwise by means of electricity generated or transmitted by or escaping from the plant or machinery of any licensee, it shall not be necessary for the plaintiff to prove that the damage or injury was caused by the negligence of the defendant, and damages may be recovered notwithstanding the absence of such proof.

(2) In any such proceedings, it shall be a defence that the damage or injury was due to the willful act or to the negligence of the person injured or of some person not in the employ of the defendant or of some person operating the plant or machinery of the defendant without his or her consent.

11. (1) A licensee shall send to the Authority written notice of any accident which caused or was likely to have caused loss of life or serious bodily harm to any person which has occurred in any part of or in connection with such licensee's works or transmission lines, accompanied by particulars of any loss of life or serious bodily harm caused by such accident.

Notice
of certain
accidents

(2) Any licensee who fails to send to the Authority notice of an accident as required by subsection (1), within seven days of becoming aware of the occurrence of such accident, commits an offence and is liable to a fine not exceeding P30 000.

12. The Authority may order an inquiry to be held by an investigator appointed by the Authority, in any case where it considers it advisable, in connection with any matter arising under the provisions of this Act, including any accident under section 11.

Inquiries

13. (1) The Authority, or any person authorised thereto in writing by the Authority, may —

Powers of
entry,
inspection and
calling for
returns

- (a) at all reasonable times enter upon the premises of any licensee and inspect any plant, machinery, books, accounts and other documents found at such premises;
- (b) call upon any licensee to furnish, to the Authority, such periodical or other returns in such form as the Authority may from time to time determine, and such particulars in respect of the undertaking, as the Authority may from time to time demand; and
- (c) at all reasonable times enter upon the premises of any consumer and inspect any electrical installations at such premises.

(2) The powers referred to in subsection (1) (a) may be exercised only —

- (a) insofar as their exercise is reasonably required in the interests of public safety or in order to secure the development or utilization of property for a purpose beneficial to the community; or
- (b) to enable an officer or agent of the Government to inspect premises or anything thereon for the purpose of any tax, rate or duty.

(3) The Authority may require that the accuracy of returns and particulars referred to in subsection (1) (b) be verified on oath by the licensee.

(4) Any person who refuses to allow any such inspection or fails to comply with any such call or requirement or who wilfully obstructs or hinders any person authorised in any such inspection commits an offence and is liable to a fine not exceeding P30 000.

(5) If any person divulges information obtained by him or her upon such inspection, except for the purpose of carrying out his or her duties under this Act, he or she commits an offence and is liable to a fine not exceeding P30 000 or to imprisonment for a term not exceeding six months, or to both.

Appointment
of inspectors

14. For the purpose of ensuring compliance with this Act, the Authority may appoint any suitably qualified and experienced person or persons to inspect any works covered by this Act upon payment of such fees, if any, as the Authority may consider appropriate.

Regulations

15. (1) The Minister may, after consultation with the Authority, make regulations for the better carrying out of the objects and purposes of this Act and for giving effect to its principles and provisions, and without prejudice to the generality of the foregoing, may make regulations prescribing or providing for —

- (a) the standards with which buildings, machinery, transmission lines and other works of whatever description which are required to generate or supply electricity shall comply;
- (b) the standards with which consumers' electrical installations shall comply and the testing and licensing of electrical contractors;
- (c) the construction, installation, alteration, operation, control, protection, inspection and testing of works, plant, machinery, apparatus, appliances and equipment for or incidental to the generation, transmission, distribution, connection or use of electricity whether on the premises of a licensee or a consumer;
- (d) securing the safety of the public from personal injury or damage to property occasioned by the exercise of rights granted under this Act;
- (e) inquiries into accidents and other matters;
- (f) units or standards for the measurement of power, the verification of meters, the fees to be charged therefor and the settlement of disputes as to measurements of power;
- (g) the frequency, type of current and pressure of electricity to be generated or supplied; and
- (h) the form in which records and books of account are to be kept.

(2) Regulations made under subsection (1) shall not apply to any installation or works covered by any regulations issued under another Act.

(3) Regulations made under subsection (1) may prescribe penalties for any contravention thereof not exceeding —

(a) for a first fine, a fine of P5 000 or imprisonment for a term not exceeding two years, or both; and

(b) for each subsequent offence, a fine not exceeding P1000 or imprisonment for a term not exceeding 12 months, or both.

(4) In exercising the powers conferred by subsection (1) the Minister may provide that different regulations shall apply to different licensees or classes of licensees, different consumers or classes of consumers, or to different areas of Botswana.

16. (1) The Electricity Supply Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

Repeal and
savings Cap.
73:01

(2) Any subsidiary legislation made under or in accordance with the provisions of the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue to have force and effect as if it was made under this Act.

(3) Any licence issued under or granted in pursuance of the provisions of the repealed Act and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue to have force and effect as though it were done under or in pursuance of the provisions of this Act.

17. The Minister may, by Order published in the *Gazette*, make such transitional arrangements as shall be necessary for the coming into operation of this Act.

Transitional
provisions

PASSED by the National Assembly this 8th day of August, 2016.

BARBARA N. DITHAPO,
Clerk of the National Assembly.