

ELECTRICITY SUPPLY ACT, 1973

No. 21



of 1973

ARRANGEMENT OF SECTIONS

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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: 28.9.73

Date of Commencement: 12.10.73

ENACTED by the Parliament of Botswana.

Short title
and date of
commence-
ment

Inter-
pretation

23 of 1970

Licence
required

1. This Act may be cited as the Electricity Supply Act, 1973, and shall come into operation upon the date of publication in the Gazette.

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

“Corporation” means the Botswana Power Corporation established under the Botswana Power Corporation Act, 1970;

“licence” means a licence to generate or supply electricity issued under this Act;

“licensee” means any holder of a licence to generate or supply electricity issued under this Act;

“Minister” means the Minister for the time being responsible for electrical power;

“transmission line” means any cable or overhead line for the transmission and reticulation of electricity from one undertaking to another or from an undertaking to a consumer, together with any transformers, switchgear and other works necessary to and used in connexion with such cable or overhead line, and the buildings and such part thereof as may be required to accommodate such transformers, switchgear and other works.

3. (1) Subject to subsection (2) no person shall —

(a) 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

(b) supply to or for the use of any other person electricity from any plant, apparatus or works designed for the supply or use of electricity,

except under and in accordance with the terms of a licence issued by the Minister under and in accordance with this Act or any regulations made thereunder expressly authorizing such use, work, operation or supply, as the case may be.

(2) No licence shall be required in respect of —

(a) any supply of electrical energy provided by or any plant, apparatus or works operated by a Department of the Government; or

(b) any installation not exceeding 25 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) Notwithstanding subsection (2) all generators or suppliers of electricity shall be subject to any regulations made by the Minister under section 16 relating to or connected with safety, or any regulations expressly applied therein to such generators or suppliers.

4. Any licence issued under the Electricity Supply Law (repealed by this Act) which was valid immediately before the date of commencement of this Act shall be deemed to have been issued by the Minister under and in accordance with this Act, and the provisions of this Act and any regulations made thereunder shall apply to every such licence.

Existing
licences
25 of 1961

5. (1) For the purposes of this Act licences shall be issued by the Minister in accordance with regulations made under section 16 of this Act.

Issue of
licences

(2) Before issuing a licence for the purpose of this Act, the Minister shall consult the Corporation, and shall take into consideration the existing or future plans of the Corporation with regard to the generation and supply of electricity for Botswana, giving precedence to the interests of the Corporation.

(3) Licences for the purposes of this Act may be issued subject to such conditions or restrictions as the Minister thinks fit, and may be reviewed, amended or cancelled in accordance with regulations made by the Minister.

6. (1) The President may acquire, in accordance with the Acquisition of Property Proclamation, so much land or rights over land, as he 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 Proclamation, be deemed to be a public purpose.

Acquisition of
land for
electricity
purposes
Cap. 118

(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 he wishes to use and has been unable to do so; and

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

(3) The President may, under such conditions as he deems fit, permit the use by the licensee concerned of any land which he has acquired under the provisions of subsection (1), so, however, that —

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

(b) the land or such part of it as the President may determine shall revert 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 the provisions of subsection (1).

(4) Any compensation payable under the Acquisition of Property Proclamation 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.

7. (1) A licensee may, subject to the provisions of this section, place any transmission line, whether above or below ground, into, out of or across any land, other than land covered by buildings.

(2) Before placing any such line in position in accordance with the provisions of subsection (1), the licensee shall serve on the owner of the land and on any person lawfully occupying it, or, in the case of a street, on the local or other authority concerned, notice of his intention, together with a description of the lines proposed to be placed:

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.

(3) If within twenty-eight days after the service of the notice the person to whom such notice has been given objects, or attaches to his consent any terms or conditions to which the licensee objects, the licensee may refer the matter to the Minister for decision, and the Minister may make such order as he thinks fit, so, however, that any question as to an amount of compensation shall be decided in accordance with regulations made by the Minister under section 16.

(4) Nothing contained in this section shall authorize or empower the licensee to 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, so, however, that any overhead line and any support, stay, or strut required for the sole purpose of supporting an overhead line may be placed on or over any land or building with the consent of the Minister if, in his opinion, the consent of the owner or person lawfully occupying the land, as the case may be, is being unreasonably withheld, and the Minister shall fix the amount of compensation or of annual rental, or of both, which shall be paid to such owner or such person by the licensee.

(5) 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 line to be changed, the Minister may, by notice in writing, order the licensee to alter the position of such line, subject to such conditions as, failing agreement between the parties, may be specified by the Minister.

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

8. (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 or the Electricity Supply Law (repealed by this Act), may break up any 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 lines:

Breaking up
of streets

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

(2) A licensee shall, not less than 30 days before he exercises any power conferred by this section, give the authority concerned notice in writing of his intention so to do, except in case of emergency when he shall give such notice as soon as possible after the emergency has arisen, and he shall likewise give notice to the owners of water-pipes, telephone cables and other installations likely to be affected by his 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 authority concerned and according to such specifications and such plan showing the route as may be approved by that authority or, if any dispute arises respecting such specifications, plan or route, as may be approved by the Minister:

Provided that if the said authority fails to exercise the rights of superintendence hereby conferred after notice as aforesaid has been given, the licensee may exercise such powers without such superintendence.

(4) Whenever a licensee carries out any work authorized by this section he shall comply with any bye-laws or regulations of the authority concerned and shall complete that work with reasonable despatch and, if so required by the authority concerned, reinstate and make good the street opened or broken up and remove the rubbish occasioned thereby and shall, 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 by subsection (4) the 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 authority concerned the costs reasonably and necessarily incurred by it in exercising any superintendence under this section.

(7) Nothing in this section contained shall be construed as relieving a licensee from any liability in respect of any loss or damage caused in the exercise of his powers under this section or by his failure to comply with the provisions of this section, for which loss or damage he 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.

Prevention of obstruction of or interference with transmission lines

9. (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 7, 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 intention to cut down or trim the trees or undergrowth in question and after the expiry of such notice may carry out such intention:

Provided that if immediate action is required to protect any transmission line from damage by trees or undergrowth the person aforesaid 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) No person shall 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 such line or in such a position that an existing line could constitute a hazard to occupants of the building without the permission of the licensee having control of such line, and if any person so erects a building or structure the licensee may apply in the prescribed manner to the Minister for an order authorizing him to remove or adjust the building or structure, and the Minister after making such enquiry as he may deem necessary may make such order as he deems fit.

Rights of entry

10. (1) Where, in accordance with the provisions of section 6 or section 7, 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 shall be entitled to reasonable access to such land or line for the purpose of carrying on his operations on such land or for maintaining, removing, repairing, or replacing such line.

(2) The licensee or any person authorized thereto in writing by him 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 in order to inspect or maintain the lines, meters, fittings, works and apparatus belonging to such licensee or 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 where a supply is no longer required, or where such licensee may cut off the supply, for the purpose of removing any lines, meters, fittings, works and apparatus belonging to such licensee.

(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 16.

11. (1) Any lines, meters, fittings, works or apparatus belonging to a licensee and lawfully placed in or upon any premises not in his 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.

Lines, meters, and other apparatus not to be fixtures

(2) For the purposes of this section and section 10 (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 him.

12. (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.

Liability of licensee for damage or injury

(2) In any such proceedings it shall be a defence that the damage or injury was due to the wilful 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 consent.

13. (1) A licensee shall send to the Minister 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 connexion 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 Minister notice of an accident as required by subsection (1), within 7 days of becoming aware of the occurrence of such accident, shall be guilty of an offence and liable to a fine of 200 rand.

14. The Minister may order an inquiry to be held by an investigator to be appointed by him in any case where he deems it advisable in connexion with any matter arising under the provisions of this Act, including any such accident as is referred to in section 13.

Inquiries

A.270

Minister's powers of entry and inspection and calling for returns

15. (1) The Minister or any person authorized thereto in writing by him may —

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

(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 Minister 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 authorized in any such inspection shall be guilty of an offence and liable to a fine of 200 rand.

(5) If any person divulges information obtained by him upon such inspection except for the purpose of carrying out his duties under this Act or regulations made thereunder he shall be guilty of an offence and liable to a fine of 200 rand and to imprisonment for 6 months.

Regulations

16. (1) The Minister may, after consultation with the Botswana Power Corporation, 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) all matters stated, permitted or required by this Act to be prescribed;
- (b) the form and manner in which any application for a licence or for amendment, cession or transfer of a licence or any

objection thereto shall be made and the fees payable in respect of any such application;

- (c) the review of licences and the cancellation of licences;
- (d) conditions which may be attached to the grant of licences;
- (e) scales of charges for the supply of electricity and other services;
- (f) the duties and obligations of licensees;
- (g) the standards with which buildings, machinery, transmission lines and other works of whatever description which are required to generate or supply electricity shall comply;
- (h) the standards with which consumers' electrical installations shall comply and the testing and licensing of electrical contractors and tradesmen;
- (i) 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, connexion or use of electricity whether on the premises of a licensee or a consumer;
- (j) securing the safety of the public from personal injury or damage to property occasioned by the exercise of rights granted under this Act;
- (k) inquiries into accidents and other matters;
- (l) 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;
- (m) the frequency, type of current and pressure of electricity to be generated or supplied; and
- (n) the form in which records and books of account are to be kept.

(2) Such regulations shall not apply to any installation or works covered by any regulations issued under another Act.

(3) Such regulations may prescribe penalties for any contravention thereof not exceeding a fine of 200 rand and imprisonment for 6 months, and a continuing fine of 100 rand per day.

(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.

(5) For the purpose of ensuring compliance with this Act and any regulations made thereunder the Minister 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 he considers appropriate.

A.272

Continuation
of supply

17. Where the Minister cancels a licence in accordance with regulations made under this Act and determines that it is in the public interest that electricity shall continue to be supplied to the area covered by the licence, the licensee shall hand over to the Minister or any person or persons nominated by the Minister, all works, buildings, machinery and every other thing associated with the operation of the licence, including up-to-date books of accounts and all financial and commercial liabilities and assets.

Compensation shall be payable to the person whose licence has been revoked, based solely upon —

- (a) an assessment of the actual value of the assets employed in the operation of the licence carried out by the person or persons nominated by the Minister; and
- (b) the value of the nett current assets handed over.

Appeals from
decisions of
Minister

18. (1) Any licensee, or any consumer or number of consumers purchasing not less than 100,000 units of electricity per annum, or any number of consumers exceeding 10, may appeal to the President in the prescribed form and manner from any decision of the Minister and the decision of the President on any such appeal shall be final and shall not be questioned in any court.

(2) Notice of any such appeal shall be lodged within one month after the decision of the Minister has been published or otherwise brought to the notice of the appellant.

(3) After receipt of the notice of appeal the President —

- (a) shall require the Minister to submit a report in connexion with the matter in dispute, indicating any matter to which he desires that special attention be given by the Minister; and
- (b) shall afford the appellant an opportunity to submit within a period determined by the President, being not less than 30 days, any oral or written representations in connexion with the appeal.

Repeal of
Electricity
Supply Law
25 of 1961

19. The Electricity Supply Law, 1961 is repealed.

Passed by the National Assembly this 3rd day of April, 1973.

I.P. GONTSE,
Clerk of the National Assembly.