

ELECTRICITY SUPPLY (AMENDMENT) ACT, 2007

No. 20



of 2007

ARRANGEMENT OF SECTIONS

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An Act to amend the Electricity Supply Act to authorise the creation and licensing of independent producers and suppliers of electricity, and generally for taking measures conducive to the development and promotion of the electricity supply industry, and to provide for matters connected with or incidental thereto.

Date of Assent: 24.12.2007

Date of Commencement: On Notice

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Electricity Supply (Amendment) Act, 2007 and shall come into force on such date as the Minister may, by Order, determine.

Short title and commencement

2. The Electricity Supply Act, in this Act referred to as “the Act”, is amended, in section 2 thereof, by –

Amendment of section 2 of Cap. 73:01

(a) inserting, in their correct alphabetical order, the following new definitions –

“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” 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 final user, 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 and shall, without limiting the generality of the foregoing, include a power system operating 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 one or more persons outside Botswana;
 - “generation” means the production of electricity by any means;
 - “generating station” means a station for generating electricity, including buildings, plant and machinery and all accessories used for that purpose and the site used for the station or any such building, plant, machinery or accessories;
 - “import” means the purchase of electricity from outside of Botswana to any one or more persons inside Botswana;
 - “licence” means a licence issued under section 4 of this Act;
 - “licensee” means any person who holds a licence under this Act;
 - “retail supply” means the retail supply of electricity to any one or more consumers 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 power 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 accommodate the transformers, switchgear and other works and shall without limiting the generality of the foregoing include a power system operating at or above 132 kV; and
- (b) deleting the definitions of “licence” and “licensee”.

3. The Act is amended by substituting for section 3, the following new section —

“Licence required

3. (1) Subject to subsection (2) no person shall —
- (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 of 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 Minister under this Act and expressly authorizing such generation, supply, transmission, distribution, export, import, use, work or operation, as the case may be.

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

- (a) any generation, supply, transmission or distribution of electrical energy provided by 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, suppliers, transmitters, distributors of electricity shall be subject to any regulations made by the Minister under section 15 relating to safety.”

4. The Act is amended by inserting immediately after section 3, the following new section —

“Application for a licence

3A. An application for a licence to generate, supply, transmit, distribute, export or import electricity, shall be made to the Minister —

- (a) accompanied by such fee as may be prescribed; and
- (b) on such form as may be prescribed.”

5. The Act is amended by substituting for section 4, the following new section —

“Issue of licence

4. (1) The Minister shall, where he is satisfied that the applicant meets the requirements for the issue of a licence, and after consultation with the Corporation, issue to the applicant a licence in the prescribed form on such terms and conditions as set out in subsection (3).

Substitution of section 3 of the Act

Insertion of new section 3A into the Act

Amendment of section 4 of the Act

(2) A licence issued under subsection (1) may set out the rights of a person to construct, own, operate or to maintain generation, transmission and associated infrastructure for —

- (a) the generation of electricity;
- (b) the export of electricity;
- (c) the import of electricity;
- (d) the transmission and supply of electricity to the Corporation or, with the approval of the Minister, to any one or more customers or consumers in Botswana;
- (e) the transmission and supply of electricity to a person outside Botswana.

(3) A licence referred to in this section may be issued on terms and conditions relating to one or more of the following, as shall be determined by the Minister —

- (a) the term of the licence and its renewal;
- (b) the modification, suspension, or cancellation of the licence;
- (c) the location and capacity of generation, transmission and associated infrastructure;
- (d) the operation and maintenance of generation, transmission and associated infrastructure;
- (e) the determination, regulation or approval of the tariff applicable to the generation, supply and transmission of electricity;
- (f) the ceding, transfer, encumbrance or assignment of the licence, share capital, control of the licensee and the electricity undertaking assets; and the procedure to be followed in effecting such cession, transfer, encumbrance or assignment, and terms and conditions related thereto;
- (g) the compliance with technical standards of operation and maintenance of transmission lines, codes and regulations, as may be specified or incorporated by referral in the licence;
- (h) the compliance with health, safety and environmental standards and requirements;
- (i) scheduling and dispatch requirements for electricity and deviations from such requirements;
- (j) the payment of licence fees;
- (k) the keeping of records and the furnishing of information and documents which the Minister may require in the licence for the purpose of this Act; or
- (l) any other matter related to the generation, transmission distribution, supply, export and import of electricity as the Minister may prescribe.”

6. The Act is amended by inserting immediately after section 4, the following new section —

Insertion of section 4A into the Act

“Modification of licence

4A. (1) An application for modification of any of the terms and conditions of a licence shall be made to the Minister in the prescribed form.

(2) Upon receipt of an application under subsection (1), the Minister may modify a licence as requested by the licensee or as he deems appropriate.

(3) The Minister may refuse to modify a licence where the proposed modifications are not consistent with the requirements of this Act:

Provided that the Minister shall not refuse to modify a licence without informing the licensee of the reasons for such refusal.”.

7. The Act is amended by inserting immediately after the new section 4A, the following new section —

Insertion of section 4B into the Act

“Transfer of licence

4B. (1) A licensee may apply to the Minister to transfer his or her licence to another person, in the prescribed form.

(2) Without prejudice to the generality of subsection (1), the Minister may transfer a licence where —

(a) the licensee has been declared insolvent or has surrendered his estate for the benefit of his creditors, to his trustees;

(b) the licensee becomes subject to any legal disability; or

(c) the licensee has died, to his heir or beneficiary.

8. The Act is amended by inserting immediately after the new section 4B, the following new section —

Insertion of section 4C into the Act

“Cancellation or suspension of licence

4C. The Minister may suspend or cancel a licence on any of the following grounds —

(a) non-compliance with any licence condition;

(b) contravention of any of the provisions of this Act;
or

(c) as may be necessary in the public interest:

Provided that the Minister shall not cancel or suspend a licence without first consulting the licensee.”.

9. The Act is amended by inserting immediately after section 9, the following new section —

Insertion of section 9A into the Act

“Access or use of Corporation facilities

9A. A licensee shall have access to or use of transmission facilities and associated infrastructure owned and operated by the Corporation subject to the terms and conditions set forth in the licence.”.

Substitution
of section 16
of the Act

10. The Act is amended by substituting for section 16, the following new section —

“Continuation
of
generation,
supply, etc.

16. (1) Where the Minister cancels a licence in accordance with section 4C, and determines that it is in the public interest that electricity shall continue to be generated for, supplied, transmitted, distributed 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.

(2) Where the Minister has made a determination in terms of subsection (1) —

- (a) in dealing with real property, compensation shall be payable in terms of the law relating to the acquisition of property for public purposes; and
- (b) in dealing with other property, compensation shall be based solely upon 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.

(3) Where, in terms of a licence issued under section 4, an agreement exists between the Government and a licensee concerning compensation matters in relation to any determination in terms of subsection (1), the terms of the agreement shall apply in calculating compensation.”

Substitution
of section 17
of the Act

11. The Act is amended by substituting for section 17, the following new section —

“Appeals from
decisions of
Minister

17. (1) A licensee aggrieved by any decision of the Minister, including a decision —

- (a) not to renew a licence;
- (b) not to transfer a licence;
- (c) not to modify a licence;
- (d) to suspend a licence; or
- (e) to cancel a licence,

may apply for review or appeal to the High Court within 30 days from the date of the notification or communication of the decision to him.

(2) Where the High Court determines that the Minister acted improperly, irregularly, unprocedurally or unlawfully in arriving at his decision, the High Court shall, where there is no agreement between Government and the licensee, determine the amount of compensation to be paid to the licensee.

(3) Where there is an agreement between the Government and a licensee, and the High Court has determined that the Minister acted improperly, irregularly, unprocedurally, or unlawfully in arriving at his decision, the High Court shall refer the calculation of compensation to be paid to the licensee to arbitration under such an agreement.

(4) Notwithstanding subsections (1), (2) and (3), a licensee may refer the Minister's decision to other dispute resolution and compensation arrangements where there is an agreement between the Government and a licensee providing for such arrangements.”.

PASSED by the National Assembly this 10th day of December, 2007.

E.S. MPOFU,
Clerk of the National Assembly.